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Port of Seattle
2711 Alaskan Way
Seattle WA 98111



WASHINGTON STATE DEPARTMENT OF
Natural Resources
Peter Goldmark - Commissioner of Public Lands

AQUATIC LANDS OUTFALL EASEMENT
Terminal 10 Stormwater Outfall

EASEMENT NO. 51-086861

Grantor: Washington State Department of Natural Resources
Grantee(s): Port of Seattle
Legal Description: In front of Lots 8 and 9, Block 406, Seattle Tidelands, East ½ Section 12,
Township 24 North, Range 3 East, W.M.
Assessor's Property Tax Parcel or Account Number of parcel adjacent to this Easement: 766670-2960

THIS AGREEMENT is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and the Port of Seattle, a municipal corporation ("Port").

BACKGROUND

Certain state-owned aquatic lands located in King County, Washington, are subject to a use authorization granted by State to Lockheed Martin Corporation ("Lockheed") for an engineered material cap designed to isolate contaminated sediments from the surrounding environment ("Sediment Cap"). Lockheed constructed the Sediment Cap pursuant to a Consent Decree negotiated between Lockheed and the United States of America (through the Environmental

Protection Agency or "EPA") and entered in the District Court for the Western District of Washington, Seattle Division, on July 23, 2003, Civil Action No. CV03-118C, a copy of which is recorded in the King County Auditor's Office under File No. 951020501.

The Port desires to use approximately 0.09 acres (4,039 square feet) of these state-owned aquatic lands for the purpose of installing a connection to a new storm water conveyance system, improving an existing upland cap installed under a separate Consent Decree and installing an outfall structure. The work proposed by Port will help avoid recontamination of the Sediment Cap by the migration of contaminated groundwater. The Port has obtained regulatory authorizations for this purpose, which are listed in Table 1 of Exhibit B.

Port has coordinated its plans with Lockheed and the EPA, and has obtained Lockheed's waiver for any claims against State for granting an easement to Port for this outfall. A copy of the waiver is attached as Exhibit C to this Agreement.

State is willing to grant an easement for a term to Port in reliance upon Lockheed's waiver and Port's promises to construct and operate the storm water conveyance system and outfall in compliance with all laws and permits and in the manner as described in all regulatory authorizations. State has authority to enter this Easement under Chapter 43.12, Chapter 43.30, and Title 79 of the Revised Code of Washington (RCW).

Nonetheless, State's goals are to promote water re-use and reduce reliance on in-water disposal of waste effluent, storm water and other discharges that affect the use and environmental conditions of state-owned aquatic lands and associated biological communities. Therefore, future grants of easement rights will depend on Port's satisfactory progress toward implementation of reasonably practical disposal alternatives, if any.

THEREFORE, the Parties agree as follows:

SECTION 1 GRANT OF EASEMENT

1.1 Easement Defined.

- (a) State hereby grants and conveys to Port a nonexclusive easement, subject to the terms and conditions of this agreement, over, upon, and under the real property described in Exhibit A. In this agreement, the term "Easement" means this agreement and the rights granted; the term "Easement Property" means the real property subject to this agreement.
- (b) This Easement is subject to all valid interests of third parties noted in the records of King County, or on file in the Office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes.
- (c) The Easement Property is on real property subject to Use Authorization Agreement No. 51-075781 issued by State to Lockheed. Port is fully responsible

for all coordination with and approvals from Lockheed necessary for Port to exercise rights under this Easement.

- (d) This Easement does not include any right to harvest, collect or damage any natural resource, including aquatic life or living plants, any water rights, or any mineral rights, including any right to excavate or withdraw sand, gravel, or other valuable materials, except to the extent expressly permitted in Exhibit B.

1.2 Survey and Easement Property Descriptions.

- (a) Port prepared Exhibit A, which describes the Easement Property. Port warrants that Exhibit A is a true and accurate description of the Easement boundaries and the improvements to be constructed or already existing in the Easement area.
- (b) Port shall not rely on any written legal descriptions, surveys, plats, or diagrams ("property description") provided by State. Port shall not rely on State's approval or acceptance of Exhibit A or any other Port-provided property description as affirmation or agreement that Exhibit A or other property description is true and accurate. Port's obligation to provide a true and accurate description of the Easement Property boundaries is a material term of this Easement.
- (c) State accepts a preliminary Exhibit A upon the Commencement Date of this Easement. Port shall submit a record of survey to be the final Exhibit A for State's approval within sixty (60) days of the Commencement Date. Upon State's written approval, the final Exhibit A will be recorded by the Port with the King County Auditor and will supersede the preliminary Exhibit A. Until superseded, the preliminary Exhibit A has full legal effect.

1.3 Condition of Easement Property. State makes no representation regarding the condition of the Easement Property, improvements located on the Easement Property, the suitability of the Easement Property for Port's Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Easement Property, or the existence of hazardous substances on the Easement Property.

SECTION 2 USE

2.1 Permitted Use. Port shall use the Easement Property for construction and operation of a stormwater outfall and an approximately 2,968 square foot area of paved fill, supported by a bulkhead (the "Permitted Use") and for no other purpose. Exhibit B describes the Permitted Use in detail. The Permitted Use is subject to additional obligations described in Exhibit B.

2.2 Restrictions on Permitted Use and Operations. The following limitations apply to the Property and adjacent state-owned aquatic lands. Port's compliance with the following does not limit Port's liability under any other provision of this Lease.

- (a) Port shall not cause or permit:
 - (1) Damage to natural resources, except as incidental to construction of Improvements necessary for the Permitted Use as described in Exhibit B,

- regardless of whether the damages are a direct or indirect result of the Permitted Use,
- (2) Waste, or
 - (3) Deposit of material, unless approved by State in writing and except as incidental to construction of Improvements necessary for the Permitted Use as described in Exhibit B. This prohibition includes deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter. Outfall discharges in full compliance with a valid National Pollutant Discharge Elimination System (NPDES) Permit are not subject to this prohibition.

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

2.4 Liens and Encumbrances. Port shall keep the Easement Property free and clear of any liens and encumbrances arising out of or relating to its use of the Easement Property, unless expressly authorized by State in writing.

2.5 Interference with Other Uses.

- (a) Port shall exercise Port's rights under this Easement in a manner that minimizes or avoids interference with the rights of State, the public or others with valid right to use or occupy the Easement Property or surrounding lands and water.
- (b) To the fullest extent reasonably possible, Port shall place and construct Improvements in a manner that allows unobstructed movement in and on the waters above and around the Easement Property.
- (c) Except in an emergency, Port shall provide State with written notice of future construction or other significant activity on Easement Property at least thirty (30) days in advance. "Significant Activity" means any activity that may affect use or enjoyment by the State, public, or others with valid rights to use or occupy the Easement Property or surrounding lands and water. State has already received written notice of the construction described in the Construction Documents in Exhibit B.
- (d) Port shall mark the location of any hazards associated with the Permitted Use and any Improvements in a manner that ensures reasonable notice to the public.

2.6 Amendment Upon Change of Permit Status. State reserves the right to amend the terms and conditions of this Easement whenever any regulatory authority (1) modifies a permit in a manner affecting the provisions of this Easement or (2) allows for a change in the manner of outfall operation including, but not limited to, a change in the type, quality, or quantity of discharge.

SECTION 3 TERM

3.1 Term Defined. The term of this Easement is ten (10) years (the "Term"), beginning on the first (1st) day of December 2011 (the "Commencement Date"), and ending on the thirtieth (30th) day of November 2021 (the "Termination Date"), unless terminated sooner under the terms of this Easement.

3.2 Renewal of the Easement.

- (a) Subject to requirements in Paragraph 3.2(b), Port may renew this Easement for two (2) additional terms of ten (10) years each. The initial Term of this Easement, and all renewal terms, is thirty (30) years in the aggregate. Port must file with State a written request to renew at least one (1) year prior to the Termination date and State will respond with denial or consent to Port within ninety (90) days. Renewal will be effective upon State's agreement. State may deny the renewal request if Port is in default at the time. The terms and conditions of any renewal term will be the same as this Easement, except that State may charge fees for the renewal term if authorized by law; require financial security if authorized by law; modify the provisions dealing with hazardous waste or impacts to natural resources; and modify or add terms concerning conservation of aquatic habitat.
- (b) Reduction of Discharge on State-Owned Aquatic Lands.
 - (1) Port warrants that Port considered alternatives to minimize impact of discharge.
 - (2) At the time of application to renew the NPDES Permit, or every five (5) years, whichever is first, Port shall submit to State a report addressing progress to reduce discharges on state-owned aquatic lands and associated biological communities. "Progress" means Port is analyzing or developing alternative disposal methods including, but not limited to, (1) reduction of inflow and infiltration; (2) groundwater recharge; (3) industrial process supply; (4) water conservation programs; (5) other water re-use projects.
 - (3) State will consider reports submitted under Paragraph 3.2(b)(2) in evaluation of Port's application to renew this Easement. If reports demonstrate insufficient progress toward disposal alternatives that abate impacts to state-owned aquatic lands and associated biological communities, State may either:
 - (i) Require Port to undertake investigation and analysis of reasonably practical disposal alternatives to the Permitted Use, or
 - (ii) Rely on State's alternatives analysis developed in accordance with WAC 332-30-122(2)(d) and other regulations.
 - (4) Port's failure to anticipate and conduct stormwater management alternatives investigation and analysis may delay or prevent renewal of this Easement or issuance of a new Easement.

3.3 End of Term.

- (a) Upon the expiration or termination of this Easement, Port shall remove Improvements in accordance with Section 7, Improvements, and surrender the Easement Property to State restored to a condition substantially like its natural state before construction and operation of the outfall.
- (b) If Easement Property does not meet the condition described in Paragraph 3.3(a), the following provisions apply:
 - (1) State shall provide Port a reasonable time to take all steps necessary to remedy the condition of the Easement Property. State may require Port to enter into a right-of-entry or other use authorization prior to the Port entering the Easement Property to remedy any breach of this Subsection 3.3.
 - (2) If Port fails to remedy the condition of the Easement Property in a timely manner, State may take any steps reasonably necessary to remedy Port's failure. Upon demand by State, Port shall pay all costs of State's remedy, including but not limited to the costs of removing and disposing of any material deposited improperly on the Easement Property, lost revenue resulting from the condition of the Easement Property, and any administrative costs associated with State's remedy.

SECTION 4 FEES

4.1 Fee. For the Term, Port shall pay to State for the outfall easement use an administrative fee calculated in accordance with RCW 79.110.230(1) in the amount of One Thousand Two Hundred Thirty Dollars (\$1,230.00). Additionally, for the fill area use, Port shall pay Forty-two Thousand Seven Hundred Forty-nine Dollars and Seventy-two Cents (\$ 42,749.72), which is due and payable on or before the Commencement Date. State shall bill Port for the administrative fee, which Port shall pay within thirty (30) days of billing. Any payment not paid by State's close of business on the date due is past due.

4.2 Payment Place. Port shall make payment to Department of Natural Resources, Financial Management Division, 1111 Washington St SE, PO Box 47041, Olympia, WA 98504-7041.

SECTION 5 OTHER EXPENSES

5.1 Utilities. Port shall pay all fees charged for utilities, if any, in connection with the Permitted Use.

5.2 Taxes and Assessments. Port shall pay all taxes, assessments, and other governmental charges, of any kind whatsoever, applicable or attributable to the Easement and the Permitted Use.

5.3 Failure to Pay. If Port fails to pay any of the amounts due under this Easement, State may pay the amount due, and recover its cost in accordance with Section 6.

5.4 Environmental Damages.

- (a) If required to compensate for damages to natural resources under Section 14, Port shall compensate State for lost or damaged resource values upon State's demand. The value of damages shall be determined in accordance with Paragraph 5.4(b).
- (b) Unless the Parties otherwise agree on the value, a three-member panel of appraisers will determine the measure of lost or damaged resource values. The appraisers shall be qualified to assess economic value of natural resources. State and Port each shall appoint and compensate one member of the panel. By consensus, the two appointed members shall select the third member, who will be compensated by State and Port equally. The panel shall base the calculation of damages on generally accepted valuation principles. The written decision of the majority of the panel shall bind the Parties.

SECTION 6 LATE PAYMENTS AND OTHER CHARGES

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

6.2 Interest Penalty for Past Due Fees and Other Sums Owed.

- (a) Port shall pay interest on the past due fees at the rate of one percent (1%) per month until paid, in addition to paying the late charges determined under Subsection 6.1, above.
- (b) If State pays or advances any amounts for or on behalf of Port, Port shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Port of the payment or advance. This includes, but is not limited to taxes, assessments, insurance premiums, costs of removal and disposal of unauthorized materials pursuant to Subsection 2.2 above, costs of removal and disposal of improvements pursuant to Section 7 below, or other amounts not paid when due.

6.3 Referral to Collection Agency and Collection Agency Fees. If State does not receive payment within thirty (30) days of the due date, State may refer the unpaid amount to a collection agency as provided by RCW 19.16.500 or other applicable law. Upon referral, Port shall pay collection agency fees in addition to the unpaid amount.

6.4 No Accord and Satisfaction. If Port pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. No endorsement or

statement on any check, any payment, or any letter accompanying any check or payment constitutes accord and satisfaction.

SECTION 7 IMPROVEMENTS

7.1 Improvements Defined.

- (a) "Improvements," consistent with Chapters 79.105 through 79.145 RCW, are additions within, upon, or attached to the land. This includes, but is not limited to, structures and fixtures.
- (b) "Personal Property" means items that can be removed from the Easement Property without (1) injury to the Easement Property, adjacent state-owned lands or Improvements or (2) diminishing the value or utility of the Easement Property, adjacent state-owned lands or Improvements.
- (c) "State-Owned Improvements" are Improvements made or owned by State. State-Owned Improvements include any construction, alteration, or addition to State-Owned Improvements made by Port.
- (d) "Port-Owned Improvements" are Improvements made by Port with State's consent.
- (e) "Unauthorized Improvements" are Improvements made by Port on the Easement Property without State's prior consent or Improvements made by Port that do not conform with plans submitted to and approved by the State.
- (f) "Improvements Owned by Others" are Improvements made by Others with a right to occupy or use the Easement Property or adjacent state-owned lands.

7.2 Existing Improvements. On the Commencement Date, the following Improvements Owned by Others are located on the Easement Property: the Sediment Cap constructed and maintained by Lockheed. The following Port-Owned Improvements are located on the Easement Property: an approximately 2,968 square-foot area of fill contained by a steel sheetpile bulkhead and surfaced with asphalt and concrete paving.

7.3 Construction, Major Repair, Modification, and Demolition.

- (a) This Subsection 7.3 governs construction, alteration, replacement, major repair, modification alteration, demolition and deconstruction of Improvements ("Work"). Section 11 governs routine maintenance and minor repair of Improvements and Easement Property.
- (b) Except in an emergency, Port shall not conduct any Work without State's prior written consent, as follows:
 - (1) State may deny consent if State determines that denial is in the best interests of the State. State may impose additional conditions reasonably intended to protect and preserve the Easement Property. If Work is for removal of Improvements at End of Term, State may waive removal of any or all Improvements.

- (2) Except in an emergency, Port shall submit to State plans and specifications describing the proposed Work at least sixty (60) days before submitting permit applications to regulatory authorities unless Port and State otherwise agree to coordinate permit applications. At a minimum or if no permits are necessary, Port shall submit plans and specifications at least ninety (90) days before commencement of Work.
- (3) State waives the requirement for consent if State does not notify Port of its grant or denial of consent within sixty (60) days of submittal.
- (c) Port shall notify State of emergency Work within five (5) business days of the start of such Work. Upon State's request, Port shall provide State with plans and specifications or as-builts of emergency Work.
- (d) Port shall not commence or authorize Work until Port has:
 - (1) Obtained all required permits.
 - (3) Provided notice of Significant Activity in accordance with Paragraph 2.5(c).
- (e) Port shall preserve and protect Improvements Owned by Others, if any.
- (f) Port shall preserve all legal land subdivision survey markers and witness objects ("Markers.") If disturbance of a Marker will be a necessary consequence of Port's construction, Port shall reference and/or replace the Marker in accordance with all applicable laws and regulations current at the time, including, but not limited to Chapter 58.24 RCW. At Port's expense, Port shall retain a registered professional engineer or licensed land surveyor to reestablish destroyed or disturbed Markers in accordance with U.S. General Land Office standards.
- (g) Before completing Work, Port shall remove all debris and restore the Easement Property, as nearly as possible, to its natural condition before the Work began. If Work is intended for removal of Improvements at End of Term, Port shall restore the Easement Property in accordance with Subsection 3.3, End of Term.
- (h) Upon completing work, Port shall promptly provide State with as-built plans and specifications.

7.4 Port-Owned Improvements at End of Easement.

- (a) Disposition.
 - (1) Port shall remove Port-Owned Improvements in accordance with Subsection 7.3 upon the expiration, termination, or cancellation of the Easement unless State waives the requirement for removal or State determines that abandonment of Improvements is in the best interests of State.
 - (2) Port-Owned Improvements remaining on the Easement Property on the expiration, termination or cancellation date become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership.
 - (3) If Port-Owned Improvements remain on the Easement Property after the expiration, termination, or cancellation date without State's consent, State

- may remove all Improvements and Port shall pay the costs of removal and disposal.
- (b) Determination of Removal or Abandonment.
 - (1) State may waive removal of any or all Port-Owned Improvements whenever State determines that it is in the best interests of the State. State will consider it in the best interests of the State to waive removal where abandonment is less detrimental than removal to the long-term use and management of state-owned lands and resources.
 - (2) If Port renews the Easement or enters into a new Easement, State may waive requirement to remove Port-Owned Improvements. State also may consent to Port's continued ownership of Port-Owned Improvements.
 - (3) If Port does not renew the Easement or enter into a new Easement, State and Port shall coordinate removal or abandonment as follows:
 - (i) Port must notify State at least one (1) year before the Termination Date of its proposal to either leave or remove Port-Owned Improvements.
 - (ii) State, within ninety (90) days, will notify Port whether State (1) does not waive removal or (2) consents to abandonment.
 - (c) Port's Obligations if State Consents to Abandonment.
 - (1) Port shall conduct Work necessary for abandonment in accordance with Subsection 7.3.
 - (2) The submittal of plans and specifications shall identify means for plugging pipelines and notifying public of abandoned Improvements.
 - (d) Port's Obligations if State Waives Removal.
 - (1) Port shall not remove Improvements if State waives the requirement for removal of any or all Port-Owned Improvements.
 - (2) Port shall maintain such Improvements in accordance with this Easement until the expiration, termination, or cancellation date. Port is liable to State for cost of repair if Port causes or allows damage to Improvements State has designated to remain.

7.5 Disposition of Unauthorized Improvements.

- (a) Unauthorized Improvements belong to State, unless State elects otherwise.
- (b) State may either:
 - (1) Consent to Port ownership of the Improvements, or
 - (2) Charge use and occupancy fee in accordance with RCW 79.105.200 for the Improvements from the time of installation or construction and
 - (i) Require Port to remove the Improvements in accordance with Subsection 7.3, in which case Port shall pay use and occupancy fee for the Improvements until removal,
 - (ii) Consent to Improvements remaining and Port shall pay use and occupancy fee for the use of the Improvements, or

- (iii) Remove Improvements and Port shall pay for the cost of removal and disposal, in which case Port shall pay use and occupancy fee for use of the Improvements until removal and disposal.

7.6 Disposition of Personal Property.

- (a) Port retains ownership of Personal Property unless Port and State agree otherwise in writing.
- (b) Port shall remove Personal Property from the Easement Property by the Termination Date. Port is liable for any damage to the Easement Property and to any Improvements that may result from removal of Personal Property.
- (c) State may sell or dispose of all Personal Property left on the Easement Property after the Termination Date.
 - (1) If State conducts a sale of Personal Property, State shall apply proceeds first to the State's administrative costs in conducting the sale, second to payment of amount that then may be due from the Port to the State, and State shall pay the remainder, if any, to the Port.
 - (2) If State disposes of Personal Property, Port shall pay for the cost of removal and disposal.

SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

8.1 Definitions.

- (a) "Hazardous Substance" means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup.
- (b) "Release or threatened release of Hazardous Substance" means a release or threatened release as defined under any law described in Paragraph 8.1(a).
- (c) "Utmost care" means the standard of care applicable under the Washington State Model Toxics Control Act ("MTCA"), Chapter 70.105 RCW, as amended.
- (d) "Port and affiliates" when used in this Section 8 means Port or Port's contractors, agents, employees, and affiliates, or any person on the Easement Property in connection with the Permitted Use.
- (e) "Liabilities" as used in this Section 8 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys' fees and disbursements), penalties, or judgments.

8.2 General Conditions.

- (a) Port's obligations under this Section 8 extend to the area in, on, under, or above:
 - (1) The Easement Property and
 - (2) Adjacent state-owned aquatic lands if affected by release of Hazardous Substances that occurs as a result of the Permitted Use.

- (b) Standard of Care.
 - (1) Port shall exercise the utmost care with respect to Hazardous Substances.
 - (2) In relation to the Permitted Use, Port shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable consequences of those acts or omissions, to the extent required to establish a viable, third-party defense under the law.

8.3 Current Conditions and Duty to Investigate.

- (a) Hazardous Substances are known to exist in, on, or under the Easement Property.
- (b) This Easement does not impose a duty on State to conduct investigations or supply information to Port about Hazardous Substances.
- (c) Port is responsible for conducting all appropriate inquiry and gathering sufficient information concerning the Easement Property and the existence, scope, and location of any Hazardous Substances on or near the Easement Property necessary for the Port to meet Port's obligations under the Easement and utilize the Easement Property for the Permitted Use.

8.4 Use of Hazardous Substances.

- (a) Port and affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.
- (b) Port shall not undertake, or allow others to undertake by Port's permission, acquiescence, or failure to act, activities that result in a release or threatened release of Hazardous Substances.
- (c) If use of Hazardous Substances related to Port's use of the Easement Property results in violation of law:
 - (1) Port shall submit to State any plans for remedying the violations, and
 - (2) Port shall implement any remedial measures to restore the Easement Property or natural resources that State may require in addition to remedial measures required by regulatory authorities.

8.5 Management of Contamination.

- (a) Port shall not undertake activities that:
 - (1) Damage or interfere with the operation of remedial or restoration activities;
 - (2) Result in human or environmental exposure to contaminated sediments;
 - (3) Result in the mechanical or chemical disturbance of on-site habitat mitigation.
- (b) Port shall not interfere with access by:
 - (1) Employees and authorized agents of the Environmental Protection Agency (EPA), the Washington State Department of Ecology (Ecology), health department, or other similar environmental agencies; and

- (2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Easement Property.

8.6 Notification and Reporting.

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

8.7 Indemnification.

- (a) Port shall fully indemnify, defend, and hold State harmless from and against Liabilities that arise out of, or relate to:
 - (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Port and affiliates occurring whenever Port occupies or has occupied the Easement Property;
 - (2) The release or threatened release of any Hazardous Substance resulting from any act or omission of Port and affiliates occurring whenever Port occupies or has occupied the Easement Property.
- (b) Port shall fully indemnify, defend, and hold State harmless for Liabilities that arise out of or relate to Port's breach of obligations under Subsection 8.5.
- (c) Port is obligated to indemnify under this Subsection 8.7 regardless of whether a NPDES or other permit or license authorizes the discharge or release of Hazardous Substances.

8.8 Reservation of Rights.

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

8.9 Cleanup. If Port's act, omission, or breach of obligation under Subsection 8.4 results in a release of Hazardous Substances that exceeds the threshold limits of any applicable regulatory standard, Port shall, at Port's sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances in accordance with applicable law.

8.10 Sampling by State, Reimbursement, and Split Samples.

- (a) State may conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Property at any time to determine the existence, scope, or effects of Hazardous Substances.
- (b) If such Tests, along with any other information, demonstrate a breach of Port's obligations regarding Hazardous Substances under this Lease, Port shall promptly reimburse State for all costs associated with the Tests, provided State gave Port thirty (30) calendar days advance notice in nonemergencies and reasonably practical notice in emergencies.
- (c) In nonemergencies, Port is entitled to obtain split samples of Test samples, provided Port gives State written notice requesting split samples at least ten (10) calendar days before State conducts Tests. Upon demand, Port shall promptly reimburse State for additional cost, if any, of split samples.
- (d) If either Party conducts Tests on the Easement Property, the conducting Party shall provide the other with validated final data and quality assurance/quality control/chain of custody information about the Tests within sixty (60) calendar days of a written request by the other party, unless Tests are part of a submittal under Paragraph 8.6(c) in which case Port shall submit data and information to State without written request by State. Neither party is obligated to provide any analytical summaries or the work product of experts.

8.11 Closeout Assessment.

- (a) State may require Port to conduct a Closeout Environmental Assessment ("Closeout Assessment") prior to Termination of the Lease.
- (b) The purpose of the Closeout Assessment would be to determine the existence, scope, or effects of Hazardous Substances on the Easement Property and

associated natural resources resulting from the Permitted Use. The Closeout Assessment may include sediment sampling.

- (c) No later than one hundred eighty (180) calendar days prior to the Termination Date, or within ninety (90) days of valid notice to early termination, State shall provide Port with written notice that State requires a Closeout Assessment.
- (d) Within sixty (60) days of State's notice that Closeout Assessment is required and before commencing assessment activities, Port shall submit a proposed plan for conducting the Closeout Assessment in writing for State's approval. Port shall coordinate the Closeout Assessment with Lockheed and all applicable regulatory authorities.
- (e) If State fails to approve or disapprove of the plan in writing within sixty (60) days of its receipt, State waives requirement for approval.
- (f) Port shall be responsible for all costs required to complete planning, sampling, analyzing, and reporting associated with the Closeout Assessment.
- (g) If the initial results of the Closeout Assessment disclose that Hazardous Substances may have migrated to other property as a result of the Permitted Use, State may require additional Closeout Assessment work to determine the existence, scope, and effect of Hazardous Substances on adjacent property, any other property subject to use by Port in conjunction with its use of the Easement Property, or on associated natural resources.
- (h) Port shall submit Closeout Assessment to State upon completion.
- (i) As required by law, Port shall report to the appropriate regulatory authorities if the Closeout Assessment discloses a release or threatened release of Hazardous Substances.

SECTION 9 ASSIGNMENT

Port shall not assign any part of Port's interest in this Easement or the Easement Property or grant any rights or franchises to third parties without State's prior written consent, which State shall not unreasonably condition or withhold. State reserves the right to reasonably change the terms and conditions of this Easement upon State's consent to assignment.

SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE

10.1 Indemnity.

- (a) Port shall indemnify, defend, and hold State, its employees, officers, and agents harmless from any Claims arising out of the Permitted Use or activities related to the Permitted Use by Port, its contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees.
- (b) "Claim" as used in this Subsection 10.1 means any financial loss, claim, suit, action, damages, expenses, fees (including attorneys' fees), penalties, or judgments attributable to bodily injury; sickness; disease; death; damages to

tangible property, including, but not limited to, land, aquatic life, and other natural resources; and loss of natural resource values. "Damages to tangible property" includes, but is not limited to, physical injury to the Easement Property and damages resulting from loss of use of the Easement Property.

- (c) Port is obligated to indemnify under this Subsection 10.1 regardless of whether any other provision of this Agreement or NPDES or other permit or license authorizes the discharge or release of a deleterious substance resulting in a claim.
- (d) No damages or fees paid by Port to State under other provisions of this Easement are a setoff against Port's obligation to indemnify under this Subsection 10.1.
- (e) State shall not require Port to indemnify, defend, and hold State harmless for claims that arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents.
- (f) Port waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold State and its agencies, officials, agents, or employees harmless.
- (g) Section 8, Environmental Liability/Risk Allocation, exclusively governs Port's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold State harmless for Hazardous Substances.

10.2 Insurance Terms.

- (a) Insurance Required.
 - (1) At its own expense, Port shall procure and maintain during the Term of this Easement, the insurance coverages and limits described in this Subsection 10.2 and in Subsection 10.3, Insurance Types and Limits. State may terminate this Easement if Port fails to maintain required insurance.
 - (2) Unless State agrees to an exception, Port shall provide insurance issued by an insurance company or companies admitted to do business in the State of Washington and have a rating of A- or better by the most recently published edition of Best's Reports. Port may submit a request to the risk manager for the Department of Natural Resources for an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies must comply with Chapters 48.15 RCW and 284-15 WAC.
 - (3) The State of Washington, the Department of Natural Resources, its elected and appointed officials, agents, and employees must be named as an additional insured on all general liability, excess, umbrella, property, builder's risk, and pollution legal liability insurance policies.
 - (4) All insurance provided in compliance with this Easement must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.
- (b) Waiver.
 - (1) Port waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Easement covers these damages.

- (2) Except as prohibited by law, Port waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this Easement.
- (c) Proof of Insurance.
 - (1) Port shall provide State with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Easement and, if requested, copies of policies to State.
 - (2) The certificate(s) of insurance must reference additional insureds and the Easement number.
 - (3) Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies.
- (d) State must receive written notice before cancellation or non-renewal of any insurance required by this Easement, in accordance with the following:
 - (1) Insurers subject to RCW 48.18 (admitted and regulated by the Insurance Commissioner): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State forty-five (45) days' advance notice of cancellation or non-renewal.
 - (2) Insurers subject to RCW 48.15 (surplus lines): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State thirty (30) days' advance notice of cancellation or non-renewal.
- (e) Adjustments in Insurance Coverage.
 - (1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.
 - (2) Port shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.
- (f) If Port fails to procure and maintain the insurance described above within fifteen (15) days after Port receives a notice to comply from State, State may either:
 - (1) Deem the failure an Event of Default under Section 14, or
 - (2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Port shall pay to State the full amount paid by State, together with interest at the rate provided in Subsection 6.2 from the date of State's notice of the expenditure until Port's repayment.
- (g) General Terms.
 - (1) State does not represent that coverage and limits required under this Easement will be adequate to protect Port.
 - (2) Coverage and limits do not limit Port's liability for indemnification and reimbursements granted to State under this Easement.
 - (3) If Port rebuilds under Paragraph 12.1(b), the Parties shall use any insurance proceeds payable by reason of damage or destruction to Easement Property first to restore the Easement Property, then to pay the

cost of the reconstruction, then to pay the State any sums in arrears, and then to Port.

10.3 Insurance Types and Limits.

(a) General Liability Insurance.

- (1) Port shall maintain commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal injury, or property damage arising on the Easement Property and/or arising out of the Permitted Use and, if necessary, commercial umbrella insurance with a limit of not less than One Million Dollars (\$1,000,000) per each occurrence. If such CGL or MGL insurance contains aggregate limits, the general aggregate limit must be at least twice the "each occurrence" limit. CGL or MGL insurance must have products-completed operations aggregate limit of at least two times the "each occurrence" limit.
- (2) CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.
- (3) MGL insurance must have no exclusions for non-owned watercraft.

(b) Workers' Compensation.

(1) State of Washington Workers' Compensation.

- (i) Port shall comply with all State of Washington workers' compensation statutes and regulations. Port shall provide workers' compensation coverage for all employees of Port. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with the Permitted Use or related activities.
- (ii) If Port fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Port shall indemnify State. Indemnity includes all fines; payment of benefits to Port, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.

- (2) Longshore and Harbor Workers' and Jones Acts. Longshore and Harbor Workers' Act (33 U.S.C. Section 901 *et seq.*) and/or the Jones Act (46 U.S.C. Section 688) may require Port to provide insurance coverage in some circumstances. Port shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with law. Port is

responsible for all civil and criminal liability arising from failure to maintain such coverage.

- (c) **Employer's Liability Insurance.** Port shall procure employer's liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident or One Million Dollars (\$1,000,000) each employee for bodily injury by disease.

SECTION 11 ROUTINE MAINTENANCE AND REPAIR

11.1 State's Repairs. This Easement does not obligate State to make any alterations, maintenance, replacements, or repairs in, on, or about the Easement Property during the Term.

11.2 Port's Repairs and Maintenance.

- (a) Routine maintenance and repair are acts intended to prevent a decline, lapse, or cessation of the Permitted Use and associated Improvements. Routine maintenance or repair is the type of work that does not require regulatory permits.
- (b) At Port's sole expense, Port shall keep and maintain all Port-Owned Improvements and the Easement Property as it relates to the Permitted Use in good order and repair and in a safe condition. State's consent is not required for routine maintenance or repair.
- (c) At Port's own expense, Port shall make any additions, repairs, alterations, maintenance, replacements, or changes to the Easement Property or to any Improvements on the Easement Property that any public authority requires because of the Permitted Use.
- (d) Port shall follow procedures for the inspection, routine maintenance, and emergency plans in Exhibit B. Upon State's request, Port shall provide State with a copy of complete Operation and Maintenance Manual and/or Facilities Plan.
- (e) Upon completion of maintenance activities, Port shall remove all debris and restore the Easement Property, as nearly as possible, to the condition prior to the commencement of work.

SECTION 12 DAMAGE OR DESTRUCTION

12.1 Notice and Repair.

- (a) In the event of material damage to or destruction of the Easement Property or any Improvements, Port shall promptly give written notice to State. State does not have actual knowledge of the damage or destruction of the Easement Property or any Improvements without Port's written notice.
- (b) In the event of material damage or destruction of Improvements, Port may terminate the Easement, provided Port notifies State in writing within thirty (30) days of casualty, of intent to terminate. Port shall terminate in accordance with Subsection 3.3, End of Term. If not terminating, Port shall promptly reconstruct,

repair, or replace any Improvements in accordance with Subsection 7.3, Construction, Major Repair, Modification, and Demolition. Where material damage to state-owned aquatic lands or natural resources is attributable to the Permitted Use, Port shall promptly restore the lands or resources to their condition before the damage.

12.2 State's Waiver of Claim. State does not waive any claims for damage or destruction of the Easement Property unless State provides written notice to Port of each specific claim waived.

12.3 Insurance Proceeds. Port's duty to reconstruct, repair, or replace under this Section 12 is not conditioned upon the availability of any insurance proceeds. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).

SECTION 13 CONDEMNATION

In the event of condemnation, the Parties shall allocate the award between State and Port based upon the ratio of the fair market value of (1) Port's rights in the Easement Property and Port-Owned Improvements and (2) State's interest in the Easement Property; the reversionary interest in Port-Owned Improvements, if any; and State-Owned Improvements. In the event of a partial taking, the Parties shall compute the ratio based on the portion of Easement Property or Improvements taken. If Port and State are unable to agree on the allocation, the Parties shall submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

SECTION 14 BREACH, REMEDIES, AND TERMINATION

14.1 Breach and Right to Cure.

- (a) State shall provide written notice of Port's breach of the terms and conditions of this Easement.
- (b) Port shall have sixty (60) days to cure the breach. If breach arises from Port's failure to comply with Subsection 2.2 or results in damages to natural resources, Port shall additionally mitigate environmental damages in accordance with Paragraph 14.2(c).
- (c) For breaches not capable of cure within sixty days, State will not unreasonably withhold approval of a reasonable alternative cure schedule. Port shall submit a cure schedule within thirty (30) days of notice of breach. Port shall work diligently and in good faith to execute the cure.

14.2 Remedies

- (a) State may terminate this Easement upon Port's failure to timely cure a breach.
- (b) If the breach that Port fails to timely cure arises from Subsection 2.2 or results in damages to natural resources,

- (1) State may, without terminating the easement, restore the natural resources and charge Port costs and/or charge Port for damages in accordance with Subsection 5.4. Upon demand by State, Port shall pay all costs and/or damages, or
- (2) Port shall mitigate damages as follows:
 - (i) Port shall prepare a written plan, subject to State's approval, incorporating measures to (1) eliminate or minimize future impacts to natural resources, (2) replace unavoidable lost or damaged natural resource values, and (3) monitor and report on plan implementation. Port shall implement the plan upon State's approval.
 - (ii) Port shall compensate State in accordance with Subsection 5.4 for irreplaceable natural resource values.
 - (iii) If a regulatory authority requires Port to provide mitigation on state-owned aquatic lands, Port shall coordinate the proposed mitigation activities with state and obtain an appropriate use authorization prior to commencement of activities.
- (c) The remedies specified under this Subsection 14.2 are not exclusive of other remedies or means of redress to which the State is lawfully entitled for Port's breach or threatened breach of any provision of this Easement.

14.3 Termination by Nonuse. If Port does not use the Easement Property for a period of three (3) successive years, this Easement terminates without further action by State. Port's rights revert to State upon Termination by Nonuse.

14.4 Termination by Port. Port may terminate this Easement upon providing State with written notice of intent to terminate. Termination by Port is effective upon completion of all obligations under Subsection 3.3.

SECTION 15 NOTICE AND SUBMITTALS

Following are the locations for delivery of notice and submittals required or permitted under this Easement. Any Party may change the place of delivery upon ten (10) days written notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES
Aquatic Resources Division, Ports Program
1111 Washington Street MS 47027
Olympia WA 98504-7027

Port: PORT OF SEATTLE
Seaport Division
2711 Alaskan Way
Seattle WA 98121-1107

mailing: PO Box 1209
Seattle WA 98111-1209

The Parties may deliver any notice in person, by facsimile machine, or by certified mail. Depending on the method of delivery, notice is effective upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after mailing. All notices must identify the Easement number. On notices transmitted by facsimile machine, the Parties shall state the number of pages contained in the notice, including the transmittal page, if any.

SECTION 16 MISCELLANEOUS

16.1 Authority. Port and the person or persons executing this Easement on behalf of Port represent that Port is qualified to do business in the State of Washington, that Port has full right and authority to enter into this Easement, and that each and every person signing on behalf of Port is authorized to do so. Upon State's request, Port shall provide evidence satisfactory to State confirming these representations.

16.2 Successors and Assigns. This Easement binds and inures to the benefit of the Parties, their successors, and assigns.

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

16.4 Entire Agreement. This Easement, including the exhibits and addenda, if any, contains the entire agreement of the Parties. This Easement merges all prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Easement Property.

16.5 Waiver.

- (a) The waiver of any breach or default of any term, covenant, or condition of this Easement is not a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Easement. State's acceptance of payment is not a waiver of any preceding or existing breach other than the failure to pay the particular payment that was accepted.
- (b) The renewal of the Easement, extension of the Easement, or the issuance of a new Easement to Port, does not waive State's ability to pursue any rights or remedies under the Easement.

16.6 Cumulative Remedies. The rights and remedies under this Easement are cumulative and in addition to all other rights and remedies afforded by law or equity or otherwise.

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

16.8 Language. The word "Parties" means State and Port in the collective. The word "Party" means either or both State and Port, depending on context.

16.9 Invalidity. The invalidity, voidness, or illegality of any provision of this Easement does not affect, impair, or invalidate any other provision of this Easement.

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

16.11 Recordation. At Port's expense and no later than thirty (30) days after receiving the fully-executed Easement, Port shall record this Easement, including its exhibits in the county in which the Property is located. Port shall include the parcel number of the upland property used in conjunction with the Property, if any. Any exhibit previously or separately recorded may be referenced by the recording number. Port shall provide State with recording information, including the date of recordation and file number.

16.12 Modification. No modification of this Easement is effective unless in writing and signed by the Parties. Oral representations or statements do not bind either Party.

16.13 Survival. Any obligations of Port not fully performed upon termination of this Easement do not cease, but continue as obligations of the Port until fully performed.

16.14 Exhibits. All referenced exhibits are incorporated in this Easement unless expressly identified as unincorporated.

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

PORT OF SEATTLE

Dated: _____, 20__

By: _____
Title: Tay Yoshitani
Address: Chief Executive Officer
2711 Alaskan Way
Seattle, WA 98121-1107
Phone: 206-787-3000

**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES**

Dated: _____, 20__

By: _____
Title: Peter Goldmark
Address: Commissioner of Public Lands
1111 Washington St SE MS 47027
Olympia, WA 98504-7027

Approved as to form this
28th day of September 2011
Terry Pruitt, Assistant Attorney General

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
County of)

I certify that I know or have satisfactory evidence that TAY YOSHITANI is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Chief Executive Officer of the PORT OF SEATTLE to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Seal or stamp)

(Signature)

(Print Name)

Notary Public in and for the State of
Washington, residing at

My appointment expires _____

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
County of Thurston)

I certify that I know or have satisfactory evidence that PETER GOLDMARK is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Commissioner of Public Lands and ex officio administrator of the DEPARTMENT OF NATURAL RESOURCES to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Seal or stamp)

(Signature)

(Print Name)

Notary Public in and for the State of
Washington, residing at

My appointment expires _____

PRELIMINARY EXHIBIT A

TERMINAL 10

UTILITY INFRASTRUCTURE UPGRADE PROJECT

STORM WATER OUTFALL AND STORM WATER PIPE EASEMENT

DESCRIPTION

THAT PORTION OF THE WEST WATERWAY ABUTTING LOTS 8 AND 9, BLOCK 406, SEATTLE TIDELANDS, EXTENSION NO. 1 ACCORDING TO MAPS ON FILE IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS IN OLYMPIA, WASHINGTON, FURTHER DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHWEST CORNER OF LOT 15 OF SAID BLOCK 406, THENCE NORTH 00°00'00" EAST, ALONG THE INNER HARBOR LINE, A DISTANCE OF 541.79 FEET; TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 45°10'04" WEST, A DISTANCE OF 70.39 FEET;

THENCE SOUTH 00°00'00" WEST, A DISTANCE OF 13.03 FEET;

THENCE NORTH 90°00'00" WEST, A DISTANCE OF 31.50 FEET;

THENCE NORTH 00°00'00" EAST, A DISTANCE OF 34.00 FEET;

THENCE NORTH 90°00'00" EAST, A DISTANCE OF 31.50 FEET;

THENCE SOUTH 00°00'00" WEST, A DISTANCE OF 12.73 FEET;

THENCE NORTH 43°24'25" EAST, A DISTANCE OF 72.65 FEET;

THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 110.65 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 4,039 SQUARE FEET. MORE OR LESS

December 20, 2010

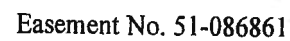


EXHIBIT B PLAN OF OPERATIONS

1. DESCRIPTION OF THE PERMITTED USE

The Permitted Use is a discharge outfall pipeline, including outfall anchoring and discharge apron, terminating a stormwater conveyance and treatment system that drains approximately 10.5 acres of impervious asphalt and concrete paving at Port's Terminal 10 Facility. The area drained includes the Lockheed Shipyard Uplands Operable Unit within the Harbor Island Superfund Site and is subject to a 1995 Consent Decree between EPA and Lockheed.

The Permitted Use is further described in construction documents submitted by Port to State, copies of which are on file with State's Title and Records Office ("Construction Documents"). This Permitted Use incorporates the requirements of the permits and approvals listed in Table 1, copies of which are on file with State's Title and Records Office.

Table 1 : Terminal 10 Permits and Approvals

Agency	Type	Reference Number	Issue Date
US Army Corps of Engineers	Nationwide Permit #7 – Outfall structures and Associated Intake Structures	NWS-2009-1054	May 20, 2010
Washington State Dept. of Fish and Wildlife	Hydraulic Project Approval	118741-1	February 2, 2010
City of Seattle	Shoreline Substantial Development Permit and Variance approval	DPD Project Number 3010548	May 25, 2011
City of Seattle	Building Permit	DPD Project Number 6223769	May 25, 2011
Port of Seattle (lead agency)	SEPA Determination of Non-significance	POS SEPA No. 05-20	October 28, 2005
Port of Seattle (lead agency)	SEPA Addendum	POS SEPA No. 09-02	May 22, 2009
EPA	Consultation approval for Corps Nationwide #7 permit – Stormwater Quality and Treatment at Terminal 10	NWS-2009-1054	March 31, 2010
EPA	Consultation approval for Corps Nationwide #7 permit – Construction BMP Plan	NWS-2009-1054	May 6, 2010
EPA	Consultation approval for Corps Nationwide #7 permit – Operations and Maintenance Work Plan	NWS-2009-1054	August 30, 2010

The Permitted Use does not include activities identified as prohibited under the Section 2 of the Operations and Maintenance Work Plan (O&M Plan) submitted by Port to State, copy of which is on file with State's Title and Records Office.

2. ADDITIONAL OBLIGATIONS

A. Port shall construct the Improvements necessary for the Permitted Use reasonably consistent with the Construction Documents. Work described in Construction Documents is not subject to the submittal requirements of Paragraph 7.3(b) of the Agreement.

B. Port's obligations under the following are also obligations of this Agreement:

1. Phase 1 Municipal Stormwater Permit for large and medium municipal separate storm sewer systems issued January 17, 2007, by Ecology.
2. Operation and maintenance of the stormwater systems in compliance with City of Seattle Stormwater, Grading and Drainage Control Code (SMC22.800-22.808).

C. During construction and installation, Port shall assure compliance with the Construction Best Management Practices Work Plan submitted by Port to State, copy of which is on file with State's Title and Records Office.

D. Port shall monitor, operate, and maintain the stormwater system as described in the following documents, copies of which are on file with State's Title and Records Office: (1) May 13, 2010, Memorandum to Tim Goodman, Response to DNR Comments, supplementing memorandum to EPA, Anticipated Storm Water Quality and Treatment at Terminal 10, dated March 31, 2010; and (2) Port of Seattle, Terminal 10, Operations and Maintenance (O&M) Work Plan, dated January 7, 2010. Specifically, or in addition to the obligations under the cited documents, Port shall:

1. Inspect the treatment vault every two (2) months of the first year as proposed on page 2-4 of the O&M Work Plan.
2. Report to State any treatment problems or sampling results that exceed regulatory criteria (threshold violation) as soon as practical but within thirty (30) days of Port's knowledge.
3. On request, report to State on all adaptive management measures and effects.

E. Port shall contemporaneously copy State on all reports, including data compilations, submitted to any regulatory authority in connection with the Permitted Use or its impact on state-owned aquatic lands. Port shall submit all reports and notices in accordance with Section 15 of the Easement Agreement.

F. Port shall notify State of any proposed or actual modifications or changes in any permit or approval for the Permitted Use issued by any regulatory authority.

EXHIBIT C

WAIVER and RELEASE
BY LOCKHEED MARTIN CORPORATION
For Terminal 10 Stormwater Outfall Easement
Seattle, Washington

Port of Seattle, a government entity ("Port") desires to use aquatic lands owned by the State of Washington and located in King County, Washington for the purpose of discharging effluent from an outfall pipeline draining the Terminal 10 Infrastructure Upgrade Project ("Project").

The land Port desires to use is subject to Use Authorization No. 51-075781 granted by the State of Washington, acting by and through the Department of Natural Resources ("State") to Lockheed Martin Corporation ("Lockheed") for an engineered material cap designed to isolate contaminated sediments from the surrounding environment ("Sediment Cap").

Lockheed and Port have entered into Remedial Action Performance Agreement, copy attached, under which Lockheed authorizes Port to access the Sediment Cap as required for implementation of the Project.

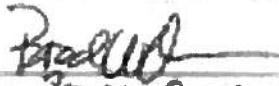
In reliance on Lockheed's approval of Port's Project and proposed use on the Sediment Cap, State is willing to grant Aquatic Lands Outfall Easement No. 51-086861 to Port, for the purposes of construction and operation of a municipal stormwater outfall.

THEREFORE, and in consideration of the mutual benefits received,

Lockheed has reviewed Easement No. 51-086861 and agrees that the rights granted to Port under it do not interfere with the rights granted to Lockheed under Use Authorization No. 51-075781. Lockheed hereby releases and waives all claims against State with respect to claims, damages, or injuries arising from Port's activities and operations authorized under Easement No. 51-086861.

LOCKHEED MARTIN CORPORATION

Dated: _____, 20__


By: Brad W. Adams
Title: Director, Environmental Remediation

PORT OF SEATTLE

Dated: _____, 20__

By: _____
Title: _____

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____, 20__

By: _____
Title: _____

REMEDIAL ACTION PERFORMANCE AGREEMENT

This REMEDIAL ACTION PERFORMANCE AGREEMENT ("Agreement") is made and entered into as of this 14th day of April, 2011, by and between THE PORT OF SEATTLE ("Port") on the one hand, and LOCKHEED MARTIN CORPORATION ("Lockheed Martin"), on the other hand. The Port and Lockheed Martin may be referred to individually as a "Party" or collectively as the "Parties."

RECITALS

1. WHEREAS, pursuant to the Real Estate Purchase and Sale Agreement ("P&S Agreement") executed April 29, 1997, the Port acquired ownership of certain real property described therein, formerly known as Yard 1 of the Lockheed Shipbuilding Company ("Yard 1") and now known as Terminal 10;
2. WHEREAS, pursuant to the P&S Agreement, the Port acknowledged, in part, that there is contamination remaining on the property that is covered by an asphalt and/or concrete cap (the "Cap"), the location of which is identified on the survey attached to the P&S Agreement as Exhibit E, and agreed to: (1) maintain the Cap in compliance with the Consent Decree; (2) ensure that improvements constructed within the capped area do not diminish the effectiveness of the Cap below Consent Decree requirements; and (3) be responsible for disposal costs and compliance with all Environmental Laws in connection with any such improvements;
3. WHEREAS, the property is subject to a 1995 Consent Decree between the United States Environmental Protection Agency ("EPA") and Lockheed Martin, known as the Lockheed Shipyard Uplands Operable Unit ("LU-OU3") within the Harbor Island Superfund Site area, and Lockheed Martin retains full responsibility under this Consent Decree and the P&S Agreement for any remedial actions required by EPA or other regulatory entities due to the capped contamination that remains at the LU-OU3 site;
4. WHEREAS, the aquatic land offshore from the property is subject to a 2003 Consent Decree between the EPA and Lockheed Martin, known as the Lockheed Shipyard Sediments Operable Unit ("LSS-OU7"), and Lockheed Martin is solely responsible for implementing the remedial action at that site; i.e., constructing and maintaining a near shore underwater sediment cap; the Port committed in the P&S Agreement to reimburse Lockheed Martin if it incurs any increased cleanup costs within LSS-OU7 due to Port actions on the upland property;
5. WHEREAS, in 2004 Lockheed entered into Use Authorization Agreement No. 51-075781 with the State Department of Natural Resources in order to implement the LSS-OU7 remedial action on State-owned aquatic land;
6. WHEREAS, in a letter to Lockheed Martin dated January 7, 2011, EPA stated, in part, as follows: "...EPA recognizes that the LU-OU3 is currently owned by the Port of Seattle (Port). The Port is currently planning a redevelopment that includes a stormwater conveyance system, including a stormwater outfall. During the Harbor Island 5-year review, EPA determined that this stormwater conveyance system is critical for remedy protectiveness and especially necessary

for operations and maintenance that is an integral component of the selected remedy for both LU-OU3 and the LSS-OU7. Given that Lockheed [Martin] and not the Port is the signatory to both the LU-OU3 and LSS-OU7 consent decrees for Remedial Action, prior to any LU-OU3 redevelopment, Lockheed [Martin] must submit the appropriate designs, specifications and operations, and maintenance and monitoring plans for EPA approval in order for the stormwater conveyance system, including the outfall, to be implemented. If Lockheed [Martin] and the Port want to work together, EPA will allow the Port to perform for Lockheed [Martin], but EPA's relationship for both LUOU3 and LSS-OU7 is with Lockheed [Martin] as consent decree signatory (and not with the Port). EPA will therefore assure all compliance from Lockheed [Martin], and Lockheed [Martin] will be responsible for any failure to perform. Failure to do any of the aforementioned may constitute a violation of Lockheed [Martin]'s responsibilities with the LU-OU3 consent decree for cap maintenance and ensuring protectiveness of both the upland capping on LU-OU3 and sediment capping in LSS-OU7." (at page 3); and

7. WHEREAS, given their interlocking duties, Lockheed Martin and the Port want to work together to perform the required remedial actions as suggested by EPA.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

RECITALS INCORPORATED BY REFERENCE

Each Recital set forth above is incorporated herein by this reference and made a part of the Agreement between the Parties.

I. DEFINITIONS

"Claims" means any claim, cause of action or liabilities, liens, fines, penalties, assessments, injunctions or other injuries, damages, or relief, (including but not limited to any fines or penalties imposed by EPA on Lockheed Martin under the Upland and LSSOU Consent Decrees and any use fees or other assessments imposed by the State of Washington Department of Natural Resources on Lockheed Martin for use of state property), including fees and costs (including reasonable attorneys' and environmental consultants' fees and costs), related to or arising from implementation or non-implementation of the Terminal 10 Infrastructure Upgrade Project.

"EPA" means the United States Environmental Protection Agency and its directors, officers, employees and agents.

"Lockheed Martin" means Lockheed Martin Corporation and its directors, officers, employees, agents, and predecessors in interest.

"LSSOU Consent Decree" means the Consent Decree entered in the United States District Court, Western District of Washington Seattle Division, in Civil Action No. CV03-1180,

applicable to the Lockheed Shipyard Sediment Operable Unit (LSSOU), including any administrative orders or other requirements issued by EPA for the implementation of such Consent Decree.

"O&M Order" means the requirement on page two of the letter dated January 7, 2011, from the EPA to Lockheed Martin that states "EPA has determined that the following actions are necessary: [p]ermanently repair cap problems and construct stormwater controls consistent with redevelopment plans for the upland."

"Port" means The Port of Seattle and its directors, officers, employees and agents.

"Terminal 10 Infrastructure Upgrade Project" or "the Project" means the implementation and maintenance of the construction project described in the following documents: Port of Seattle, Plans and Technical Specifications, Terminal 10 Infrastructure Improvement Project (final dated March 15, 2011).

"Upland Consent Decree" means the Consent Decree entered in the United States District Court, Western District of Washington Seattle Division, in Civil Action No. C94-1823, applicable to that part of the property above the mean higher high water mark, including any administrative orders or other requirements issued by EPA for the implementation of such Consent Decree.

"Use Authorization Agreement" means the Use Authorization Agreement No. 51-075781 between Lockheed Martin and the State Department of Natural Resources (DNR), entered into January 15, 2004.

II. COVENANTS AND AGREEMENTS

1. Lockheed Martin to Submit Plans. Lockheed Martin hereby agrees to submit to the EPA for approval the following planning documents prepared by the Port concerning the Terminal 10 Infrastructure Upgrade Project: (1) Port of Seattle, Anticipated Stormwater Quality and Treatment at Terminal 10 (final dated March 31, 2010); (2) Port of Seattle, Terminal 10, Construction Best Management Practices Work Plan (final dated May 6, 2010); and (3) Port of Seattle, Plans and Technical Specifications, Terminal 10 Infrastructure Improvement Project (final dated March 15, 2011).

2. Appointment of Port as Contractor. For the purposes of complying with the O&M Order, Lockheed Martin hereby appoints the Port to act as an independent contractor in permitting, planning, designing, constructing and maintaining the Project in conformity with the terms of the LSSOU and Upland Consent Decrees. Lockheed Martin grants access to the Port within the geographical area of the Use Authorization Agreement as required for implementation of the Project. By acting as Lockheed Martin's contractor for the purposes of complying with the O&M Order, the Port is explicitly not accepting any responsibility, duty, liability or obligation under the Use Authorization Agreement, the Upland Consent Decree or the LSSOU Consent Decree, including but not limited to monitoring of or reporting on the Project. The Port is not a successor or assign under the terms of the Consent Decree or the LSSOU Consent Decree, and the Port is not a purchaser, mortgagee, assign, pledge, sublessee or transferee under

the terms of the Use Authorization Agreement.

3. Performance of Work. The Port hereby agrees to permit, plan, design, construct and maintain the Project at its sole cost and expense. The Port agrees to perform all work in conformity with the terms of the Consent Decree and to provide written notice of the Consent Decree to all contractors hired to perform the Work. Once the Project has been constructed, the Port agrees to prepare as-built plans and surveys for Lockheed Martin to submit to DNR in compliance with Section 5.3 of the Use Authorization Agreement. The Parties agree that performance of this work constitutes a partial discharge of its duties under Section 4(b) of the P&S Agreement to maintain the Cap in compliance with the Consent Decree.

4. Indemnity. The Port shall hold Lockheed Martin harmless and indemnify, defend, and protect Lockheed Martin from and against any and all Claims imposed upon, or commenced or asserted against Lockheed Martin by EPA, DNR or any other agency with jurisdiction in connection with the construction and maintenance of the Project; provided, however, that the Port shall not be required to indemnify Lockheed Martin to the extent such Claims arise from Lockheed Martin's own acts or failure to act. If actions by both the Port and Lockheed Martin result in joint liability, costs to indemnify and defend shall be apportioned between the parties in accordance with their relative contribution.

5. Defense. The obligation of the Port to indemnify, defend and hold Lockheed Martin harmless hereunder includes, without limitation, the rights of the Port to defend through counsel assigned by the Port and approved by Lockheed Martin, which approval will not be unreasonably withheld. In the event that Lockheed Martin determines in good faith that counsel selected by the Port has or anticipates having a conflict of interest, the Port agrees to select other counsel for Lockheed Martin that is independent of counsel defending the Port. Such independent counsel is subject to the approval of Lockheed Martin, which approval will not be unreasonably withheld. The Port agrees to advance all legal, expert, and other fees and costs of the defense throughout the course of the defense, except as limited in paragraph 4.

6. Third Party Beneficiaries. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors and assigns, and is made solely and specifically for their benefit. No other person shall have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

7. No Effect on Prior Agreements. No provision of this Remedial Action Performance Agreement shall be interpreted to terminate, supersede or otherwise alter the Parties' respective obligations under prior agreements, orders and decrees, including without limitation the P&S Agreement.

8. Amendment. Any modification of this Agreement or any additional obligations assumed by any Party hereto shall be binding only if evidenced by a writing signed by each of the Parties hereto.

9. Governing Law. This Agreement and the legal relations between the Parties hereto shall be governed by and construed and enforced in accordance with the laws of the State

of Washington, except to the extent that the applicability of any of such laws may now or hereafter be preempted by Federal law, in which case such Federal law shall so govern and be controlling.

10. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO HEREBY WAIVES TRIAL BY JURY IN ANY ACTION ARISING OUT OF MATTERS RELATED TO THIS AGREEMENT, WHICH WAIVER IS INFORMED AND VOLUNTARY.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original hereof. All executed counterparts together shall constitute one and the same document, and any initialed pages and signature pages may be assembled to form a single original document.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

PORT OF SEATTLE, a Washington municipal corporation:

By: *Tay Yoshitani*
Name: **Tay Yoshitani**
Title: **Chief Executive Officer**
Date: 4/1/11

LOCKHEED MARTIN:

LOCKHEED MARTIN CORPORATION,
a Maryland corporation

By: _____
Name:
Title:
Date:

of Washington, except to the extent that the applicability of any of such laws may now or hereafter be preempted by Federal law, in which case such Federal law shall so govern and be controlling.

10. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO HEREBY WAIVES TRIAL BY JURY IN ANY ACTION ARISING OUT OF MATTERS RELATED TO THIS AGREEMENT, WHICH WAIVER IS INFORMED AND VOLUNTARY.

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

PORT OF SEATTLE, a Washington municipal corporation:

By: _____
Name:
Title:
Date:

LOCKHEED MARTIN:

LOCKHEED MARTIN CORPORATION,
a Maryland corporation

By: Brad W. Owens
Name: Brad W. Owens
Title: Director, Environmental Remediation
Date: 4/1/11

