



MEMORANDUM

TO: ROB FIX
FROM: CHRIS CLARK
SUBJECT: LEASE AGREEMENT WITH ABC RECYCLING

DATE: June 21, 2022
CC: TERRY ILAHI / ANNIKA BJORKMAN
DAVE WARTER

ACTION REQUESTED

Motion by the Port Commission to approve a Lease Agreement between the Port of Bellingham and ABC Recycling Operations Corp for 6.00 acres of property located in the Log Pond area plus rights to use the Bellingham Shipping Terminal on a non-exclusive basis.

BACKGROUND

ABC Recycling is the largest metal recycling company in western Canada. They have nine locations in British Columbia and Alberta including their head office in Burnaby, BC. ABC is expanding and has chosen Bellingham as their American base. Their USA subsidiary will handle both shredded and cut grade recycled metal as well as process recyclable metal at a new facility under development in Whatcom County. The shredded and cut grade materials will be **stockpiled at the Log Pond acreage prior to export** from the Bellingham Shipping Terminal (BST). In addition, ABC will also **barge in recycled metal from their Vancouver Island yards and truck it to their site in the county for processing**. The anticipated cargo volumes that will pass through the BST via the Log Pond are:

- Import (via barge): In 2022: 20,000 metric tons ("mt") / Subsequent years: 60,000 mt.
- Export (via ship): In 2022: 81,000 mt / Year Two: 242,000 mt / Year Three and subsequent years: 320,000 mt.

ABC is in the processing of hiring six people to work at the Log Pond property; all will be paying living wages. In addition they will hire twenty people to work at their owned property in Whatcom county once it is up and running.

The key terms of the Lease include:

- Authorized use at the **Log Pond to be limited to collecting and storage of finished bulk scrap** and the authorized use of the BST for vessel moorage and staging of bulk scrap for shipment, loading and unloading to and from the vessels.
- An initial 15-year term, with one (1) 10-year renewal option, for a total of 25-years. Port retains the right to terminate the lease for lack of use.
- Land rent at the rate of \$ 2,770.00 per acre/per month or approximately \$ 199,420. per annum for the first five years.
- The Port has the option to move ABC to a similar site in the Log Pond/BST area if and when available.
- Terminal fees are based on the Port's Terminal tariff, except the throughput charge to be \$2.75 per metric ton and the storm water management charge to be at \$0.75 per metric

ton. Commencing in 2023, ABC is obligated to ship a minimum annual cargo volume of 60,000 MT; absent that they will pay the Port compensation between volume shipped and the minimum at the throughput rate.

- ABC has a responsibility to comply with all applicable rules and regulations, including environmental storm water management requirements and permits and to abide by best management practices for use of Port property.
- ABC's chosen stevedore ("PTSC") to abide by labor and ship loading arrangements in accordance with Port and ILWU requirements.

FISCAL IMPACT

Expected annual revenue from BST activities will range from approximately \$ 420,000 in Year One to approx. \$ 1,212,000 by Year Three. Combined "Log Pond" rental and BST activity will yield an expected yearly net return to the Port of \$ 525,000 this year (2022) increasing up to approx. \$ 1,530,000 by Year Three.

STRATEGIC PURPOSE

This action fully supports the Port's 2022 Key Corporate Goal No. 5 "Redevelopment of the Bellingham Shipping Terminal and Log Pond Area" and No. 6 "Stimulate Economic Development and Job Creation".

RECOMMENDATION

Approval.

HARBOR LAND LEASE INCLUDING LEASE OF DNR PROPERTY

This **HARBOR LAND LEASE** (the "Lease") is made and entered into this _____ day of _____ 2022, by and between the **PORT OF BELLINGHAM**, a Washington municipal corporation (hereinafter referred to as "Lessor") and **A.B.C. RECYCLING OPERATIONS CORP.**, a Washington State corporation (hereinafter referred to as "Lessee").

ARTICLE I **Summary of Lease Terms and Definitions**

Lessor: Port of Bellingham
Lessor's Address: 1801 Roeder Ave.
Bellingham, WA 98225

Lessee: A.B.C. Recycling Operations Corp.
Lessee's Address: 2219 Rimland Drive. Suite 301
Bellingham, WA 98226

Premises: Exclusive Use Property: Approximately Six (6) acres in the Log Pond/Bellingham Shipping Terminal area, pursuant to Section 2.1.4.

Lessor Option to Relocate Exclusive Use Property: During the term of this Lease, Lessor reserves the right to relocate the Exclusive Use Property (hereinafter "Relocated Exclusive Use Property") by providing one hundred eighty (180) calendar days' written notice to Lessee. The Relocated Exclusive Use Property shall be similar in size as the Exclusive Use Property and Relocated Exclusive Use Rent shall be recalculated in accordance with Section 3.2.1. Lessee shall bear all costs of relocation, which shall include but not limited to moving fences, truck scales, offices and other Tenant Improvements as well as moving and reconnecting Lessee's utilities.

Non-Exclusive Use Property: Portions of the Bellingham Shipping Terminal including the truck route and the berthing area adjacent to the Central Pier as depicted on Exhibit "B," or as otherwise designated by Lessor, pursuant to Section 2.1.5.

Use of Premises: Exclusive Use Property: **To collect, store and convey Finished Bulk Scrap.**

Non-Exclusive Use Property: Staging Bulk Scrap for shipment, vessel moorage, loading and unloading of Bulk Scrap to/from vessels and trucks.

Exhibits: Exhibit "A" - Description of Premises (including separate descriptions for PMA Property and Non-PMA Property)
Exhibit "B" - Map of Premises (showing PMA Property and Non-PMA Property)

Exhibit "C" - PMA
 Exhibit "D" List of applicable environmental documents
 Exhibit "E" Best Management Practices—Exclusive Use Property
 Exhibit "F" Best Management Practices—Bellingham Shipping
 Terminal, Stormwater Pollution Prevention Crew
 Briefing

Commencement Date: June 22, 2022

Term: Commencing upon the "Commencement Date" and expiring on May 31, 2037, the "Termination Date" approximately Fifteen (15) years thereafter.

Renewals: One (1) consecutive ten (10) year period.

Exclusive Use Rent: \$2,770.00 per acre, per month for years one (1) through five (5), plus applicable Washington State Leasehold Excise Tax. Provided, however, should Lessor relocate the Exclusive Use Property then the Relocated Exclusive Use Property Rent shall be recalculated in accordance with Section 3.2.1

Non-Exclusive Use Fees: Dockage, foreign flag security charges and all other charges applicable to Lessor's Terminal Tariff NO. 800, which is subject to annual adjustment (hereinafter "Terminal Tariff"), shall be assessed as contained therein, except that the Throughput Charge & Stormwater Management Charge shall be set forth as below:

<u>Calendar Year</u>	<u>Throughput Charge</u>	<u>Stormwater Management Charge</u>
2022 – 2031	\$ 2.75 per MT	\$ 0.75 per MT
2032 and beyond	Subject to Adjustment per Section 3.5	

The Throughput Charge shall be subject to the Guaranteed Minimum Cargo Volume in accordance with Section 3.4.2 herein.

Initial Rental Bond Amount: \$74,265.87

ARTICLE II
Premises, Term, Renewals

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 in Exhibits "A" and "B" above (hereinafter referred to as the "Premises"). The Premises consist of the Exclusive Use Property and the Non-Exclusive Use Property as referenced in Sections 2.1.4 and 2.1.5. Provided, however, should Lessor relocate the Exclusive Use Property then the Exhibits shall be updated to describe the Relocated Exclusive Use Property.

2.1.1 **Definitions.** The following definitions apply to this Lease.

a. "DNR" refers to the Department of Natural Resources ("DNR"), which owns some or all of the real property upon which the Premises are located.

b. "PMA" is the Port Management Agreement entered into by and between the Lessor and DNR dated September 9, 1997 including all present and future amendments or modifications.

c. "PMA Property" is that portion of the Premises that is owned by DNR and subject to the PMA.

d. "Non-PMA Property" is that portion of the Premises that is owned by the Lessor and not subject to the PMA.

e. "Water Dependent Use" is defined in RCW 79.105.060 as a use that cannot logically exist in any location but on the water.

f. "Water Oriented Use" is defined in RCW 79.105.060 as a use which historically has been dependent on a waterfront location, but with existing technology could be located away from the waterfront.

g. "Non-Water Dependent Use" is defined in RCW 79.105.060 as a use which can operate in a location other than on the waterfront.

h. "Finished Bulk Scrap" is defined as clean, homogenous blend of ferrous steel products, processed to mill specifications and ready for melting at a domestic or foreign steel mill that is free of any surface contaminants and contains no oils, fuels or other hydrocarbons.

i. "Unfinished Bulk Scrap" is defined as any and all scrap metal products other than Finished Bulk Scrap.

j. "Bulk Scrap" is defined as Finished Bulk Scrap and Unfinished Bulk Scrap.

2.1.2 **Port Management Agreement.** Lessee hereby understands that Lessor manages all or a portion of the Premises pursuant to the PMA, a copy of which is attached hereto as Exhibit "C" and incorporated herein by reference. With regard to the PMA Property, Lessee understands that this Lease is subject to all the terms and conditions of the PMA, and Lessee hereby agrees to abide by all of the terms and conditions of the PMA. Lessee further understands that if the term of this Lease extends beyond the term of the PMA, the Lease shall survive the PMA.

2.1.3 **Premises Removed From PMA.** Pursuant to the terms and conditions of the PMA, if either (i) the PMA is terminated or (ii) any portion of the Premises, which is subject to the PMA, is deleted from the PMA, then the DNR shall become the Lessor for that portion of the Premises which was formerly subject to the PMA.

2.1.4 **Exclusive Use Property:** Lessor grants Lessee the exclusive use of approximately Six (6.0) acres located in the Log Pond/Bellingham Shipping Terminal area as depicted on Exhibit "A" (collectively the "Exclusive Use Property"). The Exclusive Use Property consists of Non-PMA Property only. Provided, however, should Lessor exercise its right to relocate the Exclusive Use Property in accordance with Section 2.1.4.2 below, Lessor shall provide a new Exhibit depicting the Relocated Exclusive Use Property.

2.1.4.1 **Survey of Exclusive Use Property:** At the time of execution of this Lease the Exclusive Use Property has not been surveyed. Lessor, at Lessor's cost, shall cause to be prepared a survey and revised legal description of the Exclusive Use Property, or if relocated pursuant to Section 2.1.4.2 the Relocated Exclusive Use Property, which will be generally consistent with Exhibit "B". At the time the survey is complete and thereby a new legal description obtained, Exhibits "A" and "B" shall be replaced by the Lessor with new Exhibits "A" and "B". In the event the square foot area of the Exclusive Use Property as determined by the survey is different from the approximate agreed rental area as stated in this Lease, rents shall be adjusted in accordance with Section 3.3. The change in the legal description shall not affect the validity of the Lease.

2.1.4.2 **Lessor Option to Relocate Exclusive Use Property:** During the term of this Lease, Lessor reserves the right to relocate the Exclusive Use Property (hereinafter "Relocated Exclusive Use Property") provided Lessor provides one hundred eighty (180) calendar days' written notice to Lessee. The Relocated Exclusive Use Property shall be similar in size as the Exclusive Use Property and within the Lessor's Bellingham Shipping Terminal/Log Pond area and Exclusive Use Rent shall be recalculated in accordance with Sections 3.2.1. Lessee shall bear all costs of relocation, which shall include but not limited to moving fences, truck scales, offices and other Tenant Improvements as well as moving and reconnecting Lessee's utilities.

2.1.5 **Non-Exclusive Use Property:** Lessor grants a non-exclusive right to use portions of the Bellingham Shipping Terminal including the truck route and the berthing area adjacent to the Central Pier as depicted on Exhibit "B" or as otherwise designated by Lessor (collectively the "Non-Exclusive Use Property"), for the purposes of staging and moving cargo for vessel loading and unloading of scheduled shipments. The Non-Exclusive Use Property consists of both Non-PMA Property and PMA Property.

2.1.5.1 **Option for Lessor to Modify the Non-Exclusive Use Property:** Lessor reserves the right to modify or otherwise re-designate the Non-Exclusive Use Property in its sole discretion and as it deems necessary, including relocating and or modifying the boundaries of the Non-Exclusive Use Property as shown on Exhibit B, provided the Lessee's use of the Non-Exclusive Use Property for the uses described herein is reasonably accommodated.

2.1.5.2 **Rail Span Pier and Adjacent Gravel area:** Lessor is redeveloping the Rail Span Pier as shown in Exhibit "B". Upon completion of this redevelopment work, Lessee may request and Lessor may, in its sole discretion, agree to provide this area to be added to the Non-Exclusive Use Property in accordance with Section 2.1.5.1. Furthermore, in such case that the Rail Span Pier is added into the Non-Exclusive Use Property, Lessee may request use of the adjacent graveled area for Unfinished Bulk Scrap barged in to be temporarily placed prior to loading in

outbound trucks, and Lessor may, in its sole discretion, and if the adjacent graveled is area is available for use, agree to add this area into to the Non-Exclusive Use Property in accordance with Section 2.1.5.1. If any additional site preparation, permitting, or other requirements are needed to mitigate or manage Stormwater runoff as a result of Unfinished Bulk Scrap being temporarily placed in the Non-Exclusive Use Property, Lessee shall comply with any and all such requirements at its sole cost and expense.

2.1.5.3 **Scheduling of the Non-Exclusive Use Property:** Lessee agrees and acknowledges that Lessor and other tenants will be using the Non-Exclusive Use Property to stage and ship other products. Lessee shall only use the Non-Exclusive Use Property in accordance with a scheduled shipment. The term "scheduled shipment" shall mean a shipment on a vessel with a berth reservation. Lessee must secure a berth reservation to schedule use of the Non-Exclusive Use Property in advance with Lessor by submitting an Application for Vessel Berth Reservation and Berth Agreement ("Berth Agreement") at least twenty-one (21) calendar days in advance of the requested use. Lessor will respond to submittal of Berth Agreement within two (2) business days of its receipt from Lessee. The use of the Non-Exclusive Use Property shall be subject to the rules and regulations for such use as contained in the Terminal Tariff.

2.2 **TERM:** The term of this Lease ("Term") shall be for approximately fifteen (15) years beginning June 22, 2022 ("Commencement Date") and expiring on May 31, 2037 ("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.

2.2.1 **Termination for Lack of Use.** Should Lessee not utilize the Non-Exclusive Use Property for cargo shipping/receiving over a period of twenty-four consecutive months, the Lessor has the right to terminate the Lease by providing a 30-day written notice.

2.3 **RENEWAL:** Subject to the terms and conditions herein, Lessee shall have the right to renew this Lease for one (1) consecutive ten (10) year period by giving written notice of such intention to Lessor at least one-hundred twenty (120) days prior to the expiration of the term of this Lease or any renewal thereof. 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 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 Harbor Land Lease Agreement.

ARTICLE III **Rent and Rental Renegotiation**

3.1 **RENT:** The term "Rent" as used herein includes Base Rent for the Exclusive Use Property, Fees for the Non-Exclusive Use Property, 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 Paid in Advance – Late Charges.** 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 **BASE RENT FOR EXCLUSIVE USE PROPERTY:** As Base Rent for the Exclusive Use Property ("Exclusive Use Rent"), Lessee shall pay to Lessor, in U.S. funds, the sum of Sixteen Thousand Six Hundred and Twenty Dollars and Zero Cents (\$16,620.00) per month plus applicable Washington State leasehold excise tax, commencing upon the Commencement Date and extending for five (5) years.

3.2.1 **BASE RENT FOR RELOCATED EXCLUSIVE USE PROPERTY:** In the event Lessor exercises its right to relocate the Exclusive Use Property in accordance with Section 2.1.4.2 above, Base Rent shall be abated for three (3) months (the "Abated Rent" period); provided, however, Washington State leasehold excise tax on the Abated Rent shall be due and payable by the Lessee. Following the Rent abatement period, Rent for the Relocated Exclusive Use Property for the initial five (5) years, or portion thereof, shall be calculated by using \$2,770.00 per acre, per month, plus applicable Washington State leasehold excise tax.

3.3 **EXCLUSIVE USE RENT ADJUSTMENT FOR SURVEY:** The parties agree that in the event the survey, as required in Section 2.1.2, shows that the square foot area of the Exclusive Use Property, or if relocated the Relocated Exclusive Use Property, are different from the approximate agreed rental area as stated in this Lease, that the Exclusive Use Rent shall be subject to adjustment by the Lessor on the first (1st) day of the month following the date of the survey using the surveyed square footage area and the rate set in Section 3.2 or as adjusted per Section 3.4.

3.4 **RENTAL ADJUSTMENT FOR EXCLUSIVE USE PROPERTY:** Exclusive Use Rent shall be subject to adjustment on the first (1st) day of the sixth (6th) year, and then again on the first (1st) day of the eleventh (11th) year (herein referred to as the "Adjustment Date"). The parties agree to renegotiate the amount of Exclusive Use Rent, and to agree on the amount at least ninety (90) days prior to the commencement of each succeeding five (5) year period, (hereinafter "Renegotiation Deadline). The adjusted Exclusive Use Rent for the renewal term shall be consistent with the then existing Financial Guidelines of the Lessor, but in no event less than the fair market rental value of the Premises. If the parties cannot agree on an adjustment of Exclusive Use Rent before the Renegotiation Deadline, then the Exclusive Use Rent shall be determined according to the "Appraisal" section herein. Regardless of the way the new Exclusive Use Rent is determined, the adjusted Exclusive Use Rent shall not be less than the Exclusive Use Rent for the preceding Lease year.

3.5 **BASE RENT FOR NON-EXCLUSIVE USE PROPERTY:** The Non-Exclusive Use Property consists of Non-PMA Property and PMA Property and as Base Rent for the Non-Exclusive Use Property ("Non-Exclusive Use Fees") Lessee shall pay to Lessor, in U.S. funds, the sums below, plus applicable Washington State leasehold excise tax:

3.5.1 **Dockage and other Charges.** Dockage, foreign flag security charges and all other charges applicable to Lessor's Terminal Tariff NO. 800, which is subject to annual adjustment (hereinafter "Terminal Tariff"), shall be charged per the Terminal Tariff, except the Throughput Charge & Stormwater Management Charge shall be set forth as below:

<u>Calendar Year</u>	<u>Throughput Charge</u>	<u>Stormwater Management Charge</u>
2022 – 2031	\$ 2.75 per MT	\$ 0.75 per MT
2032 and beyond	Subject to Adjustment per Section 3.5	

3.5.2 **Guaranteed Minimum Cargo Volume:** Commencing January 1, 2023, Lessor guarantees a minimum volume of 60,000 Metric Tons per year of cargo to be shipped or received through the Non-Exclusive Use Property. Should the annual guaranteed minimum cargo volume not be achieved by December 31 of each year, Lessee shall compensate Lessor at the "Throughput Charge" rate for the difference between cargo actually shipped or received and the 60,000 Metric Tons minimum. Notwithstanding the foregoing, Tenant shall be excused from the annual guaranteed minimum cargo volume for such periods that Tenant's performance is delayed beyond its reasonable control (e.g., work stoppages or labor strikes, pandemics, unusual weather conditions or similar force majeure events) in proportion to the duration of such events.

3.5.3 **PMA Rent.** For the PMA Property, the sum of Zero Dollars (\$0.00) per month consisting of Zero Dollars (\$0.00) related to the Water Dependent Use, Zero Dollars (\$0.00) related to the Non-Water Dependent Use, and Zero Dollars (\$0.00) related to the Water-Oriented use (collectively "PMA Rent"). Lessee understands that the rent for any Non-Water Dependent Use of the PMA Property herein must be the full fair market rental value of the aquatic land, as determined by statute, and must always be greater than the amount that would be charged as rent for a Water Dependent Use of the same parcel.

3.5.4 **Copy of Lease to DNR.** Upon mutual execution of this Lease, Lessor shall provide a copy to DNR. Lessee understands that DNR may disagree with the characterization of Lessee's use of the PMA Property as set forth above. In the event of a disagreement, the Lessor shall avail itself, at its own expense, of the "Dispute Resolution" procedure set forth in the PMA; provided, however, that during such Dispute Resolution proceeding, Lessee shall pay any greater rental amount that Lessee would be required to pay if DNR's characterization is ultimately upheld. The results of the Dispute Resolution proceeding shall be binding on Lessee. If the result of such proceeding is to uphold the Lessor's characterization, then the Lessor shall refund any overpayments to Lessee. If the result is to uphold DNR's characterization, then the Lessee shall continue to pay the greater amount based on DNR characterization of the use.

3.6 **RENTAL ADJUSTMENT FOR NON-EXCLUSIVE USE PROPERTY:** The Throughput Charge and Stormwater Management Charge, as described in Section 3.4.1 herein, shall be subject to adjustment on January 1, 2032. The parties agree to renegotiate the amounts on or before September 30, 2031. In no event will the Throughput Charge and Stormwater Management Charge be less than such rates for the preceding year. If the parties cannot agree on the adjustment to the Throughput Charge and Stormwater Management Charge before September 30, 2031, then the Throughput Charge and Stormwater Management Charge shall be adjusted based on the percent of cumulative Terminal Tariff increases on Dockage over the term of the prior ten years.

3.7 **ABATED RENT:** If this Lease provides for a postponement of any monthly rental payments, a period of free Rent or other Rent concession, such postponed rent or free rent is called the "Abated Rent." Lessee shall be credited with having paid all the Abated Rent on the expiration of the term of this Lease only if Lessee has fully, faithfully and punctually performed all of Lessee's obligations hereunder, including the payment of all Rent (other than the Abated Rent) and all other monetary obligations and the surrender of the Premises in the condition required by this Lease. Lessee acknowledges that its right to receive credit for the Abated Rent is absolutely conditioned upon Lessee's full, faithful and punctual performance of its obligations under this Lease. If Lessee defaults and does not cure within any applicable grace period, the Abated Rent shall immediately become due and payable in full and this Lease shall be enforced as if there were no such Rent abatement or other Rent concession. In such case, Abated Rent shall be calculated based on the

full initial rent payable under this Lease, plus interest thereon at the rate of twelve percent (12%) per annum from date each monthly Rental payment was postponed.

ARTICLE IV

Use of Premises, Condition of Property, Improvements, Removal of Property, Maintenance, Utilities, and Off-Street Parking

4.1 LESSEE'S USE OF PREMISES:

a. Lessee shall use the Exclusive Use Property for the following purpose: To collect, store and convey Finished Bulk Scrap (the "Exclusive Authorized Use"), and for no other purpose. Unfinished Bulk Scrap shall not be stored on or conveyed over the Exclusive Use Property.

b. Lessee shall use the Non-Exclusive Use Property for the following purpose: Staging Bulk Scrap for shipment, vessel moorage, loading and unloading of Bulk Scrap to and from barges, ships, and trucks (the "Non-Exclusive Authorized Use") and for no other purpose. The parties stipulate that the Non-Exclusive Authorized Use is a Water Dependent Use.

4.1.1 **Lessor Held Permits, Authorizations and Agreements.** The Premises are managed pursuant to the following Lessor held permits, authorizations and agreements, which are hereby incorporated by reference: (i) NPDES Permit No. WA 0001091 (ii) Industrial Stormwater General Permit WAR305536 ("ISGP"), (iii) Stormwater Pollution Prevention Plan, (iv) Waterway Permit No. 20-092231, (v) Whatcom Waterway Consent Decree No. 072022577, as amended, (vi) Phase II Municipal Stormwater Permit, WAR045707, and (vii) Agreed Order 6834, as amended. These Lessor held permits, authorizations and agreements are available to Lessee upon request. Lessee shall abide by all requirements of these permits, authorizations, and agreements. Lessee shall participate in annual ISGP training at the request of Lessor.

4.1.2 **Stormwater Management.** Lessee shall comply with all applicable rules, codes, laws, and regulations regarding stormwater management, which may require Lessee to obtain an Industrial Stormwater Permit through the Washington State Department of Ecology in association with its Authorized Use.

4.1.3 **Best Management Practices.** Lessee shall abide by Best Management Practices for use of the Premises as follows:

a. Exclusive Use Property. Lessee shall abide by the "Best Management Practices—Exclusive Use Property," as incorporated herein as Exhibit "E."

b. Non-Exclusive Use Property. Lessee shall abide by the "Best Management Practices—Bellingham Shipping Terminal, Stormwater Pollution Prevention Crew Briefing," as incorporated herein as Exhibit "F", or as updated and modified by Lessor, in its sole discretion, and upon which Lessor shall provide notice to Lessee with copy of the revised Exhibit "F".

4.1.4 **Labor and Ship Loading Arrangements.** Lessee shall abide by the following requirements involving labor and ship loading arrangements:

a. At time of ship loading, Finished Bulk Scrap shall be transported from the Exclusive Use Property to the Non-Exclusive Use Property via off-road dump trucks and/or tractor-end dump trucks provided by Lessee at Lessee's cost.

b. Prior to outbound ship loading, transportation and dumping of Finished Bulk Scrap from the Exclusive Use Property to the Non-Exclusive Use Property will be done by Lessee's employees, without the assistance of the International Longshore and Warehouse Union, Local 7 ("ILWU"), using Lessee provided off-road dump trucks and/or tractor-end dump trucks. However once the Finished Bulk Scrap is dumped by Lessee on the Non-Exclusive Use Property ILWU labor shall be used to move and "high pile" the material as necessary. Lessor shall provide Lessee with map delineating space allotted for staging Bulk Scrap at the dock.

c. During outbound ship loading, the transportation and dumping of Finished Bulk Scrap from the Exclusive Use Property to the Non-Exclusive Use Property in off-road dump trucks and/or tractor-end dump trucks shall be done by Lessee's employees, however, one ILWU laborer is to be employed per gang to spot the cargo and otherwise assist the Lessee driver as needed at Lessee's/their stevedore contractor's cost. The designated stevedore contractor will coordinate this work with the ILWU as part of their hiring requirement.

d. ILWU labor shall unload Bulk Scrap from all inbound barges as well as load the Bulk Scrap on outbound vehicles transporting it off site at Lessee's cost. Vehicles loaded with Bulk Scrap shall be driven in and out of the Non-Exclusive Use Property by Lessee's employees or agents, including but not limited to contract haulers.

e. The Lessor will designate the site(s) within the Non-Exclusive Use Property where Finished Bulk Scrap is to be staged prior to ship loading. Lessee shall comply, at its sole cost and expense, with any additional site preparation, permitting or other requirements needed to mitigate or manage Stormwater runoff as a result of Bulk Scrap being staged on the Non-Exclusive Use Property.

f. Lessee shall have the option to load outbound Bulk Scrap on ships and unload inbound Bulk Scrap from barges. Unfinished Bulk Scrap shall be transported directly to Lessee's off-site processing facility and under no circumstances can Unfinished Bulk Scrap be transported over/through or stored at/on the Exclusive Use Property.

g. Lessee, at its sole cost and expense, shall select a stevedore contractor to source longshore labor from the ILWU for ship and barge loading and unloading, truck loading on the Non-Exclusive Use Property, and piling of cargo dumped from trucks on the Non-Exclusive Use Property.

h. For smaller scale operations involving no more than three longshoremen, Lessee has the option of contracting directly with the Lessor for longshore labor from ILWU as a "stand alone" operation independent of their Stevedore Contractor agreement. Any such operations shall be negotiated on a case-by-case basis.

4.1.5 Equipment and Use of Dock in Non-Exclusive Use Property.

a. Any and all equipment needed for the loading and unloading of the Lessee's cargoes, including mobile cranes, grabs, pay loaders etc. will be provided by Lessee and/or their Stevedore Contractor. All Lessee and/or Stevedore Contractor equipment specifications must be reviewed and approved in advance by Lessor prior to use on the BST pier. Lessee and/or their Stevedore Contractor may rent Lessor's equipment as available at rates to be mutually agreed.

b. Lessee and/or their Stevedore Contractor will supply all steel sheeting, pans, berms and all other materials necessary to protect the terminal docks from damage during loading and unloading of cargo.

4.1.6 **Default- Unauthorized Use.** Lessee shall be in default under this Lease if it: (i) ceases conducting the Exclusive Authorized Use or the Non-Exclusive Authorized Use (collectively referred to as the "Authorized Use") for any period of time exceeding thirty (30) days; or (ii) conducts any other business or activity on the Premises without first obtaining a validly executed lease modification. In conducting the Authorized Use, Lessee shall properly and fairly serve the public, providing reasonable hours of operation, and suitable service.

4.1.7 **No Flammable or Dangerous Materials.** Notwithstanding the foregoing described use, the Premises shall not be used to store, distribute or otherwise handle flammable or dangerous materials, excepting only 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 **RENTAL ADJUSTMENT TO PMA PROPERTY BASED ON CHANGE OF USE:** Lessee understands that the Rent for the PMA Property herein is established pursuant to guidelines in the PMA and is based on the PMA Property Permitted Use set forth herein. If this use changes, and the PMA requires a rental adjustment, then the Rent for the PMA Property shall be adjusted as appropriate for the new use. The classification of the new use as Water Dependent, Water Oriented, or Non-Water Dependent shall be reasonably made in the sole discretion of Lessor according to statute. If the DNR disagrees with the characterization, the parties will cooperate in resolving the disagreement with the DNR pursuant to the terms of the PMA or the applicable statute. The parties shall attempt to reach an agreement as to the new rental rate based on the new use. If Lessor and Lessee cannot agree on the fair market rental value within thirty (30) days of the new use, the matter shall be determined according to the Appraisal provision herein; provided, however, that any rate arrived at by appraisal or by agreement of the parties shall be retroactive to the commencement of the changed use.

4.3 **ENVIRONMENTAL CONDITION OF PROPERTY:** The Premises is located on the site of a former industrial facility and is included within the boundaries of a Washington State Department of Ecology designated site known as the Georgia Pacific West Site (the "Site"). The soils and groundwater underlying the Site, including the Premises, are contaminated with hazardous substances are the subject of various remedial actions designed to address these hazardous substances. The subsurface soil and groundwater environmental condition is further described in the documents listed on Exhibit "D" (the "Environmental Documents") which have been made available for review and copying by the Lessee at the offices of the Lessor.

4.4. **SURFACE CAP ON PREMISES:** The Premises is capped with asphalt to prevent human contact with the soils and groundwater (the "Cap"). The protection, integrity and continued functioning of the CAP is extremely important to the Lessor. The Lessee will not disturb or damage the CAP.

4.4.1 **Environmental Documents Reviewed.** The Lessee has been provided an opportunity to review and copy the Environmental Documents and fully understands the environmental condition of the Premises.

4.4.2 **Regular Inspection of CAP.** The Lessor reserves the right to routinely enter upon the Premises to inspect the CAP.

4.4.3. **Damage or Disturbance of the CAP.** In the event of a disturbance or damage to the CAP on the Exclusive Use Property, not caused by Lessor, the Lessee will (i) promptly report the damage or disturbance to the Lessor and (ii) promptly undertake, at its sole cost and expense,

such actions as the Lessor may direct to repair the CAP. In the event Lessee, its employees, agents, licensees, invitees or anyone on the Non-Exclusive Use Property as a result of Lessee's activities damage the CAP on the Non-Exclusive Use Property the Lessee will (i) promptly report the damage or disturbance to the Lessor and (ii) promptly undertake, at its sole cost and expense, such actions as the Lessor may direct to repair the CAP.

4.5 **CONDITION OF PROPERTY:** Prior to executing this Lease, Lessee has fully and carefully inspected the Premises. Lessee accepts the Premises, including all existing improvements thereon, "as is" without further liability for maintenance or repair on the part of the Lessor, and is not relying on any representations of Lessor as to condition, suitability, zoning restrictions, or usability, except as specifically noted herein. 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, including but not limited to the CAP, to remain in a damaged, unworkable or other condition which compromises the condition of any portion of the Premises; provided, however, that any preexisting damage to the CAP will be excluded from the Lessee's obligations.

4.6 **CONSTRUCTION OF TENANT IMPROVEMENTS:** The Lessee shall abide by the following terms with regard to improvements:

4.6.1 **Existing Improvements.** On the Commencement Date, the following improvements are located on the Premises: electrical improvements, stormwater conveyance improvements and the CAP on the Exclusive Use Property and terminal improvements on the Non-Exclusive Use Property. These improvements are the property of the Lessor. All improvements on PMA Property shall be subject to the provisions of RCW 79.125.300 or RCW 79.105.310. Lessee shall forever release and hold Lessor harmless from any and all claims relating to or resulting from such improvements.

4.6.2 **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, not unreasonably withheld. Lessor reserves the right to condition its approval upon the Lessee providing payment and/or performance bonds satisfactory to the Lessor. Lessee shall submit plans to and obtain written approval from Lessor before commencing any Tenant Improvements; Lessor shall have a reasonable period of time to review such plans prior to issuing a decision, but in no event longer than forty-five (45) days, provided, however, if Lessor requests additional information for review, the 45-day review period shall toll until Lessee delivers the requested information. 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 improvements by Lessee shall conform to the requirements of the Americans With Disabilities Act, 42 USC 12101 et seq.

4.6.3 **Exclusive Use Property Improvements:** Lessee shall, at Lessee expense, construct the following tenant improvements in the Exclusive Use Property: a ten (10) foot high full perimeter fence with attached visual barrier (the "Exclusive Use Property Improvements"). Substantial completion of said tenant improvements shall occur on or before one-hundred and twenty (120) days of the date of execution of this Lease.

4.6.4 **Improvements by Lessee.** Lessee shall construct the Exclusive Use Property Improvements, and may desire to construct, at its own expense other Tenant Improvements on the Exclusive Use Property, including buildings, paving of surface, modification or installation of

electrical or water utilities, and other improvements, for which Lessee shall comply with the following requirements:

- a. Lessee's construction is subject to review and approval by the Lessor as prescribed in Section 4.6.2 herein,
- b. Lessee's construction is subject to Lessee obtaining all permits as described in Section 7.2 herein, including but not limited to approval from the City of Bellingham,
- c. Lessee's construction is subject to compliance with all laws and regulations as required in Section 7.6 herein, and,
- d. All buildings, full perimeter fencing and any other improvements constructed by Lessee shall be temporary and portable in nature, unless otherwise approved by Lessor in its own discretion.
- e. The surface of the Exclusive Use Property is composed of unimproved asphalt and concrete. If Lessee repaves the Exclusive Use Property such improvements and materials to be used must be approved in advance by Lessor and the surface must always remain intact during such improvements as well as in the course of day-to-day operations.

4.6.5 **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.

4.7 **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; and
- c. All Tenant Improvements that are not designated fixtures.

4.7.1 **Lessor's Remedies.** 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.

The foregoing remedies are cumulative and in addition to any other remedies provided by law, and Lessor shall not be required to elect its remedies.

4.8 **MAINTENANCE OF FACILITIES:** Maintenance and repair of the Exclusive Use Property and all improvements thereon is the sole responsibility of Lessee including, but not limited to, maintenance and repair of any damage to the Exclusive Use Property from unforeseen or unexpected events or Acts of God. Without limiting the generality of the foregoing, Lessee shall maintain the Exclusive Use Property in good condition and repair. Further without limiting the generality of the foregoing, Lessee shall maintain and repair any damage caused to any portion of the Exclusive Use Property, the Non-Exclusive Use Property, or Lessor's property by Lessee, its employees, agents, licensees, invitees or anyone on the Premises or Lessor's property as a result of Lessee's activities.

4.9 **UTILITIES:** Lessee will arrange and pay for all utility connections and services and distribution of such utilities within the Exclusive Use Property. 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. Water is neither available nor provided on the Exclusive Use Property.

4.9.1. **Electrical Utility:** Electrical utilities are available on the Exclusive Use Property. Lessee accepts these electrical utilities in there "as is" condition in accordance with Section 4.6.1 of this Lease. If Lessee determines electrical utilities need to be improved or modified it shall be considered a Tenant Improvement and subject to development in accordance with Section 4.6 of this Lease.

4.9.2 **Water Utility:** Water utilities are not available at the Exclusive Use Property. At Lessee request, Lessor shall present options in the form of maps of existing water utilities lines near the Exclusive Use Area. If Lessee determines it is feasible to develop water utilities and wishes to proceed with development, it shall be considered a Tenant Improvement subject to development in accordance with Section 4.6 of this Lease.

4.10 **OFF STREET PARKING:** Lessee agrees to provide space for the parking of vehicles in the number necessary to comply with applicable laws, regulations and Port policies and otherwise to accommodate its normal business requirements on the Premises included within this Lease. Lessee is not relying on any public streets, right of way or other properties not included in this Lease for the parking of said vehicles.

ARTICLE V

Insurance and Financial Security

5.1 **CASUALTY LOSS OF LESSEE:** The parties hereto agree that the Lessor and DNR, their respective commissioners and employees, Lessor's and DNR's insurance carriers and Lessor's and DNR's casualty policies 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 sole responsibility to provide its own protection 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, DNR Lessee, third party, or act of nature. Lessee hereby releases and discharges the Lessor and DNR, their respective commissioners and

employees, Lessor's and DNR's insurance carriers and Lessor's and DNR's casualty policies from any claims for loss or damage to Lessee's property.

5.2 **INSURANCE:** Lessee shall procure and maintain a comprehensive general liability policy covering all claims for personal injury (including death) and property damage (including all real and personal property located on the Premises, Lessor's property, or DNR's property) arising on the Premises, Lessor's property, or DNR's property as a result of, arising out of Lessee's operations under this Lease. The limits of liability shall be not less than Two Million Dollars (\$2,000,000.00) for each occurrence and in the aggregate unless the Lessee requests, and Lessor approves in writing, a lesser liability limit. If the Lessee maintains higher insurance limits than the minimums required herein, the Lessor and DNR shall be insured for the full available limits of Commercial General and/or Excess or Umbrella liability maintained by the Lessee, irrespective of whether such limits maintained by the Lessee are greater than those required by this Lease or whether any certificate of insurance furnished to the Lessor evidences the lower limits of liability set forth above. Lessor may impose changes in the limits of liability: (i) on any Adjustment Date; (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 Authorized 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 **Policy Provisions.** The foregoing insurance policy shall name Lessor and DNR as additional named insureds by way of a policy endorsement. 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 defense and indemnification of the Lessor as an "additional insured" will not be effected by any act or omission by Lessee which might otherwise result in a forfeiture of said insurance; (v) contain a separation of insureds provision such that the policy applies separately to each insured that is subject of a claim or suit; (vi) not contain a cross-claim, cross-suit, or other exclusion that eliminates coverage by one insured against another; and (vii) provide for coverage for damage to the Lessor's property caused by the Lessee.

5.2.2 **Failure to Obtain and Maintain Insurance.** 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.

5.2.3 **Prudent Business Insurance.** 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 **FINANCIAL SECURITY:** In compliance with the requirements of state law, Lessee agrees that it will secure the performance of the rental portion of this Lease by procuring and maintaining, during the term of this Lease, a corporate surety bond, or by providing other financial security satisfactory to Lessor (herein referred to as the "Bond"), in an amount not less than Thirty-Three Percent (33%) of the sum of Annual Exclusive Use Rent, plus state leasehold excise tax. The

Bond shall be in a form and issued by a surety company acceptable to Lessor and shall comply with the requirements of Washington law. Lessee shall obtain such Bond and forward evidence thereof to Lessor within fourteen (14) days of execution of this Lease, but in no event later than the Commencement Date of this Lease. Failure to comply with this requirement shall be grounds for termination of this Lease without notice by Lessor. Such Bond shall be kept always in effect during the term of this Lease; failure to comply with this requirement shall render Lessee in default. The Bond shall be increased annually to reflect any adjustments in annual Rent. Upon any default by Lessee in its obligations under this Lease, Lessor may collect on the Bond to offset the liability of Lessee to Lessor. Collection on the Bond shall not relieve Lessee of liability, shall not limit any of Lessor's other remedies, and shall not reinstate or cure the default or prevent termination of the Lease because of the default.

ARTICLE VI
Environmental Liability

6.1 **ENVIRONMENTAL INDEMNIFICATION:** Lessee shall defend (with legal counsel suitable to Lessor), indemnify and hold Lessor and DNR harmless from any and all claims, demands, judgments, orders or damages resulting from Hazardous Substances on the Premises, Lessor's property, or DNR's property caused in whole or in part by the activity of the Lessee, its agents, subtenants, or any other person or entity(i) on the Premises as a result of, arising out of, or relating to Lessee's operations under this Lease or any previous lease or agreement to which Lessee was a party, (ii) on Lessor's property as a result of, arising out of, or relating to Lessee's operations 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 to which Lessee was a party, or (iii) on DNR's property as a result of, arising out of, or relating to Lessee's operations 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 to which Lessee was a party. It is the intent of the parties that Lessee shall be responsible and shall defend and hold Lessor and DNR harmless from any Hazardous Substances that have or may occur on the Premises, Lessor's property, or DNR's property as a result of, arising out of, or relating to Lessee's operations since Lessee first occupied the Premises or other portion of the Lessor's or DNR's property through this Lease or any previous lease or agreement to which Lessee was a party. Notwithstanding the foregoing and with specific respect to the release of Hazardous Substances on the Non-Exclusive Use Property, DNR's property, or Lessor's property, Lessee's indemnity obligation under this Section 6.1 shall apply for those actions or omissions of the Lessee, its agents, subtenants, invitees or any other person or entity under the control of Lessee. 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. 1251 et seq.; the Clean Air Act, 42 USC Sec. 7401 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 **Unconditional Environmental Obligations.** Lessee's defense and indemnity obligations under this article are unconditional to the extent permitted by law, 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 **Environmental Investigations.** Although Lessee shall not be liable for any Hazardous Substances on the Premises that was not caused in whole or in part by the activity of the Lessee, its agents, subtenants, or any other person or entity on the Premises as a result of, arising out of, or relating to Lessee's operations under this Lease or any previous lease or agreement, 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 regardless of when or how the Hazardous Substances were released into those soils.

6.2 **CURRENT CONDITIONS AND DUTY OF LESSEE:** Hazardous Substances exist in the soil and groundwater under the Premises as further explained in the Environmental Documents.

Lessor makes no representation that the contaminants set forth in the Environmental Documents are the sole and exclusive contaminants existing on the Premises. 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 **No Exacerbation of Existing Environmental Conditions.** In the conduct of the Authorized Use, Lessee shall not exacerbate existing environmental contamination and shall consult with Lessor prior to undertaking any activity which may impact existing environmental contamination including, but not limited to, any activity which may damage the Cap.

6.3 **EXISTING ENVIRONMENTAL ISSUES.** Lessor has informed Lessee that it may conduct environmental remediation of the Hazardous Substances on the Exclusive Use and Non-Exclusive Use Properties during the term of this Lease (the "Remedial Actions"). The Remedial Actions could include entry upon the Premises by the Lessor and actions by the Lessor which could disrupt the activities of Lessee including, but not limited to, installation of monitoring wells, excavation, backfill, and/or other remediation activities. Lessee hereby acknowledges that the rental rate has been negotiated taking into account the Lessor's right to conduct the Remedial Actions on the Premises during the term of this Lease and the potential consequence of the same to Lessee's business. Notwithstanding the foregoing, Lessor agrees that the Rent shall be reduced in proportion to the area of the Premises rendered unusable by the Remedial Actions for any periods exceeding five business days. Lessee expressly waives any and all claims it could have for damages, whether direct, indirect, and/or consequential, related to or arising out of any impacts the Remedial Actions may, can, will, or could have on or to Lessee's business. Lessee shall reasonably cooperate with the Remedial Actions. Nothing in this Lease requires the Lessor to undertake the Remedial Actions.

6.3.1 **Disruption Possible.** The parties recognize and agree that the Remedial Actions conducted from the date of execution of this Lease may disrupt Lessee's business operations on the Premises.

6.3.2 **Minimize Disruption to Lessee's Business.** if Lessor conducts Remedial Activities on the Premises, the Lessor shall make reasonable efforts to minimize disruption to Lessee's business. However, scheduling of Remedial Actions will be dependent on applicable laws and permit constraints.

6.3.3 **Monitoring Wells.** Lessor has already installed monitoring wells (typically flush mounted, traffic rated monitoring wells) on the Premises as part of the Lessor's environmental testing and investigation. A map showing the locations of these wells are included in the Environmental Documents listed on Exhibit "D", which have been made available for review and copying by the Lessee at the offices of the Lessor, and are incorporated herein by reference. Lessor may install additional monitoring wells on the Premises as part of the Remedial Activities. In such a case, Lessor will provide Lessee with a map showing the location of the additional monitoring wells. Lessee shall not damage the existing or future monitoring wells. In addition, Lessee shall allow reasonable access by Lessor to these wells located on the Exclusive Use Area as required by Lessor for the purpose of collecting water and/or soil samples and conducting Remedial Activities. Without limitation to the foregoing, Lessor shall be responsible for all maintenance, upkeep, and repairs for all monitoring wells except for damaged caused by Lessee.

6.3.4 **Subordination.** This Lease shall be subordinate to any consent decree, contaminated materials management plan, environmental covenants, or similar land use restriction

(collectively the "Covenants") which may now, or in the future, apply to the Premises related to or arising out of the Lessor's environmental remediation activities. Lessee shall comply with all Covenants upon receiving written notice of the same.

ARTICLE VII

Miscellaneous Provisions

7.1 **APPRAISAL**: When Base Rent is to be determined by appraisal, the process in this article shall govern. Within seven (7) calendar days from the Rental Renegotiation Deadline, Lessor and Lessee shall mutually agree upon a disinterested, MAI certified appraiser, having at least ten (10) years prior experience with commercial properties, to perform an appraisal of the fair market rental rate for 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 Base Rent, which shall be retroactive to the Adjustment Date.

7.1.1 **Failure to Agree on Appraiser**. 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 a MAI certified appraiser to perform an appraisal of the fair market rental value 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 Rental Renegotiation Deadline (herein this date shall be referred to as the "Appraisal Completion Date"). The average of the two (2) appraisals shall constitute the new Base Rent which 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 Base Rent.

7.2 **LESSEE WILL OBTAIN PERMITS**: Lessee agrees to obtain and comply with all necessary permits for any Tenant Improvements and to conduct the Authorized Use. 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, DNR, and their respective 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, on Lessor's property, or on DNR's property, (i) occasioned by either the negligent or willful conduct of the Lessee, its agents, or any person or entity holding under the Lessee, or (ii) made by any person or entity on the Premises, on the Lessor's property, or on DNR's property as a result of Lessee's activity, regardless of who the injured party may be. This indemnification and hold harmless shall not apply to the extent the damages was caused by the gross negligence or willful misconduct of the Lessor or DNR.

7.5. **LIMITED WAIVER OF IMMUNITY UNDER WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW AND OTHER SIMILAR INDUSTRIAL INSURANCE**

SCHEMES: For purposes of the foregoing indemnification provision, and only to the extent of claims against Lessee by Lessor under such indemnification provision, Lessee specifically waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW, The United States Longshore and Harbor Workers Compensation Act, 33 USC §901-950, or any other similar workers' compensation schemes. The indemnification obligation under this Lease shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefit acts. The foregoing provision was specifically negotiated and agreed upon by the parties hereto.

7.6 **LAWS AND REGULATIONS:** Lessee agrees to conform to and abide by all applicable 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 applicable rule, code, law, regulation, Port policy, or other authority.

7.6.1 **Environmental Laws and Regulations.** 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. Lessee shall defend (with legal counsel acceptable to Lessor), 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 article.

7.7 **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.

7.8 **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.

7.9 **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 twenty-four hours (24) 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 after having been removed. 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.

7.10 **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.

7.11 **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.

7.12 **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 or limited liability company units 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.

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

7.12.2 **No Waiver of Future Consents.** 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.

7.12.3 **Transfer Fee.** An administrative handling and transfer fee ("Transfer Fee") 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), or sublease. Such Transfer Fee shall be submitted to the Lessor at the same time that Lessee requests the Lessor's consent to the proposed sublease or assignment.

7.12.4 **Attorneys' Fees.** In addition to the Transfer Fee, Lessee shall pay Lessor's reasonable and customary attorneys' fees incurred relating to the Lessee's request for Lessor's consent to a proposed assignment or in the event Lessee seeks to modify the Lease during the term of the Lease or any renewals thereof. Lessee's failure to remit this 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 or sublease is not accomplished due to total refusal on the part of Lessor to grant its consent to the request.

7.12.5 **Excess Rent.** If, pursuant to any assignment or sublease, Lessee receives rent, either initially or over the term of the assignment or sublease: i) in excess of the Rent called for hereunder, or ii) in the case of a sublease of 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 hereunder, fifty percent (50%) of the excess of each such payment of Rent received by Lessee after its receipt.

7.12.6 **Lessee's Liability on Assignment or Sublease.** 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 to 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.

7.12.7 **Proceed Against Lessee.** 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, 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.

7.12.8 **Assignee/Sublessee Insurance.** In the event the Lessor approves an assignment or sublease hereunder, such assignee or sublessee shall provide Lessor with insurance certificates and/or endorsements evidencing such assignee's or sublessee's compliance with the insurance provisions set forth herein including, but not limited to, the endorsement of Lessor as an additional insured under such policy or policies.

7.13 **DEFAULT, CROSS DEFAULT, AND REMEDIES:**

7.13.1 **Monetary Defaults.** 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 then, at Lessor's sole option, upon ten (10) 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.

7.13.2 **Non-monetary Defaults.** 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.

7.13.3 **Other Defaults.** 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.

7.13.4 **Multiple Defaults in a Year.** 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.

7.13.5 **Cross-Default.** 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.

7.13.6 **Other Remedies.** 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 including, but not limited to, recovering damages for past due rent, future rent, costs to re-let the Premises, and costs to restore the Premises to its prior condition (reasonable wear and tear excepted). 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. 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. 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 Default Notice.

7.14 **TERMINATION:** This Lease shall terminate for default if Lessee fails to cure any default within the time provided for herein; furthermore, Lessor may terminate the Lease in accordance with Section 2.2.1. 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.

7.15 **NON-WAIVER:** Neither the acceptance of Rent nor any other act or omission of Lessor after a default by Lessee or termination 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
1801 Roeder Ave.
Bellingham, WA 98225

TO LESSEE: A.B.C. Recycling Operations Corp
2219 Rimland Drive, Suite 301
Bellingham, WA 98226

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 Property. 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 or Property. 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 or Property.

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 Lessee complies with this Lease and subject to Lessor's right of entry onto the Premises as set forth herein.

7.19.1 **Easements.** 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.

7.19.2 **Closure by Government Order.** 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, including Remedial Actions, 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 authorized 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 authorized 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 and not in any federal court.

7.26 **ATTORNEY FEES-LEASE ENFORCEMENT:** The prevailing party in any action to enforce any term or condition of this Lease shall be entitled to an award of their reasonable costs and attorney fees.

7.27 **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 staff time incurred and 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.

7.28 **ATTORNNMENT:** 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.

7.29 **COUNTERPARTS AND ELECTRONIC TRANSMISSION:** This Agreement may be signed in counterparts. Electronic transmission of any signed original document, and retransmission of any signed electronic transmission shall be the same as delivery of an original document.

7.30 **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.

7.31 **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.

THIS LEASE CONTAINS INDEMNIFICATIONS FROM THE LESSEE TO THE LESSOR, RELEASES BY THE LESSEE AND A LIMITED WAIVER OF IMMUNITY UNDER THE WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW, OR ANY OTHER SIMILAR WORKERS' COMPENSATION SCHEMES

LESSEE:

A.B.C. RECYCLING OPERATIONS CORP.



Its: Chief Operating Officer
Name: Andrew Anthony

LESSOR:

PORT OF BELLINGHAM

Its: President/Vice President

Its: Secretary

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this day before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, _____ and _____, to me known to be the President/Vice President and Secretary, respectively, 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 he/she was authorized to execute the said instrument on behalf of the corporation.

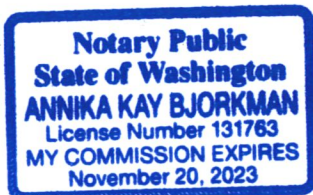
GIVEN under my hand and official seal this ____ day of _____, 2022.

Print Name: _____
NOTARY PUBLIC in and for the
State of Washington, residing at _____
My commission expires: _____

STATE OF Washington)
) ss.
COUNTY OF Whatcom)

On this day before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Andrew Anthony**, to me known to be the **Chief Operating Officer** of **A.B.C. RECYCLING OPERATIONS CORP.**, 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 he was authorized to execute the said instrument on behalf of the corporation.

GIVEN under my hand and official seal this 14th day of June, 2022.



Annika Kay Bjorkman
Print Name: Annika Kay Bjorkman
NOTARY PUBLIC in and for the
State of Washington, residing at Lynden
My commission expires: 11-20-2023

EXHIBIT "A"

Description of Premises

(Including separate descriptions for PMA Property and Non-PMA Property)

Exclusive Use Property- Approximately 6 acres located in a portion of Port owned properties described as follows:

WATERFRONT GENERAL BINDING SITE PLAN AS REC AF 2017-0801912-EXC THAT PTN LY WITHIN LOT 1 WATERFRONT SPECIFIC BINDING SITE PLAN NO 1 AS REC AF 2018-0201342,

NEW WHATCOM TIDELANDS-LOTS 186-187-203-206-207-TOG WI VAC PTNS OF COMMERCIAL-BAY-IVY-OAK STS ABTG INCLUDING ALL VAC COMMERCIAL ST BTWN LOTS 201-208-ALL VAC IVY ST BTWN LOTS 207-208-EXC NEW GREAT NORTHERN R/W ACROSS LOTS 201-205-206-207-208-209-ACROSS, AND

NEW WHATCOM TIDELANDS-LOTS 185-204-205-EXC GREAT NORTHERN RR R/W-TOG WI PTN VAC COMMERCIAL ST LY BTWN INNER HARBOR LI-SLY LI OF OAK ST-THAT PTN VAC BAY ST LY BTWN INNER HARBOR LI-SLY LI OF OAK ST-TOG WI VAC SWLY 1/2 OAK ST ABTG LOTS 185-204-205 AS VAC ORD

Non-Exclusive Use Property—A portion of Port owned properties described as follows:

WATERFRONT GENERAL BINDING SITE PLAN AS REC AF 2017-0801912-EXC THAT PTN LY WITHIN LOT 1 WATERFRONT SPECIFIC BINDING SITE PLAN NO 1 AS REC AF 2018-0201342,

NEW WHATCOM TIDELANDS-LOTS 186-187-203-206-207-TOG WI VAC PTNS OF COMMERCIAL-BAY-IVY-OAK STS ABTG INCLUDING ALL VAC COMMERCIAL ST BTWN LOTS 201-208-ALL VAC IVY ST BTWN LOTS 207-208-EXC NEW GREAT NORTHERN R/W ACROSS LOTS 201-205-206-207-208-209-ACROSS, AND

NEW WHATCOM TIDELANDS-LOTS 185-204-205-EXC GREAT NORTHERN RR R/W-TOG WI PTN VAC COMMERCIAL ST LY BTWN INNER HARBOR LI-SLY LI OF OAK ST-THAT PTN VAC BAY ST LY BTWN INNER HARBOR LI-SLY LI OF OAK ST-TOG WI VAC SWLY 1/2 OAK ST ABTG LOTS 185-204-205 AS VAC ORD

AND, a portion of Parcel 3, Port Management Agreement (PMA) No. 22-080025, described as follows:

Harbor Area situate in Whatcom County, Washington to wit:

That portion of the harbor area in front of blocks 184, 185, 204, 205, Pine Street, Central Avenue, Army Street vacated Oak, Bay and Commercial Streets, 1971 Supplemental Map of Bellingham Harbor included in a tract described as follows:

Beginning at a point at the intersection of the inner harbor line and the northwesterly line of Central Avenue, and running thence S 30° 44' 15" E 1,417.86 feet along the inner harbor line, thence continuing along said inner harbor line S 42° 01' 45" W 602.24 feet, thence leaving the inner harbor line S 56° 22' 45" W 600.00 feet, thence S 69° 12' 45" W 158.84 feet, thence N 43° 54' 15" W 1,194.99 feet to a point on the outer harbor line, thence N 32° 32' 22" E 227.38 feet along said outer harbor line to a point of intersection with the projected northwesterly line of Central Avenue N 45° 52' 21" E 1,439.11 feet to the point of beginning, as shown on the 1971 Supplemental Map of Bellingham Harbor on file in the office of the Commissioner of Public Lands at Olympia, Washington.

AND, a portion
of Whatcom Creek Waterway, Use Area D, DNR Authorization No. 20-092231 described as:

A PARCEL OF LAND LYING WITHIN SECTION 25, TOWNSHIP 38 NORTH, RANGE 2 EAST, W.M., AND SECTION 30, TOWNSHIP 38 NORTH, RANGE 3 EAST, W.M., BEING WITHIN THE EXTENDED MARGINS OF THE WHATCOM CREEK WATERWAY, PER THE "1971 SUPPLEMENTAL MAP OF BELLINGHAM HARBOR" RECORDED AS DEPARTMENT OF NATURAL RESOURCES MAP INDEX No. HA37-002, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE BRASS DISC MONUMENT MARKING THE INTERSECTION OF "C" STREET AND ROEDER AVENUE, BEING CITY OF BELLINGHAM CADASTRAL SURVEY NAD83(1998) CONTROL POINT No.1860, PER THE CITY OF BELLINGHAM'S 2005 HORIZONTAL CONTROL NETWORK RECORD OF SURVEY, RECORDED UNDER WHATCOM COUNTY AUDITOR'S FILE No.2071002449.

THENCE SOUTH 32°00'15" EAST, 282.26 FEET TO THE POINT OF INTERSECTION OF THE NORTHWEST MARGIN OF THE AFOREMENTIONED WHATCOM CREEK WATERWAY, WITH THE SOUTHWEST MARGIN OF ROEDER AVENUE;

THENCE SOUTH 44°12'12" EAST, ALONG SAID SOUTHWEST MARGIN, 363.19 FEET, TO THE INTERSECTION OF SAID SOUTHWEST MARGIN WITH THE SOUTHEAST MARGIN OF THE AFOREMENTIONED WHATCOM CREEK WATERWAY;

THENCE SOUTH 45°52'21" WEST, ALONG SAID SOUTHEAST MARGIN, 2281.01 FEET, TO A POINT AT THE INTERSECTION OF SAID SOUTHEAST MARGIN WITH THE PROJECTED CENTER LINE OF IVY STREET, SAID POINT BEARS NORTH 44°16'10" WEST, 1456.78 FEET FROM THE BRASS DISK MONUMENT MARKING THE INTERSECTION OF IVY STREET WITH CORNWALL AVENUE ;

THENCE CONTINUING ALONG THE SOUTHEAST MARGIN OF THE AFOREMENTIONED WHATCOM CREEK WATERWAY, SOUTH 45°52'21" WEST, 279.40 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE CONTINUING ALONG THE SOUTHEAST MARGIN OF THE AFOREMENTIONED WHATCOM CREEK WATERWAY, SOUTH 45°52'21" WEST, 170.54 FEET TO THE INTERSECTION OF SAID SOUTHEAST MARGIN WITH THE PLATTED INNER HARBOR LINE, PER THE AFOREMENTIONED SUPPLEMENTAL MAP OF BELLINGHAM HARBOR;

THENCE CONTINUING ALONG SAID SOUTHEAST MARGIN SOUTH 45°52'21" WEST, 1328.73 FEET;

THENCE NORTH 44°07'39" WEST, 80.59 FEET TO THE PLATTED OUTER HARBOR LINE, PER THE AFOREMENTIONED SUPPLEMENTAL MAP OF BELLINGHAM HARBOR;

THENCE ALONG SAID OUTER HARBOR LINE, NORTH 9°44'54" EAST, 15.96 FEET, TO A POINT ON AN OFFSET LINE PARALLEL WITH AND 90.00 FEET DISTANT FROM THE SOUTHEAST MARGIN OF SAID WHATCOM CREEK WATERWAY;

THENCE NORTH 45°52'21" EAST, ALONG SAID OFFSET LINE, 1337.26 FEET TO THE INTERSECTION OF SAID OFFSET LINE WITH THE AFOREMENTIONED INNER HARBOR LINE;

THENCE CONTINUING ALONG SAID OFFSET LINE NORTH 45°52'21" EAST, 149.12 FEET;

THENCE SOUTH 44°07'39" EAST, 90.00 FEET TO THE SOUTHEAST MARGIN OF THE AFOREMENTIONED WHATCOM CREEK WATERWAY, BEING THE **TRUE POINT OF BEGINNING**.

CONTAINS 134,874 SQUARE FEET, MORE OR LESS.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

EXHIBIT "B"
Map of Intended Premises
(Showing PMA Property and Non-PMA Property)

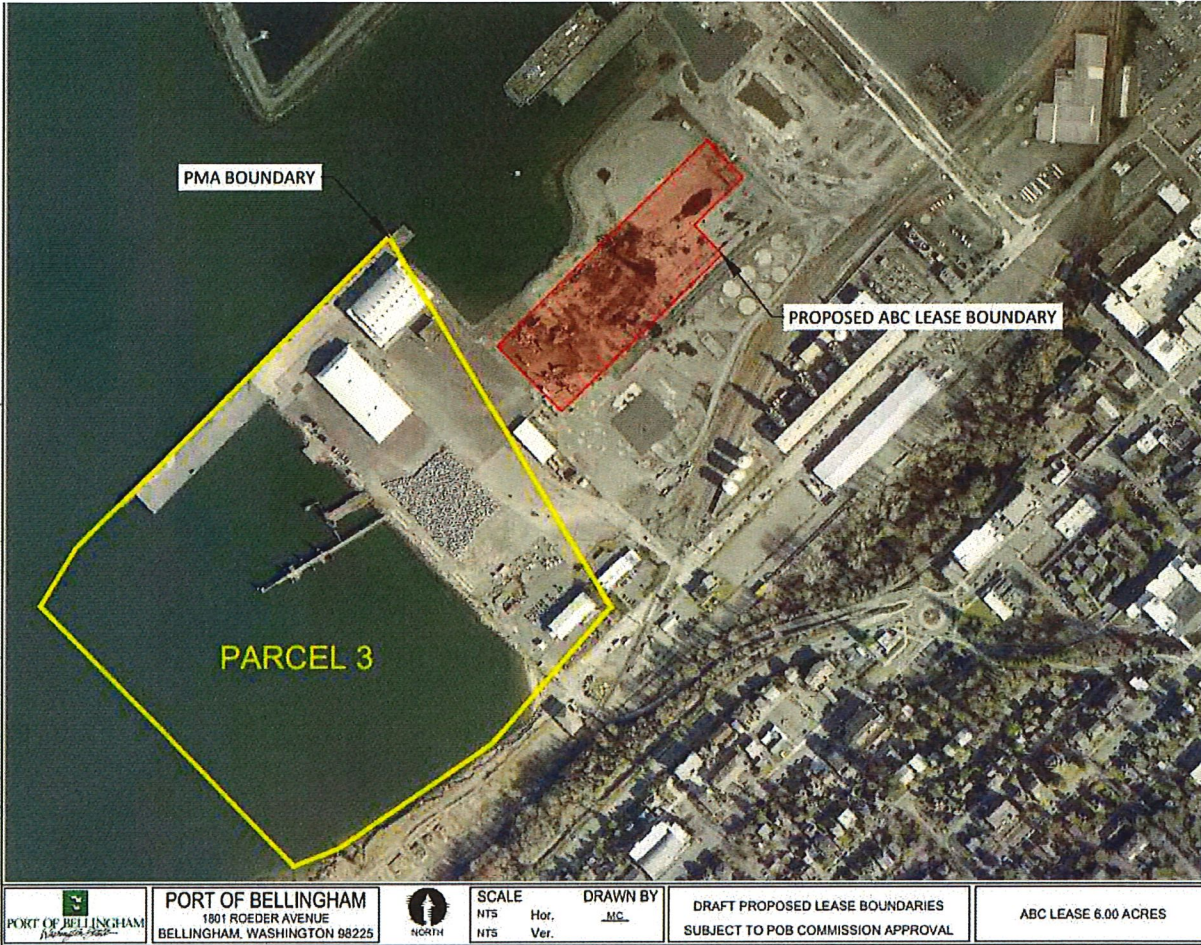


EXHIBIT "C"
Port Management Agreement (PMA)

Port Management Agreement
No. 22-080025
PORT OF BELLINGHAM

This Port Management Agreement ("Agreement"), effective as of the 1st day of July, 1997 ("the Effective Date"), by and between the state of Washington ("the State"), through the Department of Natural Resources ("DNR"), and the PORT OF BELLINGHAM, a Washington municipal corporation ("the Port"),

WITNESSETH:

Whereas, DNR is directed by law to manage aquatic lands owned by the state of Washington; and

Whereas, RCW 79.90.475 authorizes DNR and the port district, upon request of a port district, to enter into an agreement to manage state-owned aquatic lands as set forth in said law; and

Whereas, this agreement is in the form of the Model Port Management Agreement approved by the Washington Board of Natural Resources pursuant to RCW 79.90.475 and the implementing regulations; and

Whereas, the Port has requested such an agreement; and

Whereas, DNR has determined that it is in the best interest of the state of Washington to enter into such an agreement with the Port,

Now, therefore, the parties hereto hereby agree as follows:

1. Term.
 - a. Term. This Agreement shall commence on the effective date, inclusive, and shall continue in full force and effect until the 30th day of June, 2027, (Expiration Date), inclusive, a period of thirty (30) years referred to as the "Term."
 - b. New Port Management Agreement.
 - (1) If either party desires to enter into a new Port Management Agreement following the Expiration Date, the parties will meet (as often as necessary) during the two years prior to the Expiration Date to determine the feasibility of entering into a new Port Management Agreement. The parties may at that time, based on the laws of the state of Washington and in the form of the Model Port Management Agreement in effect as of that date, negotiate a new management agreement.
 - (2) If either party decides it is not in its best interest to enter into a new agreement, the parties shall decide on the fair and reasonable allocation of the leasehold revenues

for those Port leases that are in existence on the Property as of the Expiration Date. Consideration will be given to the Port's need to receive a fair return on capital invested by the Port on the Property. If the parties are unable to agree on a reasonable allocation of leasehold revenues as stated above, then either party may invoke the dispute resolution procedures under Section 24(b) below. In this event this agreement will be extended until such time as the dispute resolution regarding allocation has been concluded.

2. Delegation. DNR hereby delegates management to the Port, and the Port hereby accepts this delegation and agrees to manage the parcels of state-owned aquatic lands listed on Exhibit A, which are attached hereto and incorporated by reference, (hereinafter referred to as the "Property"), as of the Effective Date of this Agreement in accordance with the provisions hereof.

The parties intend that this Agreement encompass all authority required for the Port to effectively manage the Property as contemplated by RCW 79.90.475. The parties acknowledge that the delegation by DNR and the management by the Port contemplated by this Agreement is subject to and in accordance with State Law and regulations, including but not limited to applicable provisions of the Washington Administrative Code, the State Environmental Policy Act, the Aquatic Lands Act, the Shoreline Management Act, and the Growth Management Act. DNR retains the authority to set state-wide aquatic lands policy through administrative code provisions or adoption of policy by the Board of Natural Resources, as provided by law. The Port is responsible for implementation of that policy.

If future circumstances indicate that additional authority is required to effectively manage the Property, the Port may request such authority from DNR, which approval shall not be unreasonably withheld.

The Port is hereby granted exclusive authority to enter into leases or other use authorizations, including leases or use authorizations to itself, for the Property or portions thereof, except as otherwise provided herein. All such leases and use authorizations shall be subject to this Agreement and shall have a copy of the Agreement attached thereto and incorporated by reference. Said leases and use authorizations shall survive this Agreement. Any such lease by the Port shall contain a clause which states that upon termination of this Agreement (or successors thereof), or removal of the leased property therefrom, the lessor of said lease shall become DNR. The Port shall furnish to DNR copies of new leases, lease renewals, lease modifications, and surrender of leaseholds on parcels included in this Agreement upon execution of said lease documents.

The Port may not execute a lease or use authorization with itself for the Property to the extent the term of the lease or use authorization extends beyond the term of this Agreement.

DNR's delegation to the Port does not include the authority to bind the State or DNR to any financial obligations, to any environmental remediation of the Property, or to any habitat mitigation involving the Property without DNR's written consent.

3. Property.

Exhibit A contains a common description, legal description, planned use (if known, or if not, so stated), and map identifying each parcel of the Property. The Port may request management of any additional parcel of state-owned aquatic lands which meets the criteria

established by law. Additional parcels approved by DNR for Port management shall be added to this Agreement by amending Exhibit A. DNR's approval for such requests shall be timely made and shall not be unreasonably withheld; however, DNR may consider whether the Port is meeting its current management obligations; whether DNR has invested in, planned for, or is legally committed to, a specific use which is inconsistent with the Port's proposed use for the requested parcel; whether Port acquisition would operate to release prior lessees or users to the detriment of the State; or whether litigation is pending or threatened concerning the parcel.

DNR shall respond to the Port in writing within forty-five (45) days of request either (i) approving or denying the request or (ii) identifying that additional information is needed for a decision. Once that additional information has been provided DNR shall respond to the Port in writing within forty-five (45) days, either approving or denying the request. If the DNR denies a request, DNR shall submit in writing its reasons for denial of the request. If DNR fails to submit such written responses as provided herein, the Port shall have the right to appeal to the Supervisor of the Department of Natural Resources for a decision. If DNR fails to submit a written response within ten (10) days (excluding weekends and state holidays) of receipt of appeal, then request shall be deemed approved and Exhibit A shall be amended.

Any parcel which no longer meets the criteria established by law shall cease to be covered by this Agreement and the management thereof shall return to DNR. Any parcel may be deleted from this Agreement at any time by mutual agreement. The Port shall promptly notify DNR of such parcel no longer meeting the criteria and such notice shall be deemed to amend Exhibit A. If all subject property is deleted this Agreement shall terminate. If any parcel is no longer included in this Agreement for any reason, upon cessation the Port shall promptly remit to DNR its pro rata share of any prepaid rent received for that parcel.

4. Access. It is not the intent that any parcel owned by the State which is not covered by this Agreement, or any property owned by the Port should be left without access as a result of the Port's management of the Property. Provisions for access to such parcels shall be listed on Exhibit A or its amendments.

5. Acceptance/Relinquishment of the Property Management. Except as otherwise agreed in writing the Port hereby accepts management of the Property listed on Exhibit A in its condition existing as of the Effective Date of this Agreement, or with respect to parcels added to Exhibit A in the future, the date such parcel(s) becomes listed on Exhibit A, and agrees, at its sole expense, to conform to federal, state, and local laws and regulations governing and regulating the use of the Property. DNR has disclosed to the Port all conditions known to DNR which would adversely affect the use of the Property and the Port acknowledges that neither DNR nor DNR's agent has made any warranty as to the suitability of the Property for conduct of the Port's business.

At the termination of this Agreement the Port shall relinquish management of the Property which shall be in its condition existing as of the date identified in the paragraph above, or in a reasonable condition which would result from prudent management, except normal wear and tear as to improvements; provided, this section is not intended to address damages caused by contamination which shall be addressed under Section 8, Hazardous Substances, below.

6. Standard of Management. Management of the Property shall be consistent with Chapters 79.90 through 79.96 RCW, as amended, which state in pertinent part that: "[t]he manager of state-owned aquatic lands shall strive to provide a balance of public benefits for all citizens of the state." Management shall also be consistent with the implementing regulations adopted by the DNR or the Board of Natural Resources, and policies adopted by the Board of Natural Resources. Adoption of such policies shall be preceded by ninety (90) days notice to the Washington Public Ports Association, or its successor, with adequate opportunity for comment before the Board of Natural Resources. The DNR and the Washington Public Ports Association, or its successor, shall meet annually to review statutes, regulations and policies.

The administrative procedures for management of the Property shall be those of Title 53 RCW.

7. Use/Planning. The Port may use the Property for port purposes as authorized in Title 53 RCW so long as said use is consistent with the Washington State Constitution and laws of the state of Washington. In the event the parties develop and agree in writing upon a long-range plan for aquatic land use for the Property, the Port may enter into leases for nonwater-dependent uses consistent with that plan without DNR approval. In the absence of a long-range plan for aquatic use of a portion of the Property, if the Port contemplates the possible lease or use of that portion of the Property for nonwater-dependent uses, it shall give DNR notice of its intentions at the earliest practicable time. DNR shall promptly meet with the Port to review the proposal for its consistency with the aquatic land policies of Chapters 79.90 through 79.96 RCW, as amended, and the implementing regulations adopted by DNR.

8. Hazardous Substances.

a. Definitions.

(1) Hazardous Substances. For purposes of this Agreement, a Hazardous Substance is any substance that is or may be in the future:

(a) Designated as, or that contains components designated as, hazardous, dangerous, toxic, or harmful by applicable federal, state, or local law, regulation, statute or ordinance; and/or

(b) Subject to regulation by such laws.

(2) Application Date. For purposes of this Agreement, the Application Date is the date on which application was first made by the Port for entry into this Agreement, unless the parties agree in writing that control of properties subject to this Agreement is assumed by the Port at a later date.

(3) Liability. As used in this Section 8, "Liability" means any obligation or cost of any kind arising from the release or threatened release of Hazardous Substances, or from any alleged violation of or failure to comply with any law referenced in Subsection 8(b), where the release, threatened release, alleged violation, or failure to comply is related to or arises out of the use or control of the Property. Liability includes damages (including natural resource damages), claims, governmental investigations, proceedings or requirements, attorney fees in any investigation, administrative proceeding, trial or appeal, or witness or consultant costs.

b. Compliance. During the term of this Agreement, the Port shall comply, at its own expense, with all applicable governmental laws, regulations, permits, orders or requirements regarding the proper and lawful use, sale, transportation, generation, treatment, and disposal of Hazardous Substances related to or arising out of the Port's use or control of the Property. The Port, the lessees, and sublessees shall correct and remediate, if necessary, in accordance with applicable laws at their own expense any failure of compliance which occurs during the term of this Agreement.

c. Notice of Environmental Action.

(1) The Port shall promptly notify DNR, upon discovery of all spills, discharges or releases of any Hazardous Substances affecting the Property which are required to be reported to any federal, state, or local regulatory agency.

(2) DNR and Port shall promptly notify each other, upon discovery of any failure to comply with federal, state, or local laws or regulations with respect to the Property. Each shall promptly notify the other, upon discovery of any inspections on the Property by any regulatory entity, any fines, any regulatory orders for response or interim cleanup actions (actual or proposed), or any negotiations with any regulatory entity for a consent decree under any herein mentioned authority, or concerning any plans for any independent cleanup or mitigation and restoration of natural resources on the Property. This provision shall apply to orders issued to DNR or the Port or any third party concerning the Property.

d. Indemnity. To the extent permitted by law, the Port agrees to defend, indemnify, and hold the State, as the owner of aquatic lands, and DNR, as manager of aquatic lands, harmless from any imposition or attempted imposition of Liability upon the State or DNR related to or arising out of the use and control of the Property by the Port or anyone acting under authority of the Port from the Application Date through the end of the Term. This indemnity shall not apply to any imposition or attempted imposition of Liability that is related to or arises out of the use and control of the Property by the State or anyone acting under the authority of the State, other than the Port or anyone acting under the authority of the Port. This indemnity applies to the State solely in its capacity as the owner of aquatic lands and to DNR in its capacity as the manager of aquatic lands and does not extend to other units of state government or to the State in any capacity other than as owner of aquatic lands. Notwithstanding this provision or any other provision of this Agreement, the Port shall not be precluded from seeking relief from any other agency of state government other than DNR under the State Model Toxics Control Act, CH. 70.105D RCW ("MTCA"), the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 *et. seq.* ("CERCLA"), other similar statutes, or common law, for contribution, cost recovery, damages or other reimbursement for remediation of Hazardous Substance releases.

e. Pre-existing Contamination. The parties intend that this Agreement not alter or affect whatever Liability or responsibility either party may have for Hazardous Substance releases, or threatened releases, that occurred prior to the Application Date ("Pre-existing Contamination") under CERCLA, MTCA, or other laws that create cleanup obligations. In order to effectuate this intent, the parties agree that this Agreement will not be construed to be an indemnification or assignment of liability for any Pre-existing Contamination. Any

determination of liability or responsibility for addressing Pre-existing Contamination shall be undertaken without regard to this Agreement.

9. Port Regulations. The Port may adopt written policies and regulations to implement this Agreement and to direct the management of the Property. All such policies and regulations shall be submitted to DNR for review and comment prior to becoming effective. Any such policies or regulations must be consistent with this Agreement.

10. Rent. The following shall apply:

a. Port Use. The Port shall pay to DNR no rent for use of any portion of the Property or any state-owned improvements. In the event the Port engages in a nonwater-dependent use of any portion of the Property or any state-owned improvements, the Port shall establish the full fair market rental in dollars according to WAC 332-30-125 and shall remit, in dollars, to DNR eighty-five percent (85%) of that amount.

b. Third Party Uses. If the use of any portion of the Property involves a lease or other use authorization to a third party, rent for such portion shall be collected and distributed according to law. In the event the use is nonwater-dependent, the Port shall establish the fair market rental in dollars and shall remit, in dollars, to DNR that portion required by law.

11. Insurance and Performance Security. When the Port uses or leases any portion of the Property (including state-owned improvements) to a third party, the Port shall require the following:

a. Insurance.

(1) Liability. Bodily injury liability, including death, and property damage liability in an amount of not less than one million dollars (\$1,000,000) or such lesser amount approved by DNR, which approval shall not be unreasonably withheld. If the Port makes a written request for a lower insurance amount, DNR has forty-five (45) days following receipt of the request to respond in writing either approving or rejecting the request. If DNR fails to respond within forty-five (45) day period, the Port shall have the right to appeal to the Supervisor of the Department of Natural Resources for a decision. If DNR fails to submit a written response within ten (10) business days (excluding weekends and state holidays) of receipt of appeal, the request shall be deemed approved.

(2) Casualty. Fire and extended coverage for the insurable replacement cost of any state-owned improvements identified in Exhibit B. DNR shall provide the Port with the replacement cost value within sixty (60) days of the Port's request.

(3) In each of the cases above the State shall be named as an additional insured.

b. Performance Security.

(1) Rent Security. For those portions of the Property leased to third parties the Port shall require the third party to provide to the Port a bond, rent insurance, or other security in accordance with the requirements of RCW 53.08.085; provided, the Port commission shall not waive the rent security requirement or lower the amount of such requirement.

(2) Other Security. In addition, as is appropriate for the use occurring on the Property, the Port may require security for the performance of other lease terms including removal of improvements, trade fixtures, personal property, and hazardous substances.

c. Interim Use. When the Port leases any portion of the Property (including state-owned improvements) to a third party for a period of ninety (90) days or less, the third party shall not be required to provide insurance and performance security as stated in this Section 11 if the Port has its own insurance in the same amounts on the Property and the State is named as an additional insured.

12. Removal of Valuable Materials. Except as permitted by RCW 79.90.150 no valuable materials as referred to in Chapters 79.90 - 79.96 RCW shall be removed from any parcel subject to this Agreement without the prior written approval of DNR. If any approved removal requires payment to DNR for the value of the valuable materials removed, such payment shall be made within ninety (90) days of the removal.

13. Fills.

a. "Fill" defined. For the purposes of this Agreement, the term "Fill" means any material which has been added to increase the elevation of State-owned aquatic lands and includes rip rap, bulkheads, drainage systems or paving. "Fill" does not include confined disposal of contaminated sediments which is addressed under Section 14.

b. Adding or Removing Fill. If the Port or any of the Port's tenants proposes adding fill or removing fill from any portion of the Property, the Port shall give DNR notice of such intention at the earliest practical time. DNR shall promptly meet with the Port to review the proposal. If the proposed fill is consistent with Chapters 79.90 through 79.96 RCW, as amended, and implementing regulations, DNR shall issue written approval, which approval shall not be unreasonably withheld.

c. Rent. Except as provided for below in Subsection 13(d), rent for state-owned aquatic lands underlying the fill will be determined by the use occurring on the fill and distribution of rent will be in accordance with Section 10 of this agreement.

d. Fills with Upland Characteristics. The Port and DNR disagree as to whether filled state-owned aquatic lands with the characteristics of uplands are a nonwater-dependent use of the underlying aquatic lands. Until and unless the legislature or a court of competent jurisdiction interprets RCW 79.90.480(6) to indicate the contrary, the Port and DNR agree that the following principles control the establishment and distribution of rent between the Port and DNR for filled state-owned aquatic lands:

(1) The aquatic lands policies of RCW 79.90 control the establishment and distribution of rent for filled state-owned lands.

(2) As provided in statute, rent for state-owned aquatic lands that have been filled to the point of having the characteristic of uplands will be the full fair market rental value of the filled land pursuant to WAC 332-30-125, or as amended, if the State owns the fill and has a right to charge for the fill.

(3) Rents for filled state-owned aquatic lands which have the characteristics of uplands will be distributed according to the use of the filled state-owned aquatic lands. Rents for

water-dependent uses shall be paid to the Port. Rents for nonwater-dependent uses shall be divided between the Port and DNR. These understandings are set forth in detail in Section 10 of this Agreement.

e. Owner of Fill Identified. Fills placed on the Property prior to the Effective Date of this agreement and during the term of this Agreement shall be listed on Exhibit C. The owner of any fill which remains severed from the aquatic land shall be identified. Otherwise the fill shall be considered part of the aquatic lands, and shall be so identified.

14. Confined Disposal of Contaminated Sediments.

a. Definition. Confined Disposal of Contaminated Sediments means containment or isolation of contaminated sediments. This includes nearshore confined disposal, multi-user confined disposal, deep water confined aquatic disposal, and capping of contaminated sediments.

b. Exclusion from Agreement. Confined Disposal of Contaminated Sediments is not covered under this Agreement, and is not considered a Fill for the purposes of Section 13.

c. Agreement with DNR. A separate written agreement addressing Confined Disposal of Contaminated Sediments may be negotiated between the Port and DNR.

15. Improvements.

a. State-Owned Improvements. All state-owned improvements located on the Property are listed on Exhibit B. Improvements that become the property of the State during the term of this Agreement shall be listed on Exhibit B. These improvements shall remain the property of the State and shall be maintained at the Port's sole expense in a good condition and state of repair. Upon the cessation or termination of this Agreement as to any portion of the Property, the Port shall return said portion, together with the state-owned improvements, to DNR in a condition as good as when received, normal wear and tear excepted.

b. Non-State Owned Improvements. A management agreement or lease shall be deemed continuous from one term to the next (even after the expiration date) so long as the Port or the third party controls physical possession of the improvements and is diligently pursuing issuance of a new Agreement or lease.

(1) At any time during the continuous term of this, or any successor, Agreement(s), the Port shall determine whether improvements placed on the Property during the term of any lease are to be removed, and no compensation shall be due to the State for any such removal. DNR shall make such determination as to then existing improvements on final expiration or termination of this Agreement. The Port or the third party owner shall bear all costs of removal and of returning the parcel to the condition existing prior to placement of the improvements.

(2) Title to Improvements.

(a) Title to Port-constructed improvements shall remain with the Port so long as the parcel upon which they are located is continuously subject to a management agreement or lease with the State. Thereafter, title shall pass to the State.

(b) Title to third party-constructed improvements shall remain with the third party so long as the parcel upon which they are located is subject to a continuous lease. Thereafter, title shall pass to the State; provided, the Port may purchase the improvements from

the third party for value; and further provided, the Port shall give notice to DNR if said improvements are being purchased from a bankruptcy trustee.

16. Easements.

a. Easements Granted by DNR.

(1) DNR may grant permanent easements across any portion of the Property. For purposes of this Agreement, outfalls of any type and sediment impact zones are considered permanent easements. DNR shall obtain the Port's written approval prior to making such grants, which approval shall not be unreasonably withheld. The Port has forty-five (45) days following receipt of the request to respond in writing either approving or rejecting the request. If the Port fails to respond within the forty-five (45) day period, the State shall have the right to appeal to the Port Commission for a decision. If the Port fails to submit a written response within ten (10) business days (excluding weekends and state holidays) of receipt of appeal, the request shall be deemed approved.

(2) Any request to DNR by the Port and its Lessee for a permanent easement across any portion of the Property shall be promptly considered and approval shall not be unreasonably withheld or delayed.

(3) If DNR grants any easements, DNR shall require the grantee to indemnify the Port to the same extent that the grantee indemnifies the State.

b. Easements Granted by Port. The Port may grant non-permanent easements without DNR approval so long as the term of each grant does not exceed the maximum term allowed by statute for leases of the burdened portion of the Property. Under no condition shall the term of any non-permanent easement exceed the Term of this Agreement unless approved by DNR.

17. Local Improvement Districts. Pursuant to RCW 79.44.040, the Commissioner of Public Lands (Commissioner) shall have the exclusive authority to consent or withhold consent to the inclusion of any portion of the Property in any local improvement district (LID). The Commissioner shall not withhold consent if the Port agrees to pay any assessment against the Property by such LID, regardless of when levied. The Port shall be responsible, during the term of this Agreement, for installments due on pre-existing LID assessments.

18. Taxes. Except for taxes and other governmental charges imposed by law on third parties, the Port shall be responsible for, and shall pay when due, all taxes, fees, licenses, and other governmental charges of whatever character or arising out of, or attributable to, the Property or to the Port's management, use and/or leasing thereof during the term of this Agreement.

19. Entry. Upon reasonable notice DNR shall have right of entry to the Property at reasonable times for any lawful purposes. Such entry, however, will be subject to reasonable security and safety regulations and shall not unreasonably interfere with the use of the Property.

20. Audits. DNR may periodically review the management of the Property by the Port for consistency with the Agreement, all applicable laws, chapters 79.90 through 79.96 RCW, policies adopted by the Board of Natural Resources, and administrative code provisions. DNR will promptly notify the Port if it believes the Port is not complying.

The Port shall make all records concerning the management of any portion of the Property available to DNR upon request.

21. Liens and Encumbrances. The Port shall keep the Property free from liens and other encumbrances (other than leases and other use authorizations authorized in Sections 2 Delegation, 16 Easements, and 17 Local Improvement Districts). Nothing in this Agreement shall be construed as authorizing the Port to obligate the State, directly or indirectly, to any costs, expenses, or financial liability on account of the management, use, lease, or other actions taken by the Port with respect to the Property.

22. Eminent Domain. If at any time during the term of the Agreement the Property or any part thereof is taken or condemned by any authority having the power of eminent domain, the Port, DNR, and any other person having a legal interest shall have the right to appear in such proceedings and be represented by their respective counsel, and each may claim just compensation for its respective loss or damage sustained by the taking or condemnation. Any award, compensation, damages, or payment by reason of such taking shall be apportioned within such proceeding and each party shall take such amount, if any, as may be awarded to it.

23. Non-Waiver. The failure of either party to insist upon the strict performance of any of the covenants or conditions of this Agreement in any one or more instances shall not be construed to be a waiver thereof. In the event that a default is for other than the payment of money, the acceptance by either party of payments required under the Agreement shall not be deemed as a waiver of such default.

24. Dispute Resolution.

a. Dispute. Means that whenever the Port and DNR cannot agree on the factual circumstances necessary to interpret this Agreement, or whenever the Port and DNR cannot agree on the application of any operative sections of this Agreement, either party may declare that a dispute exists concerning the Agreement.

b. Dispute Resolution.

(1) If either party declares the existence of a dispute concerning this Agreement, the declaring party shall so notify the other party and shall provide a written statement of the facts, its interpretation of the Agreement, and its position concerning such dispute. Within fifteen (15) days the other party shall provide to the declaring party a written statement addressing those same three elements. Within fifteen (15) days after the declaring party has received the other party's written statement, the parties shall meet and try to resolve the dispute.

(2) If the parties fail to resolve the dispute as provided in Subsection 24(1) above, then either party may request further review within fifteen (15) days by giving notice to the other party. Thereafter, the Supervisor of the Department of Natural Resources and the Port's Chief Administrative Officer (in the event the Port has no Chief Administrative Officer, then such person shall be designated by the Port Commission) shall meet within thirty (30) days of the request and try to resolve the dispute.

(3) In the event the dispute is not resolved within sixty (60) days after their first meeting as provided by Subsection 24(2) above, either party may request a meeting between the Commissioner of Public Lands and a member of the Port Commission empowered to represent the Port. Within sixty (60) days after such request, said two individuals shall meet and attempt to resolve such dispute. In the event they are unable to resolve the dispute within said sixty (60) day period, either party may petition the Superior Court for resolution of the dispute.

(4) During dispute resolution arising under Section 1(b)(2), the parties agree to extend the existing Agreement, as provided for in Section 1(b)(2).

25. Termination for Default. DNR may cancel this Agreement or remove any portion of the Property therefrom for any failure by the Port to perform its obligations under this Agreement on six (6) months written notice to the Port, unless, within that time, the Port cures such default. DNR's decision whether to cancel the Agreement or to remove any portion of the Property shall be reasonably exercised. If the default is of a character which cannot be remedied within six (6) months, the Port shall notify DNR and the parties shall agree on a reasonable period to remedy the default. In the event the parties cannot agree on a period, that shall be referred to resolution as provided in Section 24, Dispute Resolution. Failure to cure the default within such period may result in cancellation or removal of any portion of the Property upon notice. The decision by DNR to give notice of its intention to cancel this Agreement, or to remove a portion of the Property for default after expiration of the period for cure, shall constitute a dispute and shall be appropriate for resolution under Section 24, Dispute Resolution, herein.

26. Notices. All notices required by law or this Agreement shall be in writing and may be personally served or sent by first class mail. If such notice is served personally, service shall be conclusively deemed made at the time of service. If service is by first class mail, service shall be conclusively deemed made three (3) days after the deposit thereof in the United States mail, postage prepaid, addressed to the parties to whom such notice is to be given. Any notice may be given at the following address (or such other address as either party may notify the other, in writing):

DNR: DEPARTMENT OF NATURAL RESOURCES
Aquatic Resources Division
1111 Washington Street SE
PO Box 47027
Olympia, WA 98504-7027

PORT: PORT OF BELLINGHAM
PO Box 1677
Bellingham, WA 98227-1677

27. Attorney Fees. In the event either party shall be required to bring any action to enforce any of the provisions of this Agreement or shall be required to defend any action brought by the other with respect to this Agreement the prevailing party in such action shall be entitled to reasonable attorney's fees in addition to costs and necessary disbursements.

28. Assignment. No part of this Agreement may be assigned or otherwise transferred.

29. Severability. If any provision of this Agreement or its application to any person, or circumstance is held invalid, the remainder of the Agreement or the application of the provision to other persons or circumstances is not affected.

30. Amendments/Supplemental Provisions.

a. If, during the term of this Agreement, the Board of Natural Resources approves amendments to the Model Port Management Agreement pursuant to RCW 79.90.475, DNR shall give notice of that fact to the Port. Either party may request that this Agreement be amended to conform to the newly approved Model Port Management Agreement.

b. If unique conditions relating to management of the Property arise during the term of this Agreement, either party may request that a supplemental provision be added to this Agreement to accommodate those unique conditions. Such supplemental provisions shall not address issues of general port industry interest or interest to any other Washington port district, as determined by the Washington Public Ports Association (WPPA), or its successor organization. WPPA shall be given sixty (60) days to review the terms of any supplemental provision. WPPA shall give notice to DNR if WPPA determines the proposed terms are of general port district interest or of interest to any other Washington port district.

c. Acceptance of a subsequent Model Port Management Agreement or inclusion herein of a supplemental provision must be by mutual agreement of the parties.

31. Survival. All obligations of the parties to be performed under the terms and conditions of this Agreement, including but not limited to, obligations occurring after the termination of this Agreement or removal of any portion of the Property from this Agreement shall not cease upon termination or removal, and shall continue as obligations until fully performed.

32. Entire Agreement. This is the entire agreement between the parties. There are no other agreements, either oral or written, that have not been incorporated into this Agreement. No amendments to this Agreement shall be binding unless the amendment is in writing and signed by the parties.

Signed this 5 day of August, 1997.

STATE:

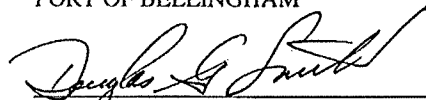
STATE OF WASHINGTON
DEPARTMENT OF NATURAL
RESOURCES



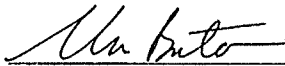
~~KAREN COYNE~~, Supervisor
CHARLES BAUM

Signed this 9 day of September, 1997.

PORT:
PORT OF BELLINGHAM



DOUGLAS G. SMITH, President
Commissioner



GINNY BENTON, Secretary
Commissioner

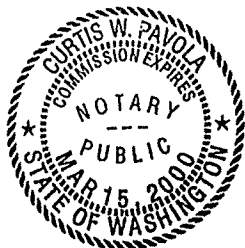


CERTIFICATE OF ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
 County of Thurston)

On this 9th day of September, 1997, personally appeared before
 me ~~WALTER DORRINGTON~~^{CHARLES BAUM}, to me known to have signature authorization delegated to ~~him~~^{him} to
 sign for JENNIFER M. BELCHER, the Commissioner of Public Lands, and ex officio
 administrator of the Department of Natural Resources of the state of Washington, the department
 that 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 ~~she~~^{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 hereto set my hand and affixed my official seal the
 day and year first above written.



SEAL

Curtis W. Pavola

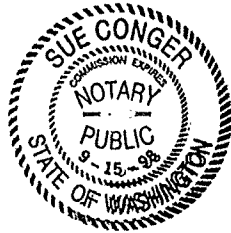
NOTARY PUBLIC in and for
 the state of Washington

My commission expires 3-15-2000

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that DOUGLAS G. SMITH is the person who appeared before me, and is the President/Commissioner for the PORT OF BELLINGHAM ("Port"). I further certify that said person acknowledged the foregoing instrument to be the free and voluntary act of the Port for the uses and purposes mentioned in the instrument, and on oath state that he is duly authorized to execute and acknowledge said instrument.

DATED: [August 5, 1997]

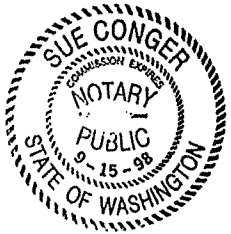


Sue Conger
[SUE CONGER]
(Type/Print Name)
Notary Public in and for the State of Washington
residing at Bellingham
My Commission Expires 9-15-98

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that GINNY BENTON is the person who appeared before me, and is the Secretary/Commissioner of the PORT OF BELLINGHAM ("Port"). I further certify that said person acknowledged the foregoing instrument to be the free and voluntary act of the Port for the uses and purposes mentioned in the instrument, and on oath state that she is duly authorized to execute and acknowledge said instrument.

DATED: [August 5, 1997]



Sue Conger
[SUE CONGER]
(Type/Print Name)
Notary Public in and for the State of Washington
residing at Bellingham
My Commission Expires 9-15-98

- Map of Existing Monitoring Wells
- Agreed Order No 6834, dated August 25, 2009
- First Amendment to Agreed Order No. 6834, dated August 30, 2011
- Second Amendment to Agreed Order No. 6834, dated August 2, 2013
- Third Amendment to Agreed Order No. 6834, dated February 26, 2019
- Administrative Amendment to Agreed Order No. 6834 (Schedule of Deliverables for Remedial Design), dated November 18, 2021
- Minor Modification to Third Amendment to Agreed Order No. 6834 (Schedule of Deliverables for Remedial Design), dated March 22, 2022
- Remedial Investigation: Georgia-Pacific West Site, Bellingham Washington, Project No. 070188-001-08, dated August 5, 2013.
- Feasibility Study: Chlor-Alkali Remedial Action Unit, Vol. 2b of RI/FS Georgia-Pacific West Site, Bellingham, Washington, dated June 2018
- Cleanup Action Plan, Chlor-Alkali Remedial Action Unit, Georgia-Pacific West Site, Bellingham, Washington, dated September 7, 2021
- Draft Final Interim Action Work Plan: Removal of Mercury Contaminated Soil at Cell Building, Project No. 0070188-001-26, dated September 8, 2016.
- NPDES Permit No. WA 0001091, dated December 27, 2014

EXHIBIT "E"
Best Management Practices- Exclusive Use Property

April 28, 2022

ABC Recycling – Port of Bellingham Operations Plan

Facility Description

ABC Recycling would operate a finished scrap metal storage facility, as well as a bulk ship loading and barge off-loading operation. The finished scrap metal storage facility would operate on the six-acre parcel that is available to us from the Port. This operation would consist of 2-3 full time employees, working a single day shift, Monday through Saturday 8am-5pm, with the possibility of a partial swing shift. This operation's primary function will be to collect and stockpile finished scrap metal for bulk cargo shipment, from our shredder yard in the Bellingham area, our existing metal recycling facilities in Western Canada, as well as other independent scrap metal recycling businesses throughout WA and Western Canada.

This finished scrap metal material will be a clean, homogenous blend of ferrous steel products, processed to mill specifications and ready for melting at a domestic or foreign steel mill. It will be free of any surface contaminants and will contain no oils, fuels, or other hydrocarbons.

The 6-acre facility will initially have 6' security fencing around the entire perimeter, south of the existing rock filled trench drain along the log pond, and will later increase in height after site clean-up by the Port in coordination with ABC Recycling. There will be a single truck scale and a portable office adjacent to the truck scale, to track truck loads of scrap metal in and out of the facility. There will be (2) 40' sea containers with an engineered cover between them for a maintenance area.

Mobile equipment will consist of the following:

- (3) hydraulic scrap material handlers
- (1) wheel-loader with bucket and sweeper attachment
- (1) water truck for dust mitigation
- (4) 40 ton off-road haul trucks
- (1) Service/maintenance truck
- (1) Fuel truck
- Potentially (2) conveyor bulk loaders (for ship loading)
- Potentially (2) self contained grapple units (for ship loading)

Our dock operations at the Port Shipping Terminal, in conjunction with a Longshoremen crew, will consist of off-loading barges with finished scrap metal materials, to be shuttled to our leased storage area. We will also be shuttling finished scrap metals to the dock for staging and loading into a bulk cargo vessel. When our shredder facility is operational, we will also be off loading incoming barges of unprocessed material that will be loaded onto end dump trailers for transport to our shredder facility for processing.

All bulk cargo loading will be performed with either conveyor bulk loaders, self-contained grapples operated by ship's gear or tilt pan and LH420 mobile harbour crane. All trucking in and out of ABC's 6-acre leased area, as well as the Shipping Terminal, will be performed by contract hauler(s). Movement of scrap from storage area to the dock and from the barge to the storage area will be done by off-road haul trucks.

Industrial Activity, Materials Inventory, and Associated Pollutants

This section identifies the areas associated with industrial activities that have the potential to be a source of pollutants, including, but not limited to, the following:

Industrial Activity / Exposed Materials	Associated Pollutants
Fueling and equipment maintenance	Petroleum and solvents
Loading and unloading of clean finished scrap metal materials	Petroleum products and metals
Travelling on leased area on the existing gravel surfaces	Dust, sediment, turbidity
Galvanized fence	Metals

Best Management Practices

The following are best management practices (BMPs) that ABC Recycling intends to implement at the facility to reduce the potential for creating impacts to stormwater or adjacent Bellingham Bay. In addition to the following, ABC Recycling and its personnel will comply with the Port's existing BMPs that apply to both the lease area and use of the Bellingham Shipping Terminal (BST) by following a set operational plan laid out in this document and detailed in the BST's ISGP.

Good Housekeeping:

- Vacuum paved surfaces within the facility with a vacuum sweeper (or a sweeper with a vacuum attachment) to remove accumulated pollutants a minimum of once per quarter
- Identify and control on-site sources of dust, thought to be primarily the existing gravel surface, to minimize stormwater contamination from the deposition of dust on areas exposed to precipitation. This will be done on an as needed basis using a water truck or other wetting measures and will be employed based on visual assessment of dust.
- All dumpsters will have a lid that will remain closed when not in use

Preventive Maintenance:

- Inspect all equipment and vehicles during site inspections for leaking fluids such as oil, antifreeze, etc. and take leaking equipment and vehicles out of service or prevent leaks from spilling on the ground until repaired. Inspections will occur daily for equipment used daily and at a minimum, once per week for all equipment.
- ABC Recycling has a robust preventative equipment maintenance program (Managers plus) and will implement this program for all equipment used on-site
- Immediately clean up spills and leaks (e.g., using absorbents, vacuuming, etc.) to prevent the discharge of pollutants.
- ABC Recycling assumes that the maintenance of the existing site storm drains, including the catch basins on the ABC leased area is the responsibility of ABC. ABC Recycling will monitor the catch ~~basin~~ basins

and clear debris in the catch basins reaches 60% of the sump depth or if the debris surface is within 6 inches below the outlet pipe. Inlet protection will be installed and maintained.

- At exposed soil areas:
 - Repair and/or stabilize soft spots, ponding, wheel ruts and erodible soil areas. Use rock replacement as needed to control pollutants.

Spill Prevention-, Reporting and Emergency Cleanup:

- All chemical liquids, fluids, and petroleum products will be stored on an impervious surface that is surrounded with a containment berm or dike that can contain 10% of the total enclosed tank volume or spill trays that are capable of containing 110% of the total container volume. Containers will be clearly labeled to identify contents.
- Containment areas will be covered with a roof structure
- Spill kits will be kept within 25 feet of all stationary fueling stations, fuel transfer stations, and mobile fueling units, and at areas where a high potential for spills exists. At a minimum, spill kits shall include:
 - Personal Protective Equipment (chemical resistant gloves, goggles, etc.)
 - Oil absorbents capable of absorbing 15 gallons of fuel.
 - A storm drain plug or cover kit.
 - A non-water containment boom, a minimum of 10 feet in length with a 12-gallon absorbent capacity.
 - A non-metallic shovel.
 - Two five-gallon buckets with lids.
 - Spill kits will be sized appropriately to handle the largest potential spill
 - ABC will ensure the presence and constant observation/monitoring of the operator at fuel transfer locations at all times during fueling.
- Fueling nozzles will not be locked in the open position and tanks will not be topped off during fueling
- An area will be designated for fueling and storm drains that receive runoff from this area will be blocked, plugged, or covered during fueling
- Drip pans or equivalent containment measures will be used during all petroleum transfer operations
- Materials, equipment, and activities will be located so that leaks are contained in existing containment and diversion systems (storage of leaky or leak-prone vehicles and equipment awaiting maintenance will be confined to protected storm drain areas).
- Drip pans and absorbents will be used under or around leaky vehicles and equipment or store under cover when feasible
- ABC Recycling will maintain a spill log that includes the following information for chemical and petroleum spills: date, time, amount, location, and reason for spill; date/time clean-up completed, notifications made, and staff involved.
- Stop, contain and clean up all spills immediately upon discovery.
- Use appropriate clean up products for each spill type.
- Collect used spill control materials and residue in appropriate disposal containers and dispose according to the Washington Dangerous Waste Regulations (WAC173-303). Do not flush used absorbent materials to storm drains.

FOR A SPILL TO WATER IMMEDIATELY CALL:

Required Notifications	Specific Individual	Phone Number
Department of Ecology NW Region		206-594-0000
State of WA Emergency Management		1-800-258-5990
National Response Center		1-800-424-8802
Fire Department		911

ABC Facility Management	Andy Anthony	360-305-0344
Port of Bellingham BST Terminal Manager	Dave Warter	360-319-0786
Port of Bellingham Environmental	Alice Cords Ben Howard (Alt) Brian Gouran (Alt)	360-820-0108 206-334-6794 360-296-2441
Port of Bellingham Real Estate Representative	Terry Ilahi	360-927-4972

FOR A SPILL TO GROUND IMMEDIATELY CALL:

Required Notifications	Specific Individual	Phone Number
State of WA Emergency Management		1-800-258-5990
Fire Department		911
ABC Facility Management	Andy Anthony	360-305-0344
Port of Bellingham BST Terminal Manager	Dave Warter	360-319-0786
Port of Bellingham Environmental	Alice Cords Ben Howard (Alt) Brian Gouran (Alt)	360-820-0108 206-334-6794 360-296-2441
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Employee Training

- All ABC Recycling staff will be trained in:
 - ABC General orientation
 - Yard Operations
 - Hand tool and equipment
 - Hearing conservation
 - Ergonomics
 - Housekeeping/Preventative Maintenance
 - Emergency response
 - Spill Prevention
 - Fire Prevention
 - Emergency Evacuation
 - Bellingham Shipping Terminal SWPPP
 - Equipment specific training
 - How employees make a difference in complying with the SWPPP and preventing contamination of Stormwater, and identifying potential pollutant sources.
 - Spill response procedures, good housekeeping, maintenance requirements, and material management practices.
 - Annual ISGP training course put on by the Port staff in order to comply with BST storm water regulations.
- Training will be conducted online through DATS (ABC's Learning Management System) and hands on for practical demonstrations.
- Initial training will be conducted at the start of the employee's hire or prior to when current employees first work at the site. Ongoing training will be conducted at required frequencies per ABC's training matrix on DATS. All training will be tracked on DATS for record retention.

Monthly Inspections, Reporting, and Recordkeeping

- A designated site safety representative will conduct monthly inspections of the equipment and facility areas.
- ABC Recycling has a documented inspection checklist that can be conducted electronically or on paper that will be used for the monthly inspections and includes all required inspection items. All inspections will be uploaded to DATS for tracking purposes.
- ABC Recycling has a corrective action tracking procedure to ensure that identified deficiencies are followed up on afterwards, including listing the dates and required responsible personnel, so that appropriate action is taken in response to visual inspections.
- ABC Recycling will include monthly monitoring for Illicit discharges and report these to the Port as observed, following any/all Permit requirements pertaining to the Bellingham Shipping Terminal and the ABC lease site.

Structural BMPs

- A vinyl-type roof on a metal frame will be used at the site instead of galvanized roofing materials to reduce galvanized materials leading to potential zinc impact to stormwater
- Steel plates will be placed in areas of heavy storage to protect the integrity of the existing surface and not cause damage to surficial hard or gravel surfaces
- Perimeter fencing will consist of temporary containment fencing and will not be dug below the existing grade to reduce the need for excavation into underlying soils

Loading and Unloading

- All bulk cargo loading will be performed with either conveyor bulk loaders, self-contained grapples operated by ship's gear or tilt pan and LH420 mobile harbour crane.
- All trucking in and out of the Bellingham Shipping Terminal will be performed by contract hauler(s).
- Movement of scrap from storage area to the dock and from the barge to the storage area will be done by off-road haul trucks.
- A spill plate consisting of rubber matting will be used for catching and redirecting any incidental spillage when transloading clean scrap between the shore and a vessel for transport
- A tilt pan will be used to load vessels. A dump truck will dump scrap metal onto the tilt pan which will then direct scrap to the vessel. Once material is on the vessel, a crane on the vessel typically redistributes the material to balance the load on the vessel for safe transport
- ABC Recycling will sweep the dock area after loading to remove any spilled scrap metal from the surface of the dock

Erosion and Sediment Control BMPs

Erosion and sediment controls are generally not applicable since there will be no digging, soil disturbance, or stockpiling of materials that could be eroded (e.g., no sand or gravel stockpiles) ABC will utilize the Port owned rumble strips outside our gate, on the Shipping Terminal property to reduce risk of track out from the Log Pond lease site. ABC will also maintain the rumble strips, keeping them cleaned out and maintain their structural integrity.

Treatment BMPs

ABC Recycling understands that stormwater is currently being treated and managed by the Port in the Aerated Stabilization Basin (ASB). ABC Recycling also understands that no additional treatment BMPs are required at this time to specifically address stormwater generated by ABC Recycling's lease area prior to it entering the Port-controlled stormwater collection and treatment system. However, ABC will utilize catch basin filter socks, as well as booms/bales around catch basins within the 6-acre lease site.

I hope this gives the Port an understanding of ABC's intended use of the 6-acre parcel, as well as a description of our operation at the Bellingham Shipping Terminal. Please let us know if you would like us to provide any more clarification or description of any part of our intended use.

Best Regards,

Andy Anthony
Vice President, US Operations



ABC RECYCLING
PORT OF BELLINGHAM

HAUL ROUTES C-2.2

Project	
Drawn	
Checked	
Scale	AS SHOWN
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Sheet	25 of 28
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File Path	\\server\abc\10/20/2011
File Size	10,200,000
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File Date	10/20/2011
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File Owner	abc
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File Security	Normal
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File Indexing	None
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File Auditing	None
File Monitoring	None
File Backup	None
File Restore	None
File Delete	None
File Move	None
File Copy	None
File Paste	None
File Print	None
File Save	None
File Open	None
File Close	None
File Exit	None
File Help	None
File About	None
File Settings	None
File Preferences	None
File Options	None
File Tools	None
File Views	None
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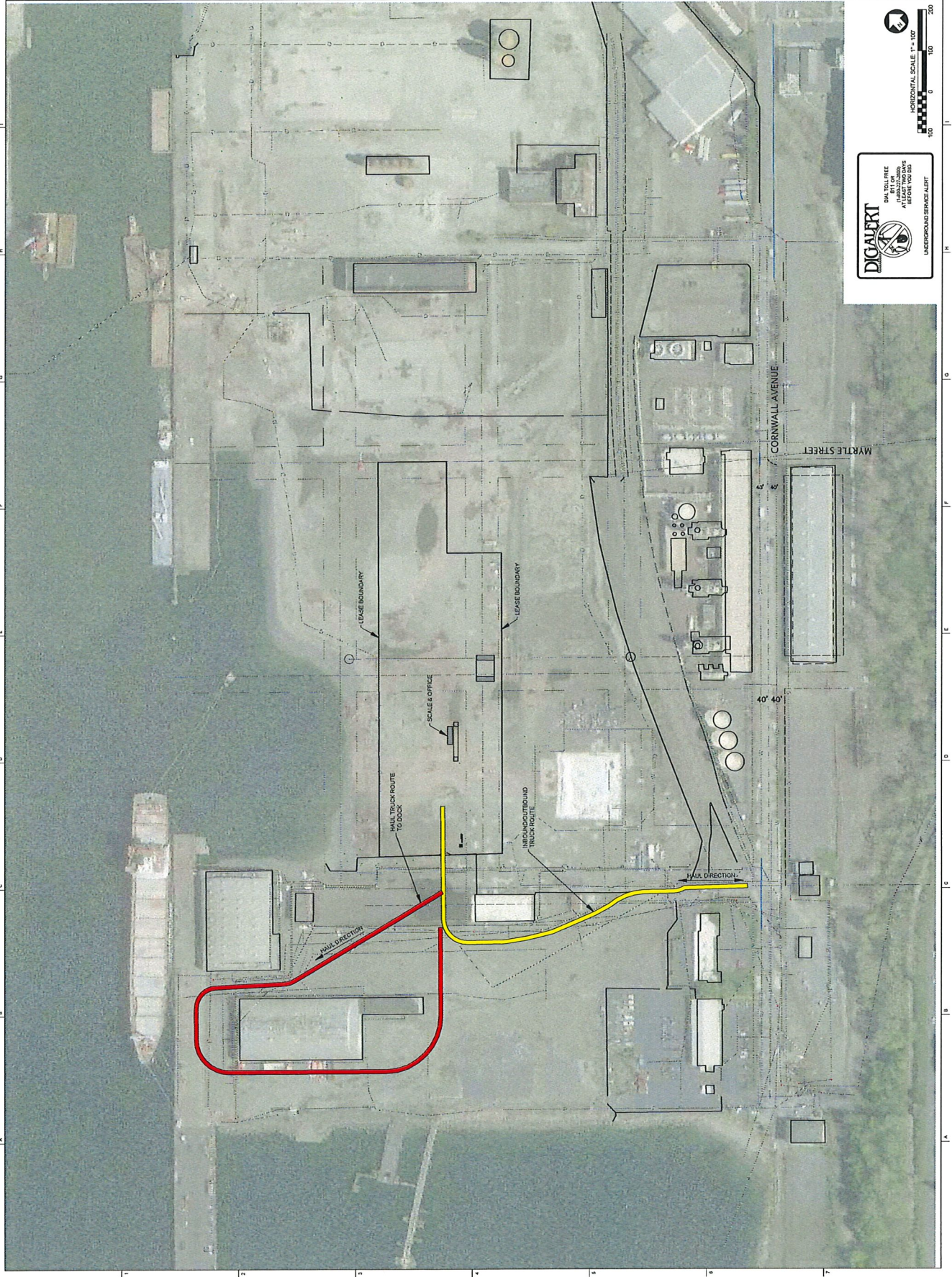
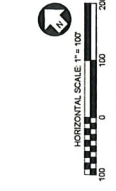


EXHIBIT "F"
Best Management Practices

BELLINGHAM SHIPPING TERMINAL

**STORMWATER POLLUTION PREVENTION
CREW BRIEFING**

This facility is equipped with stormwater treatment systems. Operations at the Bellingham Shipping Terminal (BST) must be conducted in a manner that maintains the operation of those systems and prevents damage to them. The following practices are implemented at BST for the purpose of preventing stormwater pollution and complying with the Industrial Stormwater General Permit.

To minimize or prevent stormwater pollution:

1. *Do not dump any polluting fluid or any other pollutant down any storm drains or let anything flow or blow into the water.*
2. *Do not hose down or wash down any surfaces on site.*
3. *Keep all paved areas clean of debris that could contaminate stormwater.*
4. *Keep all dumpster lids closed.*
5. *Prevent spills and leaks of liquids particularly during operation of equipment.*
6. *When not in use, park equipment in a designated area where drips and spills can be controlled.*
7. *Place drip pans under any observed leaks until they can be repaired.*
8. *Use oil containment booms to contain and dry absorbents to clean up spills and leaks of pollutant liquids immediately.*
9. *Observe storm drainage and stormwater pollution prevention systems during daily activities and report any issues to management.*
10. *When mobile fueling is conducted:*
 - a. *Perform fueling in a contained area or area that does not discharge, if available.*
 - b. *Utilize drip pans or buckets under hose connections.*
 - c. *Block or cover nearby storm drains to prevent possible discharge in the event of a spill.*
 - d. *Have the required spill kit available.*
11. *When possible or practical, conduct activities indoors or under cover.*
12. *Regularly sweep or clean dust, litter or other materials that could be exposed to stormwater.*

Notify management of:

1. *Any outside leak, spill, or situation that can cause contamination of stormwater.*
2. *Any oil sheen in stormwater discharge or in receiving water.*
3. *Any unsatisfactory stormwater pollution control system operation.*

Contact Phone Numbers:

1. *Port of Bellingham Marine Terminals Manager: Dave Warter, 360-319-0786*
2. *Port of Bellingham Environmental Specialist: Alice Cords, 360-820-0108*