

After Recording Return to:
Jan Ruiz NCS# 988973
First American Title Ins. Co.
601 Travis Street, Suite 1875
Houston, TX 77002



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11/12/2021 01:54 PM Pages: 1 of 66 Fees: \$675.50
Sagitt County Auditor

When recorded, return to:
HollyFrontier Puget Sound Refining LLC
2828 N. Harwood, Ste. 1300
Dallas, TX 75201
Attention: General Counsel



HILARY S. FRANZ
COMMISSIONER OF PUBLIC LANDS

AMENDMENT AND NOTICE OF AND CONSENT TO ASSIGNMENT OF LEASE

Lease No. 20-A12561

Grantor: Washington State Department of Natural Resources
Grantee(s): HollyFrontier Puget Sound Refining LLC; Equilon Enterprises LLC
Legal Description: Section 20 and Section 29, Township 35 North, Range 2 East, W.M.
Assessor's Property Tax Parcel or Account Number: Not Applicable
Assessor's Property Tax Parcel or Account Number for Upland parcel used in conjunction with this lease: P33022

This Amendment and Notice of and Consent to Assignment of Lease ("Agreement") is made by and between STATE OF WASHINGTON acting through the Department of Natural Resources ("State"), EQUILON ENTERPRISES LLC, a Delaware limited liability company registered to do business in the State of Washington, whose address is 150 N. Dairy Ashford Ave., Houston, TX, 77079, United States ("Assignor") and HOLLYFRONTIER PUGET SOUND REFINING LLC, a Delaware limited liability company registered to do business in the State of Washington, whose address is 2828 N. Harwood St., Dallas, TX 75201-1518, United States ("Assignee").

BACKGROUND

- A. Lease No. 20-A12561 was entered into on the 21st day of September, 2004, by and between Assignor and State, and recorded with the Skagit County Auditor's office under recording number 202110200099 (the "Lease").
- B. The Lease is for the Property legally described in Exhibit A to the Lease.
- C. Section 4 of this Agreement includes amendments to the Lease.
- D. The term "Lease" in this Agreement includes all amendments to the Lease entered into previous to the date of this Agreement and all amendments within Section 4 of this Agreement.
- E. A copy of the Lease is attached as Exhibit 1.
- F. Capitalized terms in this Agreement that are not expressly defined herein have the meaning assigned to them in the Lease.
- G. Assignor now possesses the rights, duties, and liabilities under the Lease.
- H. Assignor desires to assign and Assignee desires to assume the rights, duties, and liabilities of Tenant under the Lease. The Lease prohibits an assignment without State's consent. State is willing to give its consent based upon the assurances and agreements made in this Agreement.

THEREFORE, Assignor and Assignee agree as follows:

SECTION 1 NOTICE OF INTENT TO ASSIGN

Assignor gives notice of its intent to assign the Lease to Assignee. Assignor warrants to State and Assignee that Assignor will assign all of its rights, title, and interest as Tenant under the Lease to Assignee effective the 1st day of November, 2021, for the balance of the term as provided in the Lease upon State's consent to the assignment.

SECTION 2 NOTICE OF INTENT TO ASSUME

Assignee gives notice of its intent to assume all the duties and liabilities of Tenant under the Lease for the balance of the Lease term as provided in the Lease effective the 1st day of November, 2021. By signing this Agreement, Assignee guarantees faithful performance and discharge of the duties and liabilities of Tenant according to the terms of the Lease.

SECTION 3 NO RELEASE

State does not release Assignor from fully performing the provisions of the Lease. Assignor agrees that State and Assignee may change, modify, or amend the Lease in any way, including the rent to be paid. Any change, modification, or amendment of the Lease shall not release Assignor from fully performing the provisions of the Lease. Assignor remains liable to State to the same extent as if no assignment had been made.

SECTION 4 AMENDMENTS

Paragraph 2.2, Paragraph 3.1, Paragraph 3.4, Section 7, Section 8, Section 10, Section 11, and Exhibit B of the Lease are amended to read as specified in Exhibit 2, attached hereto. All other terms of the Lease not inconsistent with these amendments or this Agreement are hereby affirmed and ratified.

SECTION 5 FURTHER ASSIGNMENTS

Further assignments may be made, without notice to or consent of Assignor, and without in any manner releasing or relieving Assignor from liability under the Lease. Assignor shall remain liable under all the terms, covenants, and conditions of the Lease until the end of the term of the Lease. Further assignment shall not be made without prior written consent of State.

SECTION 6 WARRANTIES

Assignor represents and warrants to State and to Assignee that:

- (a) The Lease is in full force and effect;
- (b) Assignor is not in default or breach of the Lease;
- (c) Assignor has no knowledge of any claims, offsets, or defenses under the Lease or against State;
- (d) the rents due subsequent to this assignment have not been paid in advance; and
- (e) to the best of Assignor's knowledge, the Property is in full compliance with all applicable federal, state, and local governmental permits, rules, ordinances, and laws.

Assignor shall defend, indemnify, and hold harmless State from any breach of the foregoing warranties and from any claims or causes of action, known or unknown, of Assignor that have or may arise from circumstances that precede this Agreement.

SECTION 7 NOTICE

Assignor instructs State to send all future notices to Assignee. Assignee has the obligation to keep Assignor informed about the activities on the Property and Assignee's performance of its obligations under the Lease. Assignee shall send to Assignor copies of any notices it receives or sends to State. Assignor has the obligation to remain informed of Assignee's activities on the Property, Assignee's performance of its obligations under the Lease, and Assignee's financial condition. State has no obligation to provide Assignor any notice or information concerning the Lease. Assignee and Assignor shall not rely on State to inform Assignor.

The parties shall direct notices required or permitted under this Consent to the following addresses:

State: DEPARTMENT OF NATURAL RESOURCES
Orca-Straits District
919 North Township Street
Sedro-Woolley, WA 98284
Ross Zimmerman
360-707-1355
ross.zimmerman@dnr.wa.gov

Assignor: EQUILON ENTERPRISES, LLC
150 N. Dairy Ashford Ave.
Houston, TX 77079

Assignee: HOLLYFRONTIER PUGET SOUND REFINING LLC
2828 N. Harwood Street, Suite 1300
Dallas, TX 75201-1518
Attention: General Counsel

Any Party may change the place of delivery upon ten (10) days' written notice to the others. Notice is effective upon personal delivery or three (3) days after mailing.

SECTION 8 RECORDATION OF AGREEMENT AND ASSIGNMENT AND NOTICE TO STATE

Assignor agrees to provide written notice to State that an assignment between Assignor and Assignee has been executed, and to record this Agreement and the assignment (or memorandum of assignment) between Assignor and Assignee in the county in which the Property resides. Such assignment, notice, and recording must occur within 60 days of the date upon which this Agreement is executed. To meet the requirement that the assignment between the Assignor and Assignee be recorded, Assignor may record either the assignment document or a memorandum of assignment. Written notice to State under this Section shall include the recording number of this Agreement, the recording number of the assignment (or memorandum of assignment), and a Notice of and Consent to Assignment of Lease

copy of the assignment document or memorandum of assignment. If Assignor fails to notify State of the assignment in accordance with this Section, this Agreement shall be void.

SECTION 9 CONSTRUCTION

This Agreement shall be construed under the laws of the State of Washington. In the event of conflict between any term, condition, or provision of any agreement between the Assignor and Assignee, and the terms of this Agreement or the Lease, the terms of this Agreement and the Lease shall control. In the event of conflict between any term, condition, or provision of this Agreement and the Lease, this Agreement shall control.

SECTION 10 CONSENT BY STATE

In consideration of the foregoing, State consents to the assignment of the Lease to Assignee. However, State expressly conditions this consent on the understanding that neither State's consent nor its collection of rent from Assignee shall be a waiver of the covenant restricting future assignments or subletting. Furthermore, State's acceptance of Assignee as Tenant shall not be construed as releasing Assignor from full performance of the provisions of the Lease. Except as set forth in this Agreement, no provision of this Agreement or this consent alters or modifies any of the terms and conditions of the Lease, including the requirement that the written consent of State be obtained before any further assignment of the Lease or subletting of the Property occurs. If State fails to receive written notice of the assignment in accordance with Section 8 of this Agreement, State's consent shall be void.

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

ASSIGNOR:
EQUILON ENTERPRISES LLC

Dated: _____, 20____

By: ANNA L. McNEW
Title: Attorney-in-Fact
Address: 150 N. Dairy Ashford Ave.
Houston, TX 77079
Phone: 832-762-2514

ASSIGNEE:
HOLLYFRONTIER PUGET SOUND REFINING
LLC

Dated: October 27, 2021

By: VALERIE POMPA
Title: Senior Vice President Refining Operations
Address: 2828 N. Harwood St. Suite 1300
Dallas, TX 75201-1518
Phone: 214-871-3555

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____, 20____

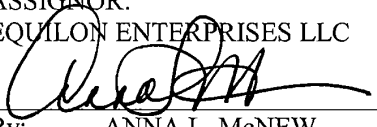
By: KATRINA LASSITER
Title: Interim Deputy Supervisor for Aquatics
Address: 1111 Washington St. SE
Olympia, WA 98504

Approved as to form this
27th day of October 2021
Jennifer Clements, Assistant Attorney General

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

ASSIGNOR:
EQUILON ENTERPRISES LLC

Dated: October 28, 2021


By: ANNA L. McNEW
Title: Attorney-in-Fact
Address: 150 N. Dairy Ashford Ave.
Houston, TX 77079
Phone: 832-762-2514

ASSIGNEE:
HOLLYFRONTIER PUGET SOUND REFINING
LLC

Dated: _____, 20____

By: VALERIE POMPA
Title: Senior Vice President Refining Operations
Address: 2828 N. Harwood St. Suite 1300
Dallas, TX 75201-1518
Phone: 214-871-3555

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____, 20____

By: KATRINA LASSITER
Title: Interim Deputy Supervisor for Aquatics
Address: 1111 Washington St. SE
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ASSIGNEE:
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By: VALERIE POMPA
Title: Senior Vice President Refining Operations
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Dallas, TX 75201-1518
Phone: 214-871-3555

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: October 28, 2021

By: 
KATRINA LASSITER
Title: Interim Deputy Supervisor for Aquatics
Address: 1111 Washington St. SE
Olympia, WA 98504

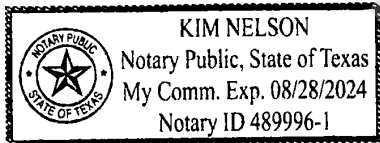
Approved as to form this
27th day of October 2021
Jennifer Clements, Assistant Attorney General

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF Texas)
COUNTY OF Harris) ss.

I certify that I know or have satisfactory evidence that ANNA L. McNEW is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Attorney-in-Fact of EQUILON ENTERPRISES LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: October 28, 2021



Kim Nelson
(Signature)

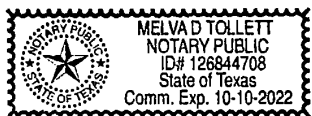
Kim Nelson
(Print Name)
Notary Public in and for the State of TX,
residing at Galveston County
My appointment expires 8/28/2024

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF Texas)
COUNTY OF Dallas) ss.

I certify that I know or have satisfactory evidence that VALERIE POMPA is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Senior Vice President Refining Operations of HOLLYFRONTIER PUGET SOUND REFINING LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 10/27/21



Melva D. Tollett
(Signature)

Melva D. Tollett
(Print Name)

Notary Public in and for the State of Texas
residing at 2828 N. Harwood, Ste 1300
Dallas TX 75201
My appointment expires 10/10/22

STATE OF WASHINGTON)
) ss.
County of Thurston)

My appointment expires 9-2-25



EXHIBIT 1**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
DOUG SUTHERLAND, Commissioner of Public Lands****AQUATIC LANDS LEASE
(Commercial)****AQUATIC LANDS LEASE NO. 20-A12561**

THIS LEASE is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and EQUILON ENTERPRISES, L.L.C (registered in the state of Delaware), d.b.a, SHELL OIL PRODUCTS US, a limited liability Company ("Tenant").

BACKGROUND

Tenant desires to lease the aquatic lands commonly known as Fidalgo Bay, which are bedlands located in Skagit County, Washington, from State, and State desires to lease the property to Tenant pursuant to the terms and conditions of this Lease.

THEREFORE, the parties agree as follows:

SECTION 1 PROPERTY

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

1.2 Survey, Maps, and Plans. In executing this Lease, State is relying on the surveys, plats, diagrams, and/or legal descriptions provided by Tenant. Tenant is not relying upon and State is not making any representations about any survey, plat, diagram, and/or legal description provided by State.

Form Date: 07/2003

I

Agreement No. 20-A12561

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

SECTION 2 USE

2.1 Permitted Use. Tenant shall use the Property for a crude oil and petroleum product transfer (the "Permitted Use"), and for no other purpose. The Permitted Use is described or shown in greater detail in Exhibit B, the terms and conditions of which are incorporated by reference and made a part of this Lease. The parties agree that this is a water-dependent use.

2.2 Restrictions on Use. Tenant shall not cause or permit any damage to natural resources on the Property. Tenant shall also not cause or permit any filling activity to occur on the Property. This prohibition includes any deposit of rock, earth, ballast, refuse, garbage, waste matter (including chemical, biological or toxic wastes), hydrocarbons, any other pollutants, or other matter in or on the Property, except as approved in writing by State. Tenant shall neither commit nor allow waste to be committed to or on the Property. If Tenant fails to comply with all or any of the restrictions on the use of the Property set out in this Subsection 2.2, State shall notify Tenant and provide Tenant a reasonable time to take all steps necessary to remedy the failure. If Tenant fails to do so in a timely manner, then State may take any steps reasonably necessary to remedy this failure. Upon demand by State, Tenant shall pay all costs of such remedial action, including but not limited to the costs of removing and disposing of any material deposited improperly on the Property. This section shall not in any way limit Tenant's liability under Section 8, below.

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

2.4 Liens and Encumbrances. Tenant shall keep the Property free and clear of any liens and encumbrances arising out of or relating to its use or occupancy of the Property.

SECTION 3 TERM

3.1 Term Defined. The term of this Lease is Thirty (30) years (the "Term"), beginning on the 1st day of September 2004 (the "Commencement Date"), and ending on the 31st day of August 2034 (the "Termination Date"), unless terminated sooner under the terms of this Lease.

3.2 Renewal of the Lease. Tenant shall have the option to renew this Lease for Zero (0) additional terms of Zero (0) years each. The initial Term of this Lease, and all

renewal terms, shall not exceed Thirty (30) years in the aggregate. Tenant shall exercise this option by providing written notice of its election to renew at least ninety (90) days prior to the Termination Date of the initial Term or any renewal term of this Lease. Tenant shall not be entitled to renew if it is in default under the terms of this Lease at the time the option to renew is exercised. The terms and conditions of any renewal term shall be the same as set forth in this Lease, except that rent shall be recalculated, the required amounts of financial security may be revised, and provisions dealing with hazardous waste or impacts to natural resources may be changed at the time of the renewal.

3.3 Delay in Delivery of Possession. If State, for any reason whatsoever, cannot deliver possession of the Property to Tenant on the Commencement Date, this Lease shall not be void or voidable, nor shall State be liable to Tenant for any loss or damage resulting from the delay in delivery of possession. In such event, the date of delivery of possession shall be the Commencement Date for all purposes, including the payment of rent. In the event Tenant takes possession before the Commencement Date, the date of possession shall be the Commencement Date for all purposes, including the payment of rent. If the Lease Term commences earlier or later than the scheduled Commencement Date, the Termination Date shall be adjusted accordingly.

3.4 End of Term. Upon the expiration or termination of the Term or extended term, as applicable, Tenant shall surrender the Property to State in the same or better condition as on the Commencement Date, reasonable wear and tear excepted.

3.5 Hold Over. If Tenant remains in possession of the Property after the Termination Date, the occupancy shall not be an extension or renewal of the Term. The occupancy shall be a month-to-month tenancy, on terms identical to the terms of this Lease, which may be terminated by either party on thirty (30) days written notice. The monthly rent during the holdover shall be the same rent which would be due if the Lease were still in effect and all adjustments in rent were made in accordance with its terms. If State provides a notice to vacate the Property in anticipation of the termination of this Lease or at any time after the Termination Date and Tenant fails to do so within the time set forth in the notice, then Tenant shall be a trespasser and shall owe the State all amounts due under RCW 79.01.760 or other applicable law.

SECTION 4 RENT

4.1 Annual Rent. Until adjusted as set forth below, Tenant shall pay to State an annual rent of Thirteen Thousand Five Hundred Eighty Three Dollars and 59/100 (\$13,583.59). The annual rent, as it currently exists or as adjusted or modified (the "Annual Rent"), shall be due and payable in full on or before the Commencement Date and on or before the same date of each year thereafter.

4.2 Payment Place. Payment is to be made to Financial Management Division, 1111 Washington St SE, PO Box 47041, Olympia, WA 98504-7041.

4.3 Adjustment Based on Use. Annual Rent is based on Tenant's Permitted Use of the Property, as described in Section 2 above. If Tenant's Permitted Use changes, the Annual Rent shall be adjusted as appropriate for the changed use.

4.4 Rent Adjustments for Water-Dependent Uses.

- (a) **Inflation Adjustment.** State shall adjust water-dependent rent annually pursuant to RCW 79.90.450 -902, except in those years in which the rent is revalued under Subsection 4.4(b) below. This adjustment shall be effective on the anniversary of the Commencement Date.
- (b) **Revaluation of Rent.** State shall, at the end of the first four-year period of the Term, and at the end of each subsequent four-year period, revalue the water-dependent Annual Rent in accordance with RCW 79.90.450-.902.
- (c) **Rent Cap.** After the initial year's rent is determined under Subsection 4.1, rent may increase by operation of Subsection 4.4(a) or 4.4(b). If application of the statutory rent formula for water-dependent uses would result in an increase in the rent attributable to such uses of more than fifty percent (50%) in any one year, the actual increase implemented in such year shall be limited to fifty percent (50%) of the then-existing rent, in accordance with RCW 79.90.490. The balance of the increase determined by the formula shall be deferred to subsequent years and added to the next and subsequent years' rental increases until the full amount of the increase is lawfully implemented.

4.5 Rent Adjustment Procedures.

- (a) **Notice of Rent Adjustment.**
Notice of any adjustments to the Annual Rent that are allowed by Subsection 4.4 (b) shall be provided to Tenant in writing no later than ninety (90) days after the anniversary date of the Lease.
- (b) **Procedures on Failure to make Timely Adjustment.**
In the event the State fails to provide the notice required in Subsection 4.4 (a), it shall be prohibited from collecting any adjustments to rent only for the year in which it failed to provide notice. No failure by State to adjust Annual Rent pursuant to Subsection 4.4 (a) shall affect the State's right to establish Annual Rent for a subsequent lease year as if the missed or waived adjustment had been implemented. The State may adjust, bill, and collect Annual Rent prospectively as if any missed or waived adjustments had actually been implemented. This includes the implementation of any inflation adjustment and any rent revaluations that would have been authorized for previous lease years.

SECTION 5 OTHER EXPENSES

During the Term, Tenant shall pay the following additional expenses:

5.1 Utilities. Tenant shall pay all fees charged for utilities in connection with the use and occupancy of the Property, including but not limited to electricity, water, gas, and telephone service.

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

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

5.4 Proof of Payment. Tenant shall, if required by State, furnish to State receipts or other appropriate evidence establishing the payment of any amounts required to be paid under the terms of this Lease.

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

SECTION 6 LATE PAYMENTS AND OTHER CHARGES

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

6.2 Interest Penalty for Past Due Rent and Other Sums Owed. If rent is not paid within thirty (30) days of the date due, then Tenant shall, in addition to paying the late charges determined under Subsection 6.1, above, pay interest on the amount outstanding at the rate of one percent (1%) per month until paid. If State pays or advances any amounts for or on behalf of Tenant, including but not limited to leasehold taxes, taxes, assessments, insurance premiums, costs of removal and disposal of unauthorized materials pursuant to Section 2 above, costs of removal and disposal of improvements pursuant to Section 7 below, or other amounts not paid when due, Tenant shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Tenant of the payment or advance.

6.3 No Accord and Satisfaction. If Tenant pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. In the absence of an election, the payment or receipt shall be applied first to accrued taxes which State has advanced or may be obligated to pay, then to other amounts advanced by State, then to late charges and accrued interest, and then to the earliest rent due. State may accept any payment in any amount without prejudice to State's right to recover the balance of the rent or pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment shall constitute or be construed as accord and satisfaction.

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

SECTION 7 IMPROVEMENTS

7.1 Existing Improvements. On the Commencement Date, the following improvements are located on the Property: Docks and wharf structure supported by pilings. The improvements are not owned by State "Existing Improvements."

7.2 Tenant-Owned Improvements. So long as this Lease remains in effect, Tenant shall retain ownership of all Existing Improvements, and all authorized improvements and trade fixtures it may place on the Property (collectively "Tenant-Owned Improvements"). Tenant-Owned Improvements shall not include any construction, reconstruction, alteration, or addition to any Unauthorized Improvements as defined in Subsection 7.5 below. No Tenant-Owned Improvements shall be placed on the Property without State's prior written consent.

7.3 Construction. Prior to any construction, alteration, replacement, removal or major repair of any improvements (whether State-Owned or Tenant-Owned), Tenant shall submit to State plans and specifications which describe the proposed activity. Construction shall not commence until State has approved those plans and specifications in writing and Tenant has obtained a performance and payment bond in an amount equal to 125% of the estimated cost of construction. The performance and payment bond shall be maintained until the costs of construction, including all laborers and material persons, have been paid in full. State shall have sixty (60) days in which to review the proposed plans and specifications. The plans and specifications shall be deemed approved and the requirement for State's written consent shall be treated as waived, unless State notifies Tenant otherwise within the sixty (60) days. Upon completion of construction, Tenant shall promptly provide State with as-built plans and specifications. State's consent and approval shall not be required for any routine maintenance or repair of improvements made by the Tenant pursuant to its obligation to maintain the Property in good order and repair that does not result in the construction, alteration, replacement, removal, or major repair of any improvements on the Property.

7.4 Removal. Tenant-Owned Improvements shall be removed by Tenant by the Termination Date unless State notifies Tenant that the Tenant-Owned Improvements may remain. If the State elects for the Tenant-Owned Improvements to remain on the Property after the Termination Date, they shall become the property of State without payment by State (if the provisions of RCW 79.94.320 or RCW 79.95.040 apply, Tenant shall be entitled to the rights provided in the statute). To the extent that Tenant-Owned Improvements include items of personal property which may be removed from the leasehold premises without harming the Property, or diminishing the value of the Property or the improvements, the State asserts no ownership interest in these improvements unless the parties agree otherwise in writing upon termination of this Lease. Any Tenant-Owned Improvements specifically identified as personal property in Exhibit A or B shall be treated in accordance with this provision. Tenant shall notify State at least one hundred eighty (180) days before the Termination Date if it intends to leave the Tenant-Owned Improvements on the Property. State shall then have ninety (90) days in which to notify Tenant that it wishes to have the Tenant-Owned Improvements removed or elects to have them remain. Failure to notify Tenant shall be deemed an election by State that the Tenant-Owned Improvements will remain on the Property. If the Tenant-Owned Improvements remain on the Property after the Termination Date without State's actual or deemed consent, they still will become the property of the State but the State may remove them and Tenant shall pay the costs of removal and disposal upon State's demand.

7.5 Unauthorized Improvements. Improvements made on the Property without State's prior consent pursuant to Subsection 7.3 or which are not in conformance with the plans submitted to and approved by State ("Unauthorized Improvements") shall immediately become the property of State, unless State elects otherwise. Regardless of ownership of Unauthorized Improvements, State may, at its option, require Tenant to sever, remove, and dispose of them, charge Tenant rent for the use of them, or both. If Tenant fails to remove an Unauthorized Improvement upon request, State may remove it and charge Tenant for the cost of removal and disposal.

SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

8.1 Definition. "Hazardous Substance" means any substance which now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*, and Washington's Model Toxics Control Act ("MTCA"), RCW 70.105D.010 *et seq.*

8.2 Use of Hazardous Substances. Tenant covenants and agrees that Hazardous Substances will not be used, stored, generated, processed, transported, handled, released, or disposed of in, on, under, or above the Property, except in accordance with all applicable laws.

8.3 Current Conditions, Duty of Utmost Care, and Duty to Investigate.

- (a) State makes no representation about the condition of the Property. Hazardous Substances may exist in, on, under, or above the Property. With regard to any Hazardous Substances that may exist in, on, under, or above the Property, State disclaims any and all responsibility to conduct investigations, to review any State records, documents or files, or to obtain or supply any information to Tenant.
- (b) Tenant shall exercise the utmost care with respect to both Hazardous Substances in, on, under, or above the Property as of the Commencement Date, and any Hazardous Substances that come to be located in, on, under, or above the Property during the Term of this agreement, along with the foreseeable acts or omissions of third parties affecting those Hazardous Substances, and the foreseeable consequences of those acts or omissions. The obligation to exercise utmost care under this Subsection 8.3 includes, but is not limited to, the following requirements:
- (1) Tenant shall not undertake activities that will cause, contribute to, or exacerbate contamination of the Property;
 - (2) Tenant shall not undertake activities that damage or interfere with the operation of remedial or restoration activities on the Property or undertake activities that result in human or environmental exposure to contaminated sediments on the Property;
 - (3) Tenant shall not undertake any activities that result in the mechanical or chemical disturbance of on-site habitat mitigation;
 - (4) If requested, Tenant shall allow reasonable access to the Property by employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, or other similar environmental agencies, and
 - (5) If requested, Tenant shall allow reasonable access to potentially liable or responsible parties who are the subject of an order or consent decree which requires access to the Property. Tenant's obligation to provide access to potentially liable or responsible parties may be conditioned upon the negotiation of an access agreement with such parties, provided that such agreement shall not be unreasonably withheld.
- (c) It shall be Tenant's obligation to gather sufficient information concerning the Property and the existence, scope, and location of any Hazardous Substances on the Property, or adjoining the Property, that allows Tenant to effectively meet its obligations under this lease.

8.4 Notification and Reporting.

- (a) Tenant shall immediately notify State if Tenant becomes aware of any of the following:
- (1) A release or threatened release of Hazardous Substances in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property;
 - (2) Any problem or liability related to, or derived from, the presence of any Hazardous Substance in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property;
 - (3) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances with respect to the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property;
 - (4) Any lien or action with respect to any of the foregoing; or,
 - (5) Any notification from the US Environmental Protection Agency (EPA) or the Washington State Department of Ecology (DOE) that remediation or removal of Hazardous Substances is or may be required at the Property.
- (b) Upon request, Tenant shall provide State with copies of any and all reports, studies, or audits which pertain to environmental issues or concerns associated with the Property, and which were prepared for Tenant and submitted to any federal, state or local authorities pursuant to any federal, state or local permit, license or law. These permits include, but are not limited to, any National Pollution Discharge and Elimination System Permit, any Army Corps of Engineers permit, any State Hydraulics permit, any State Water Quality certification, or any Substantial Development permit.

8.5 Indemnification.

- (a) Tenant shall fully indemnify, defend, and hold State harmless from and against any and all claims, demands, damages, natural resource damages, response costs, remedial costs, cleanup costs, losses, liens, liabilities, penalties, fines, lawsuits, other proceedings, costs, and expenses (including attorneys' fees and disbursements), that arise out of, or are in any way related to:

- (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Tenant, its subtenants, contractors, agents, employees, guests, invitees, or affiliates in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property, during the Term of this Lease or during any time when Tenant occupies or occupied the Property or any such other property;
- (2) The release or threatened release of any Hazardous Substance, or the exacerbation of any Hazardous Substance contamination, in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property, which release, threatened release, or exacerbation occurs or occurred during the Term of this Lease or during any time when Tenant occupies or occupied the Property or any such other property, and as a result of:
 - (i) Any act or omission of Tenant, its subtenants, contractors, agents, employees, guests, invitees, or affiliates; or,
 - (ii) Any foreseeable act or omission of a third party unless Tenant exercised the utmost care with respect to the foreseeable acts or omissions of the third party and the foreseeable consequences of those acts or omissions.
- (b) In addition to the indemnifications provided in Subsection 8.5(a), Tenant shall fully indemnify State for any and all damages, liabilities, costs or expenses (including attorneys' fees and disbursements) that arise out of or are in any way related to Tenant's breach of the obligations of Subsection 8.3(b). This obligation is not intended to duplicate the indemnity provided in Subsection 8.5(a) and applies only to damages, liabilities, costs, or expenses that are associated with a breach of Subsection 8.3(b) and which are not characterized as a release, threatened release, or exacerbation of Hazardous Substances.

8.6 Cleanup. If a release of Hazardous Substances occurs in, on, under, or above the Property, or other State-owned property, arising out of any action, inaction, or event described or referred to in Subsection 8.5, above, Tenant shall, at its sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances. Cleanup actions shall include, without limitation, removal, containment and remedial actions and shall be performed in accordance with all applicable laws, rules, ordinances, and permits. Tenant's obligation to undertake a cleanup under this Subsection 8.6 shall be limited to those instances where the Hazardous Substances exist in amounts that exceed the threshold limits of any applicable regulatory cleanup standards. Tenant shall also be solely responsible for all cleanup, administrative, and enforcement costs of

governmental agencies, including natural resource damage claims, arising out of any action, inaction, or event described or referred to in Subsection 8.5, above. Tenant may undertake a cleanup pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that: (1) Any cleanup plans shall be submitted to State (DNR) for review and comment at least thirty (30) days prior to implementation (except in emergency situations), and (2) Tenant must not be in breach of this lease. Nothing in the operation of this provision shall be construed as an agreement by State that the voluntary cleanup complies with any laws or with the provisions of this Lease.

8.7 Sampling by State, Reimbursement, and Split Samples.

- (a) State may conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Property at any time to determine the existence, scope, or effects of Hazardous Substances on the Property, any adjoining property, any other property subject to use by Tenant in conjunction with its use of the Property, or any natural resources. If such Tests, along with any other information, demonstrates the existence, release, or threatened release of Hazardous Substances arising out of any action, inaction, or event described or referred to in Subsection 8.5, above, Tenant shall promptly reimburse State for all costs associated with such Tests.
- (b) State's ability to seek reimbursement for any Tests under this Subsection shall be conditioned upon State providing Tenant written notice of its intent to conduct any Tests at least thirty (30) calendar days prior to undertaking such Tests, unless such Tests are performed in response to an emergency situation in which case State shall only be required to give such notice as is reasonably practical.
- (c) Tenant shall be entitled to obtain split samples of any Test samples obtained by State, but only if Tenant provides State with written notice requesting such samples within twenty (20) calendar days of the date Tenant is deemed to have received notice of State's intent to conduct any non-emergency Tests. The additional cost, if any, of split samples shall be borne solely by Tenant. Any additional costs State incurs by virtue of Tenant's split sampling shall be reimbursed to State within thirty (30) calendar days after a bill with documentation for such costs is sent to Tenant.

Within thirty (30) calendar days of a written request (unless otherwise required pursuant to Subsection 8.4(b), above), either party to this Lease shall provide the other party with validated final data, quality assurance/quality control information, and chain of custody information, associated with any Tests of the Property performed by or on behalf of State or Tenant. There is no obligation to provide any analytical summaries or expert opinion work product.

8.8 Reservation of Rights. The parties have agreed to allocate certain environmental risks, liabilities, and responsibilities by the terms of Section 8. With respect to those environmental liabilities covered by the indemnification provisions of Subsection 8.5, that subsection shall exclusively govern the allocation of those liabilities. With respect to any environmental risks, liabilities, or responsibilities not covered by Subsection 8.5, the parties expressly reserve and do not waive or relinquish any rights, claims, immunities, causes of action, or defenses relating to the presence, release, or threatened release of Hazardous Substances in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property, that either party may have against the other under federal, state, or local laws, including but not limited to, CERCLA, MTCA, and the common law. No right, claim, immunity, or defense either party may have against third parties is affected by this Lease and the parties expressly reserve all such rights, claims, immunities, and defenses. The allocations of risks, liabilities, and responsibilities set forth above do not release either party from, or affect either party's liability for, claims or actions by federal, state, or local regulatory agencies concerning Hazardous Substances.

SECTION 9 ASSIGNMENT AND SUBLETTING

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

- (a) In determining whether to consent, State may consider, among other items, the proposed transferee's financial condition, business reputation and experience, the nature of the proposed transferee's business, the then-current value of the Property, and such other factors as may reasonably bear upon the suitability of the transferee as a tenant of the Property. Tenant shall submit information regarding any proposed transferee to State at least thirty (30) days prior to the date of the proposed transfer.
- (b) State reserves the right to condition its consent upon: (1) changes in the terms and conditions of this Lease, including the Annual Rent and other terms; and/or (2) the agreement of Tenant or transferee to conduct Tests for Hazardous Substances on the Property or on other property owned or occupied by Tenant or the transferee.
- (c) Each permitted transferee shall assume all obligations under this Lease, including the payment of rent. No assignment, sublet, or transfer shall release, discharge, or otherwise affect the liability of Tenant.

9.2 Event of Assignment. If Tenant is a corporation, a dissolution of the corporation or a transfer (by one or more transactions) of a majority of the voting stock of Tenant shall be deemed to be an assignment of this Lease. If Tenant is a partnership, a

dissolution of the partnership or a transfer (by one or more transactions) of the controlling interest in Tenant shall be deemed an assignment of this Lease.

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

9.4 Terms of Subleases. All subleases shall be submitted to State for approval and shall meet the following requirements:

- (a) The sublease shall be consistent with and subject to all the terms and conditions of this Lease;
- (b) The sublease shall confirm that if the terms of the sublease conflict with the terms of this Lease, this Lease shall control;
- (c) The term of the sublease (including any period of time covered by a renewal option) shall end before the Termination Date of the initial Term or any renewal term;
- (d) The sublease shall terminate if this Lease terminates, whether upon expiration of the Term, failure to exercise an option to renew, cancellation by State, surrender or for any other reason;
- (e) The subtenant shall receive and acknowledge receipt of a copy of this Lease;
- (f) The sublease shall prohibit the prepayment to Tenant by the subtenant of more than one month's rent;
- (g) The sublease shall identify the rental amount to be paid to Tenant by the subtenant;
- (h) The sublease shall confirm that there is no privity of contract between the subtenant and State;
- (i) The sublease shall require removal of the subtenant's improvements and trade fixtures upon termination of the sublease; and,
- (j) The subtenant's permitted use shall be within the Permitted Use authorized by this Lease.

9.5. Routine Subleasing of Moorage Slips. In the case of routine subleasing of moorage slips to recreational and commercial vessel owners for a term of one year or less, Tenant shall not be required to obtain State's written consent or approval pursuant to

Subsection 9.1 or Subsection 9.4. Tenant shall be obligated to ensure that these moorage agreements conform to the sublease requirements in Subsection 9.4.

SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE

10.1 Indemnity. Tenant shall indemnify, defend, and hold harmless State, its employees, officers, and agents from any and all liability, damages (including bodily injury, personal injury and damages to land, aquatic life, and other natural resources), expenses, causes of action, suits, claims, costs, fees (including attorneys' fees), penalties, or judgments, of any nature whatsoever, arising out of the use, occupation, or control of the Property by Tenant, its subtenants, invitees, agents, employees, licensees, or permittees, except as may arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents. To the extent that RCW 4.24.115 applies, Tenant shall not be required to indemnify, defend, and hold State harmless from State's sole or concurrent negligence. Tenant's liability to State for hazardous substances, and its obligation to indemnify, defend, and hold the State harmless for hazardous substances, shall be governed exclusively by Section 8.

10.2 Financial Security.

- (a) At its own expense, Tenant shall procure and maintain a corporate surety bond or provide other financial security satisfactory to State (the "Bond") in an amount equal to Thirty Thousand Dollars (\$30,000), which shall secure Tenant's full performance of its obligations under this Lease, with the exception of the obligations under Section 8 (Environmental Liability/Risk Allocation) above. The Bond shall be in a form and issued by a surety company acceptable to State. State may require an adjustment in the amount of the Bond:

- (1) At the same time as revaluation of the Annual Rent;
- (2) As a condition of approval of assignment or sublease of this Lease;
- (3) Upon a material change in the condition of any improvements; or,
- (4) Upon a change in the Permitted Use.

A new or modified Bond shall be delivered to State within thirty (30) days after adjustment of the amount of the Bond has been required by State.

- (b) Upon any default by Tenant in its obligations under this Lease, State may collect on the Bond to offset the liability of Tenant to State. Collection on the Bond shall not relieve Tenant of liability, shall not limit any of State's other remedies, and shall not reinstate or cure the default or prevent termination of the Lease because of the default.

10.3 Insurance. At its own expense, Tenant shall procure and maintain during the Term of this Lease, the insurance coverages and limits described in Subsections 10.3(a) and (b) below. This insurance shall be issued by an insurance company or companies admitted and licensed by the Insurance Commissioner to do business in the State of Washington. Insurers must have a rating of B+ or better by "Best's Insurance Reports," or a comparable rating by another rating company acceptable to State. If non-admitted or non-rated carriers are used, the policies must comply with Chapter 48.15 RCW.

(a) **Types of Required Insurance.**

- (1) **Commercial General Liability Insurance.** Tenant shall procure and maintain Commercial General Liability insurance and, if applicable, Marina Operators Legal Liability insurance covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Tenant's operations. If necessary, commercial umbrella insurance covering claims for these risks shall be procured and maintained. Insurance must include liability coverage with limits not less than those specified below:

Description	
Each Occurrence	\$1,000,000
General Aggregate Limit	\$2,000,000

State may impose changes in the limits of liability:

- (i) As a condition of approval of assignment or sublease of this Lease;
- (ii) Upon any breach of Section 8, above;
- (iii) Upon a material change in the condition of the Property or any improvements; or,
- (iv) Upon a change in the Permitted Use.

New or modified insurance coverage shall be in place within thirty (30) days after changes in the limits of liability are required by State.

- (2) **Property Insurance.** Tenant shall procure and maintain property insurance covering all real property located on or constituting a part of the Property in an amount equal to the replacement value of all improvements on the Property. Such insurance may have commercially reasonable deductibles.

- (3) **Worker's Compensation/Employer's Liability Insurance.** Tenant shall procure and maintain:

- (i) State of Washington Worker's Compensation coverage, as applicable, with respect to any work by Tenant's employees on or about the Property and on any improvements;

Employers Liability or "Stop Gap" insurance coverage with limits not less than those specified below. Insurance must include bodily injury coverage with limits not less than those specified below:

	Each Employee	Policy Limit
<u>By Accident</u>	<u>By Disease</u>	<u>By Disease</u>
\$1,000,000	\$1,000,000	\$1,000,000

Longshore and Harbor Worker's Act and Jones Act coverage, as applicable, with respect to any work by Tenant's employees on or about the Property and on any improvements.

- (4) **Builder's Risk Insurance.** As applicable, Tenant shall procure and maintain builder's risk insurance in an amount reasonably satisfactory to State during construction, replacement, or material alteration of the Property or improvements on the Property. Coverage shall be in place until such work is completed and evidence of completion is provided to State.
- (5) **Business Auto Policy Insurance.** As applicable, Tenant shall procure and maintain a business auto policy. The insurance must include liability coverage with limits not less than those specified below:

<u>Description</u>	<u>Each Accident</u>
Bodily Injury and Property Damage	\$1,000,000

- (b) **Terms of Insurance.** The policies required under Subsection 10.3 shall name the State of Washington, Department of Natural Resources as an additional insured (except for State of Washington Worker's Compensation coverage, and Federal Jones' Act and Longshore and Harbor Worker's Act coverages). Furthermore, all policies of insurance described in Subsection 10.3 shall meet the following requirements:

- (1) Policies shall be written as primary policies not contributing with and not in excess of coverage that State may carry;
- (2) Policies shall expressly provide that such insurance may not be canceled or nonrenewed with respect to State except upon

forty-five (45) days prior written notice from the insurance company to State;

- (3) To the extent of State's insurable interest, property coverage shall expressly provide that all proceeds shall be paid jointly to State and Tenant;
- (4) All liability policies must provide coverage on an occurrence basis; and
- (5) Liability policies shall not include exclusions for cross liability.

Proof of Insurance. Tenant shall furnish evidence of insurance in the form of a Certificate of Insurance satisfactory to the State accompanied by a checklist of coverages provided by State, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements described in section 10, and, if requested, copies of policies to State. The Certificate of Insurance shall reference the State of Washington, Department of Natural Resources and the lease number. Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies. Tenant acknowledges that the coverage requirements set forth herein are the minimum limits of insurance the Tenant must purchase to enter into this agreement. These limits may not be sufficient to cover all liability losses and related claim settlement expenses. Purchase of these limits of coverage does not relieve the Tenant from liability for losses and settlement expenses greater than these amounts.

10.4 State's Acquisition of Insurance. If Tenant fails to procure and maintain the insurance described above within fifteen (15) days after Tenant receives a notice to comply from State, State shall have the right to procure and maintain comparable substitute insurance and to pay the premiums. Tenant shall pay to State upon demand the full amount paid by State, together with interest at the rate provided in Subsection 6.2 from the date of State's notice of the expenditure until Tenant's repayment.

SECTION 11 MAINTENANCE AND REPAIR

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

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

- (a) Tenant shall, at its sole cost and expense, keep and maintain the Property and all improvements (regardless of ownership) in good order and repair, in a clean, attractive, and safe condition.
- (b) Tenant shall, at its sole cost and expense, make any and all additions, repairs, alterations, maintenance, replacements, or changes to the Property

or to any improvements on the Property which may be required by any public authority.

- (c) All additions, repairs, alterations, replacements or changes to the Property and to any improvements on the Property shall be made in accordance with, and ownership shall be governed by, Section 7, above.

SECTION 12 DAMAGE OR DESTRUCTION

- (a) In the event of any damage to or destruction of the Property or any improvements, Tenant shall promptly give written notice to State. Unless otherwise agreed in writing, Tenant shall promptly reconstruct, repair, or replace the Property and any improvements as nearly as possible to its condition immediately prior to the damage or destruction.
- (b) Tenant's duty to reconstruct, repair, or replace any damage or destruction of the Property or any improvements on the Property shall not be conditioned upon the availability of any insurance proceeds to Tenant from which the cost of repairs may be paid.
- (c) Unless this Lease is terminated by mutual agreement, there shall be no abatement or reduction in rent during such reconstruction, repair, and replacement.
- (d) Any insurance proceeds payable by reason of damage or destruction shall be first used to restore the real property covered by this Lease, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Tenant.
- (e) In the event Tenant is in default under the terms of this Lease at the time damage or destruction occurs, State may elect to terminate the Lease and State shall then have the right to retain any and all insurance proceeds payable as a result of the damage or destruction.

SECTION 13 CONDEMNATION

13.1 Definitions.

- (a) Taking. The term "taking," as used in this Lease, means the taking of all or any portion of the Property and any improvements thereon under the power of eminent domain, either by judgment or settlement in lieu of judgment. Taking also means the taking of all or a portion of the Property and any improvements thereon to the extent that the Permitted Use is prevented or, in the judgment of State, the Property is rendered impractical for the Permitted Use. A total taking occurs when the entire Property is

taken. A partial taking occurs when the taking does not constitute a total taking as defined above.

- (b) **Voluntary Conveyance.** The terms "total taking" and "partial taking" shall include a voluntary conveyance, in lieu of formal court proceedings, to any agency, authority, public utility, person, or corporate entity empowered to condemn property.
- (c) **Date of Taking.** The term "date of taking" shall mean the date upon which title to the Property or a portion of the Property passes to and vests in the condemnor or the effective date of any order for possession if issued prior to the date title vests in the condemnor.

13.2 Effect of Taking. If during the Term there shall be a total taking, the leasehold estate of Tenant in the Property shall terminate as of the date of taking. If this Lease is terminated, in whole or in part, all rentals and other charges payable by Tenant to State and attributable to the Property taken shall be paid by Tenant up to the date of taking. If Tenant has pre-paid rent, Tenant will be entitled to a refund of the pro rata share of the pre-paid rent attributable to the period after the date of taking. In the event of a partial taking, there shall be a partial abatement of rent from the date of taking in a percentage equal to the percentage of Property taken.

13.3 Allocation of Award. State and Tenant agree that in the event of any condemnation, the award shall be allocated between State and Tenant based upon the ratio of the fair market value of Tenant's leasehold estate and Tenant-Owned Improvements on the Property and State's interest (a) in the Property, (b) in the reversionary interest in Tenant-Owned Improvements, and (c) in State-Owned Improvements. In the event of a partial taking, this ratio will be computed on the basis of the portion of Property or improvements taken. If Tenant and State are unable to agree on the allocation, it shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association.

SECTION 14 DEFAULT AND REMEDIES

- (a) Tenant shall be in default of this Lease on the occurrence of any of the following:
 - (1) Failure to pay Annual Rent or other expenses when due;
 - (2) Failure to comply with any law, regulation, policy, or order of any lawful governmental authority;
 - (3) Failure to comply with any other provision of this Lease;

- (4) Two or more defaults over a period of time, or a single serious default, that demonstrates a reasonable likelihood of future defaults in the absence of corrective action by Tenant; or
- (5) Proceedings are commenced by or against Tenant under any bankruptcy act or for the appointment of a trustee or receiver of Tenants' property.
- (b) A default shall become an event of default ("Event of Default") if Tenant fails to cure the default within the applicable cure period after State provides Tenant with written notice of default, which specifies the nature of the default. For failure to pay rent or other monetary defaults, the cure period shall be ten (10) days. For other defaults, the cure period shall be thirty (30) days.
- (c) Upon an Event of Default, State may terminate this Lease and remove Tenant by summary proceedings or otherwise. State may also, without terminating this Lease, relet the Property on any terms and conditions as State in its sole discretion may decide are appropriate. If State elects to relet, rent received by it shall be applied: (1) to the payment of any indebtedness other than rent due from Tenant to State; (2) to the payment of any cost of such reletting; (3) to the payment of the cost of any alterations and repairs to the Property; and, (4) to the payment of rent and leasehold excise tax due and unpaid under this Lease. Any balance shall be held by State and applied to Tenant's future rent as it becomes due. Tenant shall be responsible for any deficiency created by the reletting during any month and shall pay the deficiency monthly. State's reentry or repossession of the Property under this subsection shall not be construed as an election to terminate this Lease or cause a forfeiture of rents or other charges to be paid during the balance of the Term, unless State gives a written notice of termination to Tenant or termination is decreed by legal proceedings. State may at any time after reletting elect to terminate this Lease for the previous Event of Default.

SECTION 15 ENTRY BY STATE

State shall have the right to enter the Property at any reasonable hour to inspect for compliance with the terms of this Lease.

SECTION 16 DISCLAIMER OF QUIET ENJOYMENT

As indicated in Section 1.1, this Lease is subject to all valid recorded interests of third parties, as well as rights of the public under the Public Trust Doctrine or federal navigation servitude, and treaty rights of Indian Tribes. State believes that its grant of the Lease is consistent with the Public Trust Doctrine and that none of the identified interests of third parties will materially and adversely affect Tenant's right of possession and use

of the Property as set forth herein, but makes no guaranty or warranty to that effect. Tenant and State expressly agree that Tenant shall be responsible for determining the extent of its right to possession and for defending its leasehold interest. Consequently, State expressly disclaims and Tenant expressly releases State from any claim for breach of any implied covenant of quiet enjoyment with respect to the possession of the Property. This disclaimer includes, but is not limited to, interference arising from or in connection with access or other use rights of adjacent property owners or the public over the water surface or in or under the water column, including rights under the Public Trust Doctrine; rights held by Indian Tribes; and the general power and authority of State and the United States with respect to aquatic lands, navigable waters, bedlands, tidelands, and shorelands. In the event Tenant is evicted from the Property by reason of successful assertion of any of these rights, this Lease shall terminate as of the date of the eviction. In the event of a partial eviction, Tenant's rent obligations shall abate as of the date of the partial eviction, in direct proportion to the extent of the eviction, but in all other respects, this Lease shall remain in full force and effect.

SECTION 17 NOTICE

Any notices required or permitted under this Lease may be personally delivered, delivered by facsimile machine, or mailed by certified mail, return receipt requested, to the following addresses or to such other places as the parties may direct in writing from time to time:

State: DEPARTMENT OF NATURAL RESOURCES
Northwest Region
919 North Township Street
Sedro-Woolley, WA 98284

Tenant: EQUILON ENTERPRISES, L.L.C., d.b.a, SHELL OIL PRODUCTS US
PO Box 622
600 South Texas Road
Anacortes, WA 98221-0622

A notice shall be deemed given and delivered upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after being mailed as set forth above, whichever is applicable.

SECTION 18 MISCELLANEOUS

18.1 Authority. Tenant and the person or persons executing this Lease on behalf of Tenant represent that Tenant is qualified to do business in the State of Washington, that Tenant has full right and authority to enter into this Lease, and that each and every person signing on behalf of Tenant is authorized to do so. Upon State's request, Tenant will provide evidence satisfactory to State confirming these representations. This Lease is entered into by State pursuant to the authority granted it in Chapters 79.90 to 79.96 RCW and the Constitution of the State of Washington.

18.2 Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the parties, their successors and assigns.

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

18.4 Entire Agreement. This Lease, including the exhibits and addenda, if any, contains the entire agreement of the parties. All prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Property, if any, are merged into this Lease.

18.5 Waiver. The waiver by State of any breach or default of any term, covenant, or condition of this Lease shall not be deemed to be a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Lease. State's acceptance of a rental payment shall not be construed to be a waiver of any preceding or existing breach other than the failure to pay the particular rental payment that was accepted.

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

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

18.8 Language. The word "Tenant" as used in this Lease shall be applicable to one or more persons, as the case may be. The singular shall include the plural, and the neuter shall include the masculine and feminine. If there is more than one Tenant, their obligations shall be joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations.

18.9 Invalidity. If any provision of this Lease shall prove to be invalid, void, or illegal, it shall in no way affect, impair, or invalidate any other provision of this Lease.

18.10 Applicable Law and Venue. This Lease shall be interpreted and construed in accordance with the laws of the State of Washington. Any reference to a statute shall mean that statute as presently enacted or hereafter amended or superseded. Venue for any action arising out of or in connection with this Lease shall be in the Superior Court for Thurston County, Washington.

18.11 Recordation. Tenant shall record this Lease or a memorandum documenting the existence of this Lease in the county in which the Property is located, at Tenant's sole expense. The memorandum shall, at a minimum, contain the Property description, the names of the parties to the Lease, the State's lease number, and the duration of the Lease. Tenant shall provide State with recording information, including the date of recordation.

and file number. Tenant shall have thirty (30) days from the date of delivery of the final executed agreement to comply with the requirements of this subsection. If Tenant fails to record this Lease, State may record it and Tenant shall pay the costs of recording upon State's demand.

18.12 Modification. Any modification of this Lease must be in writing and signed by the parties. State shall not be bound by any oral representations or statements.

THIS AGREEMENT requires the signature of all parties and is executed as of the date of the last signature below.

EQUILON ENTERPRISES, L.L.C., D.B.A,
SHELL OIL PRODUCTS US,
A limited liability company

Dated: August 24, 2021

By: Thomas N. Smith
THOMAS N. SMITH

Title: Refinery Manager

Address: PO Box 622
600 South Texas Road
Anacortes, WA 98221-0622

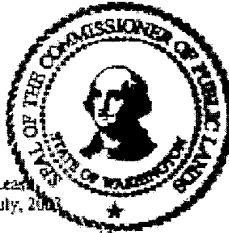
STATE OF WASHINGTON
DEPARTMENT OF NATURAL
RESOURCES

Dated: 9/21/14, 2014

By: Doug Sutherland
DOUG SUTHERLAND

Title: Commissioner of Public Lands

Address: 1111 Washington St SE
Olympia, WA 98504-7027



Standard Commercial Lease
Approved as to Form July, 2003
by Mike Grossmann
Assistant Attorney General
State of Washington

Form Date: 07/2003

23

Agreement No 20-A12561

CORPORATE ACKNOWLEDGMENT

STATE OF Washington)
) ss
 COUNTY OF Skagit)

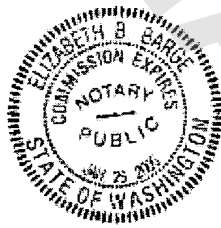
On this 24th day of August, 2004, before me personally appeared THOMAS N. SMITH to me known to be the Refinery Manager of the company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was 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.

DATED: Aug 24, 2004

Elizabeth Barge
 Elizabeth Barge
 (Type/Print Name)

Notary Public in and for the State of Washington
 residing at: Island County
 My Commission Expires: Jan 26, 2010



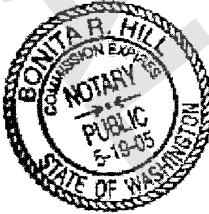
STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
)ss
 County of Thurston)

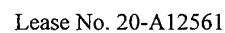
On this 21st day of September, 2021, personally appeared before me DOUG SUTHERLAND, to me known to be the Commissioner of Public Lands of the Department of Natural Resources, State of Washington, who executed the within and foregoing instrument on behalf of the State of Washington, and acknowledged said 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 was authorized to execute said instrument and that the seal affixed is the official seal of the Commissioner of Public Lands for the State of Washington.

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

DATED: 11-21-21



Bonita R. Hill
Bonita R. Hill
 (Type/Print)
 Notary Public in and for the State of Washington,
 residing at 1111 1st Ave
 My appointment expires 5-18-05



**SHELL OIL PRODUCTS US
Exhibit B
DNR Lease No. 20-A12561**

Introduction

The Shell Puget Sound Refinery (PSR) was originally constructed in 1958. The facility is a fuels refinery that processes approximately 140,000 barrels per day of crude oil into gasoline, diesel, jet fuel and other related hydrocarbon products. As part of our normal operation, the facility has substantial water-dependent activities associated with the receipt of raw materials, shipping of products, vessel fueling and permitted Clean Water Act (CWA) discharges. The dock under consideration for this lease was originally built in 1958 when the entire refinery was constructed. This exhibit and other submittals are in support of the re-lease of the aquatic lands beneath our wharf and portions of our access roadway and pipeline support structures.

Dock Operation

In 2003, approximately 300 vessels visited the Puget Sound Refinery Dock facility. These ships included a combination of mostly crude oil and petroleum product vessels. Scheduling of the arrival and departure of ships is completed by the refinery Business Planning and Operations Group and is designed to meet raw material and product needs in our market area. Docking procedures are outlined in the facility Marine Transfer Pipeline Operations Manual. The manual is regularly reviewed and approved by the United States Coast Guard (USCG) and the Department of Ecology.

In compliance with the National Invasive Species Act (NISA) of 1996, the United States Coast Guard has established both regulations and guidelines to control the invasion of aquatic nuisance species (ANS). 68 CFR 44691 outlines newly proposed regulations to address ANS through a comprehensive national ballast water management program. 68CFR 44691 includes requirements that all vessels equipped with ballast water tanks entering U.S. waters after operating beyond the Exclusive Economic Zone (EEZ) employ at least one of the following ballast management practices:

- Prior to discharging ballast water in U.S. waters, perform complete ballast water exchange in an area no less than 200 nautical miles from any shore.
- Retain ballast water onboard the vessel.
- Use an alternative environmentally sound method of ballast water management that has been approved by the Coast Guard
- Discharge ballast water to an approved reception facility.

As Shell does not generally own, or operate, the vessels that call at our wharf facility, we do not have direct control over the ships ballast water exchange activities. As the facility is concerned with the possible introduction of ANS, we have had a number of meetings with ship owners and operators to express Shell's interest in preventing the introduction of invasive species.

In compliance with USCG 33 CFR Parts 154 and 156/WAC 173-180B, the facility maintains and regularly updates its Marine Transfer Pipeline Operations Manual (MTPOM). The purpose of the MTPOM is to describe personnel responsibilities, operating procedures, facility descriptions, and related data concerning the Shell Oil Products US Puget Sound Refinery Dock and Transfer Operations. The manual documents how the PSR meets or exceeds the operating rules and equipment requirements prescribed by 33 CFR Parts 154 and 156 and State of Washington (WAC 173-180B-070) in conducting cargo transfer and transfer pipeline operations.

All governmental regulations and Company standards and procedures are strictly enforced throughout docking and loading/unloading operations. In case of an emergency or accidental discharge of oil, which reaches open water, the appropriate procedures noted in the Shell Oil Products US Puget Sound Refinery Facility Response plan shall be followed.

The U.S. Coast Guard, as part of efforts to improve homeland security, has established an exclusion zone for unauthorized personnel and vessels around PSR's water dependent facilities. The Coast Guard required exclusion zone (currently 300') can accommodate other users of the aquatic lands within the exclusion area, as long as authorized users receive explicit Coast Guard and Department of Natural Resource approval and provide such approvals to the facility in writing prior to any use.

The Marine Transfer Pipeline Operations Manual is reviewed and approved by the United States Coast Guard. The USCG makes periodic inspections of the wharf facility to confirm compliance with applicable regulations. The Marine Transfer Pipeline Operations Manual is maintained at the facility and is available for viewing at the request of appropriate agency personnel.

Oil Handling Personnel Training

In compliance with WAC 173-180C (7), Puget Sound Refinery (PSR) provides training for employees and supervisors having exposure to dock or pipeline operation. This training consists of several modules as listed below:

- OHP 501 - Overview of Oil Handling, Transfer, Storage, Monitoring and Leak Detection
- OHP 503 - Local Environmental Sensitivity and Oil Spill Impacts
- OHP 505 - Notification Procedures for Emergency Spill Prevention Actions for Operations
- OHP 506 - Major components of the PSR Marine Transfer Pipeline Facility Operations Manual
- OHP 508 - Major Components of the PSR Spill Prevention Plan (SPCC)
- OHP 509 - Major components of the PSR Oil Spill Response Plan (OSRP)

- OHP 511 - Emergency spill prevention and safe shutdown conditions
- OHP 600/610/620 - Equipment problem assessment and preventative maintenance

The training is required to be completed before any new maintenance employees can begin work with the dock or pipeline areas of the refinery.

Oil Spill Prevention Plan

In compliance with Department of Ecology spill prevention rules (Chapter 173-180 A - D) and other applicable regulations, PSR maintains and regularly updates the facility Oil Spill Prevention Plan. This plan is regularly reviewed and approved by the Department of Ecology. The Oil Spill Prevention Plan describes the procedures and technologies in place at Puget Sound Refinery to prevent and minimize the occurrence and consequences of oil spills. The Puget Sound refinery is designed, maintained, and operated to minimize the potential for the occurrence of oil spills. The purpose of the plan is to:

- Detail information of all of the key components of a spill prevention program.
- Provide a reference document for plant personnel involved in spill prevention operations.
- Describe spill prevention procedures and technologies implemented at PSR.
- Identify, through risk analysis, the equipment or components of the oil transfer and storage system which may have a high potential for oil spills.
- Implement "Best Achievable Protection Measures" for those areas identified as having a high risk.
- Increase overall awareness of the importance of spill prevention to plant personnel.

Spill Prevention, Control, and Countermeasure Plan

The Spill Prevention, Control, and Countermeasure Plan (SPCC) for Puget Sound Refinery has been developed in accordance with the regulatory requirements of 40 CFR Part 112 (EPA). This plan describes the facility and sources of potential hydrocarbon releases and measures in place to contain and or mitigate the likelihood of such a release. The plan includes a detailed description of spill prevention countermeasures, notification requirements and response procedures at Puget Sound Refinery.

Oil Spill Response Plan

In compliance with the requirements of Title 33, Code of Federal Regulations (CFR), Part 154.1035, Puget Sound Plant Maintains and regularly update the facility "Oil Spill Response Plan".

The Oil Spill Response Plan describes the equipment, personnel, agency contact, and actions to be taken in the event of a significant oil spill. The plan is reviewed and approved by the United States Coast Guard. As part of the activities related to the Oil Spill Response Plan, the facility conducts annual drills to train personnel, test equipment, and assess our readiness for an actual oil spill event. Oil spill drills are typically attended by Federal, State and Local agency representative who provide feedback with regard to oil spill response preparedness.

Emergency Response Guide and Emergency Action Plan

The purpose of the Emergency Response Guide and Emergency Action Plans is to provide detailed guidelines to facilitate effective response actions to emergency situations. The guides provide preparedness and planning information to assist responders. The plans are based on the United States Coast Guard Incident Command System structure.

NPDES (Wastewater Discharge) Permit

In compliance with the requirements of the Federal Clean Water Act, the Washington State Dept. of Ecology issued NPDES permit number WA-000294-1 to the Shell Puget Sound Refinery in February 2001. The facility includes a permitted wastewater treatment facility and outfall. In 1997, PSR completed an \$10.8 million upgrade of the wastewater treatment facilities that included a new biological section and clarifiers. Since the installation of the new equipment, PSR has not had any violations of our permit requirements that were the result of activities controllable by the facility. PSR's NPDES permit requires numerous studies and limits designed to be fully protective of human health and the environment including:

- Monthly discharge monitoring reports
- Toxicity Compliance Testing
- Sediment Sampling and Analysis
- Treatment Efficiency Study
- Effluent ReCharacterization for Human Health
- Pollution Prevention Plans
- Effluent Discharge Outfall Evaluation

Shell is required to be in compliance with any sediment sampling requirements and details that may be referenced in the varying NPDES permits, which are typically re-issued by the State Department of Ecology every five years.

In addition to the above mentioned NPDES permit requirements, a number of ecological studies have been completed that demonstrate the health of the local marine environment including:

- **Ecology Publication No. 79-338, November 1997, entitled "Survey for Petroleum and Other Chemical Contaminants in the Sediments of Fidalgo Bay".** The findings and conclusions of the study include the following:
 1. "Results of this survey show the chemical quality of the sediments in Fidalgo Bay to be generally good."
 2. "The survey did not clearly identify any chemical contamination that could be linked to adverse effects of herring."
- **Ecology Publication No. 00-03-008, May 2000, entitled "Results of a Screening Analysis for Metals and Organic Compounds in Shellfish from Padilla Bay and Vicinity."** (Includes Fidalgo Bay). The study concludes: "Results of this study show that shellfish in the Padilla/Fidalgo Bay area have a very low level of chemical contamination. In most instances, the concentrations detected appear to be at background level for Puget Sound."
- **National Toxics Rule 303d List** - State and Federal Officials are required to establish water quality standards that are protective of human health and the environment. Should a water body contain levels of pollution that exceed these standards, the water body must be included on the National Toxics Rule 303d list. Water in Fidalgo Bay and Guemes Channel has been extensively tested and no chemical contamination has been found in excess of acceptable water quality standards. Thus, Fidalgo Bay and Guemes Channel are *NOT* listed on the National Toxics Rules 303d list.

In summary, the department of Ecology has strict discharge monitoring requirements and has completed substantial ecological and environmental studies in Fidalgo Bay over a number of years. According to the Washington Dept. of Fisheries, the local herring population in Fidalgo Bay more than doubled during the 10-year window between 1983 and 1992. In conclusion, various ecological studies and environmental indicators show the overall health in the marine environment in Fidalgo Bay to be generally good. At this time, none of the extensive studies or data shows an adverse connection between the activities at the facility wharf and the health of the local marine environment.

EXHIBIT 2

Paragraph 2.2, Paragraph 3.1, Paragraph 3.4, Section 7, Section 8, Section 10, Section 11, and Exhibit B of the Lease are deleted in their entirety and replaced with the following:

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

- (a) Tenant shall not cause or permit:
 - (1) Damage to land or natural resources,
 - (2) Waste, or
 - (3) Deposit of material, unless approved by State in writing. This prohibition includes deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter.
- (b) Nothing in this Lease shall be interpreted as an authorization to dredge the Property.
- (c) If pressure washing or cleaning any equipment, machinery, or floating or fixed structures, Tenant shall avoid scouring the substrate and damaging any aquatic land and vegetation. Tenant shall also comply with the following limitations:
 - (1) If equipment contains or is covered with petroleum based products: (1) Tenant shall not pressure wash such equipment in or over the water and (2) all wash water must be contained and taken to an approved treatment facility.
 - (2) Tenant shall collect or sweep up non-organic debris accumulations on structures resulting from pressure washing and properly dispose of such debris in an upland location.
 - (3) Tenant shall pressure wash using only clean water. Tenant shall not use or add to the pressure washing unit any detergents or other cleaning agents.
 - (4) Tenant shall pressure wash painted structures using appropriate filter fabric to control and contain paint particles generated by the pressure washing.
- (d) Tenant shall not allow moorage or anchorage of vessels in water shallower than seven (7) feet at the extreme low tide and shall not allow vessels to come in contact with underlying bedlands (commonly referred to as "grounding out") at any time.
- (e) The following Vessel call limitations apply to the Permitted Use:
 - 1. For each Lease Year (September 1 – August 31), commencing with the Lease Year beginning on September 1, 2023, Tenant's Permitted Use is limited to a maximum number of "Vessel" calls at the dock to transfer crude oil and petroleum products equal to three hundred fifty (350) (the "Vessel Limitation"). "Vessels" are defined as tankers, articulated tug barges, and towed barges that are transferring crude oil and petroleum products. The Vessel Limitation does not include vessels conducting pre-

booming, vessels present to support Work as defined in Paragraph 7.3(a), or other vessels not transferring crude oil and petroleum products. For clarity, a "double call" in which a Vessel is only able to load or unload part of its cargo and returns to load or unload the balance of its cargo after mooring nearby shall be deemed to be a single call as opposed to two calls for all purposes hereunder.

2. At any time after September 1, 2023, Tenant may request in writing permission from State to adjust the Vessel Limitation set forth above for specified periods. Requests shall state Tenant's reason for the need for additional Vessel traffic and the anticipated number of Vessels over a specified period. If State fails to respond to written requests to adjust the Vessel Limitations within 45 days, the request shall be deemed approved. State's approval shall not be unreasonably withheld. State's approval shall be deemed to be unreasonably withheld if the capacity of Tenant's associated refinery has not increased above 149,000 barrels per day and Tenant's reasons for needing additional Vessel traffic over a specified period include any of the following:
 - i. The volume of pipeline-supplied crude oil to Tenant's associated refinery is physically reduced due to reasons beyond Tenant's control, such as those caused by damage to pipelines;
 - ii. The ability to transport refined products by pipeline, rail, or truck is substantially reduced due to reasons beyond Tenant's control;
 - iii. Events restricting volume on pipelines servicing Tenant's refinery that are beyond Tenant's control, including apportionment, re-rating, and change of service; or
 - iv. Actions of governmental authorities or third parties that are beyond Tenant's control and that restrict the volume of pipeline-supplied crude or that restrict refined product transport volume on pipelines, rail, or trucks servicing Tenant's associated refinery.
3. At any time after September 1, 2027, Tenant may submit a request to State to increase the Vessel Limitation for the remainder of the Term. When evaluating Tenant's request and setting a revised Vessel Limitation, State agrees to reasonably take into consideration (i) Tenant's Vessel call history for the immediately preceding three-year period prior to the request and (ii) the fact that Tenant's operating capacity of 149,000 barrels per day has not changed and (iii) any restrictions imposed by third parties, including those enumerated in Paragraph 2.2(e)(2)(i)-(iv) above.
4. Notwithstanding anything to the contrary herein, in the event that a pipeline supplying crude oil to, or transporting refined products from, Tenant's associated refinery ceases operation, Tenant shall not be required to comply with the Vessel Limitation herein during the period of cessation. For the purpose of assessing compliance with the Vessel Limitation under Paragraph 2.2(e)(5), both the number of Vessel calls during the cessation and the duration of the cessation shall be excluded from calculations of the three-year annual average of Vessel calls.

5. Tenant's compliance with the Vessel Limitation shall be assessed annually, with the first such assessment occurring on September 1, 2026. Tenant shall be deemed to have complied with the Vessel Limitation if the annual average of Tenant's Vessel calls over the three-year period prior to each assessment is less than or equal to the Vessel Limitation.

3.1 Term Defined. The term of this Lease is Thirty (30) years (the "Term"), beginning on the 1st day of September, 2004 (the "Commencement Date"), and ending on the 31st day of August, 2034 (the "Termination Date"), unless terminated sooner under the terms of this Lease. Whenever the phrase "termination of this Lease" or "termination of the Lease" is used in this Lease, it shall refer to the ending, termination, cancellation, or expiration of the Lease.

3.4 End of Term.

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

SECTION 7 IMPROVEMENTS

7.1 Improvements Defined.

- (a) "Improvements" and "improvements," consistent with RCW 79.105 through 79.140, are additions within, upon, or attached to the land. This includes, but is not limited to, fill, structures, bulkheads, docks, pilings, and other fixtures.
- (b) "Personal Property" means items that can be removed from the Property without
 - (1) injury to the Property, adjacent state-owned aquatic lands, or Improvements or

(2) diminishing the value or utility of the Property, adjacent state-owned aquatic lands or Improvements.

- (c) "State-Owned Improvements" are Improvements made or owned by the State of Washington. State-Owned Improvements includes any construction, alteration, or addition to State-Owned Improvements made by Tenant.
- (d) "Tenant-Owned Improvements" are Improvements authorized by State and (1) made by Tenant, (2) acquired by Tenant from the prior tenant, (3) made by subtenants on the Property, or (4) acquired by a subtenant from Tenant or a prior subtenant or tenant.
- (e) "Unauthorized Improvements" are Improvements made on the Property without State's prior consent or Improvements made by Tenant that do not conform to plans submitted to and approved by State.

7.2 Existing Improvements. On November 1, 2021, the following Tenant-Owned Improvements are located on the Property: a piling-supported wharf and causeway with approximately 3,000 pilings, a two-story dock operations office, a small-craft launching facility, a one-story storage building, an electrical substation, a fire protection building, a hose house, two gangway towers, pipelines, and a single-lane road. Also on the Property is a wastewater outfall pipeline and diffuser that is owned by the Tenant and is authorized under Aquatic Lands Easement 51-076264.

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

- (a) This Paragraph 7.3 governs construction, alteration, replacement, major repair, modification, and removal of Improvements ("Work").
- (b) Except in an emergency, Tenant shall not conduct Work without State's prior written consent. Tenant shall obtain State's prior written consent as follows:
 - (1) Tenant shall submit to State plans and specifications describing the proposed Work at least sixty (60) days before submitting permit applications to regulatory authorities unless Tenant and State otherwise agree to coordinate permit applications. At a minimum, or if no permits are necessary, Tenant shall submit plans and specifications at least ninety (90) days before commencement of Work.
 - (2) State may deny consent if State determines that denial is in the best interest of the State of Washington or if proposed Work does not comply with Paragraph 7.4. State may impose additional conditions reasonably intended to protect and preserve the Property.
 - (3) State will not approve plans to construct new Improvements or expand existing Improvements in or over habitats designated by State as important habitat, including, but not limited to: native aquatic vegetation, commercial geoduck tracts, forage fish spawning areas, and salmon critical habitat. Tenant shall confirm location of important habitat on Property, if any, with State before submitting plans and specifications in accordance with Paragraph 7.3.

- (c) Tenant shall immediately notify State of emergency Work. Upon State's request, Tenant shall provide State with plans and specifications or as-builts of emergency Work.
- (d) Tenant shall not commence or authorize Work until Tenant or Tenant's contractor has:
 - (1) Obtained a performance and payment bond in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of construction. Tenant or Tenant's contractor shall maintain the performance and payment bond until the costs of the Work, including all laborers and material persons, are paid in full.
 - (2) Obtained all required permits.
- (e) Before completing Work, Tenant shall remove all debris and restore the Property to an orderly and safe condition. If Work is for removal of Improvements at End of Term, Tenant shall restore the Property in accordance with Paragraph 3.4, End of Term.
- (f) Upon completing Work, Tenant shall promptly provide State with as-built plans and specifications. State may also require Tenant to obtain an updated record of survey showing the Property boundaries and the as-built location of all Improvements on the Property.
- (g) State shall not charge rent for authorized Improvements installed by Tenant during this Term of this Lease, but State may charge rent for such Improvements when and if Tenant or successor obtains a subsequent use authorization for the Property and State has waived the requirement for Improvements to be removed as provided in Paragraph 7.5.

7.4 Standards for Work.

- (a) Applicability of Standards for Work.
 - (1) The standards for Work in Paragraph 7.4(b) apply to Work commenced in the five year period following the Commencement Date. Work commences when State approves plans and specifications.
 - (2) If Tenant commences Work five years or more after the Commencement Date, Tenant shall comply with State's current standards for Work.
 - (3) Tenant may ascertain State's current standards for Work as follows:
 - (i) Before submitting plans and specifications for State's approval as required by Paragraph 7.3 of the Lease, Tenant shall request State to provide Tenant with State's current standards for Work on State-owned Aquatic Lands.
 - (ii) Within thirty (30) days of receiving Tenant's request, State shall provide Tenant with State's current standards for Work, which will be effective for the purpose of State's approval of Tenant's proposed Work provided Tenant submits plans and specifications for State's approval within two (2) years of Tenant's request for standards.
 - (iii) If State does not timely provide State's current standards upon Tenant's request, the standards for Work under Paragraph 7.4(b)

apply to Tenant's Work provided Tenant submits plans and specifications as required by Paragraph 7.3 within two (2) years of Tenant's request for State's current standards for Work.

- (iv) If Tenant fails to (1) make a request for State's current standards for Work or (2) timely submit plans and specifications to State after receiving State's current standards for Work, Tenant shall make changes in plans or Work necessary to conform to State's current standards for Work upon State's demand.

(b) Standards for Work.

- (1) Tenant shall only conduct in-water Work during time periods authorized for such work under WAC 220-660-330, Authorized Work Times in Saltwater Areas, or as otherwise directed by the Washington Department of Fish and Wildlife (WDFW).
- (2) Tenant shall use embedded anchors and midline floats on all anchored structures and buoys.
- (3) Tenant shall orient and shield lighting fixtures attached to overwater structures in a manner that minimizes the amount of light shining directly on the water, minimizes the amount of glare on the water, and minimizes the amount of light broadcasting into the night sky. Tenant shall implement the following measures to achieve this requirement:
 - (i) Tenant shall direct light to walkways,
 - (ii) Tenant shall use light shields which prevent light from being emitted upward and prevent glare on the water,
 - (iii) Tenant shall use fixtures that do not emit light upward, and
 - (iv) Tenant shall use lights that are "warm-white" or filtered.

7.5 Tenant-Owned Improvements.

- (a) Removal of Tenant-Owned Improvements upon termination.
 - (1) Tenant shall remove Tenant-Owned Improvements in accordance with Paragraph 7.3 upon the termination of the Lease unless State waives the requirement for removal.
 - (2) Tenant-Owned Improvements remaining on the Property after the termination of the Lease shall become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership.
 - (3) If Tenant-Owned Improvements remain on the Property after the termination of the Lease without State's consent, State may remove all Improvements and Tenant shall pay State's costs.
- (b) Conditions Under Which State May Waive Removal of Tenant-Owned Improvements.
 - (1) State may waive removal of any Tenant-Owned Improvements whenever State determines that it is in the best interests of the State of Washington and regardless of whether Tenant enters into a new Lease for the Property.
 - (2) If Tenant enters into a new Lease for the Property, State may waive requirement to remove Tenant-Owned Improvements. State also may

consent to Tenant's continued ownership of Tenant-Owned Improvements.

- (3) If Tenant does not enter into a new Lease for the Property, State may waive requirement to remove Tenant-Owned Improvements upon consideration of a timely request from Tenant, as follows:
 - (i) Tenant must notify State at least one (1) year before the Termination Date of its request to leave Tenant-Owned Improvements.
 - (ii) State, within ninety (90) days of receiving Tenant's notification, will notify Tenant whether State consents to any Tenant-Owned Improvements remaining. State has no obligation to grant consent.
 - (iii) State's failure to respond to Tenant's request to leave Improvements within ninety (90) days is a denial of the request.
- (c) Tenant's Obligations if State Waives Removal.
 - (1) Tenant shall not remove Tenant-Owned Improvements if State waives the requirement for removal of any Tenant-Owned Improvements.
 - (2) Tenant shall maintain such Tenant-Owned Improvements in accordance with this Lease until the termination of the Lease. Tenant is liable to State for cost of repair if Tenant causes or allows damage to Tenant-Owned Improvements State has designated to remain.

7.6 Unauthorized Improvements.

- (a) Unauthorized Improvements belong to State, unless State elects otherwise.
- (b) The placement of Unauthorized Improvements on the Property is a default of the Lease. State may require removal of any or all Unauthorized Improvements. If State requires removal of Unauthorized Improvements and Tenant fails to remove Unauthorized Improvements, State may remove Unauthorized Improvements and Tenant shall pay for the cost of removal and disposal.
- (c) In addition to requiring removal of Unauthorized Improvements, State may charge Tenant a use fee that is sixty percent (60%) higher than the full market value of the use of the land for the Unauthorized Improvements from the time of installation or construction until the time the Unauthorized Improvements are removed.
- (d) If State consents to Unauthorized Improvements remaining on the Property, upon State's consent, the Unauthorized Improvements will be treated as Tenant-Owned Improvements and the removal and ownership of such Improvements shall be governed by Paragraph 7.5. If State consents to the Unauthorized Improvements remaining on the Property, State may charge a use fee that is sixty percent (60%) higher than the full market value of the use of the land for the Unauthorized Improvements from the time of installation or construction until State consents.

7.7 Personal Property.

- (a) Tenant retains ownership of Personal Property unless Tenant and State agree otherwise in writing.

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

SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

8.1 Definitions.

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

8.2 General Conditions.

- (a) Tenant's obligations under this Section 8 extend to the area in, on, under, or above:
 - (1) The Property; and
 - (2) Adjacent state-owned aquatic lands if affected by a release of Hazardous Substances that occurs as a result of the Permitted Use.
- (b) Standard of Care.
 - (1) Tenant shall exercise the utmost care with respect to Hazardous Substances.

- (2) Tenant shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable consequences of those acts or omissions, to the extent required to establish a viable, third-party defense under the law.

8.3 Current Conditions and Duty to Investigate.

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

8.4 Use of Hazardous Substances.

- (a) Tenant and affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.
- (b) Tenant shall not undertake, or allow others to undertake by Tenant's permission, acquiescence, or failure to act, activities that result in a release or threatened release of Hazardous Substances.
- (c) If use of Hazardous Substances related to Tenant's use or occupancy of the Property results in violation of law:
 - (1) Tenant shall submit to State any plans for remedying the violations, and
 - (2) Tenant shall implement any remedial measures to restore the Property or natural resources that State may require in addition to remedial measures required by regulatory authorities.
- (d) Tenant shall comply with the provisions of Chapter 90.56 RCW Oil and Hazardous Substance Spill Prevention and Response Act. Tenant shall develop, update as necessary, and operate in accordance with a plan of operations that is consistent with the requirements of Chapter 90.56 RCW.

8.5 Management of Contamination, if any.

- (a) Tenant and affiliates shall not undertake activities that:
 - (1) Damage or interfere with the operation of remedial or restoration activities, if any;
 - (2) Result in human or environmental exposure to contaminated sediments, if any;
 - (3) Result in the mechanical or chemical disturbance of on-site habitat mitigation, if any.
- (b) If requested, Tenant shall allow reasonable access to:

- (1) Employees and authorized agents of the United States Environmental Protection Agency (EPA), the Washington State Department of Ecology, health department, or other similar environmental agencies; and
- (2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Property. Tenant may negotiate an access agreement with such parties, but Tenant may not unreasonably withhold such agreement.

8.6 Notification and Reporting.

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

8.7 Indemnification.

- (a) Tenant shall fully indemnify, defend, and hold harmless State from and against Liabilities that arise out of, or relate to:
 - (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Tenant and affiliates occurring whenever Tenant occupies or has occupied the Property;
 - (2) The release or threatened release of any Hazardous Substance resulting from any act or omission of Tenant and affiliates occurring whenever Tenant occupies or has occupied the Property.
- (b) Tenant shall fully indemnify, defend, and hold harmless State for Liabilities that arise out of or relate to Tenant's breach of obligations under Paragraph 8.5.

- (c) If Tenant fails to exercise care as described in Paragraph 8.2(b)(2), to the extent permitted by law, Tenant shall fully indemnify, defend, and hold harmless State from and against Liabilities arising from the acts or omissions of third parties in relation to the release or threatened release of Hazardous Substances.

8.8 Reservation of Rights.

- (a) For Liabilities not covered by the indemnification provisions of Paragraph 8.7, the Parties expressly reserve and do not waive any rights, claims, immunities, causes of action, or defenses relating to Hazardous Substances that either Party may have against the other under law.
- (b) The Parties expressly reserve all rights, claims, immunities, and defenses that either Party may have against third parties. Nothing in this Section 8 benefits or creates rights for third parties.
- (c) The allocations of risks, Liabilities, and responsibilities set forth in this Section 8 do not release either Party from or affect the liability of either Party for Hazardous Substances claims or actions by regulatory agencies.

8.9 Cleanup.

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

8.10 Sampling by State, Reimbursement, and Split Samples.

- (a) State may enter the Property and conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Property at any time to determine the existence, scope, or effects of Hazardous Substances.
- (b) If such Tests, along with any other information, demonstrate a breach of Tenant's obligations regarding Hazardous Substances under this Lease, Tenant shall promptly reimburse State for all costs associated with the Tests, provided State gave Tenant thirty (30) calendar days advance notice in nonemergencies and reasonably practical notice in emergencies.
- (c) In nonemergencies, Tenant is entitled to obtain split samples of Test samples, provided Tenant gives State written notice requesting split samples at least ten

(10) calendar days before State conducts Tests. Upon demand, Tenant shall promptly reimburse State for additional cost, if any, of split samples.

- (d) If either Party conducts Tests on the Property, the conducting Party shall provide the other Party with validated final data and quality assurance/quality control/chain of custody information about the Tests within sixty (60) calendar days of a written request by the other party, unless Tests are part of a submittal under Paragraph 8.6(c) in which case Tenant shall submit data and information to State without written request by State. Neither party is obligated to provide any analytical summaries or the work product of experts.

8.11 Closeout Assessment.

- (a) State may require Tenant to conduct a Closeout Environmental Assessment ("Closeout Assessment") prior to Termination Date or after a valid notice of early termination according to the procedures set forth in (b)-(j) below.
- (b) The purpose of the Closeout Assessment is to determine the existence, scope, or effects of Hazardous Substances on the Property and associated natural resources. The Closeout Assessment may include sediment sampling.
- (c) No later than one hundred eighty (180) calendar days prior to the Termination Date, or within ninety (90) days of a valid notice of early termination, State may provide Tenant with written notice that State requires a Closeout Assessment.
- (d) Within sixty (60) days of State's notice that Closeout Assessment is required and before commencing assessment activities, Tenant shall submit a proposed plan for conducting the Closeout Assessment in writing for State's approval.
- (e) If State fails to approve or disapprove of the plan in writing within sixty (60) days of its receipt, State waives requirement for approval.
- (f) Tenant shall be responsible for all costs required to complete planning, sampling, analyzing, and reporting associated with the Closeout Assessment.
- (g) If the Lease has terminated, State may require Tenant to enter into a right of entry or other use authorization prior to the Tenant entering the Property for any Closeout Assessment work required by this Paragraph 8.11.
- (h) Tenant shall submit Closeout Assessment to State upon completion.
- (i) As required by law, Tenant shall report to the appropriate regulatory authorities if the Closeout Assessment discloses a release or threatened release of Hazardous Substances.
- (j) If the initial results of the Closeout Assessment disclose that Hazardous Substances may have migrated to other property, State may require Tenant to conduct additional assessment work to determine the existence, scope, and effect of Hazardous Substances on adjacent property, any other property subject to use by Tenant in conjunction with its use of the Property, or on associated natural resources. Tenant shall submit additional assessment work to State upon completion. As required by law, Tenant shall report to the appropriate regulatory authorities if the additional assessment discloses a release or threatened release of Hazardous Substances.

SECTION 10 INDEMNITY, INSURANCE, FINANCIAL SECURITY**10.1 Indemnity.**

- (a) Tenant shall indemnify, defend, and hold harmless State, its employees, officials, officers, and agents from any Claim arising out of the Permitted Use, any Claim arising out of activities related to the Permitted Use, and any Claim arising out of the use, occupation, or control of the Property by Tenant, its subtenants, contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees to the fullest extent permitted by law and subject to the limitations provided below.
- (b) "Claim" as used in this Paragraph 10.1 means any financial loss, claim, suit, action, damages, expenses, costs, fees (including attorneys' fees), fines, penalties, or judgments attributable to bodily injury, sickness, disease, death, and damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "Damages to tangible property" includes, but is not limited to, physical injury to the Property, diminution in value, and/or damages resulting from loss of use of the Property.
- (c) State shall not require Tenant to indemnify, defend, and hold harmless State, its employees, officials, officers, and agents for a Claim caused solely by or resulting solely from the negligence or willful act of State, its employees, officials, officers, or agents.
- (d) Tenant specifically and expressly waives any immunity that may be granted under the Washington State Industrial Insurance Act, Title 51 RCW in connection with its obligation to indemnify, defend, and hold harmless State and its employees, officials, officers, and agents. Further, Tenant's obligation under this Lease to indemnify, defend, and hold harmless State and its employees, officials, officers, and agents shall not be limited in any way by any limitation on amount or type of damages, compensation, or benefits payable to or for any third party under the worker's compensation acts.
- (e) Only to the extent RCW 4.24.115 applies and requires such a limitation, if a Claim is caused by or results from the concurrent negligence of (a) State or State's employees, officials, officers, or agents, and (b) the Tenant or Tenant's subtenants, agents, or employees, these indemnity provisions shall be valid and enforceable only to the extent of the negligence of the Tenant and those acting on its behalf.
- (f) Section 8, Environmental Liability/Risk Allocation, exclusively shall govern Tenant's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold harmless State for Hazardous Substances.

10.2 Insurance Terms.

- (a) Insurance Required.
 - (1) Tenant certifies that on the Commencement Date of this Lease it is self-insured for all the liability exposures, its self-insurance plan satisfies all State requirements, and its self-insurance plan provides coverage equal to that required in this Paragraph 10.2 and by Paragraph 10.3, Insurance

Types and Limits. Tenant shall provide to State evidence of its status as a self-insured entity. Upon request by State, Tenant shall provide a written description of its financial condition and/or the self-insured funding mechanism. Tenant shall provide State with at least thirty (30) days' written notice prior to any material changes to Tenant's self-insured funding mechanism. If during the term of this Lease Tenant's self-insurance plan fails to provide coverage equal to that required in Paragraph 10.2 and Paragraph 10.3 of this Lease, Tenant shall procure additional commercial insurance coverage to meet the requirements of this Lease. The requirements in Paragraph 10.2(a)(2), (3) and (4) only apply where the Tenant procures additional commercial insurance to meet the requirements of this Lease.

- (2) Unless State agrees to an exception, Tenant shall provide insurance issued by an insurance company or companies admitted to do business in the State of Washington and have a rating of A- or better by the most recently published edition of A.M. Best's Insurance Reports. Tenant may submit a request to the risk manager for the Department of Natural Resources to approve an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies shall comply with Chapter 48.15 RCW and 284-15 WAC.
- (3) All general liability, excess, umbrella and pollution legal liability insurance policies must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, officers, agents, and employees as an additional insured by way of endorsement.
- (4) All property insurance, builder's risk insurance, and equipment breakdown insurance must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, officers, agents, and employees as a loss payee.
- (5) All insurance provided in compliance with this Lease must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.
- (b) Waiver.
 - (1) Tenant waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Lease covers these damages.
 - (2) Except as prohibited by law, Tenant waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this lease.
- (c) Proof of Insurance.
 - (1) Tenant shall provide State with a certificate(s) and endorsement(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Lease; and, if requested, copies of policies to State.
 - (2) The certificate(s) of insurance must reference the Lease number.
 - (3) Receipt of such certificates, endorsements or policies by State does not constitute approval by State of the terms of such policies.

- (d) State must receive written notice before cancellation or non-renewal of any insurance required by this Lease, as follows:
- (1) Insurers subject to RCW 48.18 (admitted and regulated by the Insurance Commissioner): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State forty-five (45) days' advance notice of cancellation or non-renewal.
 - (2) Insurers subject to RCW 48.15 (surplus lines): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State twenty (20) days' advance notice of cancellation or non-renewal.
- (e) Adjustments in Insurance Coverage.
- (1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.
 - (2) Tenant shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.
- (f) If Tenant fails to procure and maintain the insurance described above within thirty (30) days after Tenant receives a notice to comply from State, State may either:
- (1) Deem the failure an Event of Default under Section 14 and terminate the Lease without giving Tenant any further opportunity to cure, or
 - (2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Tenant shall pay to State the full amount paid by State, together with interest at the rate provided in Paragraph 6.2 from the date of State's notice of the expenditure until Tenant's repayment.
- (g) General Terms.
- (1) State does not represent that coverage and limits required under this Lease are adequate to protect Tenant.
 - (2) Coverage and limits do not limit Tenant's liability for indemnification and reimbursements granted to State under this Lease.
 - (3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to property first to restore the real property covered by this Lease, then to pay the cost of the reconstruction, then to pay State any sums in arrears, and then to Tenant.
 - (4) Notwithstanding anything to the contrary herein, if any insurance required hereunder, with the exception of any Workers' Compensation insurance required under Paragraph 10.3(b), ceases to be generally available in the commercial insurance marketplace, Tenant shall either (a) increase the Security set forth in Paragraph 10.4 hereof by an amount equal to the amount of insurance that is unavailable or (b) provide a guaranty to State equal to the amount of the insurance that is unavailable. Tenant's failure to procure replacement Security or a guaranty as prescribed in clauses (a) and (b) of the immediately preceding sentence within thirty (30) days after receipt of notice from State of failure to procure and maintain the insurance described in this Agreement shall constitute a failure of Tenant to maintain the insurance required hereunder.

10.3 Insurance Types and Limits.

- (a) General Liability Insurance.
 - (1) Tenant shall maintain commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Tenant's use, occupation, or control of the Property and, if necessary, commercial umbrella insurance with a limit of not less than Five Million (\$5,000,000). If such CGL or MGL insurance contains aggregate limits, the general aggregate limit must be at least twice the "each occurrence" limit. CGL or MGL insurance must have products-completed operations aggregate limit of at least two times the "each occurrence" limit.
 - (2) CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.
 - (3) MGL insurance must have no exclusions for non-owned watercraft.
- (b) Workers' Compensation.
 - (1) State of Washington Workers' Compensation.
 - (i) Tenant shall comply with all State of Washington workers' compensation statutes and regulations. Tenant shall provide workers' compensation coverage for all employees of Tenant. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with Tenant's use, occupation, and control of the Property.
 - (ii) If Tenant fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Tenant shall indemnify State. Indemnity shall include all fines; payment of benefits to Tenant, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.
 - (2) Longshore and Harbor Workers' and Jones Acts. Longshore and Harbor Workers' Act (33 U.S.C. Section 901 *et seq.*) and/or the Jones Act (46 U.S.C. Section 30104) may require Tenant to provide insurance coverage in some circumstances. Tenant shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with law. Tenant is responsible for all civil and criminal liability arising from failure to maintain such coverage.
- (c) Employers' Liability Insurance.
 - (1) Tenant shall procure employers' liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than One

Million Dollars (\$1,000,000) each accident for bodily injury by accident and One Million Dollars (\$1,000,000) each employee for bodily injury by disease.

(d) Property Insurance.

- (1) Tenant shall buy and maintain property insurance covering all real property and fixtures, equipment, tenant improvements and betterments (regardless of whether owned by Tenant or State). Such insurance must be written on an all risks basis and, at minimum, cover the perils insured under ISO Special Causes of Loss Form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductibles. Any coinsurance requirement in the policy must be waived.
- (2) Tenant shall buy and maintain equipment breakdown insurance covering all real property and fixtures, equipment, tenant improvements and betterments (regardless of whether owned by Tenant or State) from loss or damage caused by the explosion of equipment, fired or unfired vessels, electric or steam generators, electrical arcing, or pipes.
- (3) In the event of any loss, damage, or casualty that is covered by one or more of the types of insurance described above, the Parties shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which State shall hold in trust, including interest earned by State on such proceeds, for use according to the terms of this Lease. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).
- (4) When sufficient funds are available, using insurance proceeds described above, the Parties shall continue with reasonable diligence to prepare plans and specifications for, and thereafter carry out, all work necessary to:
 - (i) Repair and restore damaged building(s) and/or Improvements to their former condition, or
 - (ii) Replace and restore damaged building(s) and/or Improvements with a new building(s) and/or Improvements on the Property of a quality and usefulness at least equivalent to or more suitable than, damaged building(s) and/or Improvements.

(e) Builder's Risk Insurance.

- (1) Tenant shall procure and maintain in force, or require its contractor(s) to procure and maintain in force, builder's risk insurance on the entire work during the period construction is in progress and until completion of the project and acceptance by State. Such insurance must be written on a completed form and in an amount equal to the value of the completed building and/or Improvements, subject to subsequent modifications to the sum. The insurance must be written on a replacement cost basis. The insurance must name Tenant, all contractors, and all subcontractors in the work as insured.

- (2) Insurance described above must cover or include the following:
- (i) All risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse;
 - (ii) The entire work on the Property, including reasonable compensation for architect's services and expenses made necessary by an insured loss;
 - (iii) Portions of the work located away from the Property but intended for use at the Property, and portions of the work in transit;
 - (iv) Scaffolding, falsework, and temporary buildings located on the Property; and
 - (v) The cost of removing debris, including all demolition as made legally necessary by the operation of any law, ordinance, or regulation.
- (3) Tenant or Tenant's contractor(s) is responsible for paying any part of any loss not covered because of application of a deductible contained in the policy described above.
- (4) Tenant or Tenant's contractor(s) shall buy and maintain equipment breakdown insurance covering insured objects during installation and until final acceptance by permitting authority. If testing is performed, such insurance must cover such operations. The insurance must name Tenant, all contractors, and subcontractors in the work as insured.
- (f) Business Auto Policy Insurance.
- (1) Tenant or Tenant's contractor(s) shall maintain business auto liability insurance and, if necessary, commercial umbrella liability insurance with a limit not less than One Million Dollars (\$1,000,000) per accident. Such insurance must cover liability arising out of "Any Auto".
 - (2) Business auto coverage must be written on ISO Form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy must be endorsed to provide contractual liability coverages and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01.
- (g) Pollution Legal Liability Insurance.
- (1) Tenant shall procure and maintain for the duration of this Lease pollution legal liability insurance, including investigation and defense costs, for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed. Such coverage must also provide for both on-site and off-site cleanup costs and cover gradual and sudden pollution, and include in its scope of coverage natural resource damage claims. The Insurance Certificate must state that the insurer is covering Hazardous Substance removal. Tenant shall maintain coverage in an amount of at least:
 - (i) Five Million Dollars (\$5,000,000) each occurrence for Tenant's operations at the site(s) identified above, and
 - (ii) at least Ten Million Dollars (\$10,000,000) general aggregate or policy limit, if any.

- (2) Such insurance may be provided on an occurrence or claims-made basis. If such coverage is obtained as an endorsement to the CGL or is provided on a claims-made basis, the following additional conditions must be met:
 - (i) The policy must contain no retroactive date, or the retroactive date must precede the effective date of the Lease.
 - (ii) Coverage must either be continuously maintained for a period of five (5) years following the Termination Date of the Lease, or an extended reporting period of five (5) years following the Termination Date of the Lease shall be purchased.

10.4 Financial Security.

- (a) At its own expense, Tenant shall procure and maintain during the Term of this Lease a corporate security bond or provide other financial security that State, at its option, may approve ("Security"). Tenant shall provide Security in an amount equal to One Million Dollars (\$1,000,000), which secures Tenant's performance of its obligations under this Lease. Tenant's failure to maintain the Security in the required amount during the Term constitutes a breach of this Lease.
- (b) All Security must be in a form acceptable to State.
 - (1) Bonds must be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports, unless State approves an exception in writing. Tenant may submit a request to the Risk Manager for the Department of Natural Resources for an exception to this requirement.
 - (2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, et. seq.
 - (3) Savings account assignments, if approved by State, must allow State to draw funds at will.
- (c) Adjustment in Amount of Security.
 - (1) State may require an adjustment in the Security amount:
 - (i) At the same time as revaluation of the Annual Rent,
 - (ii) As a condition of approval of assignment or sublease of this Lease,
 - (iii) Upon a material change in the condition or disposition of any Improvements, or
 - (iv) Upon a change in the Permitted Use.
 - (2) Tenant shall deliver a new or modified form of Security to State within thirty (30) days after State has required adjustment of the amount of the Security.
- (d) Upon any default by Tenant in its obligations under this Lease, State may collect on the Security to offset the liability of Tenant to State. Collection on the Security does not (1) relieve Tenant of liability, (2) limit any of State's other remedies, (3) reinstate the Lease or cure the default or (4) prevent termination of the Lease because of the default.

SECTION 11 MAINTENANCE AND REPAIR

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

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

- (a) Tenant shall, at its sole cost and expense, keep and maintain the Property and all Improvements in good order and repair, in a clean, attractive, and safe condition.
- (b) Tenant shall, at its sole cost and expense, make any and all additions, repairs, alterations, maintenance, replacements, or changes to the Property or to any Improvements on the Property that may be required by any public authority having jurisdiction over the Property and requiring it for public health, safety and welfare purposes.
- (c) Except as provided in Paragraph 11.2(d), all additions, repairs, alterations, replacements or changes to the Property and to any Improvements on the Property shall be made in accordance with, and ownership shall be governed by, Section 7, above.
- (d) Routine maintenance and repair are acts intended to prevent a decline, lapse, or cessation of the Permitted Use and associated Improvements. Routine maintenance or repair that does not require regulatory permits does not require authorization from State pursuant to Section 7.
- (e) The requirements of Section 11 apply to maintenance and repair on the exterior surfaces, features, or fixtures of the existing piling-supported wharf and causeway, two-story dock operations office, small-craft launching facility, one-story storage building, electrical substation, fire protection building, hose house, two gangway towers, pipelines, and single-lane road. Additions, repairs, alterations, replacements or changes to the aforementioned Improvements which will result in an expansion of the exterior dimensions of the Improvements are not considered to be routine maintenance or repair.

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

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

EXHIBIT B**1. DESCRIPTION OF PERMITTED USE**

A. Existing Facilities. As of November 1, 2021, the facilities on the Property include a dock that consists of a piling-supported wharf in deep water and a causeway that connects the wharf to land. The dock is the marine terminal for an associated upland refinery. The refinery is the second largest in Washington State, with an average annual processing rate of 149,000 barrels of crude oil per day.

The wharf has two berths that accommodate tankers, articulated tug barges, and towed barges. Crude oil is unloaded, typically from tankers. Refined petroleum products, including gasoline, diesel, and kerosene (*i.e.*, jet fuel), are loaded onto all types of vessels. Loading and unloading occurs via marine loading arms ("MLAs"): five MLAs serve the northern berth and three MLAs serve the southern berth. Pipelines under the wharf and on the surface of the causeway convey crude oil, refined products, and treated and untreated wastewater.

The dock was constructed in 1958 and was substantially renovated in 1984. The construction of the wharf is a mix of timber, pre-stressed concrete, and steel. As of November 1, 2021, a two-story dock operations office is located in the center of the wharf. Also present on the dock are a small-craft launching facility for two spill-response skiffs, a one-story storage building, an electrical substation, a fire protection building, a hose house, and two gangway towers. The causeway is located partially on the Property and partially on Tenant-owned tidelands. Over 4,000 feet of the causeway is on the Property. The causeway also has a 14-foot wide road for vehicular access. The construction of the causeway is timber.

As of 2021, Tenant is conducting piling replacement and preventative measures maintenance on a five-year program. This maintenance focuses on the pilings and structural supports that must be repaired or replaced to maintain the dock in good order and repair. Maintenance on a five-year cycle is expected to continue due to permitting requirements.

Also on the Property is an outfall pipeline and diffuser that discharges treated sanitary, industrial, and stormwater wastewater effluent. The outfall pipeline and diffuser are attached to the dock. The outfall is owned by Tenant and authorized under Aquatic Lands Easement 51-076264.

B. Proposed Work.

State authorizes Tenant to conduct the following Proposed Work on the Property: in-water work that includes the replacement of 70 piles with full length polyurea-coated ACZA treated timber piles and strut repair to 57 piles; and above-water work that includes: connection repairs to 22 piles and the replacement of braces, girts, sashes, firewalls, timber pile caps, stringers, and decking. Additional details of the Proposed

Work are set forth in the 2018 Joint Aquatic Resources Permit Application, submitted by Tenant, dated December 2018, as approved by State. Tenant's Proposed Work is considered Work and subject to the terms and conditions of this Lease. If Tenant is required to renew, extend, modify, or obtain a new regulatory permit for the Proposed Work, Tenant shall obtain State's prior written consent before conducting the Proposed Work pursuant to Paragraph 7.3 of the Lease.

C. Permits for Proposed Work. Tenant has secured the following permits for the Proposed Work: list permits with permitting agency, identification number, and date issued.

- Hydraulic Project Approval, issued by Washington Department of Fish and Wildlife, dated June 7, 2019 to January 31, 2023
- Nationwide Permit (NWP) 3, issued by Department of the Army Corps of Engineers, dated November 24, 2020 to March 18, 2023

2. ADDITIONAL OBLIGATIONS

Except for the Proposed Work authorized in Section 1.B. of this Exhibit B, State has not authorized Tenant to conduct any Work on the Property. Where Work will need to be conducted to meet the Additional Obligations below, Tenant shall obtain State's prior written consent in accordance with Paragraph 7.3 of this Lease and obtain all necessary regulatory permits prior to commencing such Work.

A. Creosote Piling Replacement/Sleeving. Every five (5) years, beginning not later than September 1, 2025, and continuing until the termination or expiration of the Lease, Tenant shall submit a Dock Piling Replacement and Preventative Maintenance report ("Maintenance Report") to State identifying the pilings and structural supports that must be repaired or replaced to maintain the causeway and wharf in good order and repair, prepared by a qualified structural engineer. The Maintenance Report shall identify pilings to be replaced, pilings to be encased, any other repairs/replacements, and a proposed schedule for such Work. Tenant shall repair or replace the pilings and perform all other necessary repairs/maintenance in accordance with the schedule set forth in the Maintenance Report.

B. Additional Piling Creosote Containment Work. Every five (5) years, beginning no later than September 1, 2025, and continuing until the termination or expiration of the Lease, Tenant shall perform piling creosote containment work to fifty (50) additional pilings (per 5 year period) not included in the Maintenance Report to achieve the goal of preventing creosote from entering the water column and sediment ("Additional Piling Creosote Containment Work"). This Additional Piling Creosote Containment Work may include: (1) removal and replacement of creosote-treated pilings, or (2) encasing, wrapping, or sleeving creosote-treated pilings in a manner that prevents leaching of contaminants into water. Tenant may use Ammoniacal Copper Zinc

Arsenate (ACZA) treated wood pilings as replacement pilings only if pilings are treated prior to installation with marine grade polyurea. Tenant shall never use Chromated Copper Arsenate (CCA), Alkaline Copper Quaternary (ACQ), or creosote-treated wood at any location. At Tenant's request, State may, but is not obligated to, adjust the number of additional pilings or timing for completion of this Work.

C. Grating on Causeway. Tenant shall conduct and submit to State a feasibility study to assess plans to avoid and minimize impacts to eelgrass (*Zostera marina*) resulting from the solid surface of the causeway ("Grating Study") no later than March 31, 2023. The Grating Study shall assess the engineering requirements associated with replacing the solid surface of the causeway with grating to increase light penetration. The Grating Study shall evaluate the feasibility of grating on at least fifty percent (50%) of the surface area where eelgrass is within twenty-five (25) feet of the edge of the causeway and where the water depth is less than fifteen (15) feet at Mean Lower Low Water (-15 feet MLLW). Grating material must have at least sixty percent (60%) functional open space or forty percent (40%) or greater multi-directional open space, unless engineering or safety requirements require less. When the Grating Study is completed, Tenant and State shall discuss the conclusions of the Grating Study and potential next steps. If the Grating Study concludes that it is feasible to install grating on the portion of the solid surface of the causeway subject to the study, Tenant shall prepare and submit to State a schedule for phased replacement of such solid surface with grating.

D. Sediment Sampling. By October 31, 2022, Tenant shall conduct sediment sampling on the Property and submit sampling reports to state as follows:

Tenant shall submit a Sediment Sampling and Analysis Plan (SAP) to State for approval no less than sixty (60) days before commencing sediment sampling. After initial review, State may require modifications to the SAP. If State disapproves of the SAP, Tenant shall submit a revised SAP to State. After State receives revised SAP from Tenant, State will have up to 30 days for review of modifications. After State's approval of the SAP, Tenant must conduct sampling within one hundred eighty (180) days.

Specifics of the SAP shall be developed by a qualified environmental professional following the Washington State Department of Ecology's most recent version of *Sediment Cleanup User's Manual II- Guidance for Implementing the Cleanup Provisions of the Sediment Management Standards (SCUM II)*, Chapter 173-204 WAC and current ASTM Phase II Standards.

State may require Tenant to conduct additional monitoring or implement additional Best Management Practices during the term of the Lease based on the sampling results.

The SAP shall at a minimum:

- (1) Contain a sufficient number and distribution of samples for a Phase II environmental site assessment.
- (2) Include the full suite of Sediment Management Standards (SMS) chemicals of concern as well as tributyltin.
- (3) Focus sample collection in areas of deposition where adequate samples can be collected.
- (4) Include core samples to address risk posed by historical use on and adjacent to the Property.
- (5) Select sampling locations from areas that have not been dredged or have not been previously sampled in the last five (5) years, yet are otherwise closest to where industrial activities have occurred.

The sediment sampling shall be conducted by a qualified environmental professional in accordance with the SAP. Tenant shall be responsible for all costs required to complete planning, regulatory permitting, sampling, analyzing, and reporting associated with the SAP.

After completion of the sediment sampling and analysis, a Sediment Analysis Report must be written as outlined in the Department of Ecology's SCUM II Manual. The Sediment Analysis Report shall clearly identify all exceedances. Tenant shall submit an electronic and hardcopy version of the Sediment Sampling and Analysis Report to State. If an exceedance is identified, Tenant shall immediately notify both State and Department of Ecology.

Tenant shall ensure all sampling data is entered into the Department of Ecology's Environmental Information Management (EIM) database following Department of Ecology's myEIM database process (see link for details):

<https://ecology.wa.gov/Research-Data/Data-resources/Environmental-Information-Management-database/EIM-submit-data>.