

WHATCOM COUNTY
CONTRACT NO.
201805012

AIRPORT INDUSTRIAL PARK LEASE

THIS AIRPORT INDUSTRIAL PARK LEASE, hereinafter called Lease, is made and entered into this 5th day of June, 2018, by and between the **PORT OF BELLINGHAM**, a municipal corporation, hereinafter called Lessor, and **WHATCOM COUNTY**, a Washington County, hereinafter called Lessee.

ARTICLE I
Recitals

PRELIMINARY STATEMENT: Lessor is the owner of certain real property located at 3720 Williamson Way, Bellingham, Washington. The Lessee is owner of a certain building improvement located on said property owned by Lessor. The Lessor and Lessee are parties to a certain Interlocal Agreement for Real Estate Services Airport Industrial Park, dated May 17, 2017. It is the desire of both Lessor and Lessee to terminate the Interlocal Agreement and enter into a Lease agreement for said property. Upon execution of this Lease the Interlocal Agreement shall hereby be terminated.

Summary of Lease Terms and Definitions

Lessor:	Port of Bellingham
Lessor's Address:	1801 Roeder Avenue Bellingham, WA 98225
Lessee:	Whatcom County
Lessee's Address:	311 Grand Avenue Bellingham, WA 98225
Agreed Rentable Area Lease #4:	31,248 square feet of real property described as Lease #4 of the Bellingham International Airport Binding Site Plan, with a street address of 3720 Williamson Way, Bellingham, Washington 98226
Agreed Rentable Area Additional Premises:	500 square feet as shown on Exhibit "D"
Use of Premises:	Whatcom County Facility Management Program
Exhibits:	Exhibit "A" General Binding Site Plan & Specific Binding Site Plan #1 Exhibit "B" Map of Premises Exhibit "C" Existing Building Improvement Exhibit "D" Additional Premises
Commencement Date:	Retroactively, June 1, 2018
Term Lease #4:	Five (5) years
Term Additional Premises:	Month to Month

Renewals: Two (2) consecutive five (5) year renewals

Base Rent:	Months of	*Monthly
	<u>Lease Term</u>	<u>Total</u>
	Years 1-2	\$1,309.61
	Years 3-5	\$1,375.09

*Plus applicable Washington State Leasehold tax.

ARTICLE II

Premises, Term, and Renewal

2.1 **PREMISES:** Lessor, in consideration of the rents hereinafter reserved and of the covenants and conditions herein set forth to be performed by Lessee, does hereby demise and let unto Lessee, all of the real property described as **Lease #4 of the Bellingham International Airport Binding Site Plan**, described in Exhibits "A" and "B" above (hereinafter "Premises"). The Premises consist of an Agreed Rentable Area of 31,248 square feet of real property. The Premises does not include the building and associated improvements that are located on the Premises. The building and associated improvements are owned by the Lessee.

2.1.1 **Additional Premises:** A portion of the Premises is located outside Lease #4 as shown on Exhibit "D" above (hereinafter Additional Premises). The Additional Premises consist of an Agreed Rentable Area of 500 square feet of real property. Either the Lessor or the Lessee may remove the Additional Premises from the leasehold by providing the other with thirty (30) days written notice and the removal will be effective on the first day of the month following expiration of the thirty (30) day period.

2.2 **TERM:** Except for the Additional Premises, the term of this Lease ("Term") shall be for five (5) years beginning retroactively on June 1, 2018 ("Commencement Date"), and ending May 31, 2023 ("Termination Date"). If Lessee takes possession before the Commencement Date, Lessee shall pay the pro rata Rent for the period prior to the Commencement Date.

2.3 **RENEWAL:** Subject to the terms and conditions herein, Lessee shall have the right to renew this Lease for two (2) consecutive five (5) year periods. Sixty days prior to the lease expiration date, the Port and County shall notify one another of the lease expiration to determine if the county will exercise the option to renew the lease. Lessee shall not be entitled to renew this Lease unless the Lease is in good standing at the time of renewal and the Lessee is not in default under the terms of this Lease or any other lease or agreement with the Lessor. The terms and conditions of any renewal shall be the same as set forth in this Lease, except that Base Rent shall be recalculated as provided herein, and the terms of this Lease shall be updated to be consistent with the terms and conditions then existing in the Lessor's standard Airport Industrial Park Agreement.

ARTICLE III

Compensation, and Rent Renegotiation

3.1 **RENT:** The term "Rent," as used herein, includes Base Rent, **plus** applicable Washington State leasehold excise tax, and other fees and charges assessed herein. Except as expressly provided elsewhere herein, Rent shall be paid without the requirement that Lessor

provide prior notice or demand, and shall not be subject to any counterclaim, setoff, deduction, defense or abatement.

3.1.1 Rent shall be paid monthly in advance on or before the first (1st) day of each month beginning on the Commencement Date. A late charge of one percent (1%) per month will be assessed against past due Rent from the date such Rent became due. Additionally, if Rent is not received by the fifth (5th) day of any month, Lessee shall pay Lessor an additional fee of \$100 or five percent (5%) of the delinquent payment, whichever is greater, to defray costs of collecting and handling such late payment. All accrued interest and late charges shall be paid no later than the first (1st) day of the month following that month in which such interest or late charges accrued.

3.2 **RENT RENEGOTIATION:** Base Rent shall be subject to adjustment on June 1, 2023 and June 1, 2028 (hereinafter referred to as the "Adjustment Date"). The parties agree to renegotiate the amount of Rent payable to Lessor, and to agree on the amount at least ninety (90) days prior to the commencement of each succeeding five year period, (hereinafter "Renegotiation Deadline"). In no event will the Rent payable by Lessee be less than such Rent for the preceding lease year. If the parties cannot agree on the adjustment to the Rent before the Renegotiation Deadline, then the Rent shall be determined according to the "Appraisal" section herein. The ROI to be used for each Rent adjustment shall be equal to the ROI then being used by the Lessor.

ARTICLE IV

Use of Premises, Condition of Property, Improvements, Removal of Property, Maintenance, Utilities, Federal Aviation Requirements, Fire Protection, and Off Street Parking

4.1 **LESSEE'S USE OF PREMISES:** Lessee shall use the Premises for the following purpose: **Whatcom County Facility Management Program** and for no other purpose (the "Authorized Use").

4.1.1 Lessee shall be in default under this Lease if it: (i) ceases conducting the Authorized Use for any period of time exceeding thirty (30) days; or (ii) conducts any other business or activity on the Premises other than the Authorized Use without first obtaining a validly executed lease modification.

4.1.2 Notwithstanding the foregoing described use, the Premises shall not be used to store, distribute or otherwise handle flammable or dangerous materials, excepting only those which are necessary to conduct the Authorized Use. At the request of Lessor, Lessee shall provide a list of all flammable or dangerous materials stored or used on the Premises.

4.2 **CONDITION OF PROPERTY:** Lessee has inspected the Premises and accepts the Premises, including all existing improvements thereon, "as is" without further maintenance liability on the part of the Lessor, except as specifically noted herein. Lessee is not relying on any representations of Lessor as to condition, suitability, zoning restrictions, or usability, except Lessor's right to grant a lease of the Premises. Lessee further agrees to keep the Premises and all improvements thereon continually in good condition throughout the term of the Lease. Lessee shall not allow any portion of the Premises to remain in a damaged, unworkable or other condition which compromises the condition of any portion of the Premises. Lessee further

agrees to maintain the exterior appearance of all improvements on the Premises during the term of the Lease in as good of condition as they exist on the commencement of the Lease.

4.3 IMPROVEMENTS: The Lessee shall abide by the following terms with regard to improvements:

4.3.1 Existing Improvements. On the Commencement Date, the improvements shown on Exhibit "C" are located on the Premises. These improvements are the property of the Lessee. Lessee shall forever release and hold Lessor harmless from any and all claims relating to or resulting from such improvements.

4.3.2 New Improvements. Subject to obtaining Lessor's written approval as hereafter described, Lessee may make and install, at its own expense, such tenant improvements ("Tenant Improvements") as are normal and customary in connection with the Authorized Use set forth herein. Lessee's contractor, if any, shall be subject to Lessor's approval, which shall not be unreasonably withheld. Provided, however, Lessor reserves the right to condition its approval upon (i) compliance with Lessor's development standards, and (ii) the Lessee providing satisfactory payment and/or performance bonds. Lessee shall submit plans to and obtain written approval from Lessor before commencing any improvements. Lessor shall have a reasonable period of time to review such plans prior to issuing a decision. Lessor may charge Lessee a reasonable fee for staff, consultant or attorney time required to review the plans. All Tenant Improvements which are to be designated fixtures shall be so designated by Lessor upon Lessor's approval of the plans for such improvements. All new improvements by Lessee shall conform to the requirements of the Americans With Disabilities Act, 42 USC 12111 et seq and the Rules, Regulations and Minimum Standards for the Bellingham International Airport.

4.3.3 Unauthorized Improvements. Any Tenant Improvements made on the Premises without Lessor's prior written consent or which are not in conformance with the plans submitted to and approved by the Lessor ("Unauthorized Improvements") shall immediately become the property of Lessor, unless Lessor elects otherwise. Regardless of the ownership of Unauthorized Improvements, Lessor may, at its option, require Lessee to sever, remove, and dispose of them, charge Lessee rent for the use of them, or both.

4.4 REMOVAL OF PERSONAL PROPERTY AND TENANT IMPROVEMENTS: Prior to the conclusion of the Lease, Lessee shall remove the following from the Premises:

- a. All equipment;
- b. All personal property;
- c. All Tenant Improvements that are not designated fixtures;
- d. Existing building improvement shown on Exhibit C.

4.4.1 If any of the foregoing items are not removed from the Premises by the conclusion of the Lease or when Lessor has the right of re-entry, then Lessor may, at its sole option, elect any or all of the following remedies:

- a. To remove any or all of the items and to dispose of them without liability to Lessee. Lessor shall not be required to mitigate its damages, to dispose of the items in a commercially reasonable manner, or to make any effort whatsoever to obtain payment for such items. Lessee agrees to pay Lessor's costs and damages associated with Lessee's failure to remove such items, including, but not limited to, the following: storage, demolition, removal, transportation, and lost

rent (collectively "Disposal Costs"); provided, however, that any net proceeds recovered by Lessor in excess of its Disposal Costs will be deducted from Lessee's financial obligation set forth herein. Lessee's financial obligations herein shall survive the termination of this Lease.

- b. To have the title to any or all of such items revert to Lessor.
- c. To commence suit against Lessee for damages or for specific performance.
- d. Or any other remedy agreed to in writing and signed by the parties.

4.4.2 The foregoing remedies are cumulative and Lessor shall not be required to elect its remedies.

4.5 **MAINTENANCE OF FACILITIES**: Maintenance and repair of the Premises and all improvements thereon is the sole responsibility of Lessee including, but not limited to, maintenance and repair of any damage to the Premises from unforeseen or unexpected events or Acts of God. Without limiting the generality of the foregoing, Lessee shall keep and maintain any improvements on the Premises in a condition as good as they existed on the commencement of this Lease, reasonable wear and tear excepted.

4.6 **UTILITIES**: Lessee will arrange and pay for all utility connections and services and distribution of such utilities within its leased Premises. At the conclusion of this Lease, Lessee shall arrange for such utility services to be terminated and for the final bill to be sent to Lessee. Lessee shall be liable for all utility charges that accrue if it fails to so terminate services.

4.7 **FEDERAL AVIATION REQUIREMENTS**: The Lessee agrees that its use of the Premises will be accomplished in accordance with the following covenants:

4.7.1 Lessee shall prevent any use of the Premises which would interfere with the landing or taking off of aircraft at the Bellingham International Airport, or otherwise constitute an airport hazard.

4.7.2 Lessee shall prevent any operation on the Premises which would produce electromagnetic radiations of a nature which would cause interference with any air navigational or communications aid now or in the future to be installed to serve the Bellingham International Airport, or which would create any interfering or confusing light or cause any restrictions to visibility at the airport.

4.7.3 Lessor retains the public right of flight for the passage of aircraft in the airspace above the surface of the Premises hereinbefore described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in said airspace, and for use of said airspace for landing on, taking off from or operating on the Bellingham International Airport.

4.7.4 Lessee understands that it is the policy of the U.S. Department of Transportation that minority business enterprises as defined in 49 CFR, Part 23, shall have the maximum opportunity to participate in the performance of this Lease as defined in 49 CFR, Section 23.5, and that this Lease is subject to 49 CFR, Part 23, as applicable. Lessee hereby assures that no person shall be excluded from participation in, denied the benefits of, or otherwise discriminated

against in connection with 49 CFR, Part 23, on the grounds of race, color, national origin, or sex.

4.8 **FIRE PROTECTION**: The Lessee understands that the Lessor has no responsibility to provide fire protection for the Lessee's buildings, property or equipment located in or upon the leased Premises. It shall be the exclusive responsibility of the Lessee to provide for its own fire protection, including, but not limited to, promptly paying all fire district service charges when due. In this regard, the Lessee understands that it is the Lessee's responsibility and duty to include the value of its buildings, property, and equipment to appropriate County authorities for personal property tax purposes through which fire district service charges are paid. Failure of the Lessee to accurately list its improvements or promptly pay its fire district service charges when due, shall be a breach of this Lease and shall be grounds for the Lessor to terminate this Lease agreement. The Lessee shall promptly provide the Lessor with a copy of its personal property declaration within seven (7) days from the time such declaration is made to the Whatcom County Assessor.

4.9 **OFF STREET PARKING**: Lessee agrees to provide space for the parking of vehicles in the number necessary to comply with applicable regulations and otherwise to accommodate its normal business requirements on the Premises included within this Lease; and not rely on any public streets, rights-of-way or other properties not included in this Lease for the parking of said vehicles.

ARTICLE V

Miscellaneous Provisions

5.1 **CASUALTY LOSS OF LESSEE**: The parties hereto agree that the Lessor, its commissioners and employees, Lessor's insurance carrier and the Lessor's casualty policy shall not be responsible to the Lessee for any property loss or damage done to the Lessee's property, whether real, personal or mixed, occasioned by reason of any fire, storm or other casualty whatsoever. It shall be the Lessee's responsibility to provide its own protection and insurance against casualty losses of whatsoever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of the Lessor, Lessee, third party, or act of nature.

5.2 **INSURANCE**: Lessee shall procure and maintain a comprehensive general liability policy or the equivalent self-insurance program covering all claims for personal injury (including death) and/or property damage (including all real and personal property located on the Premises) arising on the Premises or arising out of Lessee's operations. The limits of liability shall be not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate unless the Lessee requests and Lessor approves in writing, a lesser liability limit. Lessor may impose changes in the limits of liability: (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 any breach of the environmental liability provision herein; (iv) upon a material change in the condition of any improvements; or (v) upon a change in the permitted use. If the liability limits are changed, Lessee shall obtain new or modified insurance coverage within thirty (30) days after changes in the limits of liability are required by Lessor. The liability policies shall contain a cross-liability provision such that the policy will be construed as if separate policies were issued to Lessee and to Lessor.

5.2.1 Lessee shall provide certificates of insurance and, if requested, copies of any policy to Lessor. Receipt of such certificate or policy by Lessor does not constitute approval by Lessor of the terms of such policy. Furthermore, the policy of insurance required herein shall: (i) be written as a primary policy; (ii) expressly provide that such insurance may not be materially

changed, amended or canceled with respect to Lessor except upon forty-five (45) days' prior written notice from the insurance company to Lessor; (iii) contain an express waiver of any right of subrogation by the insurance company against Lessor and Lessor's elected officials, employees or agents; (iv) expressly provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Lessee which might otherwise result in a forfeiture of said insurance.

5.2.2 Lessee participates in the State of Washington Self-Insurance Liability Program which administers a Liability Account to finance the payment of tort claims and lawsuits arising from the negligent actions of state agencies, its officers, employees and volunteers.

5.2.3 If Lessee fails to procure and maintain the insurance described above, Lessor shall have the right, but not the obligation, to procure and maintain substitute insurance and to pay the premiums. Lessee shall pay to Lessor upon demand the full amount paid by Lessor.

5.2.4 The Lessee believes and states that the insurance obligation herein does not exceed that which the Lessee would otherwise normally place upon itself and obtain in order to operate its business in a prudent manner.

5.3 **MUTUAL WAIVER OF SUBROGATION:** So long as their respective property/casualty insurers so permit, and with regard to any self insurance program, Lessor and Lessee hereby mutually waive their respective rights of recovery against each other for any insured property/casualty loss but only to the extent of the net insurance proceeds payable under such policies. Each party shall seek any special endorsements required by their insurer to evidence compliance with the aforementioned waiver.

5.4 **FINANCIAL SECURITY:** In compliance with the requirements of state law, Lessor has determined that Lessee, a Washington County, shall not be required to provide a performance bond or other surety.

ARTICLE VI

Environmental Liability

6.1 **ENVIRONMENTAL INDEMNIFICATION:** Lessee shall defend (with legal counsel suitable to Lessor), indemnify, and hold Lessor harmless from any and all claims, demands, judgments, orders or damages resulting from Hazardous Substances on the Premises caused in whole or in part by the activity of the Lessee, its agents, subtenants, or any other person or entity on the Premises during any period of time that Lessee has occupied all or a portion of the Premises during the term of this Lease or any previous lease or agreement. It is the intent of the parties that Lessee shall be responsible and shall defend and hold Lessor harmless from any Hazardous Substances that have or may occur on the Premises since Lessee first occupied the Premises through this Lease or any previous lease or agreement with Lessor. The term "Hazardous Substances," as used herein, shall mean any substance heretofore or hereafter designated as hazardous under the Resource Conservation and Recovery Act, 42 USC Sec. 6901 *et seq.*; the Federal Water Pollution Control Act, 33 USC Sec. 1257 *et seq.*; the Clean Air Act, 42 USC Sec. 2001 *et seq.*; the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 USC Sec. 9601 *et seq.*; or the Hazardous Waste Cleanup-Model Toxics Control Act, RCW 70.105D, all as amended and subject to all regulations promulgated thereunder.

6.1.1 Lessee's defense and indemnity obligations under this article are unconditional, shall not be discharged or satisfied by Lessor's re-entry of the Premises or exercise of any other remedy for Lessee's default under this Lease, shall continue in effect after any assignment or sublease of this Lease, and shall continue in effect after the expiration or earlier termination of this Lease.

6.1.2 Although Lessee shall not be liable for any Hazardous Substances that existed on the Premises prior to the inception of this Lease, Lessee shall be responsible for the costs of any environmental investigations or remediation arising from the development or use of the Premises by Lessee, and Lessee hereby releases the Lessor from any contribution claim for those costs. By way of example only, if the Lessee excavates soil on the Premises which contains Hazardous Substances, then the Lessee will be responsible for the cost associated with disposing of those soils.

6.2 **CURRENT CONDITIONS AND DUTY OF LESSEE:** Lessor makes no representation about the condition of the Premises. Hazardous Substances may exist in, on, under, or above the Premises. Lessee should, but is not required to, conduct environmental assessments or investigations of the Premises prior to or during this Lease to determine the existence, scope, and location of any Hazardous Substances. If there are any Hazardous Substances in, on, under or above the Premises as of the Commencement Date, Lessee shall exercise the utmost care with respect to the Hazardous Substances, the foreseeable acts or omissions of third parties affecting the Hazardous Substances, and the foreseeable consequences of those acts or omissions.

6.2.1 Prior to conducting any environmental investigation of the subsurface of the Premises, the Lessee shall provide prior written notice to the Lessor. Lessee shall provide the Lessor with the results of all such investigations.

6.3 **NOTIFICATION AND REPORTING:** Lessee shall immediately notify Lessor if Lessee becomes aware of any of the following:

- a. A release or threatened release of Hazardous Substances in, on, under or above the Premises, any adjoining property, or any other property subject to use by Lessee in conjunction with its use of the Premises;
- b. Any problem or liability related to or derived from the presence of any Hazardous Substance in, on, under or above the Premises, any adjoining property or any other property subject to use by Lessee in conjunction with its use of the Premises;
- c. 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 Premises, any adjoining property or any other property subject to use by Lessee in conjunction with its use of the Premises; or
- d. Any lien or action with respect to any of the foregoing.

6.3.1 Lessee shall, at Lessor's request, provide Lessor with copies of any and all reports, studies or audits which pertain to environmental issues concerning the Premises, and

which are or were prepared by or for Lessee 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.

ARTICLE VII

Miscellaneous Provisions

7.1 **APPRAISAL**: Whenever Land Rent or a component of the total Land Rent is to be determined by appraisal, the process in this article shall govern. Within seven (7) calendar days from the Renegotiation Deadline, Lessor and Lessee shall mutually agree upon a disinterested, MAI certified appraiser with at least ten (10) years' experience appraising property in Whatcom County to perform an appraisal of the fair market land rental value for the applicable portion of the Premises. The appraiser's costs shall be shared equally by the parties. The rental rate arrived at in the appraisal shall constitute the new Land Rent for that portion of the Premises, which shall be retroactive to the Adjustment Date.

7.1.1 If Lessor and Lessee cannot mutually agree upon an appraiser by the end of the seventh (7th) day as set forth above, then each party shall select an MAI certified appraiser to perform an appraisal of the fair market land rental value of the applicable portion of the Premises. Each party shall bear the costs of its own appraisal. The appraisals shall be completed no later than ninety (90) days after the Renegotiation Deadline (hereinafter this date shall be referred to as the "Appraisal Completion Date"). The average of the two (2) appraisals shall constitute the new Land Rent for that portion of the Premises and shall be retroactive to the Adjustment Date. If either of the appraisals is not timely completed on or before the Appraisal Completion Date, and unless there were circumstances beyond the appraisers' control that prevented its timely completion, then the rental rate established in the appraisal that was timely completed shall constitute the new Land Rent for the applicable portion of the Premises.

7.2 **LESSEE WILL OBTAIN PERMITS**: Lessee agrees to obtain and comply with all necessary permits for any leasehold improvement. If Lessee fails to obtain and comply with such permits, then Lessee accepts full responsibility for any and all costs incurred by Lessor, including actual attorneys' fees. In this way, Lessee agrees to be solely responsible for all damages, costs, and expenses incurred as a result of Lessee's failure to fully comply with any necessary permit process and requirements.

7.3 **LIENS**: Lessee agrees to keep the Premises described herein free and clear of all liens and charges whatsoever. Lessee shall not allow any mechanics' and materialmen's or other liens to be placed upon the leased Premises. If such a lien is placed or recorded, Lessee shall cause it to be discharged of record, at its own expense, within ten (10) days of Lessor's demand. Failure to comply with Lessor's demand within ten (10) days shall be a default under the terms of this Lease.

7.4 **INDEMNIFICATION AND HOLD HARMLESS**: The Lessee agrees that it will defend (with legal counsel acceptable to Lessor), indemnify and hold harmless the Lessor, its officers, employees and agents from any and all demands, claims, judgments or liability for loss or damage arising as a result of accidents, injuries or other occurrences on the Premises or on Lessor's property, occasioned by either the negligent or willful conduct of the Lessee, its agents,

or any person or entity holding under the Lessee, or any person or entity on the Premises or on the Lessor's property as a result of Lessee's activity, regardless of who the injured party may be.

7.4.1 Limited Waiver of Title 51 RCW. The foregoing indemnification and hold harmless obligation shall include, but is not limited to, all claims against the Lessor by an employee or former employee of the Lessee. For this purpose, the Lessee expressly waives, as respects the Lessor and to the fullest extent permitted by law, all immunity and limitation on liability under any industrial insurance law or scheme, including Title 51 RCW, or other workers compensation act, disability act, or other employees benefits of any act of any state or federal jurisdiction which would otherwise be applicable in the case of such a claim.

7.5 **LAWS AND REGULATIONS**: Lessee agrees to conform to and abide by all lawful rules, codes, laws, regulations and Port policies in connection with its use of the Premises and the construction of improvements and operation of Lessee's business thereon and not to permit said Premises to be used in violation of any lawful rule, code, law, regulation, Port policy, or other authority.

7.5.1 Lessee's obligations herein shall include, but in no way be limited to, the obligation to comply with all state and federal environmental laws and regulations. The Lessee covenants and agrees that it will indemnify and hold harmless the Lessor from any fine, penalty, or damage which may be imposed by any lawful authority, which may arise as a result of the Lessee's failure to comply with the obligations of this paragraph.

7.6 **WASTE AND REFUSE**: Lessee agrees not to allow conditions of waste and refuse to exist on the Premises and to keep the Premises in a neat, clean, and orderly condition and to be responsible for all damages caused to the Premises by Lessee, its agents or any third party on the Premises.

7.7 **TAXES AND ASSESSMENTS**: Lessee agrees to pay all taxes assessed against the leasehold interest and a pro rata share of any assessments made against the Premises for installation of public utility systems, based upon a reasonable overall sharing program among all properties within the assessment area.

7.8 **SIGNS**: No signs shall be installed without the prior written permission of Lessor. In the event that an unauthorized sign has been installed and after notification to remove the sign by the Lessor, Lessee shall pay the Lessor a penalty of \$100 per day for each day the sign remains in place after such notification. The penalty shall automatically resume, without notice, if the sign is reinstalled. The penalty accrued shall be paid with the next month's Base Rent. In addition, the Lessor reserves the right to provide notice of and treat an unauthorized sign as a non-monetary default of this Lease.

7.9 **EQUAL OPPORTUNITY**: Lessee agrees that in the conduct of activities on the Premises, it will be an equal opportunity employer in accordance with Title VII of the Civil Rights Act of 1964, 42 USC §2000 et seq. and shall comply with all requirements of the ADA.

7.10 **LITIGATION**: In the event Lessor shall be made a party to any litigation commenced by or against Lessee (other than actions commenced by Lessee or Lessor concerning the interpretation or enforcement of any of the terms and conditions of this Lease), then Lessee agrees to pay all costs, expert witness fees, and attorneys' fees, including all customary charges incurred by Lessor in connection with such litigation. However, if Lessor is made a party defendant and Lessee undertakes the defense of the action on behalf of Lessor, then no

obligation for costs and attorneys' fees will be chargeable against Lessee by Lessor for costs arising out of such undertaking.

Lessee also agrees to pay all costs and attorneys' fees incurred by Lessor in enforcing any of the covenants, agreements, terms, and provisions of this Lease. Costs and fees shall be paid by the Lessee only if the Lessee is found to have violated the covenants, agreements, terms or provisions.

7.11 ASSIGNMENT OF LEASE: Lessee shall not assign, rent or sublease any portions of this Lease or any extension thereof, without the prior written consent of Lessor, and no rights hereunder in or to said Premises shall pass by operation of law or other judicial process or through insolvency proceedings. Otherwise, the rights and obligations hereof shall extend to and be binding upon their respective successors, representatives and assigns, as the case may be. Lessee shall furnish Lessor with copies of all such subassignment, sublease, or rental documents. For the purposes of this Lease, any change of ownership including sale, liquidation or other disposition of some or all of the corporate stock will be considered an assignment. Should the Lessor consent to an assignment made by the Lessee for the purposes of obtaining a loan or other consideration from a third party, then the Lessor's consent shall be made in accordance with the consent to assignment document used by Lessor for these specific assignments. A copy of this consent form shall be provided by Lessor upon request of Lessee.

7.11.1 If Lessor refuses to consent to an assignment, Lessee's sole remedy shall be the right to bring a declaratory action to determine whether Lessor was entitled to refuse such assignment under the terms of this Lease.

7.11.2 No consent by Lessor to any assignment or sublease shall be a waiver of the requirement to obtain such consent with respect to any other or later assignment or sublease. Acceptance of Rent or other performance by Lessor following an assignment or sublease, whether or not Lessor has knowledge of such assignment or sublease, shall not constitute consent to the same nor a waiver of the requirement to obtain consent to the same.

7.11.3 A minimum handling and transfer fee ("Transfer Fee Deposit") of Three Hundred Dollars (\$300.00) shall be payable by Lessee to Lessor if Lessee requests the Lessor's consent to a proposed assignment (including an assignment to a creditor for security purposes), sublease or modification of this Lease. The Lessor reserves the right to increase the Transfer Fee Deposit up to Five Hundred Dollars (\$500.00) if, in Lessor's sole judgment, the transaction will necessitate the expenditure of substantial time and expense on the part of Lessor. Such Transfer Fee Deposit shall be submitted to the Lessor at the same time that Lessee requests the Lessor's consent to the proposed sublease, assignment or modification. If the Lessor's reasonable and customary attorneys' fees exceed the Transfer Fee Deposit, then Lessee agrees to reimburse the Lessor for such additional reasonable and customary attorneys' fees. Lessee's failure to remit this additional amount within sixty (60) days of the mailing of the notice of such charges shall constitute a default under this Lease. Notwithstanding anything to the contrary herein, the Lessee shall not be obligated to reimburse the Lessor in any case where an assignment, sublease, or modification is not accomplished due to total refusal on the part of Lessor to grant its consent to the request.

7.11.4 If, pursuant to any assignment or sublease, Lessee receives rent, either initially or over the term of the assignment or sublease, in excess of the Rent called for hereunder, or in the case of a sublease, a portion of the Premises in excess of such Rent fairly allocable to such portion, after appropriate adjustments to assure that all other payments called for hereunder are

appropriately taken into account, Lessee shall pay to Lessor, as additional rent expenses hereunder, fifty percent (50%) of the excess of each such payment of Rent received by Lessee after its receipt.

7.11.5 If this Lease is assigned, or if the underlying beneficial interest of Lessee is transferred, or if the Premises or any part thereof is sublet or occupied by anybody other than Lessee, Lessor may collect Rent from the assignee, subtenant or occupant and apply the net amount collected to the Rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Lessee from the further performance by Lessee of covenants on the part of Lessee herein contained. No assignment or subletting shall affect the continuing primary liability of Lessee (which, following assignment, shall be joint and several with the assignee), and Lessee shall not be released from performing any of the terms, covenants, and conditions of this Lease.

7.11.6 Notwithstanding any assignment or sublease, or any indulgences, waivers or extensions of time granted by Lessor to any assignee or sublessee or failure of Lessor to take action against any assignee or sublease, Lessee hereby agrees that Lessor may, at its option, and upon not less than three (3) days' notice to Lessee, proceed against Lessee without having taken action against or joined such assignee or sublessee, except that Lessee shall have the benefit of any indulgences, waivers, and extensions of time granted to any such assignee or sublessee.

7.12 **REIMBURSEMENT FOR EXPENSES**: Should the Lessee seek to assign this Lease to any creditor as security for a loan or forbearance from such creditor, or attempt to otherwise assign, sublease, or modify this agreement between the parties during the term of this Lease or any renewal thereof, then the Lessee agrees to reimburse the Lessor for all customary and reasonable attorney fees paid by the Lessor for the review and opinion of such attorney acting on the request. A failure to reimburse the Lessor within 60 days of the mailing of notice of such charges shall constitute a default under the terms of this lease. Notwithstanding anything to the contrary herein, the Lessee shall not be obligated to reimburse the Lessor in any case where an assignment, sublease, or modification is not accomplished due to total refusal on the part of the Lessor to grant its consent to the request.

7.13 **TERMINATION**: Upon termination of this Lease or any extension thereof, whether by expiration of the stated term or sooner termination thereon, as herein provided, Lessee shall surrender to Lessor the Premises peaceably and quietly. Lessee shall restore the Premises to the condition existing at the time of initiation of this Lease, except for: (i) normal wear and tear, and (ii) any improvements which Lessor permits to remain on the Premises.

7.14 **DEFAULT, CROSS DEFAULT, AND REMEDIES**: Failure to pay Rent or any other monetary obligations by the first day of each month shall constitute a default under the terms of this Lease. If Lessee is in default in the payment of Rent or other monetary obligations occurs then, at Lessor's sole option, upon three (3) days' written notice, this Lease may be terminated and Lessor may enter upon and take possession of the Premises. Without limiting the generality of the foregoing, Lessee expressly authorizes Lessor to obtain a prejudgment writ of restitution in the event of default by Lessee. This remedy is in addition to and is not exclusive of any other remedies provided either by this Lease or by law.

7.14.1 If Lessee shall fail to perform any term or condition of this Lease, other than the payment of Rent or other monetary obligations, then Lessor, upon providing Lessee thirty (30)

days' written notice of such default, may terminate this Lease and enter upon and take possession of the Premises. This remedy is in addition to and is not exclusive of any other remedies provided either by this Lease or by law.

7.14.2 If within any one (1) year period, Lessor serves upon the Lessee three notices requiring Lessee either to: (i) comply with the terms of this Lease or to vacate the Premises or (ii) pay Rent or vacate (collectively referred to herein as "Default Notices"), then Lessee shall, upon a subsequent violation of any term of this Lease by the Lessee (including failure to pay Rent), be deemed to be in unlawful detainer, and Lessor may, in addition to any other remedies it may have, immediately terminate the Lease and/or commence an unlawful detainer action without further notice to Lessee.

7.14.3 The following shall also constitute a default under the terms of this Lease: A default by Lessee under any other agreement or lease with the Lessor; insolvency of Lessee; an assignment by Lessee for the benefit of creditors; the filing by Lessee of a voluntary petition in bankruptcy; an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; the filing of an involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest; and failure of Lessee to secure a discharge of the attachment or release of the levy of execution within ten (10) days.

7.14.4 A default under this Lease shall constitute a default under any other lease or agreement which Lessee has with Lessor (hereinafter such other agreements shall be referred to as "Collateral Agreements"). Likewise, any material breach or default under a Collateral Agreement shall be deemed a material breach or default under the terms of this Lease. If a Collateral Agreement is terminated for a material breach or default of Lessee, then Lessor shall, without limiting any other remedies it may have, be entitled to terminate this Lease upon five (5) days' written notice to Lessee.

7.14.5 In addition to the foregoing remedies specified in this article, Lessor may exercise any remedies or rights under the laws of the State of Washington. Under no circumstances shall Lessor be held liable in damages or otherwise by reason of any lawful re-entry or eviction. Lessor shall not, by any re-entry or other act, be deemed to have accepted any surrender by Lessee of the Premises or be deemed to have otherwise terminated this Lease or to have relieved Lessee of any obligation hereunder.

7.14.6 Lessor shall be under no obligation to observe or perform any covenant of this Lease after the date of any material default by Lessee unless and until Lessee cures such default.

7.14.7 A fee of Five Hundred Dollars (\$500.00) shall be assessed to Lessee for each Default Notice issued to Lessee to defray the costs associated with preparing, issuing, and serving such notice. This fee shall be payable on the first (1st) day of the month following the issuance of the notice.

7.15 **NON WAIVER**: Neither the acceptance of Rent nor any other act or omission of Lessor after a default by Lessee shall operate as a waiver of any past or future default by Lessee, or to deprive Lessor of its right to terminate this Lease, or be construed to prevent Lessor from promptly exercising any other right or remedy it has under this Lease. Any waiver by Lessor shall be in writing and signed by Lessor in order to be binding on Lessor.

7.16 **NOTICES:** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing addressed to the other party at the addresses as follows:

TO LESSOR: Port of Bellingham
Post Office Box 1677
Bellingham, Washington, 98227-1677

TO LESSEE: Whatcom County Facilities
311 Grand Avenue
Bellingham, WA 98225

or such address as may have been specified by notifying the other party of the change of address. Notice shall be deemed served on the date of actual delivery or the first attempted delivery as shown on the return receipt if mailed with the United States Postal Service by certified mail, return receipt requested.

7.17 **AGENT FOR SERVICE:** Lessee agrees that if Lessee is in unlawful detainer, pursuant to Chapter 59.12 RCW, and Lessor is unable to serve Lessee with the unlawful detainer pleadings after one service attempt, then Lessor shall be deemed to have complied with the service requirements of Chapter 59.12 RCW if it mails such pleadings via certified mail to the address set forth in the notice section of this Lease and posts such pleadings in a conspicuous location on the Premises. Service shall be deemed complete on the third (3rd) day following the day of posting or day of mailing, whichever is later.

7.18 **SECURITY:** Lessee specifically acknowledges that Lessor has no duty to provide security for any portion of the Premises or surrounding areas. Lessee assumes sole responsibility and liability for the security of itself, its employees, customers, and invitees, and their respective property in or about the Premises. Lessee agrees that to the extent Lessor elects to provide any security, Lessor is not warranting the effectiveness of any such security personnel, services, procedures or equipment and that Lessee is not relying and shall not hereafter rely on such security personnel, services, procedures or equipment. Lessor shall not be responsible or liable in any manner for failure of any such security personnel, services, procedures or equipment to prevent or control, or apprehend anyone suspected of personal injury or property damage in, on or around the Premises.

7.19 **QUIET ENJOYMENT:** Lessor acknowledges that it has ownership of the Premises and that it has the legal authority to lease the Premises to Lessee. Lessor covenants that Lessee shall have quiet enjoyment of the Premises during the term of this Lease so long as the terms are complied with by Lessee and subject to Lessor's right of entry onto the Premises as set forth herein.

7.19.1 The Lessor reserves the right to grant easements and other land uses on the Premises to others when the easement or other land uses applied for will not unduly interfere with the use to which the Lessee is putting the Premises, or interfere unduly with the approved plan of development for the Premises. No easement or other land uses shall be granted to third parties, until damages to the leaseholder have been dealt with appropriately, or waiver signed by the Lessee.

7.19.2 Lessee understands that various federal agencies, including the Department of Homeland Security and U.S. Coast Guard, have the authority to restrict access to certain areas

on property owned by Lessor in order to counter a terrorist or other threat. Such restrictions could impact Lessee's ability to access the Premises for an indefinite period of time. Since such restrictions on access are outside the control of Lessor, Lessee agrees that such interruptions shall not be deemed a violation of this Lease or the Covenant of Quiet Enjoyment.

7.20 **LESSOR MAY ENTER PREMISES:** It is agreed that the duly authorized officers or agents of Lessor may enter to view said Premises at any time, and if the business or normal function of Lessor should at any time require that it enter upon the Premises to perform any work or make any improvements, it may do so, but not in such manner as to materially injure Lessee with its normal and usual operation.

7.21 **TIME:** It is mutually agreed and understood that time is of the essence of this Lease and that a waiver of any default of Lessee shall not be construed as a waiver of any other default.

7.22 **INTERPRETATION:** This Lease has been submitted to the scrutiny of the parties hereto and their counsel, if desired. In any dispute between the parties, the language of this Lease shall, in all cases, be construed as a whole according to its fair meaning and not for or against either the Lessor or the Lessee. If any provision is found to be ambiguous, the language shall not be construed against either the Lessor or Lessee solely on the basis of which party drafted the provision. If any word, clause, sentence, or combination thereof for any reason is declared by a court of law or equity to be invalid or unenforceable against one party or the other, then such finding shall in no way affect the remaining provisions of this Lease.

7.23 **HOLDING OVER:** If the Lessee remains in possession of said Premises after the date of expiration of this Lease without Lessor's prior written consent, such holding over shall constitute and be construed as tenancy at sufferance only, at a monthly rent equal to one hundred fifty percent (150%) of the Base Rent owed during the final month of the Term of this Lease and otherwise upon the terms and conditions in this Lease. If Lessee holds over with Lessor's prior written consent, then until such time as a new written Lease is executed by the parties hereto, Lessee shall continue to make payments to Lessor on a month-to-month basis as provided for in this Lease. Such holdover tenancy may be terminated by either party at the end of any such monthly period by sending written notice not less than five (5) days before the end of such period. Such holdover tenancy shall be subject to all terms and conditions contained herein.

7.24 **SURVIVAL:** All obligations of the Lessee, as provided for in the Lease, shall not cease upon the termination of this Lease and shall continue as obligations until fully performed. All clauses of this Lease, which require performance beyond the termination date, shall survive the termination date of this Lease.

7.25 **GOVERNING LAW:** This Lease and the right of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington, and the parties agree that in any such action jurisdiction and venue shall lie exclusively in Whatcom County, Washington.

7.26 **ESTOPPEL CERTIFICATES:** At Lessee's request, Lessor agrees to execute and deliver to Lessee or its lender(s), a customary estoppel certificate in a form acceptable to the Lessor which sets forth the following information: (i) the terms and conditions of this Lease, (ii) the status of the Rent payments under the Lease; and (iii) Lessor's knowledge of any breaches or anticipated breaches of the Lease. Lessor shall have no obligation to execute an estoppel certificate which requests any information other than as set forth above. Lessee agrees to reimburse the Lessor for all attorneys' fees paid by Lessor for the review and opinion of such

attorney acting on the request for such estoppel certificate and in negotiating acceptable language in the estoppel certificate. A failure to reimburse Lessor within sixty (60) days of the mailing of notice of such charges shall constitute a default under the terms of this Lease.

7.27 **ATTORNMENT:** In the event the Premises are sold, Lessee shall attorn to the purchaser upon the sale provided that the purchaser expressly agrees in writing that, so long as Lessee is not in default under the Lease, Lessee's possession and occupancy of the Premises will not be disturbed and that such purchaser will perform all obligations of Lessor under the Lease.

7.28 **ENTIRE AGREEMENT:** This Lease contains all of the understandings between the parties. Each party represents that no promises, representations or commitments have been made by the other as a basis for this Lease which have not been reduced to writing herein. No oral promises or representations shall be binding upon either party, whether made in the past or to be made in the future, unless such promises or representations are reduced to writing in the form of a modification to this Lease executed with all necessary legal formalities by the Commission of the Port of Bellingham.

7.29 **VALIDATION:** IN WITNESS WHEREOF, Lessor has caused this instrument to be signed by its President and Secretary by authority of the Commission of the Port of Bellingham, and this instrument has been signed and executed by Lessee, the day and year first above written.

7.30 **MODIFICATION:** Either party may request a modification to this Lease. Modifications, to be valid and binding upon either party, shall be in writing and signed by both of the parties.

LESSEE:

WHATCOM COUNTY

By:  _____

Print Name: Jack Louws

Its: County Executive

LESSOR:

PORT OF BELLINGHAM

 _____
President

 _____
Secretary

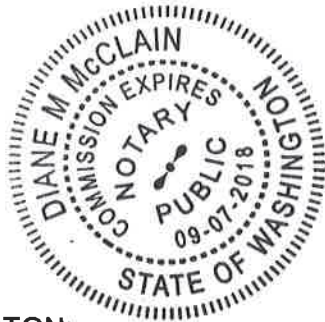
STATE OF WASHINGTON:

SS

COUNTY OF WHATCOM:

ON THIS 5th day of June, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared P. Kenneth Bell and Michael A. Shepard, known to me to be the **President** and **Secretary** of the **PORT OF BELLINGHAM**, and acknowledged the 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 they were authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.



Diane M. McClain
Name (Print) Diane M. McClain
NOTARY PUBLIC, in and for the State of Washington, residing at Bellingham
My Commission expires 09-07-18

STATE OF WASHINGTON:

SS

COUNTY OF WHATCOM :

ON THIS 24th day of May, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Jack Louws known to me to be the County Executive of **WHATCOM COUNTY**, and acknowledged the 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 they were authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.



Suzanne M. Mildner
Name (Print) Suzanne M. Mildner
NOTARY PUBLIC, in and for the State of Washington, residing at Bellingham
My Commission expires: 12-31-18

**EXHIBIT A
Description of Premises**



EXHIBIT B
Map of Premises



EXHIBIT C
Existing Building Improvement

380215 488300 0000

WHATCOM COUNTY ASSESSOR
CALCULATOR COST FORM

Sheet: _____
of: _____
Appraised by: **JK**
Date: **9/27/2005**

SQUARE FOOT COSTS

1. Parcel Number
2. Property Address
3. DBA

380215 488300 0000
3720 Williamson Way
Current Industries

IMPROVEMENT DESCRIPTION

4. Occupancy
 - a) Section
 - b) Page
5. Building Class
6. Building Quality
7. Exterior Wall
8. Stories
9. Height per Story
10. Average Floor Area
11. Bldg. Perimeter/No. of Units
12. Year of Construction
13. Condition
14. Base Sq. Ft. Cost

	SECTION I	SECTION II	SECTION III	SECTION IV	SECTION V
Vocational Train		Garage			
18		12			
28		30			
D		D			
Avg		Avg			
stucco					
1					
10					
8,110		643			
388					
1988		1988			
Avg		Avg			
73.17		15.50			

SQUARE FOOT REFINEMENTS

15. HVAC Adjustment
16. Elevator Deduction
17. Misc. Adjustment
18. Total Lines 14-17

73.17		15.50			

HEIGHT AND SIZE REFINEMENTS

19. No. of Stories Multiplier
20. Story Height Multiplier
21. Area-Perimeter Multiplier
22. Combined Ht. & Size Multiplier

1.000					
0.968					
0.968					

FINAL CALCULATIONS

23. Refined Sq. Ft. Costs
24. Current Cost Multiplier
25. Local Multiplier
26. Final Sq. Ft. Cost
27. Total Sq. Footage
28. Base Replacement Cost
29. Lump Sum Adjustments
30. Base Replacement Cost
31. Depreciation Percentage
32. Depreciation Amount
33. Depreciated Cost

70.83	15.50			
1.12	1.03			
1.08	1.08			
85.68	17.24			
8,110	643			
694,832	11,087			
694832	11087			
24%	24%			
166,760	2,661			
528,070	8,430			

TOTAL OF ALL SECTIONS

34. Income Code
35. Total Replacement Cost
36. Total Depreciated Cost
37. TOTAL ASSESSED VALUE

	NOTES:			
705920				
536500				
\$536,500				

EXHIBIT "D"
Additional Premises

