



**PORT of OLYMPIA**  
Serving All of Thurston County  
**Commission Meeting**  
**Monday, July 8, 2024**  
**4:00 PM**

Percival Plaza - Olympics Room  
626 Columbia Street NW  
Olympia, WA 98501

The meeting agenda is available on the Port's website as of July 3, 2024.  
<https://www.portolympia.com/commission>

The public may join the meeting from their computer, tablet or smartphone at:

<https://us02web.zoom.us/j/87174114590?pwd=QqJCvbSpg8bE7Y485MXBTXSACzAeO.1>

or Telephone: 1 253 215 8782

Meeting ID: 871 7411 4590

Passcode: 594862

Written public comments may be submitted to [commissioncoordinator@portolympia.com](mailto:commissioncoordinator@portolympia.com) by 12:00 p.m. on the date of the meeting. All written comments will be compiled and sent to the Commissioners prior to the meeting.

Verbal public comment is accepted in person at the meeting.

If you are attending the meeting via Zoom, you may raise your hand during the meeting to give public comment. For those listening by phone, press \*9 if you wish to raise your hand and provide comment.

## AGENDA

- A. Call to Order
- B. Pledge of Allegiance
- C. Approval of Agenda
- D. Executive Session per RCW 42.30.110(1)(i) to discuss potential litigation with legal counsel representing the agency  
*Executive Session will last until approximately 5:30 p.m.*
- E. Reconvene after Executive Session
- F. Executive Director Report
- G. Public Comment

Individual public comments are limited to 3 minutes per person. Members of the public may comment on agenda items and other port business.

NOTE: Guidelines for public comment can be found in the Commission Rules in Resolution 2022-09 Article VI.

### **Port of Olympia Mission**

*Creating economic opportunities and building community for all of Thurston County through responsible resource use.*

- Comments should be directed to Commission: Comments should be directed to the Commission as a whole and should not include comments about individual Port staff or members of the public.
- Courtesy: All speakers (members of the public, Port staff, and Commissioners) shall be courteous in language and demeanor and shall confine remarks to those facts that are germane and relevant to the question or issue under discussion.

H. Consent Calendar

1. Minutes: June 17, 2024, and June 24, 2024

I. Pending Issues or Business

1. None

J. Action Calendar

1. Legislative Services: Alex Smith, Executive Director
2. Airport Engineering Services Contract Award: Chris Paolini, Airport Senior Manager

K. Action/Other Calendar

1. None

Public Comment on Action/Other Item

L. Advisory Calendar

1. Budd Inlet Contract Amendment for DOF: Shawn Gilbertson, Director of Environmental Planning and Programs

Public Comment on Advisory Item

2. Port Management Agreement Application to Washington Department of Natural Resources: Clarita Mattox, Real Estate Senior Manager

Public Comment on Advisory Item

3. Comprehensive Scheme of Harbor Improvements: Warren Hendrickson, Director of Operations

Public Comment on Advisory Item

M. Commissioner Reports/Discussion

N. Other Business

O. Meeting Announcements

P. Adjourn



**Commission Work Session Minutes  
Monday, June 17, 2024**

Commission President Bob Iyall called the Commission Work Session of June 17, 2024, to order at 3:30 p.m. at the Percival Plaza at 626 Columbia Street NW, Suite 1B, Olympics Room, In Olympia, Washington.

**Present**

Commissioners: Bob Iyall, President; Jasmine Vasavada, Vice President; Sarah Tonge, Secretary; and Maggie Sanders.

Port of Olympia Citizens Advisory Committee: Quentin Phillips, Debby Pattin, Sue Patnude, Bob Butts, Don Krug, James Thornton, Darlene Kemery, Jack Havens, Anthony Hemstadt, Harry Branch, Bob Wubbena, and Joel Hansen.

Excused Absence: Commissioner Amy Harding.

Staff: Alex Smith, Executive Director; Camille St. Onge, Director of Strategic Initiatives and Commission Affairs; Warren Hendrickson, Director of Operations; Shawn Gilbertson, Director of Environmental Planning and Programs; and Missy Goodell, Executive and Commission Coordinator.

**Approval of Agenda**

Commissioner Tonge moved to approve the agenda. Seconded by Commissioner Sanders. Motion approved unanimously.

Port of Olympia Citizens Advisory Committee Work Product and Discussion. Camille St. Onge, Director of Strategic Initiatives and Commission Affairs, introduced Port of Olympia Citizens Advisory Committee members. Citizens Advisory Committee members gave a presentation that showed the options for public access and amenities that align with the community vision for Destination Waterfront. This presentation showcased the results of their work product from their 2023 assignment.

Commission Agenda Setting Discussion. Commissioners discussed how agendas for Commission meetings are developed and how they would like to proceed in the future.

**Adjourn**

The meeting adjourned at 5:42 p.m.

PORT OF OLYMPIA COMMISSION

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Jasmine Vasavada, Vice President

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Sarah Tonge, Secretary

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Amy Harding

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Maggie Sanders

DRAFT



## Commission Meeting Minutes Monday, June 24, 2024

Commission President Bob Iyall called the Commission meeting of June 24, 2024, to order at 5:30 p.m. at the Percival Plaza at 626 Columbia Street NW, Suite 1B, Olympics Room, in Olympia, Washington.

### **Present**

Commissioners: Bob Iyall, President; Jasmine Vasavada, Vice President; Sarah Tonge, Secretary; and Maggie Sanders.

Excused Absence: Commissioner Amy Harding.

Staff: Alex Smith, Executive Director; Rick Hughes, Port General Counsel; Warren Hendrickson, Director of Operations; Camille St. Onge, Director Strategic Initiatives and Commission Affairs; Ben McDonald, Director of Human Resources and Administration; Tad Kopf, Director of Finance; Shawn Gilbertson, Director of Environmental Planning and Programs; Trisha Miller, Controller; James Sommer, Capital Assets Program Manager; Chris Paolini, Airport Senior Manager; Clarita Mattox, Real Estate Senior Manager; Emily Girton, Marketing and Outreach Coordinator; and Missy Goodell, Executive and Commission Coordinator.

### **Approval of Agenda**

Commissioner Tonge moved to approve the agenda as presented; Commissioner Sanders seconded the motion. Motion passed unanimously.

### **Executive Director Report**

Alex Smith, Executive Director, provided an update on port events and activities.

### **Public Comment**

Two individuals provided public comments.

### **Consent Calendar**

Commissioner Sanders moved to approve the consent agenda as presented; Commissioner Tonge seconded the motion. The motion passed unanimously with Commissioner Vasavada abstaining.

### **Pending Issues or Business**

Briefing: Capital Projects Progress Report. James Sommer, Capital Assets Program Manager, provided an update on the approved 2024 capital projects.

Briefing: Q1 2024 Financial Report. Tad Kopf, Director of Finance, reviewed the fiscal performance of the first quarter of 2024.

**Action Calendar**

Recommendation of General Counsel. Ben McDonald, Director of Human Resources and Administration, provided background information related to interviews in the selection process for a new contract for legal services for the Port of Olympia.

*Motion: Commissioner Sanders moved to authorize the Executive Director to execute a contract with Dickson Frohlich Phillips Burgess to provide general counsel services to the Port of Olympia, beginning July 1, 2024, to June 20, 2025, for an amount not to exceed \$250,000. Commissioner Iyall seconded the motion. Motion passed unanimously.*

**Action/Other Calendar**

None.

**Advisory Calendar**

Legislative Services. Alex Smith, Executive Director, detailed the Port’s need to continue state legislative services as the Port’s current legislative representative is retiring. Action at a future meeting will be requested.

No one provided public comment.

**Commissioner Reports/Discussion**

Each commissioner provided an update of their current activities in the community.

**Other Business**

None.

**Meeting Announcements**

Executive Director Alex Smith provided information on upcoming Commission meetings.

**Adjournment**

The meeting adjourned at 7:10 p.m.

PORT OF OLYMPIA COMMISSION

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Bob Iyall, President

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Jasmine Vasavada, Vice President

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Sarah Tonge, Secretary

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Maggie Sanders, Commissioner

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Amy Harding, Commissioner

DRAFT

## COVER MEMO

**Briefing Date/Time:** July 8, 2024

**Staff Contact/Title:** Alex Smith, Executive Director, 360.528.8001,  
[AlexS@portolympia.com](mailto:AlexS@portolympia.com))

**Subject:** Legislative Services

**Purpose:**  Information Only  Decision Needed

### **Overview**

This is a request for action to extend the executive director the authority to approve a contract with Propolis Communications for a not-to-exceed contract amount of \$180,000 beginning July 15, 2024, through June 30, 2027.

### **Background:**

The Port of Olympia needs ongoing legislative advocacy at the state level, including requesting funding for capital/environmental projects, state policies affecting ports, and developing relationships with legislators and legislative staff.

The Port's business model has been to contract for legislative services rather than hire an internal, full-time governmental affairs position. We believe these legislative services, combined with the advocacy and public affairs work provided by the Washington Public Ports Association, should meet the Port's needs for legislative services.

### **Documents Attached:**

- PowerPoint

### **Summary & Financial Impact**

The financial impact would be up to \$180,000 over a three-year period (approximately \$60,000 per year).





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## Legislative Services for the Port of Olympia

Alex Smith  
Executive Director  
July 8, 2024



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A circular inset image showing the Washington State Capitol building in Olympia, Washington, during a sunset or sunrise. The building is illuminated, and the sky is a mix of orange, red, and blue. The image is framed by a dark blue circular border.

## Today's Presentation

*Action Item – Approval Requested*

- Advisory recap
- Selected firm
- Q&A



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## Advisory Recap

### *Legislative Representation*

- June 24 Advisory
- Issued a Request for Proposal
- Received four responses and interviewed two firms
- Selection committee recommends retaining Propolis Communications



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## Lobbying Firm Details

### *Propolis Communications*

Propolis is a local, woman-owned lobbying firm owned by Kelsey Hulse. Formerly with Strategies 360, Ms. Hulse has extensive experience in supporting municipalities in their legislative advocacy including the Habitat Conservation Plan. She has strong relationships with the 22nd District legislators.

She is local resident and feels a strong connection to the Port's priorities, challenges and success.

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## Questions and Comments

### *Suggested Motion...*

*"...move to authorize the Executive Director to execute a contract with Propolis Communications to provide legislative services to the Port of Olympia, beginning July 15, 2024, through June 30, 2027, for an amount not to exceed \$180,000."*

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## COVER MEMO

**Briefing Date/Time:** July 8, 2024

**Staff Contact/Title:** Chris Paolini, Airport Senior Manager, 360.528.8074,  
[chrisp@portolympia.com](mailto:chrisp@portolympia.com)

**Subject:** Airport Engineering Services Contract Award

**Purpose:**  Information Only  Decision Needed

### **Overview:**

- This is an action item - approval requested.
- Airport engineering services contract award to support airport projects funded by federal and state grants as well as airport funds.

### **Background:**

The airport uses engineering services contracts to hire engineering firms to complete environmental, design, and construction management services for Federal Aviation Administration (FAA) grant funded projects, as well as Port funded projects, at the Olympia Regional Airport. The selected engineering firm will be required to have extensive familiarity with FAA regulations and in-depth experience with projects in an airport environment. This firm will assist the Port in meeting FAA regulations, FAA design standards, and ensuring airport projects are completed in a timely and efficient manner.

### **Documents Attached:**

PowerPoint presentation.

### **Summary & Financial Impact:**

The engineering services contract is for a period of up to five years. The five-year period is desirable to allow the selected firm time to become familiar with the airport's unique infrastructure and provide consistent and efficient support for multi-year projects. There is no cost to the Port to enter into an engineering services contract and the Port can choose to use an alternate firm should their service not meet the Port's standards. Each future service request for the engineering firm will be set up under an individual task order under the engineering

contract and approved, per Port policy, based on the dollar amount of the specific task order.

Two very qualified firms, Century West Engineering and DOWL, submitted responses to the Airport's request for qualifications (RFQ). While both firms have great reputations in the industry, the RFQ scoring committee felt the engineering team from Century West offered stronger industry experience and valuable familiarity with the Olympia airport infrastructure making them the superior firm for our airport.

**Affected Parties:**

The engineering services agreement will be used solely for airport-related projects.

**Commission Options with Pros & Cons:**

1. Approve Port contract, with selected firm, for a not-to-exceed amount as presented.

Result: Airport projects move forward as planned.

2. Approve Port contract, with selected firm, for adjusted not-to-exceed amount.

Result: Some airport projects move forward as planned, however, a future amendment to the contract not-to-exceed amount may be necessary to complete projects and/or start new projects.

3. Take no action

Result: Airport projects utilizing FAA grant funds may be postponed or cancelled which may result in loss of grant funds.

**Staff Recommendation:**

"...move to authorize the Executive Director to execute a contract with Century West Engineering to provide airport engineering services to the Olympia Regional Airport for a period not to exceed five years, commencing upon full execution of the contract, for an amount not to exceed \$1.5 million."

**Next Steps/Timeframe:**

The Port will work with Century West Engineering to execute a contract as soon as practical and begin working with the airport and FAA to begin planning for future projects.



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Serving All of Thurston County

# Airport Engineering Services Contract Award

Chris Paolini  
Airport Senior Manager  
July 8, 2024



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## Today's Presentation

*Action Item – Approval Requested*

Selection of an aviation engineering services firm.



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## Purpose

- Per the advisory presentation to the Port Commission on June 10, 2024, the Airport is seeking a highly specialized engineering firm, competent in FAA regulations and airport design standards, to support FAA grant, and locally-funded airport projects for up to a five-year period.

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## Summary

- The engineering firm will be utilized to support projects listed in the Airport's FAA Capital Improvement Plan (CIP) as well as airport infrastructure maintenance projects.
- The projects anticipated for the next five-year period serve to update aging infrastructure and maintain Port assets.

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## 5-Year Planned Projects Include:

- Pilot controlled lighting system replacement
- Runway 17/35 LED (Light Emitting Diode) lighting and energy efficiency improvements
- Runway 17/35 pavement design and repair
- Runway 8/26 design and maintenance
- Taxiway and Apron reconstruction and maintenance to meet current FAA design standards
- Hangar development
- Environmental studies

*Projects listed above are dependent upon available FAA and Airport funding as well as environmental review*

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## Potential 2024-2025 Projects:

- 2024 Pilot Controlled Lighting System Replacement **(Pending FAA grant)**
  - \$150,000 (estimated)
- 2025 Runway 17/35 LED lighting improvements **(FAA grant anticipated)**
  - \$1,500,000 (estimated)
- 2025 Runway 17/35 pavement design and repair **(FAA grant anticipated)**
  - \$3,750,000 (estimated)
- 2025 Runway 8/26 design and maintenance **(Airport funded)**
  - \$1,750,000 (estimated)
- 2025 Apron/Ramp reconstruction **(Airport funded)**
  - \$275,000 (estimated)

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## Proposed Budget Authority

- The contract will be set up as a not-to-exceed amount using individual task orders for each project, which will require separate approval, per Port policy.
- The requested not-to-exceed amount is \$1.5 million for the five-year contract period.
- Several of the projects will be grant funded at 90% or 95% of project cost through FAA and/or WSDOT grants.

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## Results of the Request for Qualifications (RFQ)

- A Request For Qualifications (RFQ) was published on May 6, 2024, and closed Friday, June 7, 2024.
- 34 entities downloaded the RFQ document, though not all were engineering firms.
- We received two submittals, Century West Engineering, and DOWL. Both firms are well known and have an excellent reputation in the aviation industry.

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## Engineering Firm Details

### *Century West Engineering*

- Founded in 1969, Century West Engineering has worked with the Seattle Airport's District Office for more than 40 years with offices in Washington, Idaho, and Oregon. They have two local offices in Bothell and Federal Way Washington.

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## Engineering Firm Details

### *Century West Engineering*

- Century West Engineering offers airport planning, engineering, design, construction management, Disadvantaged Business Enterprise (DBE) program support, environmental, and grant writing services.
- Some current and past clients include:
  - Olympia Regional Airport
  - William R. Fairchild International Airport
  - Sanderson Field
  - Auburn Municipal Airport
  - King County International Airport

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## Recommendation

The selection committee is recommending Century West Engineering as our preferred airport engineering services firm. Century West Engineering stood out in two key scoring categories:

1. The key personnel making up the proposed project team have greater overall industry experience.
2. Century West's project team has greater familiarity with the Olympia Regional Airport, providing valuable historical knowledge and familiarity with our facilities.

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## Questions and Comments

### *Suggested Motion...*

"...move to authorize the Executive Director to execute a contract with Century West Engineering to provide airport engineering services to the Olympia Regional Airport for a period not to exceed five years, commencing upon full execution of the contract, for an amount not to exceed \$1.5 million."



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## COVER MEMO

**Briefing Date/Time:** July 8, 2024

**Staff Contact/Title:** **Shawn Gilbertson**, Director of Environmental Planning and Programs, (360)528-8061  
[ShawnG@portolympia.com](mailto:ShawnG@portolympia.com)

**Camille St. Onge**, Director of Strategic Initiatives and Commission Affairs, (564)669-3100  
[CamilleS@portolympia.com](mailto:CamilleS@portolympia.com)

**Subject:** Budd Inlet Remediation and Integrated Port Peninsula Master Plan: Dalton, Olmsted & Fuglevand Contract Amendment #3

**Purpose:**  Information Only  Decision Needed

### **Overview:**

Advisory Item – no action is required.

Proposed is an amendment to the Dalton, Olmsted & Fuglevand (DOF) Professional Services Contract No. 2022-1002 – Budd Inlet Remediation. The history of this contract is as follows:

This contract amendment will increase the not-to-exceed amount by \$5.24M. This adjusted contract budget includes \$4M for continued Budd Inlet Remediation work and \$1.24M to complete an Integrated Port Peninsula Master Plan. The contract amendment will also extend the contract expiration from Dec. 31, 2024, to Dec. 31, 2026.

### **Background:**

The Port of Olympia executed an Agreed Order (AO) with the Washington Department of Ecology (Ecology) to conduct an evaluation of contaminated sediments in Budd Inlet as required by the Model Toxics Control Act (MTCA). Originally signed in December of 2008, the AO has been amended twice. The amendments generally require an expanded site footprint, increased investigatory parameters, and progress toward developing a cleanup action plan.

The DOF Consulting team was brought under contract with the Port after a competitive solicitation process in 2022. The original contract set the course towards compliance with the Ecology AO. Subsequent amendments to the contract have been executed to fully accomplish the AO and amendments thereto, as funds have become available in the Port’s budget.

Contract History	Effective Date	Amount Added	Approximate Port Share	Amended NTE Amount
Initial Contract	June 2022	\$99,500	\$49,750	\$99,500
Amendment #1	October 2022	\$2,186,881	\$1,093,441	\$2,286,381
Amendment #2	June 2023	\$4,305,555	\$2,152,778	\$6,591,936
Proposed Amendment #3	July 2024	\$5,240,000	\$2,620,000	\$11,831,936

**Contract Amendment:**

Progress towards completion of the AO is occurring rapidly. There is now a need to expand the investigatory work to West Bay. The additional funding proposed for this amendment would allow for planning, permitting, and execution of sampling and analysis of sediments as in West Bay. This work has all been accounted for in the Port’s budget (including the recent \$2M budget amendment).

In addition to assessment of sediment contamination in Budd Inlet, the DOF contract scope of work includes integrated planning and project strategy. Integrated planning was included in the original scope of work because remediation of contaminated sediments is inextricably tied to Port operations, future development of the Port Peninsula, and opportunities for climate resilience. These considerations will impact the remediation strategy because upland placement of dredged sediment may be used to mitigate the impacts of sea level rise. Goals for the integrated planning effort include planning for the Marine Terminal, Swantown Marina & Boatworks, integration with the Deschutes Estuary Project, sea level rise response actions, and Peninsula development.

At an April 30, 2024, Commission/staff retreat, the Commission confirmed this work is a priority. The Master Plan will build off the work done in Destination Waterfront and Vision 2050 and integrate it with the Budd Inlet Remediation

Project to maximize environmental benefit, economic development, and community assets.

The DOF contract amendment supports our goal of completing the Integrated Port Peninsula Master Plan by spring of 2025. This aggressive schedule allows ample opportunity to apply for federal grants and other appropriations during 2025 and 2026 legislative funding cycles.

**Documents Attached:**

- PowerPoint Presentation
- Updated DOF Budd Inlet Scope of Work
- Integrated Port Peninsula Master Plan Scope of Work

**Financial Impact:**

\$5,240,000 expended from Budd Inlet Remediation 2024 Budget. Approximately 40% of this will be grant-reimbursable.



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# Budd Inlet Remediation and Integrated Port Peninsula Master Plan Contract

July 8, 2024

Shawn Gilbertson  
Director of Environmental  
Planning and Programs

Camille St. Onge  
Director of Strategic Initiatives  
and Commission Affairs

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## Today's Presentation

*Advisory – No action requested*

- Dalton, Olmsted and Fuglevand (DOF) contract amendment #3
- DOF primary-consultant role
  - Project and contract background
  - Contract history
  - Purpose of contract amendment
  - Integrated Port Peninsula Master Plan

 **PORT of OLYMPIA**

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## Project and Contract Background

### *Phased Project and Consultant Contract*

- Executing 2<sup>nd</sup> amendment to Ecology Agreed Order
- Investigation conducted in phases
- Contract amended to match Ecology Agreed Order
- Grant spending
- West Bay sediment sampling
- Integrated planning



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## History of Contract

Contract History	Effective Date	Amount Added	Approximate Port Share	Amended NTE Amount
Initial Contract	June 2022	\$99,500	\$49,750	\$99,500
Amendment #1	October 2022	\$2,186,881	\$1,093,441	\$2,286,381
Amendment #2	June 2023	\$4,305,555	\$2,152,778	\$6,591,936
Proposed Amendment #3	July 2024	\$5,240,000	\$2,620,000	\$11,831,936

**~50% paid by WA State Dept of Ecology and Commerce grants**

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## Proposed Contract Amendment

- Extend DOF contract to December 31, 2026
- Continue Budd Inlet Investigation - \$4M
- Develop Integrated Port Peninsula Master Plan - \$1.24M



*Processing East Bay Sediment Core Samples*

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## Integrated Port Peninsula Master Plan

**Camille St. Onge**  
Director of Strategic Initiatives &  
Commission Affairs



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## Long-Term Intent: Integrating Planning

- Initial RFP and DOF contract anticipated a broad, inclusive and integrated approach to planning for cleanup, climate resilience, the Deschutes Estuary Project, and Port Peninsula development.
- Port leadership transition
- Project delayed
- New Commission and leadership

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## Master Plans

A Master Plan is a comprehensive long-term planning document that provides a vision for the future development of an organization or a community. It outlines the framework for land use, infrastructure, and economic development, ensuring a cohesive and sustainable approach.

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## Master Plan Community Involvement

- Diverse perspectives
- Better decision-making
- Increased transparency
- Sets up long-term success



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## Planned Action EIS

A Planned Action Environmental Impact Statement (EIS) evaluates the potential environmental effects of proposed projects. It also aligns a project with city ordinances and comprehensive plans.



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## Achieving Sustainability

By integrating a Master Plan and Planned Action EIS, organizations can achieve long-term sustainability by balancing economic, environmental, and community considerations. This approach fosters resilience and responsible growth.



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## Integration and Scope

- Interlocal steering committee and public involvement
- Marine Terminal evaluation
- Marina & Boatworks evaluation
- Integrate Budd Inlet remediation
- Integrate with Deschutes Estuary Project
- Integrate sea level rise
- Integrate Vision 2050 and Destination Waterfront
- Final upland long-term plan



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## Integrated Port Peninsula Master Plan Deliverables

### Evaluations of: Marine Terminal and Marina & Boatworks

- Market analysis
- Economic impact analysis
- Master plan terminal layout
- Master plan marina layout
- Probable construction cost
- Grant funding source matrix

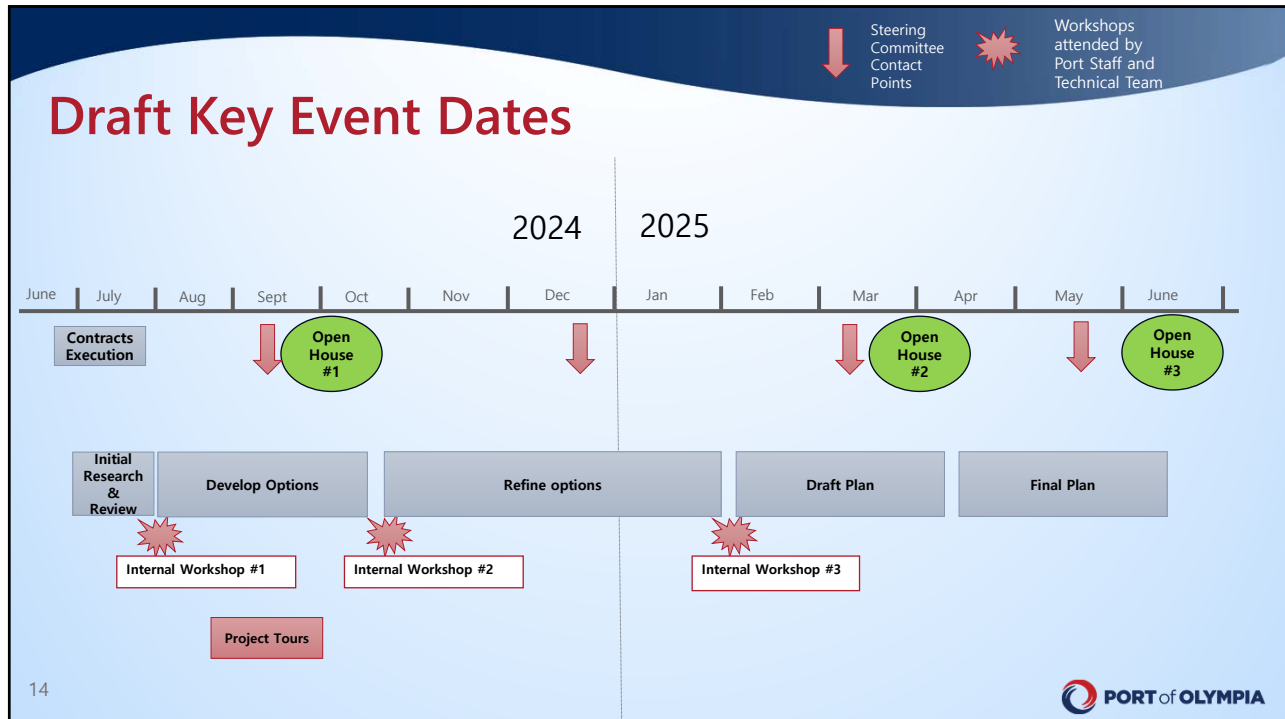
### Upland Master Plan

- Environmental: Upland sediment placement and sea level rise
- Market/financial analysis
- Marine terminal integrations
- Marina & Boatworks integrations
- Open space and parks vision casting and integration
- Branding of master plan
- Final master plan

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## Draft Key Event Dates



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## Recap

- Aligns with intended project approach outlined in DOF contract
- Strengthens position for state/federal funding requests
- Aligns with community request for broader, long-term planning approach
- Evaluates economic impacts and market demands
- Folds in multiple environmental projects: sea level rise, Budd Inlet remediation, and Deschutes Estuary Project
- Includes community visioning from Vision 2050 and Destination Waterfront
- Gains new insights to community vision

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## Questions and Comments

*Photo credit: Thank you to Thurston Talk and Experience Olympia and Beyond for photo contributions.*



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March 12, 2024

Jonathon Wolf  
Budd Inlet Project Manager  
Port of Olympia  
606 Columbia Street NW STE 300  
Olympia, WA 98501  
Email: JonathonW@PortOlympia.com

RE: Budd Inlet Sediment Remediation  
Phase 1: Engineering Design and Permitting Work in Budd Inlet Sub-Area 2 (West Bay)

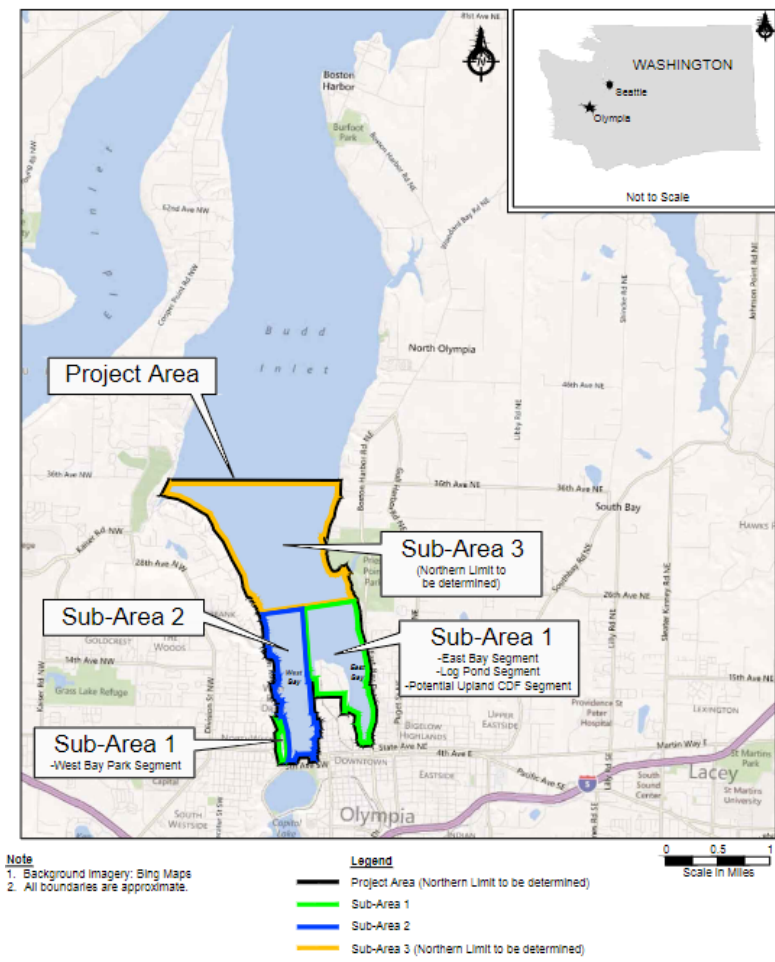
Dear Jon,

Dalton, Olmsted, Fuglevand (DOF) is pleased to submit this proposal to provide ongoing technical support to the Port of Olympia (Port) for the Budd Inlet Sediment Remediation Project. The work proposed within Budd Inlet Sub Area 2, is a direct continuation of our ongoing work completed to date within Sub Area 1. Figure 1 shows the three Sub Areas within Budd Inlet.

DOF's scope of work is designed to support the Port's work towards meeting requirements under its existing Agreed Order (DE 6083, amended in 2023 ["AO"]) with the Washington State Department of Ecology (Ecology). The process flow diagram for the project is shown in Figure 2.

Our proposed scope of work is consistent with our understanding of the Port's objectives for the Budd Inlet Sediment Project as follows.

- Meet requirements of the Agreed Order and Amendments (and future amendments as necessary to complete the project).
- Remove contamination and restore navigational depths to navigation channels and Swantown Marina and Boatworks within East Bay, allowing the USACE to resume dredging of the Federal Channel. These channels are currently several feet shallower than required in many areas, impacting navigation. Figure 3 shows current shoaling within the navigational areas.
- Remove contamination and restore navigational depths to the navigation channels, turning basin and berth areas in West Bay allowing the USACE to resume dredging of the Federal Channel. The West Bay channel and turning basin are currently several feet shallower than required in areas, impacting operations.
- Work with local and regional partners such as local City and County governments, Tribes and other interested parties and stakeholders to explore and develop projects with a nexus to Budd Inlet that can provide additional public and community benefits.



**Figure 1. Budd Inlet Sediment Remediation Site Sub Areas 1, 2 and 3.**

**Project Phasing**

This proposal is for the third Stage (Phase 1 Sub Area 2) of the ongoing Budd Inlet Sediment Remediation and Restoration Project, which continues and builds upon work successfully completed to date (Stage 1A and 1B).

To date in Stage 1B (Phase 1, Sub Area 1), which started June 30, 2023 and continues to December 31, 2024, we have successfully worked with the Department of Ecology to expedite the Project to perform Order-required sediment sampling within Budd Inlet Sub Area 1 which includes East Bay and a limited area in West Bay near the former railroad embankment and associated embayment. That field sampling event was completed in late February 2024, over 6 months ahead of the previously anticipated schedule. We assisted the Port in bringing Ecology grant reimbursements current to maintain future grant eligibility and assisted in technical and funding evaluation efforts the Port is pursuing as part of planning the larger Budd Inlet cleanup and restoration. All of our work to date is ahead of schedule and within or under budget.



To continue that momentum and leverage project opportunities we propose starting a similar process to that completed within Sub Area 1 within Sub Area 2 of Budd Inlet. This would include the preparation of AO-required submittals as described below.

We anticipate the AO-required scope of work and sediment sampling within Sub Area 2 to be on a similar order of magnitude to that performed in Sub Area 1.

Our current contract expires December 31, 2024. As we have discussed, extending our current contract for three years thru December 31, 2027, should allow for completion of Phase 1 work within Sub Area 1, 2 and 3 and position the Port to start construction. Sampling in Sub Area 2 would be performed during the 2024-2025 in water work window and sampling in Sub Area 3 during the 2025-2026 in water work window.

### **Scope of Work for Phase 1 Sub Area 2 (Stage 1C)**

Work in Phase 1 Sub Area 2 continues and builds upon work completed in Phase 1 Sub Area 1. This scope of work was developed in cooperation with the Port to continue meeting the Port's obligations as related to the AO. The scope is designed to utilize current funding available from the Port, two current Ecology Remedial Action Grants (RAG) and state legislative appropriation to Port of Olympia.

DOF understands that its work is limited to funds available to the Port and specific scopes of work will be authorized on a Work Order basis. DOF will not exceed the budget authorized by the Port without written approval from the Port.

As the exact scope and level of effort for tasks such as field data collection will be developed in discussion with the Port and Ecology, approximate levels of funding are included in this proposal. If early tasks are completed at lower cost than estimated, additional work on design and permitting tasks could be performed.

DOF will support the Port through the project direction and management of Rob Webb, PE and Tasya Gray, LG backed by the team of scientists and engineers available at DOF and teaming partners described in our May 2022 Statement of Qualifications.

Consistent with the AO, for all Ecology deliverables identified in this scope of work, we will prepare for submittal to Ecology one (1) hard copy, plus one electronic copy each in Word (.docx) and Adobe (.pdf) formats. Up to five (5) additional hard copies of deliverables will be provided as necessary for public comment periods and document repositories.

### **Task 1 – Project Strategy, Development, and Management, Project Communications, Database Management, Grant Funding Support, Integrated Planning Support and Historical Site Research & Agency Meetings and Negotiations**

***Task Status - Ongoing** We are requesting additional funding for expanded grant support to the Port including evaluation of potential DOT grants such as RAISE, PROTECT and BIG (Boating Infrastructure Grant) and for project integration with the Cascade Pole Site and MARAD PIDP Grant Project at the Marine Terminal, as appropriate, for onsite sediment management.*

***Requested Budget Modification:*** Add \$100,000 to Task 1 budget to perform Phase 1 Sub Area 2 (West Bay) work.

**Task 2 – Prepare Public Review Draft and Final Interim Action Plan (IAP) (AO Task 5A)**

***Task Status - Ongoing.*** Draft IAP was submitted to Ecology in accordance with AO schedule. Ecology to provide comments at future date and IAP revised based on results of required sediment data collection and analysis within Budd Inlet.

***Requested Budget Modification:*** No change to Task 2 budget.

**Task 3 – Prepare Pre-Remedial Design Data Gaps Memorandum (in support of AO Task 7) for Budd Inlet Sub Area 2.**

***Task Status – Completed for Sub Area 1 Sediments, Source Control Evaluation ongoing.*** - This Task was completed for Sub Area 1 sediments and will now be performed for Sub Area 2 leveraging the format developed for Sub Area 1 for efficiency.

The DOF team will complete the evaluation of data gaps for remedial design and permitting in Sub Area 2.

Based on the data gaps evaluation we will prepare a Pre-Remedial Design Data Gaps Memorandum (PRD Memo). The PRD Memo will present compiled existing data and a summary of data needs for design of dredging and dredging-related portions of the remedial action and be consistent with the Identification and Evaluation of Interim Action Alternatives Memorandum, including source control and remedy protection.

**Deliverable:** Draft and Final PRD Data Gaps Memo for Sub Area 2 in accordance with AO Amendment #2 Task 7.

***Requested Budget Modification:*** Add \$400,000 to Task 3 budget to perform Phase 1 Sub Area 2 (West Bay) work.

**Task 4 – Prepare Pre-Remedial Design Investigation Work Plan (in support of AO Task 8) for Sub Area 2**

***Task Status – Completed for Sub Area 1*** - This Task was completed for Sub Area 1 and will now be performed for Sub Area 2 leveraging format and Ecology approved methods developed for Sub Area 1 for efficiency.

We will prepare a Pre-Remedial Design Data Gaps Work Plan (Work Plan) describing the field investigations to be performed, data use, data collection methodologies, schedule, and reporting requirements. The Work Plan shall be prepared in compliance with WAC 173-340-350 and WAC 173-204-550. The Work Plan will be focused on collection of data to fill data gaps

identified in the PRD Memo. This scope of the investigation will be developed in coordination with Ecology to provide adequate data for design and regulatory compliance.

**Deliverable:** Draft and Final PRD Investigation Work Plan for Sub Area 2 in accordance with AO Amendment #2 Task 7.

**Requested Budget Modification:** Add \$200,000 to Task 4 budget to perform Phase 1 Sub Area 2 (West Bay) work.

### **Task 5 – Pre-Remedial Design Investigation (in support of AO Task 9)**

**Task Status** - Field data collection has been completed for Sub Area 1 and laboratory analysis and data evaluation are ongoing. Additional funding will support sediment sampling in Sub Area 2 leveraging approach developed for Sub Area 1 for efficiency.

We will implement a field data collection program in Sub Area 2 based on the Ecology approved Work Plan, to support engineering design and characterization necessary to finalize additional Ecology requirements under MTCA.

This is expected to include:

- Chemical sample collection.
- Laboratory analysis and validation of samples.
- Site inspection and documentation of existing conditions.
- Survey of existing structures.

Following field investigation and data analysis we will prepare a Pre-Remedial Design Investigation Report and submit it to Ecology for review and comment. The investigation report will present the data collected during the Pre-Remedial Design Field Investigation and identify if there are additional data gaps that need to be addressed by another phase of pre-remedial design sampling. If further data gaps are identified by Ecology, Tasks 7 through 9 will be repeated until there is sufficient data. If future data gaps are identified by Ecology, they will be addressed through a schedule change, per the AO.

**Deliverable:** Draft and Final PRD Investigation Report for Sub Area 2 in accordance with AO Amendment #2 Task 9, funding dependent. As required by the AO, electronic survey data for monitoring locations, electronic lab data, and GIS maps of contaminant distribution shall be provided, either in the report or as attachments.

**Requested Budget Modification:** Add \$3,300,000 to Task 5 budget to perform Phase 1 Sub Area 2 (West Bay) work.

### **Future Task 6 – Interim Action Remedial Design and Permitting (in support of AO Task 10)**

Consistent with available funding, the DOF team will begin remedial design for the remedy identified in the IAP, as modified by field data collection during Phase 1 work in Sub Area 1, 2 and 3, for sediment remediation within those Sub Areas. The remedial design will be performed consistent with the requirements of the Agreed Order.

This task is anticipated to include (pending additional investigation, remedy selection by Ecology and sufficient funding following completion of Tasks 1-5 above) design of the following items in support of the sediment remediation:

- Design of onsite confined disposal facility or facilities potentially including an in-water confined sediment disposal facility (CDF) within the area north of Berth Three called the “Log Pond” and an upland CDF in the vicinity of the Marine terminal and Cascade Pole Site.
  - If onsite CDF construction and sediment management is not practicable remedial design will use landfill disposal. Onsite placement can be considerably more cost efficient than landfill disposal.
- Design of dredging as preferred sediment remediation approach within Navigational areas.

**Deliverables:**

- A. Draft Engineering Design Report for Budd Inlet, per WAC 173-340-400(4), for Ecology review, followed by preparation of a final document addressing Ecology’s review comments. The Engineering Design Report shall incorporate pre-remedial design findings, results of engineering evaluations required to complete the design, and requirements imposed by permitting agencies, to the extent those requirements are available.
- B. Per WAC 173-340-400(4)(b), preparation of 60 percent complete Construction Plans and Specifications for Ecology review, followed by preparation of the 100 percent complete documents, each incorporating Ecology's review comments. The Construction Plans and Specifications shall be based on the EDR.
- C. Sixty percent (60%) Construction Plans and Specifications also shall include a Construction Quality Assurance Plan and a Construction (Performance) Monitoring and Contingency Response Plan. One hundred percent (100%) Construction Plans and Specifications also shall include a Water Quality Monitoring Plan, a Health and Safety Plan, and other plans necessary to complete the work.
- D. Preparation of Post-Construction Monitoring Plans per WAC 173-340-410 and WAC 173-204-560 to evaluate whether sources are being controlled, confirm interim action construction requirements have been met, verify compliance with permit conditions or substantive requirements of applicable laws after construction, and confirm interim action standards have been met both immediately following construction and in the long term.

Deliverables for Task 6 will be prepared consistent with comments from Ecology on prior deliverables and available funding.

**Future Task 7 – Permitting (AO Task 10)**

Consistent with available funding, the DOF team will begin preparation of permitting application documents from the appropriate permitting authorities, if both Ecology and the Port agree it is advisable to proceed with this aspect of the remedial action. This task will be performed, focused on Port priority areas, provided sufficient funding is available to complete design elements to a level sufficient for permitting.

**Deliverables:** Draft permitting documents for Ecology review and Final permitting documents addressing Ecology's review comments. Deliverables for Task 7 will be prepared consistent with comments from Ecology on prior deliverables and available funding.

**Assumptions**

Due to the complexity of this project DOF has made the following assumptions as part of developing this scope of work.

- Services will be provided on a time and materials basis for tasks requested by the Port’s project manager and could include informal tasks such as stakeholder or Port commission meeting attendance, document review, data analysis, status reports and letter preparation.
- DOF’s budget assumes that funds can be transferred from one task or stage to another or between subconsultants without requiring a budget modification.
- Changes to tasks and associated need to move funds between tasks can be approved by email with the Port.
- Work will be performed and paced consistent with available funding.
- Schedule will depend upon Department of Ecology and other stakeholders beyond project control.
- Actual deliverables may be adjusted based upon Port, Department of Ecology, or other stakeholder requirements.
- Scope and schedule will be adjusted as appropriate based on Port direction and available funding.

**Estimated Costs**

The estimated cost to perform the Stage 1C tasks above (increasing our current Phase 1B funding to include work in Sub Area 2) is estimated at \$4,000,000, consistent with available funding, as summarized below.

Task #	Task Description	Estimated Increased Cost
1	Project Strategy, Development, and Management, Project Communications, Database construction and support, Grant	\$100,000

	Funding Support, Integrated Planning Support and Historical Site Research, Agency Negotiations, Monthly Progress Reports.	
2	Prepare Public Review Draft and Final Interim Action Plan (IAP) (AO Task 5A).	Task Completed, no additional funding requested
3	Perform Data Gaps Analysis and Prepare Pre-Remedial Design Data Gaps Memorandum (in support of AO Task 7), Task Completed for Sub Area 1 Sediment, request additional funding to perform work in Sub-Area 2.	\$400,000
4	Prepare Pre-Remedial Design Investigation Work Plan (in support of AO Task 8), Task Completed for Sub Area 1, request additional funding to perform work in Sub-Area 2.	\$200,000
5	Pre-Remedial Design Investigation (in support of AO Task 9), Task Completed for Sub Area 1, request additional funding to perform work in Sub-Area 2.	\$3,300,000*
6	Interim Action Remedial Design and Permitting (in support of AO Task 10).	**
7	Permitting for construction (in support of AO Task 10).	**
<b>Estimated Total</b>		<b>\$4,000,000*</b>

\* Pending development of detailed Investigation Work Plan and level of sampling and analysis required.

\*\* Work on these tasks will be performed contingent upon available funding. Funds remaining from Task 1 through 5 will be redirected towards these tasks as appropriate in discussion with the Port.

DOF understands that its work is limited to funds available to the Port and specific scopes of work will be authorized on a Work Order basis. DOF will not exceed the budget authorized by the Port without written approval from the Port. It is explicitly understood that as part of this scope of work and budget that depending upon emerging project needs and Port priorities, funds can be shifted between Tasks if necessary and such reallocation will not be considered a change to the budget or scope of work.

We understand that the Port may wish to adjust the approach over the next few months based upon the results of planning activities and as the Port evaluates available funding for the project. DOF will adjust its scope of work and project schedule accordingly and communicate variations from cost assumptions that may result as work progresses. Costs will be tracked against individual tasks monthly and summarized in our invoicing.

As additional specific tasks are identified we can provide you with an associated estimated cost estimate and draw off the initial funding to do the work.

**Schedule**

Budd Inlet Phase 1: Engineering, Design and Permitting Sub Area 2

We are prepared to start work on Phase 1 work focused on Sub Area 2 immediately upon authorization from the Port. We will perform work within Sub Area 2 in an efficient manner, building upon the streamlined process completed in Sub Area 1 with a target to start sediment sampling within West Bay as soon as practicable. During Phase 1 Sub Area 2 work we will continue to meet the AO required schedule, consistent with available funding.

The DOF team looks forward to working with the Port for the successful completion of the Budd Inlet Project.

Sincerely,

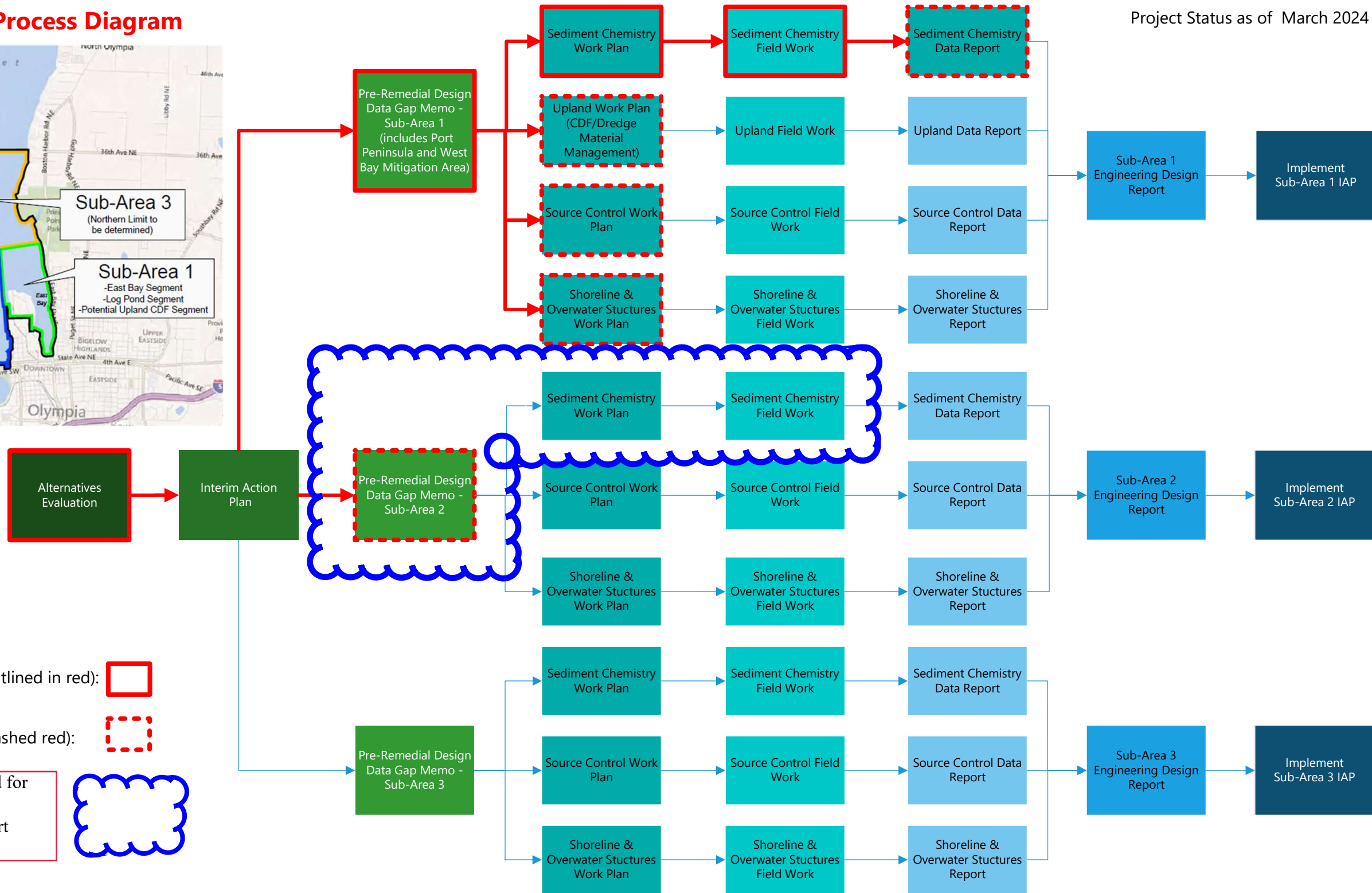
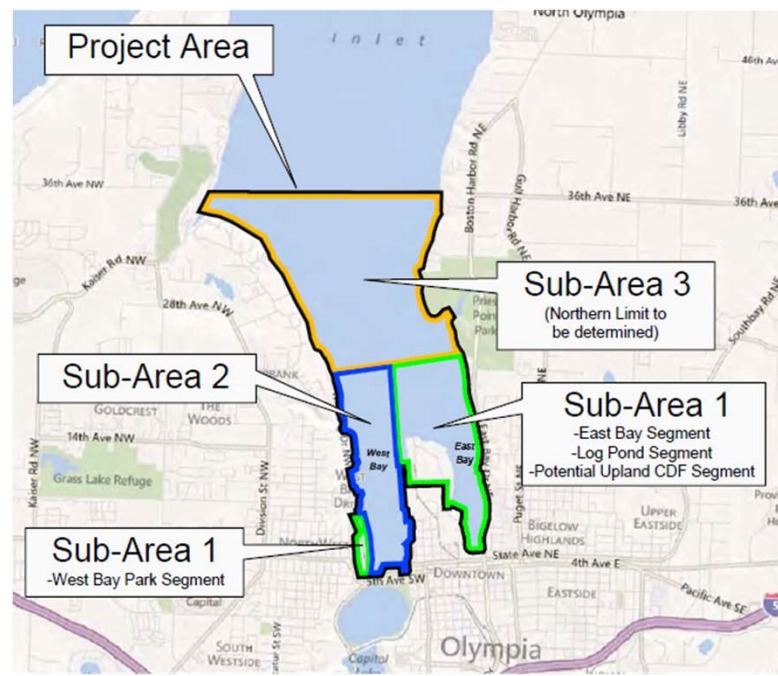


Rob Webb, PE  
President  
Dalton, Olmsted & Fuglevand, Inc.

cc Jim Darling, Leeward Strategies  
James Maul, Gemini Environmental Strategies

# Budd Inlet Process Diagram

Project Status as of March 2024



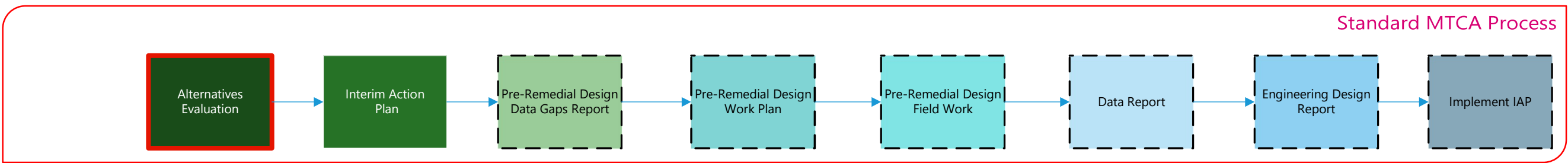
**LEGEND:**

Currently completed<sup>7</sup> (outlined in red):

In process (outlined in dashed red):

Upcoming Tasks targeted for 2024 (With Ecology concurrence & within Port funding limits):

- AO Tasks:** **Task 4:** Interim Action Alts Memo
- Task 5:** Interim Action Plan
- Task 7:** PRD Data Gaps Memo
- Task 8:** PRD Investigation Work Plan
- Task 9:** PRD Investigation Field Work & Reports
- Task 10:** Final Engineering Design Report



**Figure 2**  
**Process Flow Diagram**

1. Final Ecology approval pending for some items.





**Shoaling by Thickness**

- Above Required Dredge Prism
- 2 - 1' Overdepth
- 1' to 0' Overdepth
- Below 2' Overdepth

Note: Shoal thickness based on comparing the Composite 2017-2024 topographic and bathymetric surface to the required dredging depth plus 2' of Overdepth for the Authorized Federal Navigation Channel, Port Berth Area (-42), and the Swantown/AnchorQEA Proposed Stepped (-8, -10, -12) Dredge Prism.

**Legend**

- Federal Navigation channel
- Study Area

**Notes**

1. Horizontal Datum: Washington State Plane South, NAD83.
2. Background imagery: Google Earth Pro, 07/25/2022.

**DOF** DALTON OLMSTED FUGLEVAND  
 The Budd Inlet Team

**PORT of OLYMPIA**  
 Budd Inlet - Olympia, WA  
 Revised Alternatives Evaluation

**Shoaling within Navigation Channels and Marina**

**Figure 3**

Grette Associates Environmental Consultants | WestLand 100% EMPLOYEE OWNED | MAUL FOSTER ALONG | CRETE CONSULTING, INC. | moffatt & nichol | IAS | LANDAU ASSOCIATES

March 12, 2024



June 26, 2024

Camille St. Onge  
Director of Strategic Initiatives & Commission Affairs  
Port of Olympia  
606 Columbia Street NW STE 300  
Olympia, WA 98501  
Email: [camilles@portolympia.com](mailto:camilles@portolympia.com)

RE: Port of Olympia  
Integrated Budd Inlet - Port Peninsula Master Plan

Dear Camille,

Dalton, Olmsted, Fuglevand (DOF) is pleased to submit this proposal to provide master planning support including financial analysis to the Port of Olympia (Port) for the Port Peninsula. This master planning process integrates the ongoing Budd Inlet Sediment Remediation Project, including strategy, approach, technical and financial evaluations.

The master planning evaluation will consider potential benefits and impacts related to Budd Inlet sediment remediation dredge material management approach. Maintaining current port marine terminal and marina operations requires dredging to restore navigation resulting in dredging as the preferred remedial approach within active navigation areas. If navigation requirements change, the need for dredging and the preferred remedial approach could change. Additionally, previously identified contaminated sediments underneath the marine terminal dock may require an expensive remedial approach, due to limited access and the very steep slope below the terminal dock adjacent to the Port berth area. A change in terminal use may allow for a less costly approach to sediment remediation in this area by potentially allowing a reduction in berth area depth or removal of the marine terminal dock.

### **Objective**

The objective of this project is to evaluate land use options for the Port's Marine Terminal, Swantown Marina and Boat Works, and the overall Port Peninsula, providing the Port with information needed to make planning decisions regarding the Port's future.

This work builds on previous work at the Port and will be completed in consideration of the Budd Inlet Sediment Remediation Project and the Deschutes River Estuary Dam Removal

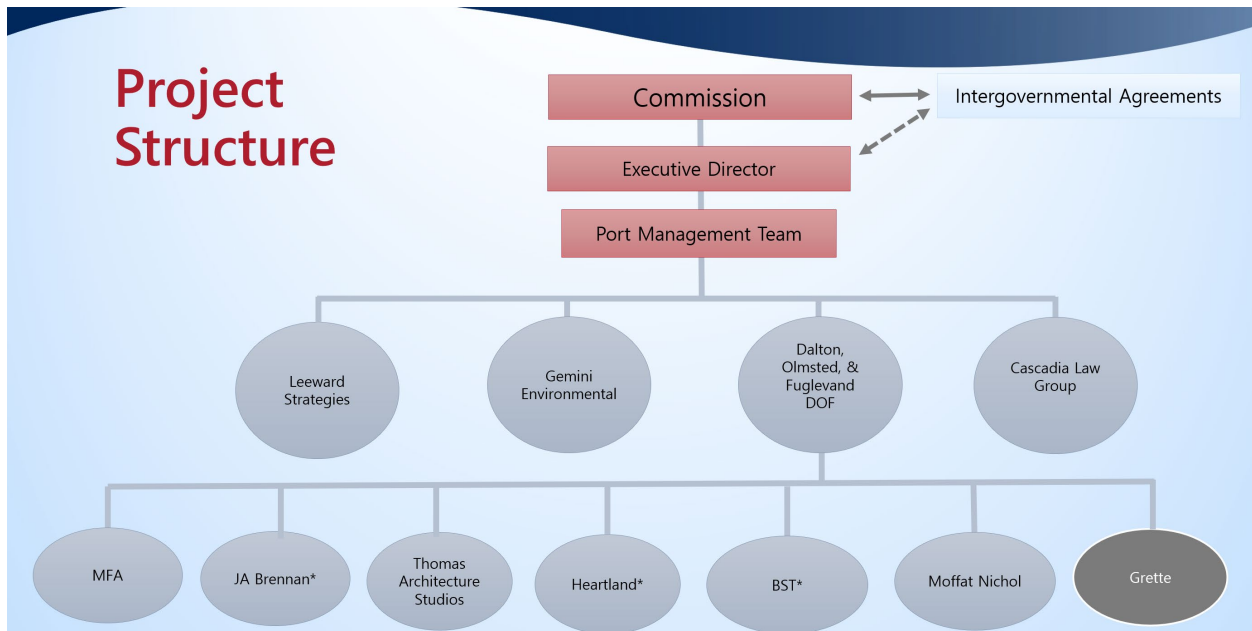
Project, and will build upon the Port’s Vision 2050, Destination Waterfront Plans, and current Waterfront Center planning underway.

**Project Team Structure**

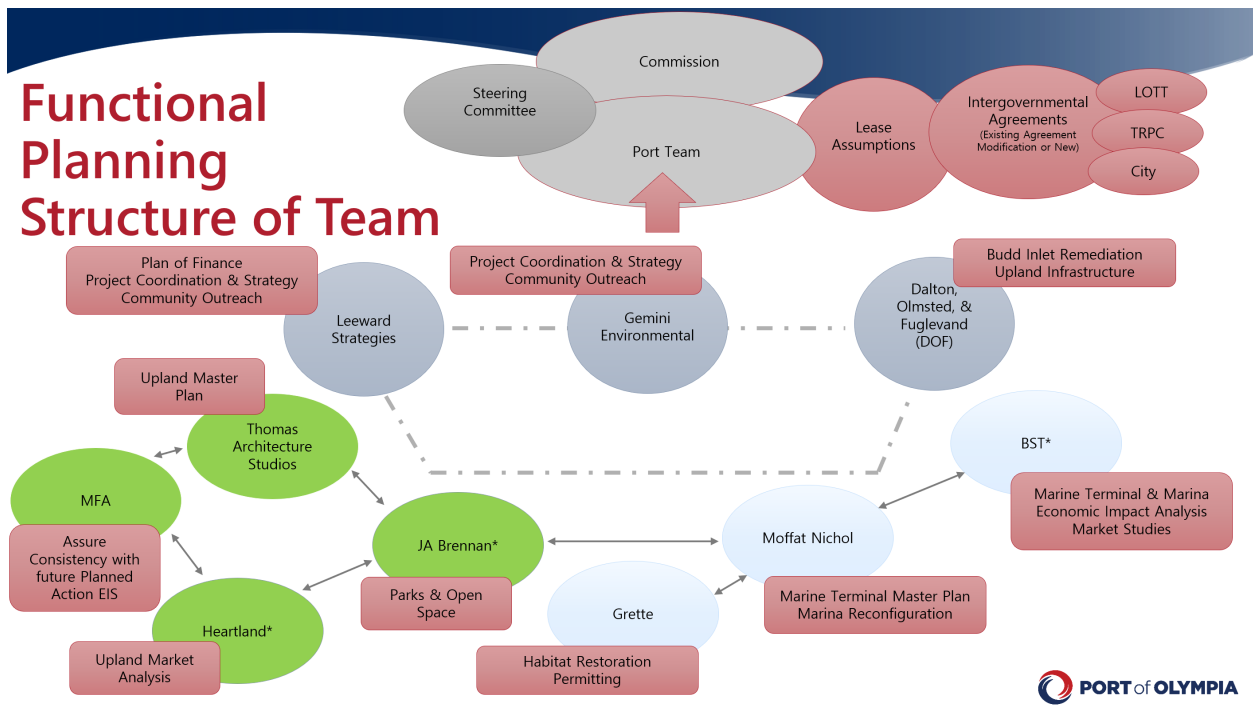
DOF will continue our support of the Port through the project direction and management of Rob Webb, PE and Tasya Gray, LG backed by our existing Budd Inlet Team. To provide additional regional expertise we will supplement the existing team’s national knowledge with three Pacific Northwest specialized firms.

- JA Brennan – Parks and Open Space evaluation and development.
- BST - Marine Terminal and Swantown Marina financial evaluations.
- Heartland – Upland real estate financial analysis.

The overall Master Plan Project Structure and team organization is shown below. In addition to the DOF Team (listed below DOF in graphic below), the project strategy, plan of finance and policy and legal support will be provided by Leeward Strategies (Jim Darling), Gemini Environmental (Jim Maul) and Cascadia Law Group, each of which are under separate contract to the Port and not included in this proposal.



**Figure 1. Project Structure**



**Figure 2. Functional Planning Structure**

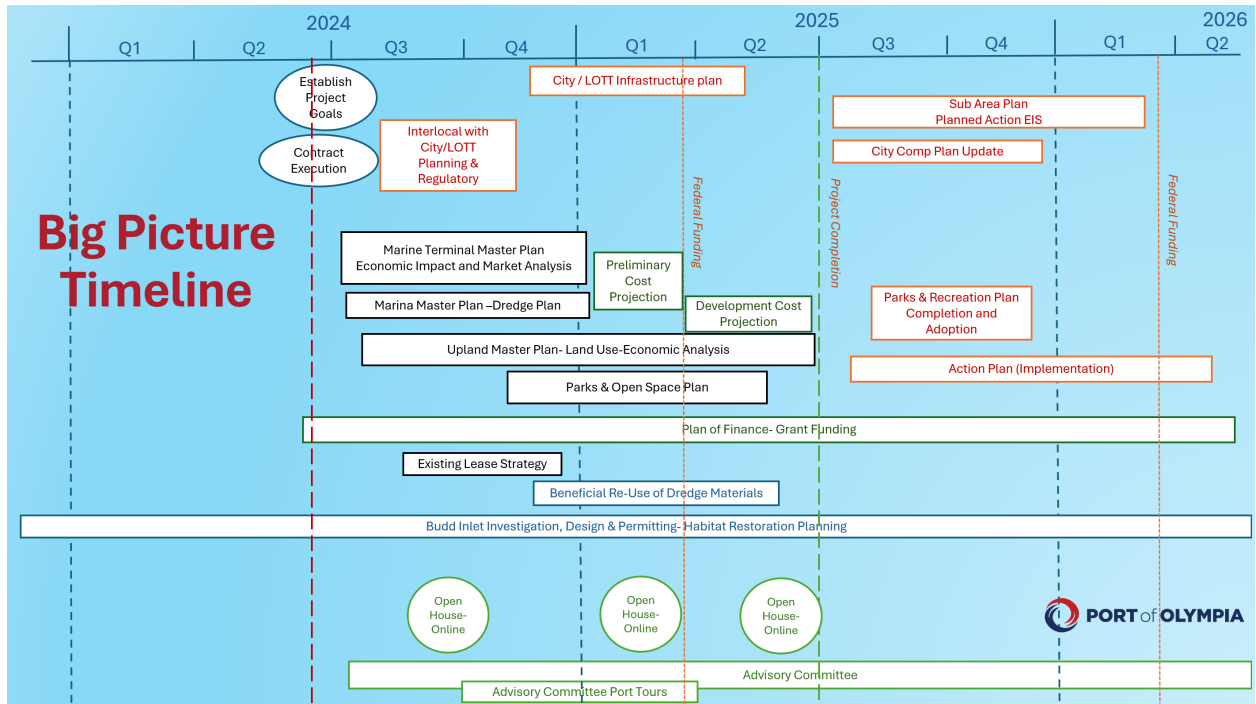
**Schedule**

Schedule is a critical driving factor to position the Port for the upcoming 2025 federal funding cycle. This project is scheduled to be completed by June 30, 2025 with substantial completion of tasks as needed to support the federal funding opportunity starting Q1 2025.

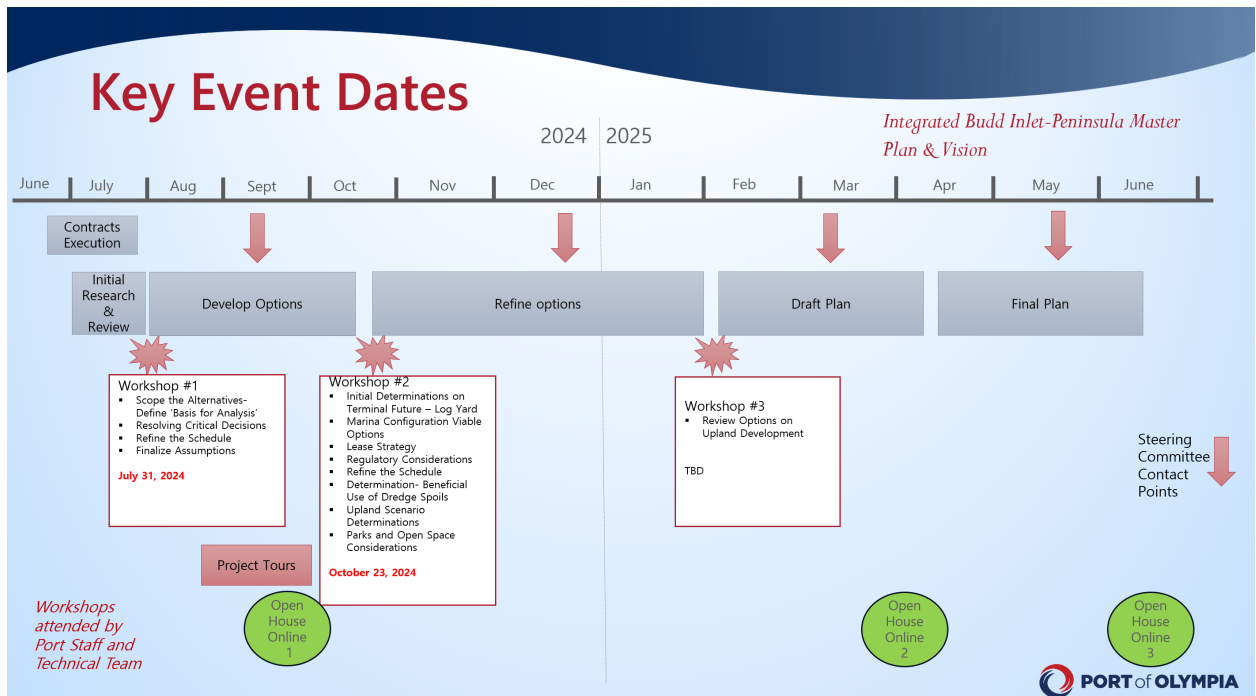
The overall project schedule and schedule for the various supporting evaluations is graphically shown on Figure 3.

The work will be guided by the Port and informed by a series of Workshops, Advisory Committee meetings, and public open houses as shown on Figures 3 and 4. The first Workshop is tentatively scheduled for July 31, 2024. We anticipate these meetings to be graphically intensive depicting current and potential future scenarios for the Marine Terminal, Swantown Marina and the Port Peninsula.

To facilitate the schedule, project reporting will be done synoptically in a brief, technical writing format based primarily on graphics and tables with limited text. This will support efficient communication of project concepts and critical details including estimated costs.



**Figure 3. Project Timeline**



**Figure 4. Key Event Dates**

### Proposed Scope of Work

This scope of work was developed in cooperation with the Port to facilitate expedited completion of the Master Planning Process to meet multiple project goals, leverage funding opportunities and integrate related projects including the Budd Inlet Sediment Remediation Project, the Deschutes River Estuary Project, the City of Olympia Comprehensive Plan revision and federal grant funding cycle.

The work has been divided into three main categories as follows.

- Task 1 – Marine Terminal Evaluations
- Task 2 – Swantown Marina and Boatworks Evaluations
- Task 3 – Port Peninsula Master Plan Evaluations including Marine Terminal and Marina

These categories each overlap with the Budd Inlet Sediment Remediation Project and with each other. This interaction will be incorporated into the various evaluations and the Port Peninsula Master Plan.



**Figure 5. Draft Study Area**

In Task 1, future use and financial evaluations of the Marine Terminal will be performed. This includes an updated economic forecast for the current Marine Terminal operations and development of several alternative futures for the Marine Terminal. Future options for the Marine Terminal will be developed during the first project Workshop and evaluated during Task 1.

Future use and financial evaluations of Swantown Marina and Boatworks will be performed in Task 2. This will include evaluation of potential updated configurations of Swantown Marina to increase public access and marina use. Future options for the Swantown Marina and Boatworks will be developed during the first project Workshop and then evaluated during Task 2.

The evaluations developed in Tasks 1 and 2 will inform Task 3, the Peninsula Master Plan. Future use and financial evaluations of the overall Port Peninsula will be performed in Task 3. Future options for the Port Peninsula will be developed during the second project Workshop and then evaluated during Task 3.

For brevity, individual tasks and subtasks are summarized in Table 1 below. Full details describing the work, planned approach, anticipated level of effort and deliverables are presented in the attached subcontractor supporting proposals.

**Table 1 – Project Tasks, Task Lead & Due Dates**

<b>Task 1. Marine Terminal Evaluation</b>				
<b>Task #</b>	<b>Task Description/Deliverable</b>	<b>Lead/Supporting Firm(s)</b>	<b>Anticipated Date (to Port)</b>	<b>Notes</b>
1.1	Preliminary Market Analysis	BST/M&N	10/26/2024	<p>Conduct a market analysis including review of relevant reports, meetings with Port staff, consideration of previous Port marketing and review of recent trends in cargo in the PNW. Report will be an extension of the 2017 “Marine Cargo Forecast and Rail Capacity Analysis” estimating the share that may move through Olympia.</p> <p>M&amp;N will provide input to the market assessment focused on vessel operations, rail operations, comparison and benchmarking to other Port facilities and sea level rise.</p>
1.2	Master Plan Considerations/Preliminary Master Plan	M&N	10/26/2024	<p>Prepare a Basis of Analysis (BOA) Technical Memo for Primary Study Area.</p> <p>Prepare draft Master Plan Layout Alternatives for Marine Terminal considering alternative uses and infrastructure layouts (4 anticipated), evaluate alternative land uses including residential, retail, and mixed-commercial.</p>



1.3	Final Market Analysis	BST/M&N	12/31/2024	<p>Prepare Estimates of Probable Cost for construction of up to 5 development alternatives developed in Task 1.2.</p> <p>Prepare a Grant Matrix identifying potential grant sources for the waterfront facilities.</p> <p>Finalize the Draft Market Analysis prepared in Task 1.1.</p>
1.4	Beneficial Use of Dredge Material	DOF	12/31/2024	<p>Incorporate elements of the Budd Inlet Sediment Remediation and related dredge material management based on the various alternatives for the Marine Terminal and associated navigational requirements. DOF will prepare a memo summarizing the potential sediment remedial approach(s) and related costs consistent with each of the alternatives developed for the Marine terminal.</p>
1.5	Final Master Plan	M&N	12/31/2024	<p>Based on the previous tasks a final Master Plan will be developed for the Marine Terminal site. This preferred alternative will then be incorporated into and further developed within the overall Peninsula Master Plan in Task 3.</p>
1.6	Infrastructure Considerations	DOF	1/31/2025	<p>Evaluate the impacts of various Marine Terminal concepts and sediment management approaches and related dredge material volumes. Based on the alternatives for the Marine Terminal and associated dredge</p>

				material management strategies preliminary, order of magnitude cost estimates for utility modifications will be developed.
1.7	Regional Economic Impact Analysis	BST	1/31/2025	Complete a Regional Economic Analysis based on the existing Marine Terminal usage. This will include an estimate of direct impacts and total impacts based on an IMPLAN model. BST will prepare a brief written report and a PowerPoint presentation presenting the key findings.
<b>Task 2. Swantown Marina &amp; Boatworks Evaluation</b>				
<b>Task #</b>	<b>Task Description/Deliverable</b>	<b>Lead/Supporting Firm(s)</b>	<b>Anticipated Date (to Port)</b>	
2.1	Marina Reconfiguration Plan Considerations/Preliminary Marina Master Plan	M&N	10/26/2024	Prepare BOA Memo summarizing criteria, assumptions, scenarios/alternatives, resiliency planning and other critical factors.  Develop Draft Master Plan Layouts – Prepare plans showing existing conditions and up to 5 alternatives which will be refined based on project workshops and Port input.
2.2	Marina Market Analysis	BST/M&N	10/26/2024	M&N will provide technical input on regional boating demographics, marina location relative to market, information on comparable marinas, market trends and forecast, and regional slip mix.
2.3	Marina Reconfiguration Plan	M&N	12/31/2024	Develop Final Marina Reconfiguration Layout Alternatives and descriptive narrative based on

				<p>draft concepts refined based on project Workshops and Port input.</p> <p>Prepare a presentation of typical marina precedents of “must haves,” “should haves,” and “could haves” to provide Port staff an understanding of the size and scale of different elements and fit-and-finishes associated with marinas and support facilities typically required on the upland.</p>
2.4	Project Costs	M&N	12/31/2024	<p>Prepare estimates of probable construction costs based on the alternatives developed.</p> <p>Prepare a Grant Matrix identifying potential grant sources for the waterfront facilities.</p>
2.5	Regional Economic Impact Analysis	BST	1/31/2025	<p>Complete a Regional Economic Analysis based on the existing Marina usage. This will include an estimate of direct impacts and total impacts based on an IMPLAN model. BST will prepare a brief written report and a PowerPoint presentation presenting the key findings.</p>
<b>Task 3. Port Peninsula Master Plan</b>				
<b>Task #</b>	<b>Task Description/Deliverable</b>	<b>Lead/Supporting Firm(s)</b>	<b>Anticipated Date (to Port)</b>	
3.1	Upland Master Plan- Study Area & Assumptions	TAS	10/26/2024	<p>An Upland Master Plan will be developed based on the project Workshops and Port input. It will incorporate and further develop concepts</p>

				for the Marine Terminal and Swantown Marina developed in Tasks 1 & 2.
3.2	Preliminary Market Assessment & Assumptions	HTL	10/26/2024	<p>An analysis of the real estate markets influencing Olympia will be prepared; effort will focus on commercial (retail, office), hospitality, industrial (flex) and residential (for sale and for rent multi-family &amp; senior housing).</p> <p>For each land use type the following will be forecast:</p> <ul style="list-style-type: none"> <li>• Absorption (sales per year by type)</li> <li>• Rental rates (retail, multi-family)</li> <li>• Sale prices (condominiums)</li> <li>• Supply (competitive pipeline projects)</li> <li>• Demand (population and employment growth)</li> <li>• Comparable Land Sales by Type</li> </ul> <p>Financial models will be built as an analytic and decision-making tool.</p> <p>Development scenarios will be formulated and tested for viability of each of them with a dynamic financial model.</p> <p>A PowerPoint presentation will be prepared to summarize findings of the evaluation.</p>

3.3	Considerations to Support Planned Action EIS	MFA	10/26/2024	<p>In anticipation of subarea planning and planned action EIS development and processing, the master planning team will coordinate with the city, Port and project team.</p> <p>Document review and summarization of city policy and regulations is anticipated, to inform what modifications will be needed to achieve the planned vision and identify key stakeholders for a subarea plan/planned action EIS effort.</p> <p>A technical memorandum will be prepared that provides the considerations and timeline anticipated to support the subarea plan/planned action EIS effort.</p>
3.4	Initial Parks and Open Space Assessment	JAB	10/26/2024	<p>Perform site evaluation, inventory and data collection in the project area. Prepare project basemap and memo.</p> <p>Identify project goals and establish project vision for open space.</p> <p>Based on technical Workshops and Port input develop up to 3 alternatives including figures and brief tech memo.</p> <p>Develop Draft Parks &amp; Open Space Concept Plan.</p>
3.5	Parks and Open Space Plan	JAB	1/15/2025	<p>Develop final Parks &amp; Open Space Concept Plan and preliminary square footage based cost estimate.</p>

				Identify potential grant funding.
				Identify potential permitting needs.
3.6	Draft Upland Master Plan/Market Assessment	TAS/HTL	1/31/2025	Develop Draft Upland Master Plan incorporating and further developing concepts for the Marine Terminal and Swantown Marina developed in Tasks 1 & 2 and Parks and Open Space developed in Task 3.5.
3.7	Final Master Plan	TAS	3/31/2025	Develop Final Upland Master Plan.
<b>Task 4. Project Management</b>				
<b>Task #</b>	<b>Task Description/Deliverable</b>	<b>Lead/Supporting Firm(s)</b>	<b>Schedule</b>	
4.1	Team Meetings	DOF/full team	Ongoing during project	The project team will meet monthly (2 hours estimated) to ensure overall project and overlapping task coordination.
4.2	Project Workshops	DOF/full team	3 planned	Lead and participate in 3 full day Project Workshops to scope and define alternatives to be evaluated, define “Basis for Analysis”, and refine other project details of Tasks 1, 2, and 3.
4.3	Open House - online	DOF/full team	3 planned	Lead and participate in 3 public meetings including in person and online options.
4.4	Project task integration	DOF/full team	Ongoing during project	DOF will provide detailed coordination between the various project elements to ensure proper and efficient integration of the various project elements throughout the initial identification, refinement and finalization stages. This is expected to include providing frequent updates to the Port for use in

				concurrent planning, budgeting, and meetings with stakeholders (including Commission).
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## **Assumptions**

Due to the complexity of this project DOF has made the following assumptions as part of developing this scope of work.

- Services will be provided on a time and materials basis for tasks requested by the Port's project manager and could include informal tasks such as stakeholder or Port commission meeting attendance, document review, data analysis, status reports and letter preparation.
- DOF's budget assumes that funds can be transferred from one task or stage to another without requiring a budget modification.
- The following services or products have been excluded from the scope of work. These items can be provided at your request as a change to the scope of work and an extra fee to be negotiated.
  - Drafting a subarea plan, planned action EIS, or comprehensive plan amendments. It is anticipated that these components will be scoped as part of future phases of the project.
  - Updates to deliverables once initially finalized.
  - Development of formal cost-benefit analysis as required for federal funding. These would be developed in the future based upon selected alternatives and identified potential funding sources.

## **Estimated Costs**

The estimated cost to perform the tasks listed above is estimated at \$1,240,086 as described in Tables 2 (below) and 3 (attached). DOF will not exceed the budget authorized by the Port without written approval from the Port.

We understand that the Port may wish to adjust approach over the next few months. DOF will adjust accordingly and communicate variations from cost assumptions that may result as work progresses. Costs will be tracked against individual tasks monthly and summarized in our invoicing.

As additional specific tasks are identified we can provide you an associated estimated cost estimate and draw off the initial funding to do the work.

As previously discussed with the Port, DOF will reduce its overhead fee on subconsultants for this work by 24% from our existing contract amount of 10% to 7.6%. This reduction is included in the project cost estimates.

**Table 2 – Estimated Project Costs**

<b><u>Task #</u></b>	<b><u>Task Description</u></b>	<b><u>Estimated Costs</u></b>
1	Marine Terminal Evaluations & Master Plan	\$266,831
2	Swantown Marina Evaluations & Master Plan	\$209,515
3	Port Peninsula Evaluations & Master Plan	\$492,842
4	Public Meeting, Project Workshops, Port & Team Meetings & Project Management	\$270,859



<b>Total</b>		<b>\$1,240,086</b>
<i>Contingency</i>	<i>20% (for use as directed by Port)</i>	<i>\$248,017</i>
<b>Total (Including Contingency)</b>		<b>\$1,488,103</b>

**Schedule**

Work will promptly commence upon authorization targeting completion by June 20, 2025, as practicable. To meet the project schedule, we request authorization to start work on July 1, 2024.

Tasks and deliverables will be completed consistent with dates listed in Table 1.

The DOF team looks forward to working with the Port for the successful completion of the Budd Inlet-Port Peninsula Master Plan Project.

Sincerely,



Rob Webb, PE  
President  
Dalton, Olmsted & Fuglevand, Inc.



Tasya Gray  
Treasurer, Principal  
Dalton, Olmsted & Fuglevand, Inc.

cc Alex Smith, Port of Olympia Executive Director  
Shawn Gilbertson, Port of Olympia Director of Environmental Planning & Programs  
Jonathon Wolf, Port of Olympia Budd Inlet Project Manager

**Attachments:**

1. BST Proposal
2. Heartland Proposal
3. JA Brennan Proposal
4. M&N Proposal
5. MFA Proposal
6. TAS Proposal

TABLE 3

**Dalton, Olmsted & Fuglevand, Inc.**  
**Environmental Consultants**

Proposal/Project Name:  
 6/26/24 5:19 PM

Port of Olympia - Budd Inlet - Port Peninsula Integrated Master Plan Number:

Prepared by: PoO-002  
 Rob Webb

- Task 1 Marine Terminal Evaluation
- Task 2 Swantown Marina & Boatworks Evaluation
- Task 3 Port Peninsula Master Plan
- Task 4 Meetings and Project Management
- Task 5
- Task 6
- Task 7
- Task 8
- Task 9
- Task 10

Labor Categories	Billing Rate	Task 1	Task 2	Task 3	Task 4	Task 5	Task 6	Task 7	Task 8	Task 9	Task 10	Total Hours	Total Dollars
Sr. Consultant 3	\$347	38	13	14	150	0	0	0	0	0	0	215	\$74,498
Sr. Consultant 2	\$330	20	0	0	48	0	0	0	0	0	0	68	\$22,420
Sr. Consultant 1	\$263	24	0	0	0	0	0	0	0	0	0	24	\$6,300
Consultant 3	\$240	0	0	0	0	0	0	0	0	0	0	0	\$0
Consultant 2	\$229	160	0	0	72	0	0	0	0	0	0	232	\$53,105
Consultant 1	\$217	80	0	0	0	0	0	0	0	0	0	80	\$17,388
Project 3	\$207	0	0	0	0	0	0	0	0	0	0	0	\$0
Project 2	\$195	0	0	0	0	0	0	0	0	0	0	0	\$0
Project 1	\$184	0	0	0	0	0	0	0	0	0	0	0	\$0
Staff 3	\$173	0	0	0	0	0	0	0	0	0	0	0	\$0
Staff 2	\$162	0	0	0	0	0	0	0	0	0	0	0	\$0
Staff 1	\$151	60	0	0	18	0	0	0	0	0	0	78	\$11,794
Overwater Premium (overwater field labor)	8%												
Total Hours		382	13	14	288	0	0	0	0	0	0	697	
Total Labor		\$89,145	\$4,505	\$4,851	\$87,003	\$0	\$0	\$0	\$0	\$0	\$0		\$185,504
Average Hourly Rate	\$266												
<b>Subconsultants</b>													
BST		\$57,000	\$78,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$135,000
Heartland		\$0	\$0	\$85,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0		\$95,000
j.a. brennan		\$0	\$0	\$76,698	\$43,084	\$0	\$0	\$0	\$0	\$0	\$0		\$119,782
MFA		\$0	\$0	\$26,575	\$22,476	\$0	\$0	\$0	\$0	\$0	\$0		\$49,051
M&N		\$107,430	\$112,530	\$18,010	\$68,800	\$0	\$0	\$0	\$0	\$0	\$0		\$306,770
TAS		\$0	\$0	\$247,240	\$23,760	\$0	\$0	\$0	\$0	\$0	\$0		\$271,000
		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
<b>Total Cost</b>		\$164,430	\$190,530	\$453,523	\$168,120	\$0	\$0	\$0	\$0	\$0	\$0		\$976,603
<b>Markup on Subs</b>	7.6%	\$12,497	\$14,480	\$34,468	\$12,777	\$0	\$0	\$0	\$0	\$0	\$0		\$74,222
<b>Reimbursables</b>													
CAD/Computer (\$/hr)		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
Travel		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
Car Rental		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
Per Diem	\$227	\$500	\$0	\$0	\$1,500	\$0	\$0	\$0	\$0	\$0	\$0		\$2,000
DOF Truck	\$ 125	\$125	\$0	\$0	\$750	\$0	\$0	\$0	\$0	\$0	\$0		\$875
Mail/Courier/Fedex		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
Mileage (\$/mile)	\$0.67	\$135	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$135
Copies (\$/copy)		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
Repro/Plotting		\$0	\$0	\$0	\$748	\$0	\$0	\$0	\$0	\$0	\$0		\$748
Buy Project Data		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
Misc expenses		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
<b>Total Cost</b>		\$760	\$0	\$0	\$2,998	\$0	\$0	\$0	\$0	\$0	\$0		\$3,758
<b>Markup on Reim.</b>	0.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
<b>Field Equip. and Supplies Summary</b>													
		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
<b>Markup</b>	7.6%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		\$0
<b>TOTAL COSTS</b>		\$266,831	\$209,515	\$492,842	\$270,898	\$0	\$0	\$0	\$0	\$0	\$0		\$1,240,086

Contingency 20% \$248,017.20  
\$1,488,103.20

- Notes:
- 2024 Rates used in table above. Rates adjust each January for the upcoming year.
  - Budget will be shifted amongst tasks and subconsultants as appropriate within limits of total budget.
  - GSA per diem rates used = \$153/day hotel & \$74/day for MI&E

Attachment 1  
BST Proposal

## Task 1.1 & 1.3 Marine Terminal Market Analysis

### A. Description and Purpose

The Port of Olympia is considering future options for the Port Peninsula, as part of the planning for environmental cleanup and dredging of Budd Inlet. As part of this analysis, BST Associates has been asked to conduct a market analysis for marine cargo at the Port of Olympia Marine Terminal.

The 60-acre marine terminal offers 1,750 of lineal moorage, with berth space for three ships. The navigation channel is authorized to a depth of 30 feet MLLW, and depth at the berth is 39 feet MLLW. The terminal is served by rail on-dock, and features a Customs bonded warehouse, as well as a complete container yard.

In past years the Port has handled a variety of cargoes, primarily breakbulk cargo such as logs, but also including exports of military cargo and proppants, among others. Since Weyerhaeuser shifted its log export operation from Tacoma to Olympia, logs have accounted for most of Olympia's marine cargo. This report will focus on potential future opportunities.

### B. Tasks to be Performed

#### I. Review of Relevant Reports

BST Associates will review relevant reports, including:

- 2007 *Port of Olympia Assessment of Breakbulk Cargo Market Opportunities* (BST Associates)
- 2017 *Marine Cargo Forecast and Rail Capacity Analysis* (for Washington Public Ports Association by BST)
- 2021 *The Economic Benefits of the Port of Olympia* (Martin Associates)
- Other relevant documents TBD

The analysis will also incorporate past cargo marketing efforts by the Port of Olympia.

#### II. Update of Cargo Trends and Forecast

BST will review recent trends in marine cargo movements in the Pacific Northwest, using the following data types/sources:

Trends that will be explored include:

- Cargo tonnage, by commodity
- Cargo vessel entrances and clearances, including draft
- Longshore labor hours
- Jones Stevedoring log export reports
- DNR Timber Harvest Reports
- Other relevant data

BST Associates will interview Port staff about cargo trends and potential market opportunities. Based on these updated trends and market insights, BST Associates will prepare an extension of the regional marine forecasts developed for the *Marine Cargo Forecast and Rail Capacity Analysis*, and will estimate the share that may move through Olympia.

This analysis will include a discussion of the industries that drive cargo exports and imports, with a focus on those that are located in the primarily hinterland for the Marine Terminal. The analysis will also describe trends in these industries, and the role these industries play in the regional economy.

### III. Report

BST Associates will prepare a report that presents the forecast and documents the methodology and results.

#### *C. Budget*

The budget for this effort is \$39,000. Draft results will be completed by the end of October, and final report by the end of 2024.

## Task 1.7 Regional Economic Impact Analysis

### A. Description and Purpose

The Port of Olympia is considering future options for the Port Peninsula, as part of the planning for environmental cleanup and dredging of Budd Inlet. As part of this analysis, BST Associates has been asked to conduct an economic impact analysis for the Port of Olympia Marine Terminal.

### B. Tasks to be Performed

BST will undertake the following scope of work to prepare the economic impact analysis of marine terminal operations.

#### I. Direct Impacts

The first step is to document the direct impacts of the marine terminal operations. The Port will provide the following information:

- List of tenants and contact information
- Employment surveys for 2014-2023
- Port capital expenditures at the Marine Terminal for the past five years (2019 to 2023, plus 2024 ytd)
- Port operations and maintenance expenditures by category of expense for the past five years (2019 to 2023, plus 2024 ytd)

BST will utilize data and in-house databases (Dun & Bradstreet, InfoUSA, data from Washington State Department of Revenue, Employment Security Department, US Census Bureau, and other sources) to identify the direct impacts from construction and operations, including:

- Revenue/sales
- Payroll
- Employment
- Taxes

BST will survey firms to better understand how they operate at the Port of Olympia and in Thurston County, and to obtain information that illustrates the importance of the Port facilities to Thurston County and Washington State. BST will conduct online surveys, as well as telephone and in-person interviews with select stakeholders.

The direct impacts will identify for both construction and operational impacts.

#### II. Total Impacts

Based on the direct impacts, we will use IMPLAN software to estimate the indirect and induced impacts. Indirect impacts refer to expenditures by the users/tenants on outside goods and services. Induced impacts refer to the household purchases based on the employment earnings from direct and indirect economic activities.

Total impacts incorporate the sum of direct, indirect, and induced impacts. It is important to note that these effects are limited for any region because of spending “leakages” at each round of inter-industry and household purchases. That is, the goods and services required at each stage are partly purchased from outside the study area, thus reducing the total supplies provided locally. The IMPLAN model is designed to calculate the multiplier effects of the designated regions (i.e., Thurston County, Washington State and the United States).

### III. Report

We will prepare a report that documents the methodology and presents the results. We will also prepare a PowerPoint slideshow that presents key findings of the study. We will present the findings to the Port Commission.

BST Associates will review the Martin Economic Impact Study prepared for the Port in 2021 and prior years and compare results with the new analysis.

#### *C. Budget & Schedule*

The budget for this effort is \$18,000, and can be accomplished by the end of 2024.



## Task 2.2 Swantown Marina & Boatworks Market Study

### A. Description and Purpose

The Port of Olympia is considering future options for the Port Peninsula, as part of the planning for environmental cleanup and dredging of Budd Inlet. As part of this analysis, BST Associates has been asked to conduct a market analysis for Swantown marina.

Swantown Marina is the largest small boat harbor in the South Puget Sound region. With more than 720 moorage spaces, a full-service boatyard, fuel dock, and boat ramp, the facility attracts boaters from a wide region.

In addition to Swantown Marina, the Olympia Yacht Club and several private marinas (located on the opposite side of the Port Peninsula) are likely to be impacted by the cleanup activities, as well as future conditions. This market analysis will include a discussion of the potential market opportunities for the Port that these marinas represent.

### B. Tasks to be Performed

#### I. Review of Relevant Reports

BST Associates will review relevant reports, including:

- Des Moines Marina Reconfiguration Study,
- Oak Harbor Marina Study,
- Squalicum Inner Harbor Reconfiguration,
- Other relevant documents TBD

The analysis will also incorporate past marketing efforts by the Port of Olympia.

#### II. Update of Trends and Forecast

BST will review recent trends of boat ownership and marina utilization, using the following sources:

- Port tenant data, including address zip-code,
- Marina occupancy by slip size, for past ten years by month
- Department of Licensing registered boats
- Other relevant data

BST Associates will interview Port staff about marina trends and potential market opportunities. Based on these updated trends and market insights, BST Associates will prepare an assessment of the optimal marina reconfiguration, which will include:

- Definition of Market (primary, secondary, and tertiary)
- Growth trends and projections of boats by size range for next ten years
- Evaluation of current marina usage, including overhangs and seasonality
- Projected optimal slip mix

#### III. Report

BST Associates will prepare a report that presents the forecast and documents the methodology and results.

### C. Budget and Schedule

The budget for this effort is \$49,000. Draft results will be completed by the end of October, and final report by the end of 2024.

## Task 2.5 Regional Economic Impact Analysis

### A. Tasks to be Performed

BST will undertake the following scope of work to prepare the economic impact analysis of Swantown Marina.

#### I. Direct Impacts

The first step is to document the direct impacts of the marina operations. The Port will provide the following information:

- List of tenants and contact information
- Port capital expenditures at Swantown Marina for the past five years (2019 to 2023, plus 2024 ytd)
- Port operations and maintenance expenditures by category of expense for the past five years (2019 to 2023, plus 2024 ytd)

BST will conduct an online survey of tenants and customers, using SurveyMonkey, to gather data on boating-related expenditures. BST will also utilize data and in-house databases (Dun & Bradstreet, Info USA, data from Washington State Department of Revenue, Employment Security Department, US Census Bureau, and other sources) to identify the direct impacts from construction and operations, including:

- Revenue/sales
- Payroll
- Employment
- Taxes

BST will conduct interviews with selected stakeholders to gather additional information.

The direct impacts will identify for both construction and operational impacts and will include lessees, service providers as well as monthly and transient tenants.

BST Associates will compare findings with the 2021 Martin economic impact study prepared for the Port.

#### II. Total Impacts

Based on the direct impacts, we will use IMPLAN software to estimate the indirect and induced impacts. Indirect impacts refer to expenditures by the users/tenants on outside goods and services. Induced impacts refer to the household purchases based on the employment earnings from direct and indirect economic activities.

Total impacts incorporate the sum of direct, indirect, and induced impacts. It is important to note that these effects are limited for any region because of spending “leakages” at each round of inter-industry and household purchases. That is, the goods and services required at each stage are partly purchased from outside the study area, thus reducing the total supplies provided locally. The IMPLAN model is designed to calculate the multiplier effects of the designated regions (i.e., Thurston County, Washington State and the United States).

#### III. Report

We will prepare a report that documents the methodology and presents the results. We will also prepare a PowerPoint slideshow that presents key findings of the study. We will present the findings to the Port Commission.

*B. Budget & Schedule*

The budget for this effort is \$29,000, and can be accomplished by the end of 2024.

Attachment 2  
Heartland Proposal

## PORT OF OLYMPIA UPLAND MASTER PLAN

### SCOPE OF WORK

Market and financial feasibility analysis is an iterative process of discovery and alternatives testing testing. The consultant team will bring their specific expertise and perspectives which will ultimately be synthesized into a feasibility assessment, master plan and strategy.

#### **Task 1: Concept Refinement**

Working collaboratively with Port staff and the consultant team, Heartland will help shape the alternative development concepts for each phase. In addition to the development program, Heartland will explore the compatibility of adjacent uses in the master plan and define the range of commercial and residential products types to be included in the market analysis.

#### **Task 2: Market Analysis**

Heartland will prepare an analysis of the real estate markets that are influencing Olympia. Initially the focus of the effort will be on commercial (retail, office), hospitality, industrial (flex) and residential (For sale and for rent multi-family & senior housing). For each land use type we will forecast:

- Absorption (sales per year by type)
- Rental rates (retail, multi-family)
- Sale prices (condominiums)
- Supply (competitive pipeline projects)
- Demand (population and employment growth)
- Comparable Land Sales by Type

#### **Task 3: Issue Identification & Mitigation**

Throughout this phase of the project, Heartland will work with the team to identify, assess and prioritize the issues that may affect the viability of the project. Some that we talked about in our first meeting include cost effective earthwork and phased placemaking. Approches to mitigating these issues will form a key part of the feasibility analysis.

#### **Task 4: Financial Analysis**

We build and operate financial models as an analytic and decision-making tool. All of the key elements discussed above are represented in the financial model through costs, revenue, timing and other market-based metrics such as discount and capitalization rates.

Scenario Development & Testing: Working closely with Port staff and the consultant team, Heartland will formulate development scenarios and test the viability of each of them with a dynamic financial model.

Costs: Heartland will work with the Port's engineering consultants/contractors to integrate cost estimates into the modeling of each scenario.

Performance: The financial model will be examining financial performance and "feasibility" from two different and dependent perspectives—the future developer and the Port. From the Port's perspective, we will compare the outcome of the different scenarios to the range of policy objectives (economic development, revenues, jobs, real estate revenue) and financial resources. To understand the developer's perspective, we will test the overall ability of the project to attract private investment.

**Task 5: Strategy Formation**

Following completion of Task 4, we will package our findings into a presentation as a standalone deliverable and/or a portion of an integrated deliverable produced by the collective consultant team.

**MEETINGS**

As part of executing the tasks above and to inform the fee proposal below, we have assumed Heartland team participation in the following meetings during the ~9 month duration of the project (ending by April 1, 2025):

- Team Calls: Monthly, 2 Hours through 6/25 (Virtual)
- Team Workshops/Site Visits: 3, all day, (In-Person @ Olympia)
- Community/Stakeholder Open House and/or Advisory Committee Meetings: 3 (Virtual)

**FEE**

Heartland proposes to complete the tasks above on a time and materials basis per the hourly rate sheet (attached), billed monthly, not to exceed a total of \$95,000 without prior written authorization.

**EXHIBIT A: Hourly Billing Rates**

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**HOURLY BILLING RATES:**

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Matt Anderson	\$380
Chris Fiori	\$320
Doug Larson	\$320
Joe Shea	\$290
Lee Striar	\$280
Mark Goodman	\$280
Dave Policar	\$280
Ben Wharton	\$235
Evan Schneider	\$230
Tyson Heriot	\$210
Divya Kapuria	\$210
Karlis Rubenis	\$200
Celina Choi	\$175
Jenny Score	\$175
Graduate Intern	\$110
Research Assistant/Graphic Assistant	\$50

**(Note: General office overhead and general clerical work are incorporated in these hourly rates)**

**REIMBURSABLE COSTS:**

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Copies - color 11 x 17	\$1.50 each
Copies - color 8-1/2 x 11	\$.75 each
Copies of large format originals - all types	Cost
Mileage	\$.655/mile
Parking and tolls	Cost
Postage and delivery	Cost
Out-of-house productions	Cost
Large format prints	\$8.50/sf
Mounting on presentation board	\$3.75/sf
Travel - airfare, car rental, lodging and meals	Cost plus 2%

**RATES ARE SUBJECT TO ANNUAL INCREASES**

Attachment 3  
JA Brennan Proposal



## Exhibit A

June 13, 2024



Landscape Architects & Planners  
2701 1<sup>st</sup> Ave, Suite 510, Seattle WA 98121  
t. 206.583-0620 | www.jabrennan.com

# Scope of Work for Integrated Budd Inlet-Peninsula Master Plan

### Prepared For:

Rob Webb  
Dalton, Olmsted & Fuglevand Inc. (DOF)

### Prepared By:

J.A. Brennan Associates PLLC (JAB)  
2701 1<sup>st</sup> Ave, Suite 510  
Seattle, WA 98121

J.A. Brennan is pleased to present our Scope of Services for the Integrated Budd Inlet – Peninsula Master Plan Project.

## **Task 3.4.A – Project Management**

Administration tasks include meetings, coordination, scheduling, contract administration, and administration costs and expenses.

### **Task 3.4.A Deliverables:**

1. Project Schedule input
2. Progress reports as needed
3. Invoicing

## **Task 3.4.B – Site Evaluation, Inventory and Data Collection**

This task includes site visits, data collection and review, identification of regulatory constraints, and other elements identified in the fee matrix. It is assumed that DOF will provide site information for this task.

### **Base map preparation.**

DOF will provide adequate base maps of the project site and context, including GIS data and CAD files, as well as high quality air photo. JAB has limited hours to compile a working base

map for the design team.

**Review relevant site data and provide input as requested by DOF.**

The review will include the Olympia Municipal Code, Comprehensive Plan land use designations, and Parks, Recreation, and Open Space Plan that are relevant to the project.

**Review site accessibility.** Provide viable solutions to reduce constraints, improve access, promote activation, and connect site with the larger urban center area.

**Context map.**

We will create a map in CAD to illustrate land ownership and highlight the various means of accessing the waterfront and connections to other shoreline or downtown areas. This can be a combination of current easements in addition to future potential acquisitions to be explored in the alternatives and visioning process.

**Task 3.4.B Deliverables:**

1. Base map
2. Participate in the Site Visit and kickoff meeting
3. Context map with linkage and known development projects
4. Opportunities and constraints map
5. Prepare up to 1-page technical memo

**Task 3.4.C – Vision Casting and Program Definition**

This task involves preparing a program list to be used in developing concept plan alternatives, the draft master plan, and the final master plan. Design goals, and vision will also be prepared and refined as part of this task.

A design workshop is proposed to capture the input and energy of the client and team to develop the preliminary alternatives for the site. DOF and other key design team members will participate in the workshop to ensure each discipline applies its specific knowledge to the process.

JAB will rely on DOF to provide data and feedback collected during community engagement efforts to assist with the preparation of the visioning exercises.

Additional public outreach and stakeholder input will guide this process, as described in Task 4.

**Task 3.4.C Deliverables:**

1. Identified project goals
2. Project vision statement
3. List of potential program and activity elements

4. Prepare and participate in a design workshop
5. One-page programming tech memo

### **Task 3.4.D - Alternative Development**

Develop up to 3 alternatives for review by DOF and the Client. The alternatives will be diagrammatic to keep the discussion focused on the big picture. One of the alternatives will explore property acquisition adjacent to the site.

Water quality improvement concepts will be assessed for each option.

#### **Task 3.4.D Deliverables:**

1. Up to 2-page tech memo including design character definition
2. Three diagrammatic alternative concept plans
3. Up to 3 detail area plans
4. Up to 2 sections
5. Brief bulleted summary memo (2 pages) outlining alternative concepts

### **Task 3.4.E – Draft Parks & Open Space Concept Plan**

The draft concept plan will be based on the preferred alternative from Task D, project objectives, assumptions, and expectations as determined through discussion with DOF, the Client, stakeholders, and public input. A preliminary square-footage-level cost estimate will be provided for the draft and final concept plan.

The draft concept plan will be partially AutoCAD-drafted with some information being hand-drawn. The concept plan will be drawn at 1" = 200' scale. Illustrative drawings will be completed to convey design feasibility and finished project character.

#### **Concept Plan Memo**

A brief memo describing design features.

#### **Site Sections**

Draft concept plan graphics will include the development of up to 4 draft sections to illustrate the design intent and character.

#### **Task 3.4.E Deliverables:**

1. Draft concept plans two sheets 1' = 200'
2. 2 Draft detail area plans
3. Revised context map with linkage and known development projects
4. Up to 4 draft sections
5. Draft Cost estimate

6. Draft concept plan design memo (up to 2 pages)

### **Task 3.5.A – Final Parks & Open Space Concept Plan**

The final concept plan will be a refinement of the draft concept plan, after receiving input from the client, stakeholders, and community members. A preliminary square-footage level cost estimate will be provided for the final concept plan.

The concept plan will be partially AutoCAD-drafted (base); although some information may be hand-drawn. The concept plan will be drawn on two sheets at 1" = 200' scale. Illustrative drawings will be completed to convey design feasibility and finished project character.

#### **Concept plan memo**

Revisions to a brief memo describing design features.

#### **Site Sections (JAB)**

Refinement of up to 4 sections created for the draft concept plan and the development of one new site section to illustrate the design intent and character.

#### **Task 3.5.A Deliverables**

1. Concept Plan memo
2. Final concept plan graphic 1' = 200'
3. 2 Final detail area plans
4. Revised context map with linkage and known development projects
5. Up to 5 final sections (4 refined 1 new)
6. Final Cost estimate

### **Task 3.5.C – Identify Grant/ Funding Sources**

This task includes the development of a preliminary list of potential grants and the relevant application dates.

#### **Task J Deliverables**

1. Summary memo of potential grants and funding sources

### **Task 3.5.D – Permit Support**

This task includes limited review and coordination with the team permit lead to integrate City Community Development Department, as well as local and federal environmental agencies, to

define the permit requirements for the park improvements.

A site visit with permit agencies, anticipated during the draft concept plan design process, will be included to better inform the permit review agencies about the project site and to receive input to refine design strategies.

## **Task 4 – Public & Stakeholder Involvement/ Team Meetings**

In coordination with DOF, JAB will engage the advisory committee, and the general public in the planning process, including workshops and meetings. Meetings will be designed to be interactive. Meeting notices, final agenda, meeting notes and mailings will be provided by DOF. Limited Boards or PowerPoint presentations input will be provided by JAB prior to each public meeting.

Meetings will likely be accomplished using a combination of in person and virtual meeting process whether zoom, Microsoft teams or other digital platform. DOF will organize and host any online digital platform for virtual meetings.

As part of the Master Plan design process, JAB will assist with public meeting facilitation, presentations, and decision maker presentations. Our goal with the public process is to ensure that all parties get a chance to be heard, provide meaningful input, and realize that they are a vital part of the design process.

See Excel spreadsheet Exhibit B for a list of meetings.

### **Assumptions:**

1. Wetland/OHWM/HTL delineation is provided by others.
2. J.A. Brennan does not provide contaminated soil remediation services.
3. The Client will provide coordinated, consolidated review comments at each submittal. Client review period will take no longer than three weeks.
4. We will use J.A. Brennan CAD standards.
5. DOF will provide base mapping for project area including topography, high quality air photo. Any available wetland mapping, important water elevations, parcel boundaries, easements, pavement edges, roads, utilities, and vegetation and other information needed for design.
6. The Client will lead the correspondence and outreach with Stakeholders, adjacent property owners, community members and the public. JAB will support outreach to the extent described in Task 4.
7. DOF will provide data and feedback collected during recent community engagement efforts to assist with the preparation of the visioning exercises.

8. Graphics may be hand drawn during Concept design.
9. Cost estimate will be limited to the hours specified. The client will review cost estimate assumptions.
10. No DNR coordination or permitting is anticipated.
11. Limited tribal coordination is anticipated through the regulator meeting process.
12. JAB will develop an appropriate title block for printed master plan design boards, size: 30" x 40".
13. Grant support will be limited to hours in Task J as part of this scope of work.
14. J.A. Brennan Associates will not be responsible for working with adjacent landowners except through a specified meeting process.
15. The Client will provide public meeting notices, and meeting organization.
16. The concept plan will be complete by Q 2 2025
17. DOF will be responsible for distribution (digital or physical) and printing of all documents.

**Integrated Budd Inlet-Peninsula Master Plan**

Prepared for: DOF

Landscape Architect: J.A. Brennan Associates, PLLC

**Exhibit B: Fee Matrix**

June 14, 2024

**Design Fee**

WORK ITEM	DESCRIPTION	JB PIC	TW SrPLA	DC PM/SrPLA	WS PLA	SS Designer	SY Admin	Total JAB Hours	Total JAB Labor	Total JAB Expenses	Total JAB (Labor + Expense)
Rate		\$230.00	\$185.00	\$185.00	\$128.00	\$115.00	\$128.00				
<b>3.4.A Project Management</b>											
1	Correspondence and meeting coordination	2	8				2	12	\$2,196	\$25	\$2,221
2	Progress Reports	1	2					3	\$600	\$25	\$625
3	Scheduling & invoicing	2	3				3	8	\$1,399	\$25	\$1,424
	<b>Total</b>	5	13	0	0	0	5	23	\$4,195	\$75	\$4,270
<b>3.4.B Site Evaluation, Inventory Analysis, and Data Collection</b>											
1	Site visit	5	5			5		15	\$2,650	\$25	\$2,675
2	Set up Base Map (based on base from DOF)	1	1			10		12	\$1,565	\$20	\$1,585
3	Review relevant existing site data and provide input for additional information needed	4	6			3		13	\$2,375	\$20	\$2,395
4	Stream / Wetland / shoreline critical area review	1	2			1		4	\$715	\$20	\$735
5	Review summary of park & recreation needs and plans from ex. documents provided by Port & City	3	4			3		10	\$1,775	\$20	\$1,795
6	Context map with linkage potentials and known development projects	1	3			2		6	\$1,015	\$20	\$1,035
7	Opportunities and constraints map (draft and final)	2	2			6		10	\$1,520	\$20	\$1,540
8	Review City land use and shoreline Codes	2	3			2		7	\$1,245	\$20	\$1,265
9	One page tech memo (speaking points)	1	2			2		5	\$830	\$20	\$850
	<b>Total</b>	20	28	0	0	34	0	82	\$13,690	\$185	\$13,875
<b>3.4.C Vision Casting and Program Definition</b>											
1	Design goals	1	2					3	\$600	\$20	\$620
2	Draft park and open space vision statement	2	2			1		5	\$945	\$20	\$965
3	Potential program and activity list or table	2	4			8		14	\$2,120	\$20	\$2,140
4	One page tech memo (speaking points)	1	3		1	1		6	\$1,028	\$20	\$1,048
	<b>Total</b>	6	11	0	1	10	0	28	\$4,693	\$80	\$4,773
<b>3.4.D Alternative Development</b>											
1	Prepare 3 alternative park and open space plans (diagrammatic plans)	10	12		2	12		36	\$6,156	\$50	\$6,206
2	Prepare up to 3 sections (One per alternative)	2	3			6		11	\$1,705	\$20	\$1,725
3	Prepare an up to 2 page tech memo (speaking points)	2	1		3	4		10	\$1,489	\$20	\$1,509
	<b>Total</b>	14	16	0	5	22	0	57	\$9,350	\$90	\$9,440
<b>3.4.E Draft parks and open space concept plan</b>											
1	Draft Concept Plan (up to 1 sheets) 1"=200'	16	24		2	18		60	\$10,446	\$100	\$10,546
2	Up to 2 detail area plans	1	4		2	12		19	\$2,606	\$100	\$2,706
3	Up-date context map with linkage potentials and known development projects	1	4			3		5	\$760	\$100	\$860
4	Up to 4 draft sections	1	5			10		16	\$2,305	\$75	\$2,380
5	Cost estimate for draft plan (based on SF cost)	4	8		1	10		23	\$3,678	\$25	\$3,703
6	Draft concept plan design tech memo (up to 2 pages) (speaking points)	2	4		1	6		13	\$2,018	\$75	\$2,093
	<b>Total</b>	25	46	0	6	59	0	136	\$21,813	\$475	\$22,288
<b>3.5.A Final Parks and Open Space Concept Plan</b>											
1	Final Concept Plan (up to 1 sheets) 1"=60'	12	20		2	16		50	\$8,556	\$100	\$8,656
2	Up to 2 detail area plans	1	4		2	6		13	\$1,916	\$100	\$2,016
3	Revise context map with linkage potentials and known development projects	1	1			1		3	\$530	\$60	\$590
4	Up to 5 final sections (4 updated and refined one new)	1	3			6		10	\$1,475	\$125	\$1,600
5	Cost estimate for final plan	3	8		1	16		28	\$4,138	\$75	\$4,213
6	Concept Design Tech Memo (up to 2 pages) (speaking points)	2	3		3	4	1	13	\$1,987	\$75	\$2,062
	<b>Total</b>	20	39	0	8	49	1	117	\$18,602	\$535	\$19,137
<b>3.5.C Identify Grant/Funding Sources</b>											
1	Memo listing potential funding opportunities and create funding model/alternatives for soft costs and hard costs	1	2			1		4	\$715	\$25	\$740
	<b>Total</b>	1	2	0	0	1	0	4	\$715	\$25	\$740
<b>3.5.D Permit Support</b>											
1	Assess permit requirements and impact to project feasibility	1	1			1		3	\$530	\$25	\$555
2	Review shoreline and critical area code	1	2					3	\$600	\$25	\$625
3	Agency Site walk	4						4	\$920	\$75	\$995
	<b>Total</b>	6	3	0	0	1	0	10	\$2,050	\$125	\$2,175
<b>4 Public and Stakeholder Involvement/ Meetings</b>											
1	Attend kick off meeting (combine with site visit)	3	3		3	3		12	\$1,974	\$25	\$1,999
2	Two (2) meeting with the Advisory Committee (1 hour each)	2	2			2		6	\$1,060	\$75	\$1,135
3	One (1) meeting with the City Parks Department (in person Olympia)	3	3			1		7	\$1,360	\$125	\$1,485
4	One (1) Precedent Project Tour	8						8	\$1,840	\$125	\$1,965
5	Workshop 1, 2, and 3 (each workshop includes 4 hours for preparation, 4 hours for in-person meetings, and 2 hours for travel)	30	30			3		63	\$12,795	\$100	\$12,895
6	Designer meetings (2) (Moffat, DOF, TAS, JAB)	8	8			1		17	\$3,435	\$100	\$3,535
7	Four (4) open houses with the public (each open house includes 2 hours for preparation and 2 hours for virtual meetings)	16	16			16		48	\$8,480	\$200	\$8,680
8	Twelve (12) Team Meetings (virtual) (2 hours each)	24	24		3	12		60	\$11,340	\$50	\$11,390
	<b>Total</b>	94	86	0	3	38	0	221	\$42,284	\$800	\$43,084
	<b>GRAND TOTAL</b>	<b>185</b>	<b>241</b>	<b>0</b>	<b>23</b>	<b>213</b>	<b>6</b>	<b>668</b>	<b>115,342</b>	<b>2,265</b>	<b>119,782</b>

Attachment 4  
M & N Proposal





505 S. 336<sup>th</sup> Street, Suite 510  
Federal Way, WA 98003

Tel: (206) 622-0222  
[moffattnichol.com](http://moffattnichol.com)

June 25, 2024

Dalton Olmsted Fuglevand (DOF)  
1001 SW Klickitat Wy  
Seattle, WA 98134

Attn: Rob Webb, President

**Subject: Integrated Budd Inlet Peninsula Master Plan - Proposal for Professional Design Services**

Dear Mr. Webb:

Moffatt & Nichol (M&N) is pleased to submit this proposal to provide professional engineering services to support Dalton Olmsted Fuglevand (DOF) for the planned Integrated Budd Inlet – Peninsula Master Plan (Master Plan) project located in Olympia, WA. Per your request, we have prepared the following scope of services to provide master planning and conceptual engineering support for the maritime portions of the project as well as assistance with portions of the upland proposed development. The scope of work for this proposal is based upon our pre-proposal teleconference meeting on June 4, 2024, and M&N's experience with similar projects.

This proposal is to provide engineering services for developing Master Plan documents in support of the Marine Terminal, Swantown Marina, and Upland Development components to inform a preferred development alternative. The Integrated Budd Inlet Peninsula Master Plan project limits consist of approximately 600 acres of both landside and overwater area within the Budd Inlet waterfront as shown in Figure 1.



Figure 1 – Integrated Budd Inlet Peninsula Master Plan Conceptual Planning Project Location

Upon receipt of Notice-to-Proceed, M&N will collect and review available information both from DOF and Port of Olympia (Port) staff and from prior relevant M&N projects within the vicinity that we may have in our archives. In addition, our team will attend a kick-off meeting with DOF to review the project objectives. M&N will develop conceptual layout alternatives to help ‘right size’ the waterside project components and that meet Port operational objectives. The goal will be to provide elements that not only integrate with envisioned upland uses, but actually enhance them. M&N will then collaborate with the team to analyze the options and assist in selecting a preferred development scenario.

At the conceptual design level, it is difficult to predict the specific zoning, planning uses, and potential revenue and capital costs associated with a waterfront development. M&N will utilize the findings of the Market Assessment and Economic Analysis (performed by BST) to help guide the discussion on the specific metrics that the future development may consider and can reasonably expect. In addition, M&N proposes to research available grant funding streams for a high-level review of potential opportunities to offset costs associated with the waterfront redevelopments. There may be available grant funding that could pay for portions of the engineering, permitting, and construction of the proposed project.

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A Community Engagement and Stakeholder Outreach program will be led by DOF to hone the Master Plan alternatives into a development that is appropriate for the community. M&N will assist DOF in developing presentation materials, attending meetings, and collaboration through the public involvement process and utilize input received to refine Master Plan alternatives.

## **Scope of Work**

### **Task 1 – Marine Terminal**

#### **Task 1.1 – Preliminary Master Plan Development**

It is assumed up-to five (5) layout alternatives will be developed for waterside improvements. Following development of draft alternatives/scenarios M&N will further refine alternatives based on input from community engagement, Port staff, and internal design charrets and issue revised final master plan layouts. It is assumed upland Master Plans will be led by others, and M&N will provide comments and guidance on those Master Plan elements. Alternatives prepared will include following assumptions:

- **Basis of Analysis (BOA) for the Primary Study Area.** This task will evaluate and summarize criteria, assumptions, scenarios/alternatives, resiliency planning benchmarks (SLR, etc.) and other critical factors that will be important to conducting the master planning work for the Primary Study Area. Establishing these benchmarks early in the planning process will help guide and coordinate the many moving parts and players throughout the project.
  - Technical memorandum with graphics summarizing BOA for review, concurrence by Port, consultant team and steering committee. Assumed that other team members will contribute to the BOA relative to their respective areas of responsibility.
- **Develop Draft Master Plan Layout Alternatives:** Consider alternative uses and infrastructure layouts for existing commercial marine terminal currently utilized by the timber industry. Consider protect-in-place existing commercial operation, reduced foot-print commercial, alternative commercial (i.e. Container), and full re-purpose. Provide opportunity for various levels of investment and optimize available space, with considerations for:
  - Evaluate alternative land uses including residential, retail, and mixed-commercial.
  - Provide preliminary recommendations for infrastructure improvements needed for re-development.
  - Assess the terminal's current or future role in regional emergency/disaster response and military significance.
  - Provide consideration for the beneficial use of dredge materials to accommodate climate adaptation and sea level rise.
  - Feasible alternative uses will be considered that do not require deep draft berths and approach channels.
  - Evaluate modify and/or abandon the turning basin and adjacent berths (if any), and what impact alternative uses would have on the federal navigation channel and the Corps' obligation to maintain its depths.
  - Evaluation of City of Olympia Sea Level Rise Plan relative to potential alternatives and timeframes.
- Plans will be prepared on M&N standard title block sheets using AutoCAD format compatible with AutoCAD 2024. Drawings will include approximate dimensions that pertain to the waterside redevelopment along with identification of typical material types and structural elements. The following sheets are anticipated as part of the submittal:
  - Cover Sheet (1)

- General Notes and Project Requirements (1)
- Existing Conditions Plan (1)
  - Will include coordinate reference data, harbor bottom elevations (if available), limits of work areas.
  - Prepare base map of project site using existing available site boundaries, surveys, bathymetry, and site topography.
- Marine Terminal Master Plan(s) (5)
  - Will show plan dimensions of proposed structures, locations of relocated and/or modified structures, location of landside “meet-me” points, and clearances between existing structures to remain in place.

### **Task 1.2 – Market Assessment and Economic Analysis**

As the next step in the Master Plan process, this task attempts to identify costs associated with the Master Plan to inform potential funding necessary to conduct the improvements. The ability to fund the improvements will be evaluated in the Market Assessment Study prepared by BST for amount of capital improvement funds required for construction costs, potential available funds to support the cost, and potential additional revenue opportunities to cover any shortfall. M&N will assist BST in development of the Market Assessment Study as follows:

- Market Assessment Study Assistance: M&N will work closely with BST to develop the market assessment as it relates to the Marine Terminal. M&N understands that much of the freight and economic analysis will be performed by BST, and M&N will complement the effort with a focus on:
  - Vessel Operations – Puget Sound Region and Port Channel: What do the existing and future fleet characteristics look like based on the market assessment; what type of infrastructure is needed to support
  - Rail Operations: What role does / could rail play in serving the demand of the market. What are some base characteristics of comparable operations
  - Competitive Assessment: What other commercial maritime facilities operate within the region which would compete and / or complement the Maritime Terminal
  - Prototype Analysis / Benchmarking: What are other facilities elsewhere in the country doing – is there a location which could be used as an example to highlight the inherent SWOT of the Marine Terminal
  - Port Resiliency and Redevelopment Plans: What resiliency considerations should be addressed within the redevelopment plans, what are practices observed elsewhere
- Prepare Estimates of Probable Construction Costs: Prepare rough order-of-magnitude construction cost estimates that will include a contingency of -30% to +50% (Class 5) in accordance with American Association of Cost Estimating (AACE) guidelines. Estimates include analysis for five (5) development alternatives as defined in Task 1.1.
  - A qualified and experienced M&N Professional Engineer with expertise in estimating construction costs for waterfront infrastructure will generate a rough order of magnitude (ROM) construction cost estimate for the waterside project elements as addressed in this scope of work. The cost estimate will be produced in conformance with the Class 5 standards set by the AACE *International Recommended Practice No. 56R-08* (see Table 1).

ESTIMATE CLASS	Primary Characteristic	Secondary Characteristic			
	LEVEL OF PROJECT DEFINITION Expressed as % of complete definition	END USAGE Typical purpose of estimate	METHODOLOGY Typical estimating method	EXPECTED ACCURACY RANGE Typical variation in low and high ranges [a]	PREPARATION EFFORT Typical degree of effort relative to least cost index of 1 [b]
Class 5	0% to 2%	Concept Screening	Capacity Factored, Parametric Models, Judgment, or Analogy	L: -20% to -50% H: +30% to +100%	1
Class 4	1% to 15%	Study or Feasibility	Equipment Factored or Parametric Models	L: -15% to -30% H: +20% to +50%	2 to 4
Class 3	10% to 40%	Budget, Authorization, or Control	Semi-Detailed Unit Costs with Assembly Level Line Items	L: -10% to -20% H: +10% to +30%	3 to 10
Class 2	30% to 70%	Control or Bid/Tender	Detailed Unit Cost with Forced Detailed Take-Off	L: -5% to -15% H: +5% to +20%	4 to 20
Class 1	50% to 100%	Check Estimate or Bid/Tender	Detailed Unit Cost with Detailed Take-Off	L: -3% to -10% H: +3% to +15%	5 to 100

**Table 1: AACE Estimate Classifications**

- Grant Funding Source Investigation: This task includes researching available grant opportunities for the proposed waterfront facilities. M&N will perform research for potential grant opportunities and conduct initial consultation with identified grant agencies. The deliverable will be a list of potential grant funding sources (Grant Matrix) and notes from discussions with agencies, including local, state, and federal type agencies.

**Task 1.3 – Final Master Plan Development**

This task includes assistance in developing a Comprehensive Master Plan Document to summarize Master Plan layouts, economic analysis, community engagement, and conceptual design background data. It is assumed the Comprehensive Master Plan Document will be prepared by others (DOF, TAS, and JAB) and M&N will provide input for responsible areas of expertise for inclusion in overall document. The study will provide the Port with recommended layouts to decide on a preferred improvement scenario, as well as inform the requirements for future permitting requirements and final design.

- Develop Final Master Plan Layout Alternatives: Following development of draft alternatives/scenarios M&N will further refine alternatives based on input from community engagement, Port staff, and internal design charets and issue revised final master plan layouts.
- Prepare Master Plan Narrative Memorandum and Basis of Analysis (BOA):
  - Provide brief narrative memorandum to accompany Master Plan layouts describing the pro’s / con’s for each development alternative.
  - Provide quantity takeoffs for necessary marine infrastructure square footages, material volumes, and material types to determine general order-of-magnitude size and quantity of elements.
  - Provide summary of any regulatory permit issues for the proposed preliminary design elements.
  - Summarize findings and recommendations into a technical memorandum and assist Port staff in determining the appropriate preferred improvement concept and inform the permitting and final design.

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- Prepare a presentation of typical marine terminal precedents of similar use, scale, and type of commercial and mixed use facilities.

### **Task 1 Deliverables**

- Master Plan Layout Drawings (Draft and Final)
- Written Master Plan Narrative and Basis of Analysis (BOA) memo for the Primary Study Area (Draft and Final)
- Estimates of Probable Construction Costs (Class 5 – Draft and Final)
- Grant Funding Source Matrix (Draft and Final)
- Summary PowerPoint Presentation of Marine Terminal Precedent Considerations

### **Task 2 – Swantown Marina**

#### **Task 2.1 – Preliminary Master Plan Development**

It is assumed up-to five (5) layout alternatives will be developed for waterside improvements. Following development of draft alternatives/scenarios M&N will further refine alternatives based on input from community engagement, Port staff, and internal design charrets and issue revised final master plan layouts. It is assumed upland Master Plans will be led by others, and M&N will provide comments and guidance on those Master Plan elements. Alternatives prepared will include following assumptions:

- Basis of Analysis (BOA) for the Primary Study Area: This task will evaluate and summarize criteria, assumptions, scenarios/alternatives, resiliency planning benchmarks (SLR, etc.) and other critical factors that will be important to conducting the master planning work for the Primary Study Area. Establishing these benchmarks early in the planning process will help guide and coordinate the many moving parts and players throughout the project.
  - Technical memorandum with graphics summarizing BOA for review, concurrence by Port, consultant team and steering committee. Assumed that other team members will contribute to the BOA relative to their respective areas of responsibility.
- Develop Draft Master Plan Layout Alternatives: Consider alternative configurations and use based on the need to disassemble, move, or demolish existing marina to undertake complete dredging of contaminated sediments. Consider dismantle and partially protect-in-place, increased foot-print to generate more revenue, relocation of Yacht Club facilities at site, potential cruise terminal integration with peninsula west-side Marine Terminal, and full re-purpose. Adjust slip mix and waterside uses to provide various levels of investment and optimize available space, with considerations for:
  - Evaluate waterfront basin dimensions, water depths, and the associated perimeter protection. Create a waterside layout and establish the basic size and marina slip requirements.
  - Provide recommendations to modify and/or reconfigure existing floating dock layout to best incorporate waterside uses as part of the future upland plan.
  - Waterside elements that complement landside uses (transient dock-and-dine facilities for upland restaurant, etc.)
  - Commercial vs recreational vessel facilities and interaction between these uses (including fuel service, vessel sales, etc.)
  - Ability for reconfiguration of buildings and/or relocation of landside buildings to waterside as floating facilities.
  - Larger recreational vessels (> 70ft length) vs smaller recreational vessels (<25ft length) and necessary clearances to maintain navigational operations. Reconfiguration of the slips to respond to local demand and optimize revenues.

- Integrate public access components such as places to launch people powered crafts (kayaks and small sailboats) and social events.
- Explore the possibility of relocating the Yacht Club moorage facilities to combine with Swantown Marina due to impact by ongoing sediment loading resulting from the Deschutes Estuary dam removal.
- Provide an estimate of upland parking requirements associated with proposed waterside buildout alternatives.
- Plans will be prepared on M&N standard title block sheets using AutoCAD format compatible with AutoCAD 2024. Drawings will include approximate dimensions that pertain to the waterside redevelopment along with identification of typical material types and structural elements. The following sheets are anticipated as part of the submittal:
  - Cover Sheet (1)
  - General Notes and Project Requirements (1)
  - Existing Conditions Plan (1)
    - Will include coordinate reference data, harbor bottom elevations (if available), limits of work areas.
    - Prepare base map of project site using existing available site boundaries, surveys, bathymetry, and site topography.
  - Swantown Marina Master Plan(s) (5)
    - Will show plan dimensions of proposed structures, locations of relocated and/or modified structures, location of landside “meet-me” points, and clearances between existing structures to remain in place.

## Task 2.2 – Market Assessment and Economic Analysis

For the Swantown Marina component, a marina Market Assessment Study will be prepared by BST to identify potential revenue and capital improvement costs. Findings from this assessment may be used to determine the slip sizes, count, and layout appropriate for the local marina market and teams preferred investment option. M&N will assist BST in development of the Market Assessment Study as follows:

- Market Assessment Study Assistance: M&N will work closely with BST to develop marina market projections as well as conducting local market research to help inform the redevelopment decision. M&N's effort will focus on:
  - Identifying existing area boating demographics
  - Description/history of the subject site/ area with respect to the boating market
  - Comparable marina property matrix with sales and lease comparatives
  - Regional vessel types and suggested slip mix
  - Market trends and forecast
- Assist in identifying potential slip revenue based on marina size, vessel length, and available amenities.
- Define preliminary marina utility requirements such as potable water, electrical, sewer pump-out, fire protection, and solid waste disposal.
- Assist in identifying operational needs with associated costs (expenses), personnel, and needs for the facility (based upon assumptions from the design).

- Prepare Estimates of Probable Construction Costs: Prepare rough order-of-magnitude construction cost estimates that will include a contingency of -30% to +50% (Class 5) in accordance with American Association of Cost Estimating (AACE) guidelines. Estimates include analysis for five (5) development alternatives as defined in Task 2.1.
  - A qualified and experienced M&N Professional Engineer with expertise in estimating construction costs for waterfront infrastructure will generate a rough order of magnitude (ROM) construction cost estimate for the waterside project elements as addressed in this scope of work. The cost estimate will be produced in conformance with the Class 5 standards set by the AACE *International Recommended Practice No. 56R-08* (see Table 1).
- Grant Funding Source Investigation: This task includes researching available grant opportunities for the proposed waterfront facilities. M&N will perform research for potential grant opportunities and conduct initial consultation with identified grant agencies. The deliverable will be a list of potential grant funding sources (Grant Matrix) and notes from discussions with agencies, including local, state, and federal type agencies.

### Task 2.3 – Final Master Plan Development

This task includes assistance in developing a Comprehensive Master Plan Document to summarize Master Plan layouts, economic analysis, community engagement, and conceptual design background data. It is assumed the Comprehensive Master Plan Document will be prepared by others (DOF, TAS, and JAB) and M&N will provide input for responsible areas of expertise for inclusion in overall document. The study will provide the Port with recommended layouts to decide on a preferred improvement scenario, as well as inform the requirements for future permitting requirements and final design.

- Develop Final Master Plan Layout Alternatives: Following development of draft alternatives/scenarios M&N will further refine alternatives based on input from community engagement, Port staff, and internal design charrets and issue revised final master plan layouts.
- Prepare Master Plan Narrative and Basis of Analysis (BOA):
  - Provide a brief written narrative to accompany Master Plan layouts describing the pro's / con's for each development alternative.
  - Provide quantity takeoffs for necessary marine infrastructure square footages, material volumes, and material types to determine general order-of-magnitude size and quantity of elements.
  - Provide summary of any regulatory permit issues for the proposed preliminary design elements.
  - Summarize findings and recommendations into a technical memorandum and assist Port staff in determining the appropriate preferred improvement concept and inform the permitting and final design.
  - Prepare a presentation of typical marina precedents of “must haves,” “should haves,” and “could haves” to provide DOF and Port staff an understanding of the size and scale of different elements and fit-and-finishes associated with marinas and support facilities typically required on the upland.

### Task 2 Deliverables

- Master Plan Layout Drawings (Draft and Final)
- Master Plan Narrative Technical Memorandum and Basis of Analysis (BOA) memo for the Primary Study Area (Draft and Final)
- Estimates of Probable Construction Costs (Class 5 – Draft and Final)
- Grant Funding Source Matrix (Draft and Final)
- Summary PowerPoint Presentation of Swantown Marina Precedent Considerations



### **Task 3 – Upland Master Plan**

#### **Task 3.1 – Preliminary Master Plan Development**

In addition to waterside components, M&N will work with the upland team (TAS and JAB) for the Parks and Recreation Plan and Upland Peninsula Master Plan to discuss integration of the waterside with the anticipated upland development. M&N will discuss concepts for waterfront elements to include the expansion and reconfiguration of existing maritime and waterside infrastructure, and identifying upland program needs associated with waterside buildouts.

It is assumed upland Master Plans will be led by others, and M&N will provide comments and guidance on those Master Plan elements. Alternatives prepared will include following assumptions:

- Upland Parks and Recreation Plan and Upland Peninsula Master Plan Integration: Provide input to upland plans lead by others (TAS and JAB) to integrate park and maritime improvements for public access amenities as well as upland infrastructure for re-zoning of Marine Terminal.
  - Sea Level Rise resiliency planning considerations for the upland and shoreline development plan will be provided by MN to assist the TAS and JAB team.
  - Provide recommendations for dry stack boat storage, mast-up storage, and small craft and educational vessel storage as well as input into upland team Master Plan for locating elements to best integrate with waterside uses.
  - Identify upland components to support waterside development (restrooms, utilities, trash, parking, etc.)
  - Identify upland elements that complement waterside uses (restaurant, retail, hospitality, etc.)
  - Identify critical infrastructure needed to support commercial development for Marine Terminal (utilities, roadway improvements, etc.)
  - Coordinate with Upland and Park team (TAS and JAB) for integration on waterside and landside uses.

#### **Task 3.2 – Final Master Plan Development**

It is assumed the Comprehensive Master Plan Document will be prepared by others (DOF, TAS, and JAB) and M&N will provide input for responsible areas of expertise for inclusion in overall document.

- Prepare Written Review and Comments on Upland Master Plan:
  - Provide written review comments & coordination with the Parks & Open Space Assessment and the Upland Master Plan. This task will provide review and integration of the draft assessments and master plans for alignment with Basis of Analysis benchmarks and thresholds. The review will also provide comments on new opportunities to leverage resilience best practices in the planning process, such as strategies to potentially utilize dredge material and integrate adaptability into landscapes, public spaces, and buildings.
  - Summarize review comments and recommendations into a technical memorandum including markups of draft master plan documents and drawings (by others) and additional comments, sketches, and ideas for resilient design.

#### **Task 3 Deliverables**

- Review Comments Memorandum (Draft and Final)

### **Task 4 – Meetings and Project Management**

M&N will work alongside DOF and the Port to attend outreach meetings and provide support services

associated with the community involvement portion of this project. The purpose of these meetings is to obtain input from local community members, Port Commission, Port staff, and impacted public on the project, to focus and narrow the design, and discuss potential project impacts related to the community. M&N will coordinate to attend meetings and prepare presentation materials. M&N will also support the meetings providing technical background and boater focused expertise.

#### **Task 4.1 – Attend Outreach Meetings**

- Prepare meeting presentations and collateral. M&N staff have experience in coordination of public outreach and will utilize our in-house design studio to create impactful meeting collateral and visual collateral for meetings.
  - Refresh and re-branding of community understanding of master planning and should be mindful of the work to date by the Port and community as well as the integration of the multiple initiatives underway.
- Attend meetings anticipated as follows:
  - Up-to Three (3) Community Workshop Meetings with community and stakeholders to be held in person. Assume up-to Two (2) staff attending.
  - Up-to Three (3) Community Open House Meetings with community and stakeholders to be held online. Assume up-to Two (2) staff attending.
  - Assumes DOF and Port staff will be lead in scheduling all meetings and identify key stakeholders, public agencies, and community leaders for support in determining important project objectives, including but not limited to Port staff, Port Commission, commercial entities and leaseholds within the harbor and local waterfront community group leaders.
- Develop meeting minutes for transmittal to design team and Port for consideration into design.

#### **Task 4.2 – Project Management**

Provide general coordination and administrative support during the project conceptual design. M&N will also attend meetings to discuss design elements, as indicated below.

- Coordinate with DOF, Port staff, and other team consultants.
- Perform QA/QC reviews and procedures.
- Attend meetings to clarify design intent and discuss recommendations, including:
  - Up-to twelve (12) tele-conference progress meetings each 2 hours in duration with DOF and Port staff.
- General administration, management, and processing of monthly invoices.
- Limited number of meetings assumed to occur after January 1, 2025 to answer questions during final plan development.

#### **Task 4 Deliverables**

- Preparation for and participation in community engagement meeting presentations and minutes

#### **Master Plan Development Exclusions and Assumptions**

The scope and fee presented in this proposal have been prepared with the assumptions outlined below.

- The general layout and square footage of the area proposed for improvements is consistent with the project limits currently shown in Figure 1.

P240750

- This scope of work will rely on existing data, including topographic and bathymetric survey data, geotechnical studies, and environmental assessments available for the project site. There is no allowance for additional surveys or technical studies.
- The Basis of Analysis will rely on existing data to establish planning horizons and benchmarks and will be informed by existing local, regional, state, and Port planning documents.
- Assume that renderings are not included in Master Plan development. M&N will provide AutoCAD format layouts for incorporation to overall Master Plan by others. Focus efforts on layout views with precedent images to depict elements rather than renderings.
- The scope of work excludes providing support for environmental compliance, regulatory agency permitting, and preliminary consultation with permit and entitlement agencies.
- Economic and financial proforma projections are excluded for the scope of work, assumed to be performed by others. Any decisions for continuing forward with development based on proforma projections are to be determined at the Port’s sole discretion.
- Preparation and submittal of the candidate grant applications is not included in this task and will be individually scoped once a desired grant program is identified.
- Benefic Cost Evaluations for federal grant acquisition is not part of this scope. MN can assist with the work but actual scope and fee will depend upon the type of grant and scope of project being proposed for the grant.
- Assume community engagement will be led by others with M&N attendance and participation in meetings. Development of meeting agenda, necessary notices, and send via email to invitees to coordinate meetings is assumed by others.
- Scope of work excludes preparation of preliminary design criteria, calculations for proposed Swantown Marina and Marine Terminal concepts, and development of coastal hazards analysis and adaptation plans to determine general order-of-magnitude size and quantity of members. Furthermore, it is assumed any site-specific design or environmental evaluation will be performed under a future phase of the project.

## **Fee Estimate**

Based upon the proposed scope of work, M&N proposes to assist DOF on a time and material basis and not to exceed for a total fee of \$307,070. The cost per task is shown in the table below.

Task No.	Description	Fee
1	Marine Terminal	\$107,430
2	Swantown Marina	\$112,530
3	Upland Master Plan	\$18,010
4	Meetings and Project Management	\$69,100
<b>Total</b>		<b>\$307,070</b>

## **Schedule**

M&N proposes the following schedule, shown in the table below, once given notice to proceed (NTP).

- Task 1 Marine Terminal
  - Basis of Analysis (Draft) – 8/9/24
  - Master Plan Considerations (Initial Assessment) – 10/26/24

P240750

- Master Plan (Final Plan) – 12/31/24
- Task 2 Swantown Marina
  - Basis of Analysis (Draft) – 8/9/24
  - Reconfiguration Analysis (Preliminary Assessment) – 10/26/24
  - Marina Reconfiguration Plan (Final) – 12/31/24
- Task 3 Upland Master Plan
  - In Alignment with Tasks 1 and 2.
- Task 4 Meetings & Project Management
  - Start of work through 6/30/25

Thank you for the opportunity to assist you with this effort. If you have any questions or require additional information, please call me at 425-417-6016 or contact me via email at [sphillips@moffattnichol.com](mailto:sphillips@moffattnichol.com). We look forward to collaborating with you.

Sincerely,

MOFFATT & NICHOL



Shane Phillips, P.E.  
Project Director



Moffatt & Nichol Fee Proposal Detail  
Port of Olympia Budd Inlet Cleanup

15/Jun/2024

Project Number: 220863  
Project Manager: Jerry H  
Project Director: Shane Phillips

Subconsultant Markup: 10%  
Other Direct Costs Markup: 10%

I. STAFF-HOUR BUDGET		LABOR CLASSIFICATIONS & CONTRACT RATES																
Phase	Task	Principal Eng./Sci	Supervisory Eng./Sci	Senior Eng./Sci	Eng./Sci III	Eng./Sci II	Eng./Sci I	Staff Eng.	Sr Tech	Designer	CADD II	CADD I	Project Controls	Word Processor	General Clerical	STAFF-HOUR	LABOR COST	
		P-9, P-8	P-7	P-6	P-5	P-4	P-3	P-1, P-2	T-4	T-4	T-3	T-2, T-1	A-4	A-4, A-3	A-1, A-2	SUBTOTALS	SUBTOTALS	
1	Marine Terminal																	\$ 107,430.00
	1.1 Preliminary Master Plan Development																	
	a Develop Basis of Analysis (BOA)	2.0	8.0	8.0	24.0			24.0									66.0	\$15,400.00
	b Develop Draft Master Plan Layout Alternatives	6.0		8.0	24.0			24.0		32.0							94.0	\$20,080.00
	1.2 Market Assessment and Economic Analysis																	
	a Market Assessment Study Assistance	1.0	8.0		24.0			24.0									57.0	\$12,780.00
	b Prepare Cost Estimates	1.0	8.0		12.0				24.0								45.0	\$11,580.00
	c Grant Funding Source Investigation	2.0	2.0		12.0			6.0									22.0	\$5,290.00
	1.3 Final Master Plan Development																	
	a Develop Final Master Plan Layout Alternatives	2.0	6.0		40.0			32.0		32.0							112.0	\$23,670.00
	b Prepare Written Master Plan Narrative	1.0	6.0		24.0			32.0					4.0				67.0	\$14,070.00
	c Coordinate with Lead Architect for Comprehensive Master Plan	2.0	8.0					8.0									18.0	\$4,560.00
2	Swantown Marina																	\$ 112,530.00
	2.1 Preliminary Master Plan Development																	
	a Develop Basis of Analysis (BOA)	1.0	4.0	8.0				20.0									33.0	\$7,120.00
	b Develop Draft Master Plan Layout Alternatives	5.0	6.0	16.0				60.0		90.0							177.0	\$34,460.00
	2.2 Market Assessment and Economic Analysis																	
	a Market Assessment Study Assistance		2.0	16.0				30.0									48.0	\$10,010.00
	b Prepare Cost Estimates		30.0	10.0					24.0								64.0	\$18,240.00
	c Grant Funding Source Investigation	1.0	2.0	4.0				12.0									19.0	\$4,050.00
	2.3 Final Master Plan Development																	
	a Develop Final Master Plan Layout Alternatives	1.0	2.0	8.0				40.0		80.0							131.0	\$24,470.00
	b Prepare Written Master Plan Narrative	1.0		16.0				30.0						4.0			51.0	\$10,280.00
	c Coordinate with Lead Architect for Comprehensive Master Plan	1.0		8.0				8.0									17.0	\$3,900.00
3	Upland Master Plan																	\$18,010.00
	3.1 Preliminary Master Plan Development																	
	a Coordinate with Lead Architect for Draft Master Plan Integration	2.0		10.0				10.0									22.0	\$5,130.00
	3.2 Final Master Plan Development																	
	a Develop Written Review Comments and Final Master Plan Layout Alts	1.0		12.0				16.0		24.0							53.0	\$10,760.00
	b Coordinate with Lead Architect for Comprehensive Master Plan	1.0		4.0				4.0									9.0	\$2,120.00
4	PM & Meetings																	\$68,800.00
	Team Meetings 12 @ 2 hr EA	6.0	24.0					24.0									54.0	\$13,680.00
	Project Workshop/Stakeholder Meetings - 3 Total @ 4 hours EA, w/ travel	6.0	24.0					24.0									54.0	\$13,680.00
	Project Open House/Online Meetings - 4 Total @ 2 hours EA, w/ prep	4.0	16.0					16.0									36.0	\$9,120.00
	Prepare Presentations and Collateral	2.0	8.0	16.0				30.0		24.0							80.0	\$17,080.00
	Project Management		32.0					16.0					12.0				60.0	\$14,940.00
<b>I. TOTAL STAFF HOURS</b>		49.0	196.0	144.0	160.0			490.0	48.0	282.0			16.0	4.0		1,389.0		
<b>II. M&amp;N LABOR COST</b>		\$16,660.00	\$63,700.00	\$41,040.00	\$40,000.00			\$78,400.00	\$11,280.00	\$52,170.00			\$2,640.00	\$580.00			\$306,470.00	

III. SUBCONSULTANT COSTS	Cost	Markup	Cost Subtotal
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
<b>Subconsultants Totals:</b>			

IV. OTHER DIRECT COSTS	Cost	Markup	Cost Subtotal
Airfare		N/A	
Lodging		N/A	
Meals		N/A	
Mileage/Rental Car	\$300.00	N/A	\$300.00
Outside Reproduction			
Postage/Delivery			
Telephone/Fax			
I&R/Divng Equipment		N/A	
Other: Misc Costs		N/A	
Other:			
<b>Other Direct Costs Totals:</b>	\$300.00		\$300.00

V. PROJECT SUMMARY	
Total M&N Labor Cost	\$306,470
Total Subconsultant Cost:	
Total Other Direct Costs:	\$300
Mark-up on Subconsultants:	
Mark-up on ODCs:	
<b>Total Project Estimate</b>	<b>\$306,770</b>

\$ 306,770.00

Attachment 5  
MFA Proposal



June 14, 2024

Project No. M0781.04.001

Rob Webb and Tasya Gray  
Dalton, Olmsted & Fuglevand  
1001 SW Klickitat Way, Suite 200B  
Seattle, WA 98134

Re: Port of Olympia, Proposal for Advancing the Port Peninsula Integrated Master Plan

Dear Rob Webb and Tasya Gray:

Maul Foster & Alongi, Inc. (MFA), appreciates the opportunity to submit this proposal to Dalton, Olmsted & Fuglevand, Inc (DOF) to support the development of the Port Peninsula Integrated Master Plan (project). The project is being led by DOF and several other consultants (the DOF project team) and DOF is contracted directly with the Port of Olympia (Port). MFA will contract directly with DOF to advance the project. MFA's proposed scope of work in support of the project is outlined below.

## Scope of Work

We understand that the first phase of the project will occur between July 2024 and June 2025. It will culminate in a package of deliverables including an upland master plan, a parks and open space plan, a Marine Terminal economic impact and market analysis study, a marina master plan, and a study assessing the beneficial reuse of dredge materials from the Budd Inlet. The results of this work will inform a Port led subarea plan, planned action environmental impact statement (EIS) and updates to the City of Olympia's (city) comprehensive plan that are currently planned to begin in mid-2025.

MFA's scope of work is associated with DOF's tasks for the project: Task 3 – Subtask 3.3 and Task 4.

## Task 3 – Upland Master Plan

### Subtask 3.3 – Considerations to Support Planned Action EIS

This subtask will result in a memorandum that defines the process that the project team will pursue in 2025 to prepare documents and studies that will facilitate future development on the Port Peninsula consistent with the future vision. MFA will:

- Coordinate with the city, Port and project team around roles and responsibilities for anticipated subarea planning and planned action EIS development and processing. MFA anticipates up to four meetings necessary to document the city and Port's roles with effort.
- Document review and summarization of city policy and regulations to inform what modifications will be needed to achieve the planned vision and to identify the key stakeholders for a subarea plan/planned action EIS effort.
- Hold half hour meetings with MFA project personnel every two weeks for four months to coordinate project direction.

**Deliverable:** This will culminate in a technical memorandum to the Port in October 2024 that provides the considerations and timeline needed to support the subarea plan/planned action EIS effort that is currently anticipated to begin in mid-2025.

## Task 4— Project Management

This task includes four subtasks that MFA will be contributing towards. These subtasks and the underlying assumptions are:

- **Subtask 4.1 – Team Meetings.** Attend two hours of project team meeting time per month between July 2024 and June 2025. Assumes attendance by one MFA staff.
- **Subtask 4.2 – Project Workshops.** Attend three in-person project team/Port workshops in Olympia between July 2024 and June 2025. Each will last four-hours and will require four hours of preparation time. MFA has included travel time and related expenses for one MFA staff.
- **Subtask 4.3 – Open House – online.** Four, two-hour long online open houses to be attended by one MFA staff. Each open house is allotted two hours of preparation time for one MFA staff.
- **Subtask 4.4 – Project Task Integration.** Coordination with project team, two hours per month for calls and meetings. Coordination with the project team related to Subtask 3.3, as needed, will be billed to Subtask 4.4.

## Assumptions

In preparing the scope of work, MFA has reviewed the provided information and made the following necessary assumptions to define the services and fees:

- The Subtask 3.3 deliverable will be finalized by the end of October 2024.
- This phase of the project will last through June 2025. After Subtask 3.3 is delivered, MFA will conduct Task 4 activities through the end of the project (June 2025).

## Exclusions

The following services or products have been excluded from the scope of work. These items can be provided at your request as a change to the scope of work and an extra fee to be negotiated.

- Drafting a subarea plan, planned action EIS, or comprehensive plan amendments. It is anticipated that these components will be scoped as part of future phases of the project.
- Updates to the Subtask 3.3 deliverable after it is finalized.

## Budget

The estimated cost to perform the proposed work is \$49,051 (see attached estimated budget). This cost estimate does not represent a lump sum. MFA bills for time and materials, consistent with the attached schedule of charges. MFA may apply money from one task to another to complete the scope of work.

After you have reviewed this letter, please indicate your approval of the proposal by signing below. You will be receiving a fully executed copy through Adobe Sign; please retain it for your records.



Sincerely,

Maul Foster & Alongi, Inc.



Erik Bakkom, PE  
Principal Engineer

### **Attachments**

- Estimated Budget
- Schedule of Charges



**Estimated Budget**  
**M0781.04.001**  
**Integrated Budd Inlet Master Planning**  
**Dalton, Olmsted & Fuglevand**

Task	Maul Foster & Alongi, Inc.			Total
	Hours	Labor	Direct	
<b>3 Upland Master Plan</b>				
3.3 Considerations to Support Planned Action EIS	141	\$26,575	\$0	\$26,575
<b>4 Project Management</b>				
4.1 Team Meetings	30	\$5,658	\$0	\$5,658
4.2 Project Workshops	30	\$7,073	\$315	\$7,388
4.3 Open House - Online	16	\$3,772	\$0	\$3,772
4.4 Project Task Integration	24	\$5,658	\$0	\$5,658
<b>Task 3 Total</b>	<b>141</b>	<b>\$26,575</b>	<b>\$0</b>	<b>\$26,575</b>
<b>Task 4 Total</b>	<b>100</b>	<b>\$22,161</b>	<b>\$315</b>	<b>\$22,476</b>
<b>Total Estimated Cost</b>				<b>\$49,051</b>



## SCHEDULE OF CHARGES

### PERSONNEL CHARGES

Principal .....	\$260 – 280/hour
Senior.....	\$190 – 250/hour
Project.....	\$170 – 210/hour
Analyst .....	\$160 – 180/hour
Superintendent .....	\$160/hour
Staff .....	\$150 – 165/hour
Graphic Design.....	\$145 – 155/hour
Technician .....	\$125 – 160/hour
Administrative Support .....	\$115 – 135/hour

Depositions and expert witness testimony, including preparation time, will be charged at 200 percent of the above rates.

Travel time will be charged in accordance with the above rates.

### SUBCONTRACTORS

Charges for subcontractors will be billed at cost plus 15 percent.

### EXPENSES

Charges for outside services, equipment, and facilities not furnished directly by Maul Foster & Alongi, Inc. will be billed at cost plus 10 percent. Such charges may include, but shall not be limited to the following:

Printing and photographic reproduction	Rented equipment
Rented vehicles/mileage	Shipping charges
Transportation on public carriers	Meals and lodging
Special fees, permits, insurance, etc.	Consumable materials

### DIRECT CHARGES

Charges for specialized software modeling and equipment are as specified in the scope of work.

Field equipment rates are set forth in the Field Equipment Rate Schedule.

The rates for document production are set forth in the Document Production Rate Schedule.

### RATE CHANGES

Schedule of Charges are subject to change without notice.

Attachment 6  
TAS Proposal



June 17, 2024

**Prepared for:**

Rob Webb, President, Principal Engineer  
Dalton, Olmsted & Fuglevand Inc. (DOF)

RE: Port of Olympia  
Integrated Budd Inlet-Peninsula Master Plan  
Scope of Services  
TAS PROJECT #BD2434

Dear Rob;

Thomas Architecture Studios (TAS) is pleased to provide you with this proposal and scope of work for master planning services for Port of Olympia Integrated Budd Inlet-Peninsula Master Plan in Olympia, WA. Following are the terms of our Agreement:

**EXISTING SITE:**

1. Budd inlet & Peninsula including East Bay and West Bay from tip of peninsula to State Ave.
2. Context area, Primary Area and Transition Area as outlined in **provided *Integrated master plan 6 17.pdf***

**DOCUMENTS PROVIDED:**

1. *Master plan tasks for scoping.xlsx (1 page)*
2. *Integrated master plan 6 17.pdf (14 pages)*

**SCOPE OF WORK/TASK:**

The following scope of work has been divided into tasks based on the task scoping document provided to us by your office.

**3.1A Upland Master Plan**

Base Documents, Information Gathering, and Preparation for Workshop #1 & Open House #1

- 3.1A-1 Project management:** Administration tasks include meetings, coordination, and administration costs & expenses.
- 3.1A-2 Project Design Team Meetings:** Design team meetings with TAS, DOF JA Brennan (JAB), Moffatt & Nichol (MN). Monthly meeting – two meetings at 2 hours each.
- 3.1A-3 Advisory Committee Coordination Meetings:** Meet with Steering committee two meetings at 2 hours each.
- 3.1A-4 Contract, Invoicing & Schedule Management:** Contract management, monthly invoicing, and project schedule management & updates.
- 3.1A-5 Advisory Committee Site Tour:** Tour project site with client and design team
- 3.1A-6 Base Map setup for Uplands:** Set up base map and set coordinate standards for uplands area and distribute in coordination with DOF, JAB and MN.
- 3.1A-7 Base Map for overall Study Area:** Establish base map for entire study area, set coordinate standards, and distribute in coordination with DOF, JAB and MN.
- 3.1A-8 Vision 2050 & Waterfront Destination Development Vision Goal Incorporation:** Review and incorporate goals established in Vision 2050 plan and Waterfront Destination Development Vision. Provide summary to design team for review.
- 3.1A-9 Comprehensive Plan & Land Use Codes Research:** Research comprehensive plan and Land Use codes for project area and provide executive summary in preparation for Workshop #01.
- 3.1A-10 Constraints & Opportunities Diagram:** Provide list of potential site constraints and opportunities. Compile list into diagram in preparation for Workshop #01.
- 3.1A-11 Sea Level Rise Study:** Provide summary of Sea Level Rise studies to date and prepare diagrams for Workshop #01.
- 3.1A-12 Dredge Spoils Area Analysis Update:** Update previously prepared dredge spoils area analysis and graphics in preparation for Workshop #01.
- 3.1A-13 Coordinate with Local Jurisdictions:** Coordinate and meet with City of Olympia and LOTT Clean Water Alliance to determine future planning and vision for Port Peninsula. Prepare graphic diagram of information gathered for Workshop #01.
- 3.1A-14 Coordinate with Stakeholders:** In coordination with the Port identify potential stakeholders and reach out to them regarding future planning. Prepare graphic diagram of information gathered for Workshop #01.
- 3.1A-15 Tour of Similar Ports:** Attend tour of similar Ports: Bellingham, Everett, Kalama & Vancouver with Port of Olympia, and Design Team.
- 3.1A-16 Photo Documentation:** Gather photo documentation from Tour of Similar Ports, generate list of potential constraints, opportunities & lessons learned. Prepare executive summary of findings.
- 3.1A-17 Photo Documentation & Illustrated project Examples:** Research additional Ports and projects of similar scope, provide photo & illustrative additional research documents.
- 3.1A-18 Preparation for Workshop #01:** Organize and prepare materials for workshop #01.
- 3.1A-19 Preparation for Public Outreach for Workshop #01:** Plan for, announce, advertise and prepare for Workshop #01 with Port Staff, Design Team, LOTT and City of Olympia. Maintain outreach log and contact list for future efforts.

**3.1A-20 Document Feedback from Workshop #01:** Gather and document feedback during Workshop #01. Prepare executive Summary of findings and have records of all feedback available upon request.

**3.1A-21 Coordinate Public Outreach with Design Team, Port Staff, City and LOTT for Open House #01:** Plan for, announce, advertise, and prepare for Open House #01 with Port Staff, Design Team, LOTT and City of Olympia. Maintain outreach log and contact list for future efforts.

**3.1A-22 Prepare for Open House #01:** Coordinate with Design & Port to Select venue, then organize and prepare materials for Open House #01.

**3.1A-23 Document Feedback from Open House #01:** Gather and document feedback during Open House #01. Establish method for submission of additional comments and maintain records log. Prepare executive Summary of findings and have records of all feedback available upon request.

### **3.1B Upland Master Plan**

Develop Upland Alternatives, Prepare for Workshop #2

**3.1B-1 Project Management:** Administration tasks include meetings, coordination, and administration costs & expenses.

**3.1B-2 Project Design Team Meetings:** Design team meetings with TAS, DOF JA Brennan (JAB), Moffatt & Nichol (MN). Weekly meeting – eight meetings at 1 hour each.

**3.1B-3 Advisory Committee Coordination Meetings:** Meet with Advisory Committee 2 meetings at 2 hours each.

**3.1B-4 Contract, Invoicing, Schedule Management:** Contract management, monthly invoicing, and project schedule management & updates.

**3.1B-5 Update Upland design goals and vision statement:** Review feedback to date, revise and update the Upland design goals & vision statement to reflect the current sentiments.

**3.1B-6 Study alternative circulation patterns & development site arrangements:** Perform analysis of site circulation and site development and devise alternative patterns and arrangements.

**3.1B-7 Study alternative massing, uses, density:** Perform analysis of development massing, uses, and densities and devise alternative options.

**3.1B-8 Study alternatives to address sea level rise, use of dredge soils:** Perform analysis of sea level rise and dredge soil usage in relation to overall upland plan and devise alternative options to address.

**3.1B-9 Design Team multi-discipline vision casting work session:** Integrated four-hour design team work session for vision casting.

**3.1B-10 Prepare 3 Alternative Upland Master Plan Options:** Review all information & feedback to date and synthesize into three alternative Upland Master Plan options.

**3.1B-11 Incorporate Marine Terminal & Marina Reconfiguration Alternatives in Overall Master Plan:** Review Marine Terminal & Marina Reconfiguration Alternatives and synthesize with Overall Master Plan. Include options for full terminal, partial terminal, and no terminal on uplands site.

**3.1B-12 Incorporate Parks and Open Space Alternatives into Overall Master Plan:** Review Parks and Open Space Alternatives with JA Brennan and synthesize with Overall Master Plan.

**3.1B-13 Preparation for Workshop #02:** Organize and prepare materials for workshop #02.

**3.1B-14 Coordinate public outreach with team, port staff, and city for Workshop #02:** Plan for, announce, advertise, and prepare for Workshop #02 with Port Staff, Design Team, LOTT and City of Olympia. Maintain outreach log and contact list for future efforts.

**3.1B-15 Document feedback from Workshop #02:** Gather and document feedback during Workshop #02. Prepare executive Summary of findings and have records of all feedback available upon request.

### **3.6 Draft Upland Master Plan, Market Assessment**

Preparation for Workshop #3 & Open House #2

**3.6-1 Project Management:** Administration tasks include meetings, coordination, and administration costs and expenses.

**3.6-2 Project Design Team Meetings:** Design team meetings with TAS, DOF JA Brennan (JAB), Moffatt & Nichol (MN). Two meetings per month – six meetings at 1 hour each.

**3.6-3 Advisory Committee Coordination Meetings:** Meet with Advisory Committee 3 meetings at 2 hours each.

**3.6-4 Contract, Invoicing, Schedule Management:** Contract management, monthly invoicing, and project schedule management & updates.

**3.6-5 Refinement of Options based on public feedback:** Review public feedback to date and revise the options to reflect the current sentiments.

**3.6-6 List and prioritize review criteria (revisit upland goals):** Revisit the upland goals and current feedback in order to generate a list & prioritize review criteria.

**3.6-7 Further graphic development of 3 Alternative Master Plan options:** Perform refinement of the 3 alternative Master Plan options and provide further development.

**3.6-8 Integration of Marine Terminal & Marina Reconfiguration Alternatives with Upland Alternatives:** Review & updates Marine Terminal & Marina Reconfiguration Alternatives then synthesize with Upland Alternatives.

**3.6-9 Integration of Parks & Open Space Alternatives with Upland Alternatives:** Review updates to Parks and Open Space Alternatives with JA Brennan and synthesize with Upland Alternatives.

**3.6-10 Integration of Destination Waterfront Development Parcels:** Review Destination Waterfront Development Parcels and incorporate current plan including Port Waterfront Center, LOTT and HOCCM expansion goals, and synthesize with current options.

**3.6-11 Coordination on Market Assessment of 3 Alternative Master Plan options:** Perform coordination for the Market Assessment for all three of the Alternative Master Plan options.

**3.6-12 Draft Master Plan w/ 3 Alternatives:** Draft the Master Plan for uplands area, including the three Alternative Master Plan options.

**3.6-13 Preparation for Workshop #03:** Organize and prepare materials for workshop #03.



**3.6-14 Coordinate public outreach with team, port staff, & city for Workshop #03:** Plan for, announce, advertise, and prepare for Workshop #03 with Port Staff, Design Team, LOTT and City of Olympia. Maintain outreach log and contact list for future efforts.

**3.6-15 Document feedback from Workshop #03:** Gather and document feedback during Workshop #03. Prepare executive Summary of findings and have records of all feedback available upon request.

**3.6-16 Coordinate public outreach with team, port staff, & city for Open House #02:** Plan for, announce, advertise, and prepare for Open House #02 with Port Staff, Design Team, LOTT and City of Olympia. Maintain outreach log and contact list for future efforts.

**3.6-17 Prep for Open House #02:** Organize and prepare materials for Open House #02.

**3.6-18 Document feedback from Open House #02:** Gather and document feedback during Open House #02. Prepare executive Summary of findings and have records of all feedback available upon request.

### 3.7 Final Master Plan

Preparation for Open House #3

**3.7-1 Project Management:** Administration tasks include meetings, coordination, and administration costs and expenses.

**3.7-2 Project Design Team Meetings:** Design team meetings with TAS, DOF JA Brennan (JAB), Moffatt & Nichol (MN). One meeting per month – two meetings at 1 hour each.

**3.7-3 Contract, Invoicing, Schedule Management:** Contract management, monthly invoicing and project schedule management & updates.

**3.7-4 Narrow 3 Alternatives to Preferred Option based on integrated & prioritized review criteria:** Review integrated & prioritized criteria with project team to narrow the three Master Plan alternatives to a single preferred Master Plan option.

**3.7-5 Integration of Marine Terminal & Marina Reconfiguration Preferred Alternative:** Review Marine Terminal & Marina Reconfiguration preferred alternative and synthesize with preferred Master Plan option.

**3.7-6 Integration of Parks & Open Space Preferred Alternative:** Review Parks and Open Space preferred alternative from JA Brannan and synthesize with preferred Master Plan option.

**3.7-7 Further graphic development of overall Preferred Alternative Integrated Master Plan:** Perform refinement of the graphical level of detail for the preferred alternative integrated Master Plan option.

**3.7-8 Coordinate update of Market Assessment for Preferred Alternative:** Perform coordination efforts for the update of the Market Assessment of the preferred Master Plan option.

**3.7-9 Coordinate public outreach with team, port staff, & city for Open House #03:** Plan for, announce, advertise, and prepare for Open House #03 with Port Staff, Design Team, LOTT and City of Olympia. Maintain outreach log and contact list for future efforts.

**3.7-10 Prep for Open House #03:** Organize and prepare materials for Open House #03.

**3.7-11 Document feedback from Open House #03:** Gather and document feedback during Open House #03. Prepare executive Summary of findings and have records of all feedback available upon request.

**3.7-12 Review Draft Final Master Plan with Advisory Committee Owner Team (in person):** Meet with the project team for two hours in person with the Advisory Committee Owner Team to review the Draft Final Master Plan.

**3.7-13 Review Draft Final Master Plan with Commissioners (in person):** Prepare and present in person to the Port Commissioners the Draft Final Master Plan. Document feedback & share with project team.

#### **4.0 Project Management (All Team)**

In addition to the management scope outline above.

**4.0-1 Team Meetings** Meet with the entire project & design team for two hours each session once per month over the course of ten months.

**4.0-2 Project Workshops** Internal project team planning and design workshops, three workshops total at four hours for each workshop.

**4.0-3 Open House** Open house meetings, three virtual meetings total at two hours each.

#### **SCHEDULE:**

Project schedule is outlined below based on DOF provided schedule from provided document ***Integrated master plan 6 17.pdf***.

Schedule to begin after contract execution tentatively scheduled around end of 2<sup>nd</sup> quarter in 2024. Project completion at the end of 2<sup>nd</sup> quarter 2025.

#### **FEES & REIMBURSABLE EXPENSES:**

- See **Attachment A 240617-Scope and Fees.pdf**

#### **CHANGES TO FEES:**

1. If for any reason the scope of work is changed from that listed above, a commensurate adjustment in the architectural fees will be negotiated between DOF and TAS prior to work proceeding.
2. For any additional work requested, TAS will first identify the additional scope of work being requested and provide DOF with a fixed fee for the additional scope of work (assuming a clear scope of work can be defined). If a clear scope of work cannot be defined, TAS will proceed forward at DOF's written direction on an hourly basis until such time that a clear scope of work can be defined.
3. TAS Hourly Rates (only applies to DOF approved additional services):
  - a. See **Attachment B TAS Fee Schedule\_2024.pdf**

**EXPENSE REIMBURSEMENTS:**

1. Invoices will include actual expenses plus 15% markup.
2. Reimbursables incurred will be itemized with each monthly invoice.

**PAYMENTS FOR SERVICES:**

1. TAS will invoice on a monthly basis based on the work accomplished to-date.

**NOTICES:**

Any written notice provided by one of the parties to the other in connection with this Agreement shall be received when personally delivered, received by electronic mail ("E-mail"), or on the third day following mailing by USPS, first class postage prepaid, to:

**DOF:**

Rob Webb, President, Principal Engineer  
Dalton, Olmsted & Fuglevand Inc. (DOF)  
18887 State Hwy 305 Suite 1000  
Poulsbo WA. 98370  
360-754-2170  
rwebb@dofnw.com

**TAS:**

Ron Thomas, AIA, President  
Thomas Architecture Studios  
525 Columbia Street SW  
Olympia, WA 9850  
360-915-8775  
ron@tasolympia.com

If you have any questions about any of the above, please do not hesitate to contact me. Thank you once again for the opportunity to provide services to you on this project.

Respectfully Submitted,



Thomas Architecture Studios  
Ron S. Thomas, AIA, President



Amos Callender, AIA, Principal

Attachments: Attachment A – Scope of Work & Fees  
Attachment B – TAS 2024 Fee Schedule

**PORT OF OLYMPIA  
INTEGRATED PENINSULA MASTER PLAN  
TAS No. BD2434**

**SCOPE OF WORK AND FEES  
UPLAND MASTER PLAN  
THOMAS ARCHITECTURE STUDIOS**

TASK		HOURLY RATE / HOURS PER TASK				
		SR. PRINCIPAL	PRINCIPAL	PROJ. MGR II	ASSOC III	ADMIN
		\$300	\$220	\$180	\$140	\$90
<b>3.1A UPLAND MASTER PLAN - BASE DOCUMENTS, INFORMATION GATHERING, &amp; PREP FOR WORKSHOP #1 &amp; OPEN HOUSE #1 (6 WEEKS)</b>						
1	Project Management	9	12	0	0	0
2	Project Design Team Meetings (TAS, JAB, DOF, MN) - Weekly (6 x 1 hrs/mtg.)	6	6	0	0	0
3	Advisory Committee Coordination Meetings - Monthly (2 x 2 hrs/mtg.)	4	4	0	0	0
4	Contract, Invoicing, Schedule Management	1	2	0	0	4
5	Advisory Committee Site Tours - Client & Design Team	3	3	3	3	0
6	Base Map set up for uplands - coordinate standards with DOF, JAB, & MN	2	4	12	32	0
7	Base Map set up for overall study area - coordinate standards with DOF, JAB, & MN	2	4	8	24	0
8	Vision 2050 & Waterfront Destination Goals incorporation	1	8	4	0	0
9	Comp Plan & Land Use Code Research + Executive Summary for Workshop #1 (WS1)	1	6	16	0	0
10	Constraints & Opportunities - Prep Diagrams for WS1	2	6	8	16	0
11	Sea Level Rise Study Summary & Diagrams for WS1	2	6	8	16	0
12	Dredge Spoil Area Analysis Update - Prepare graphics for WS1	2	6	8	16	0
13	Coordinate with City of Olympia & LOTT regarding future planning - add to Base Map	4	4	0	16	0
14	Coordinate with Stakeholders regarding future planning - add to Base Map	6	6	0	16	0
15	Tour of Similar Ports: Bellingham, Everett, Kalama, & Vancouver (2 x 8hrs/tour)	16	16	0	0	0
16	Photo document and illustrate key takeaways from tours of similar ports	1	4	2	4	0
17	Photo document and illustrate project examples from on-line research	2	2	4	16	0
18	Prep for Workshop #1	2	3	2	4	0
19	Coordinate public outreach with team, port staff, & city for Workshop #1	1	2	0	0	0
20	Document feedback from Workshop #1	0	1	2	4	0
21	Coordinate public outreach with team, port staff, & city for Open House #1	1	2	0	0	0
22	Prep for Open House #1	1	4	4	8	0
23	Document feedback from Open House #1	0	1	2	4	0
	Subtotal - Hours	69	112	83	179	4
	Subtotal - Fees	\$20,700	\$24,640	\$14,940	\$25,060	\$360
	Task 3.1A Architectural Fees			\$85,700		
<b>3.1B UPLAND MASTER PLAN - DEVELOP UPLAND ALTERNATIVES, PREP FOR WORKSHOP #2 (8 WEEKS)</b>						
1	Project Management	12	16	0	0	0
2	Project Design Team Meetings (TAS, JAB, DOF, MN) - Weekly (8 x 1 hrs/mtg.)	8	8	0	0	0
3	Advisory Committee Coordination Meetings - Monthly (2 x 2 hrs/mtg.)	4	4	0	0	0
4	Contract, Invoicing, Schedule Management	1	2	0	0	4
5	Update Upland design goals and vision statement	1	4	2	0	0
6	Study alternative circulation patterns & development site arrangements	4	8	8	16	0
7	Study alternative massing, uses, density	8	8	18	32	0
8	Study alternatives to address sea level rise, use of dredge soils	2	4	8	16	0
9	Design Team multi-discipline vision casting work session	4	4	4	4	0
10	Prepare 3 Alternative Upland Master Plan Options	8	12	24	80	0
11	Incorporate Marine Terminal & Marina Reconfiguration Alternatives in Overall Master Plan	2	4	2	16	0
12	Incorporate Parks and Open Space Alternatives into Overall Master Plan	2	4	2	16	0
13	Prep for Workshop #2	2	3	2	4	0
14	Coordinate public outreach with team, port staff, & city for Workshop #2	1	2	0	0	0
15	Document feedback from Workshop #2	0	2	2	4	0
	Subtotal - Hours	59	85	72	188	4
	Subtotal - Fees	\$17,700	\$18,700	\$12,960	\$26,320	\$360
	Task 3.1B Architectural Fees			\$76,040		
<b>3.6 DRAFT UPLAND MASTER PLAN, MARKET ASSESSMENT, PREP FOR WORKSHOP #3 &amp; OPEN HOUSE #2 (12 WEEKS)</b>						
1	Project Management	18	24	0	0	0
2	Project Design Team Meetings (TAS, JAB, DOF, MN) - 2/month (6 x 1 hrs/mtg.)	6	6	0	0	0
3	Advisory Committee Coordination Meetings - Monthly (3 x 2 hrs/mtg.)	6	6	0	0	0
4	Contract, Invoicing, Schedule Management	1	2	0	0	4
5	Refinement of Options based on public feedback	1	2	4	8	0
6	List and prioritize review criteria (revisit upland goals)	1	6	0	0	0
7	Further graphic development of 3 Alternative Master Plan options	2	4	12	24	0
8	Integration of Marine Terminal & Marina Reconfiguration Alternatives with Upland Alternatives	2	4	4	16	0
9	Integration of Parks & Open Space Alternatives with Upland Alternatives	2	4	4	16	0
10	Integration of Destination Waterfront Development Parcels	1	2	0	8	0
11	Coordination on Market Assessment of 3 Alternative Master Plan options	4	6	0	0	0
12	Draft Master Plan w/ 3 Alternatives	1	4	4	4	0
13	Prep for Workshop #3	1	3	2	4	0
14	Coordinate public outreach with team, port staff, & city for Workshop #3	1	2	0	0	0
15	Document feedback from Workshop #3	0	2	2	4	0
16	Coordinate public outreach with team, port staff, & city for Open House #2	1	2	0	0	0
17	Prep for Open House #2	1	2	2	4	0
18	Document feedback from Open House #2	0	2	2	4	0
	Subtotal - Hours	49	83	36	92	4
	Subtotal - Fees	\$14,700	\$18,260	\$6,480	\$12,880	\$360
	Task 3.6 Architectural Fees			\$52,680		
<b>3.7 FINAL MASTER PLAN &amp; PREP FOR OPEN HOUSE #3 (8 WEEKS)</b>						
1	Project Management	8	16	0	0	0
2	Project Design Team Meetings (TAS, JAB, DOF, MN) - 1/month (2 x 1 hrs/mtg.)	2	2	0	0	0
3	Contract, Invoicing, Schedule Management	1	2	0	0	4
4	Narrow 3 Alternatives to Preferred Option based on integrated & prioritized review criteria	6	6	4	4	0
5	Integration of Marine Terminal & Marina Reconfiguration Preferred Alternative	1	2	4	16	0
6	Integration of Parks & Open Space Preferred Alternative	1	2	4	16	0
7	Further graphic development of overall Preferred Alternative Integrated Master Plan	1	2	8	24	0

**PORT OF OLYMPIA  
INTEGRATED PENINSULA MASTER PLAN  
TAS No. BD2434**

**SCOPE OF WORK AND FEES  
UPLAND MASTER PLAN  
THOMAS ARCHITECTURE STUDIOS**

8	Coordinate update of Market Assessment for Preferred Alternative	4	4	0	0	0
9	Coordinate public outreach with team, port staff, & city for Open House #3	1	2	0	0	0
10	Prep for Open House #3	1	2	2	4	0
11	Document feedback from Open House #3	0	1	2	2	0
12	Review Draft Final Master Plan with Advisory Committee Owner Team (in person)	2	2	0	0	0
13	Review Draft Final Master Plan with Commissioners (in person)	2	2	0	0	0
	Subtotal - Hours	30	45	24	66	4
	Subtotal - Fees	\$9,000	\$9,900	\$4,320	\$9,240	\$360
	Task 3.7 Architectural Fees				\$32,820	

<b>4</b>	<b>PROJECT MANAGEMENT (ALL TEAM)</b>					
4.1	Team Meetings (All) (1x/month x 10 months) (2 hr/video chat mtg.)	20	20	0	0	0
4.2	Project Workshops (3 total x 4 hours mtg.)	12	12	0	0	0
4.3	Open House (3 virtual meetings x 2 hrs)	6	6	0	0	0
	Subtotal - Hours	38	38	0	0	0
	Subtotal - Fees	\$11,400	\$8,360	\$0	\$0	\$0
	Task 4 Architectural Fees				\$19,760	

	<b>TAS FEES</b>					
	Subtotal TAS Architectural Fees (Tasks 3.1A, 3.1B, 3.6, 3.7, & 4)				\$267,000	
	Subtotal TAS Reimbursables Budget				\$4,000	
	<b>Total TAS Architectural Fees &amp; Reimbursables</b>				<b>\$271,000</b>	



T H O M A S  
architecture studios

## 2024 FEE SCHEDULE

Principal	\$300
Associate Principal	\$220
Senior Project Manager	\$200
Project Manager II	\$180
Project Manager I	\$170
Project Architect II	\$160
Project Architect I	\$150
Architectural Associate III	\$140
Architectural Associate II	\$130
Architectural Associate I	\$110
Administrative	\$90
Intern	\$80
Reimbursable <sup>1</sup>	varies

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<sup>1</sup>REIMBURSABLE: Actual expenses incurred in performing services such as: mileage, printing, reproduction, postage, and other reasonable costs (billed at actual costs plus 15%). Consultant fees billed through TAS are billed at actual costs plus 15%.

Fees subject to minimum of 5% annual increase.

## COVER MEMO

<b>Briefing Date/Time:</b>	July 8, 2024
<b>Staff Contact/Title:</b>	Clarita Mattox, Real Estate Senior Manager 360.528.8070, <a href="mailto:claritam@portolympia.com">claritam@portolympia.com</a>
<b>Subject:</b>	Port Management Agreement Application to Washington State Department of Natural Resources
<b>Purpose:</b>	<input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Decision Needed

### **Overview:**

Advisory Item – no action is required.

By law, the Washington Department of Natural Resources (DNR) is directed to manage aquatic lands owned by the state of Washington. RCW 79.105.420 (previously codified at RCW 79.90.475) provides that port districts and DNR may, at the request of the ports, enter into a management agreement for ports to manage those aquatic lands for the purpose of port operations.

The Washington Administrative Code 332-30-114 states that a mutual, formal, and written agreement with the Washington Department of Natural Resources is required. The intent of the Agreement is to identify the respective responsibilities for managing aquatic lands that abut to upland properties owned by port districts.

The most current agreement between DNR and Port of Olympia was signed in 1984, which expired in 2014, at which time DNR granted an extension to the Port for an additional 10 years or through September 30, 2024.

The application to DNR requires Port Commission action, via a resolution, authorizing the Executive Director to sign the PMA on behalf of the Port.

### **Background:**

The Port's PMA was amended in September 2014 to memorialize the extension of 10 years. However, DNR had disputed in 1996 ownership of the western part of Columbia Street, which was vacated by the City of Olympia in 1924. The disputed area included the submerged tidelands, harbor and channel, and DNR claimed

rents owed to the agency from the leases along that section of Columbia Street. The two leases were from the development of Anthony's and the Market Place office building.

The settlement agreement was dated April 1, 2016, in which the Port and DNR agreed to mutual release of any claims against each other as a result of the leases. The Port acknowledged the State's ownership rights over the disputed area, and further agreed to share 35% of the base rents from the land leases (Anthony's Homeport and Market Place office building) during the remainder of the land leases' terms. DNR has received approximately \$328,576 from 2016-2023.

DNR agreed to not have the Port pay back rent for the use of the vacated area prior to March 2016, and the Port included the vacated (disputed area) as part of the PMA record survey in the future.

The application requires a new record of survey (completed April 2024), reviewed and approved by DNR; the record survey is to include the PMA area, all improvements, and uses; if any, fills on parcels or discharge permit for outfalls, title and legal description of ownership, evidence of NPDES permit issuance, and copies of any land leases or sublease associated with any of the Port's uplands abutting the PMA boundaries.

Approval is sought by the Port Commission via a resolution, directing the Port enter into a new management agreement.

**Documents Attached:**

- PowerPoint presentation
- Port's current Management Agreement
- Amendment #1
- Amendment #2

**Summary & Financial Impact:**

None outside the agreement terms.

**Affected Parties:**

Port of Olympia and Department of Natural Resources.

**Options with Pros & Cons:**



Maintain integrity of the PMA and balanced operations of the Marine Terminal.

**Staff Recommendation:**

Present a resolution to the Port Commission at the meeting of July 22, 2024, authorizing the Executive Director to submit the application and sign the PMA on behalf of the Port.



**PORT of OLYMPIA**  
Serving All of Thurston County

# Port Management Agreement Application

Clarita Mattox  
Real Estate Senior Manager  
July 8, 2024



1



## Port Management Agreement (PMA)

Application to  
Washington Department  
of Natural Resources



2



## Today's Presentation

*Advisory Only – No Action is Required*

- Port Management Agreement - expires September 30, 2024
- Application to the Washington Department of Natural Resources (DNR)



3

## PMA – Background

- By law DNR is directed to manage aquatic lands owned by the State.
- RCW 79.105.420 provides the ability for DNR and port districts to enter into an agreement for ports to manage such lands to conduct port operations such as marine terminals.
- Washington Administrative Code (WAC) 332-30-114 states the requirements that govern the Port's management of State-owned aquatic lands.



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## PMA – Background

- The Agreement is intended to identify the respective responsibilities for managing aquatic lands that abut to upland properties owned by the ports. In this case, operation of the Port of Olympia Marine Terminal.
- The 1984 PMA with the Port of Olympia expired September 30, 2014.
- Amendment #1 provided additional 10 years, which expires September 30, 2024.

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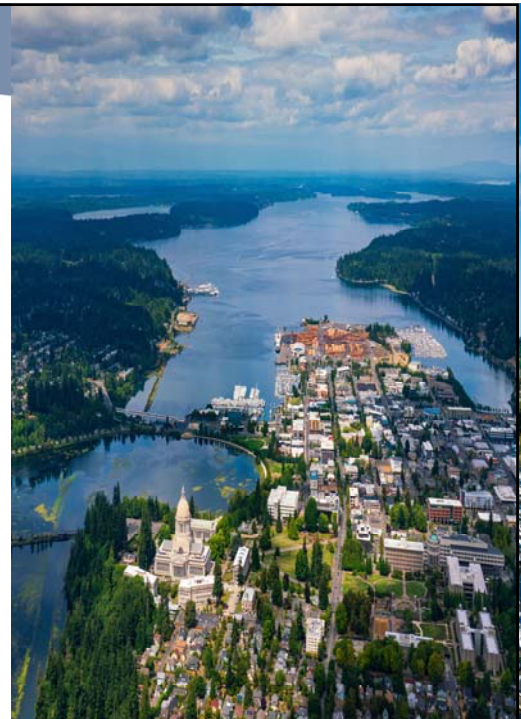


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## PMA – Background

- The Washington Public Ports Association (WPPA) developed a handbook to assist port districts through the PMA application process.
- The handbook was intended to assist public officials understand and implement Port Management Agreements.
- The handbook was published under close collaboration and participation by the WPPA and DNR.

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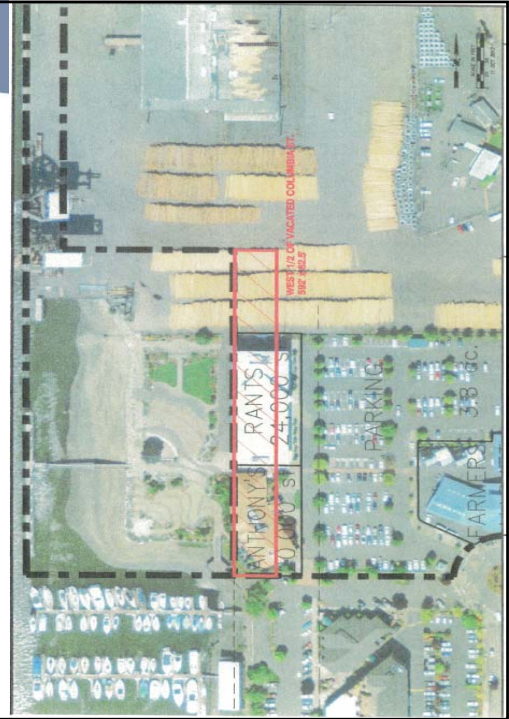


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## PMA – Current Agreement

- 1996 DNR disputed ownership of the western part of the vacated Columbia Street (submerged tidelands, harbor, and channel), when the City of Olympia vacated Columbia Street in 1924.
- The disputed area is now occupied by Anthony's and the Market Place office building, following DNR's approval for that development in 1998.
- Port and DNR settled the dispute by a Settlement Agreement dated April 1, 2016, which included DNR receiving a 35% of the annual revenues from those two businesses (Anthony's and Market Place). Approximately \$328,576 to date.

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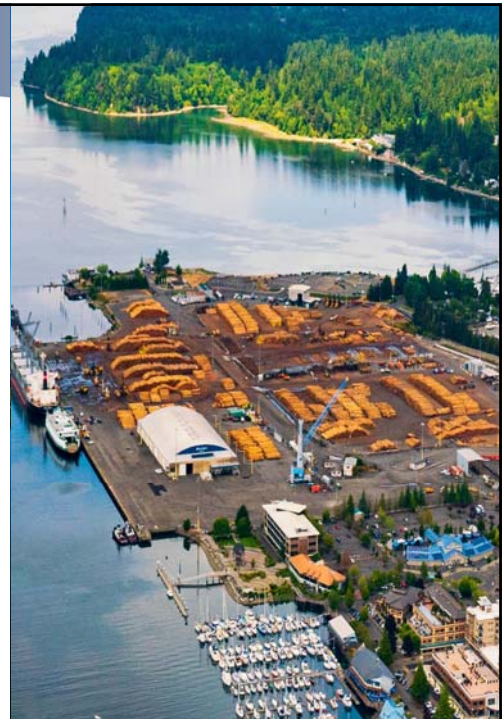


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## PMA – Current Agreement

- Amendment #2 was signed April 2016
  - Identified the tidelands owned by the Port (Parcel 2) and sign a Quit Claim Deed of the disputed area to DNR.
  - Included in the settlement agreement.
  - Identified leases affecting the vacated Columbia Street (Anthony's and Market Place).
  - Included the Port's commitment to update the PMA record of survey to include the areas subject to the settlement agreement, now known as PMA Parcel 2.

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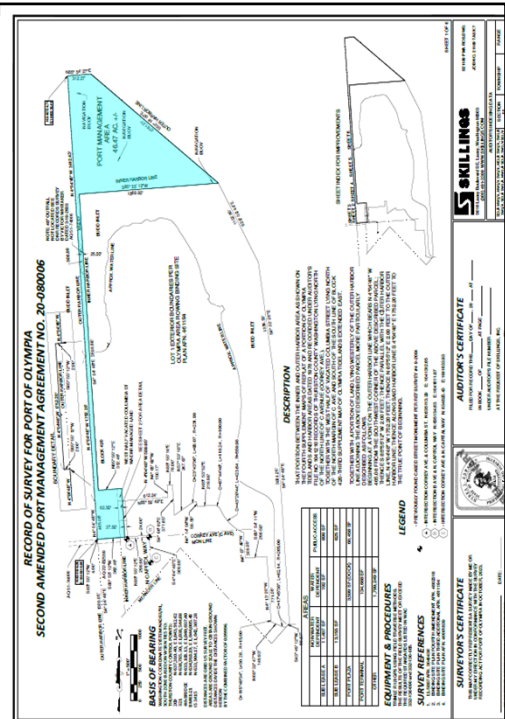


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## PMA – 2024 Application

- Port updated the record of survey in 2024, which was reviewed and accepted by DNR, and has followed the WPPA guidelines.
- The application requires description of uses within the PMA boundaries, copies of leases, and use agreements within the PMA, any planned projects in the near future, and copy of the most current Comprehensive Scheme of Harbor Improvements.
- The PMA application requires Commission action by way of a resolution providing delegation of authority to the executive director to apply and sign the PMA.

9



9

## Next Steps

### *Commission Action*

- Port Commission to approve a resolution authorizing the executive director to apply for a new Port Management Agreement and signing it on behalf of the Port.
- Typically, PMAs are for a term of 30 years.
- DNR is currently developing a new template for the PMA and if not be ready by the September 30, 2024, DNR will preliminarily grant an extension of the current PMA.
- Staff will present a resolution to the Port Commission for consideration and approval at its public meeting of July 22, 2024.

10

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**Comments / Questions**

**Thank you**

11



When recorded, return to:  
Port of Olympia  
915 Washington St NE  
Olympia, WA 98501-6931

 **COPY**

**STATE OF WASHINGTON**  
**DEPARTMENT OF NATURAL RESOURCES**  
**PETER GOLDMARK**  
Commissioner of Public Lands  
Olympia, WA 98504

**FIRST AMENDMENT TO PORT MANAGEMENT AGREEMENT (PMA)**

**Agreement No. 20-080006**

This Agreement is made between the STATE OF WASHINGTON acting through the Department of Natural Resources (the "State"), whose address is 1111 Washington Street SE, Olympia, Washington 98504-7027, and the PORT OF OLYMPIA (the "Port"), a Government Agency, whose address is 915 Washington Street NE, Olympia, Washington 98501-6931.

WHEREAS, the Port, located in Thurston County, Washington, and the State entered into a Port Management Agreement (PMA No. 20-080006) on the 1st day of October 1984, for certain state-owned aquatic lands, commonly known as the Port of Olympia; and

WHEREAS, the term of the PMA is set to expire on the 1st day of October 2014, and the Port wishes to extend the term of the existing agreement; and

WHEREAS, the State has determined that the Port is in compliance with the Port Management Agreement; and

WHEREAS, the State believes that it is in the best interest of the State of Washington to grant the Port's request;

**IT IS THEREFORE AGREED:**

PORT OF OLYMPIA  
First PMA Amendment-September 26, 2014

1 of 6

Port Management Agreement No. 20-080006

4418921  
11/25/2014 02:55 PM Agreement  
Thurston County Washington  
PORT OF OLYMPIA

Pages: 6





- 1) That an Amendment is hereby extending the term of the PMA for Ten (10) years from the 1st day of October 2014 to the 30th day of September 2024.
- 2) The Parties agree that this Amendment to the PMA will not change the liability of either party for any future remediation on the site. The Port agrees to retain all the responsibilities and liabilities associated with PMA 20-080006.
- 3) The Port acknowledges that it continues to have an ongoing obligation to report to the Department of Natural Resources' Ports Program any of the following:
  - a) Changes in Port ownership of uplands abutting PMA parcels.
  - b) Changes in planned or actual uses of PMA Property.
  - c) Documentation of water-dependent / nonwater-dependent use areas and classifications.
  - d) Development of Improvements.
  - e) Development of authorized Fills, Confined Aquatic Disposal Sites, or Mitigation Sites.
  - f) Easements through PMA Property.
- 6) That all other terms and conditions of Port Management Agreement No. 20-080006 are not affected by this Amendment.

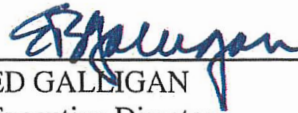
Subject to the terms of this agreement, Port Management Agreement No. 20-080006 is amended effective October 1, 2014.

This Amendment requires the signature of all Parties.

The Port expressly agrees to all covenants herein.

Executed this 14<sup>th</sup> day of October, 20 14.

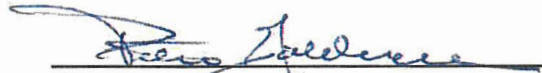
PORT OF OLYMPIA



ED GALLIGAN  
Executive Director  
915 Washington St NE  
Olympia, WA 98501-6931  
360-528-8000

Executed this 23<sup>rd</sup> day of October, 20 14.

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES



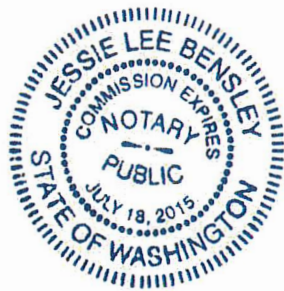
PETER GOLDMARK  
Commissioner of Public Lands  
1111 Washington Street SE MS 47000  
Olympia, WA 98504-7000  
360-902-1000

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 ) ss.  
County of Thurston )

I certify that I know or have satisfactory evidence that ED GALLIGAN 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 Executive Director of the PORT OF OLYMPIA to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 10/14/14



Jessie Bensley  
(Type/Print Name)  
Notary Public in and for the State of Washington  
Residing at Olympia  
My Commission Expires July 18, 2015

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 ) ss.  
County of Thurston )

On this 23<sup>rd</sup> day of October, 2014, personally appeared before me PETER GOLDMARK, 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 he was authorized to execute said instrument and that the seal affixed is the official seal of the Commissioner of Public Lands for the State of Washington.

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



Kelli Park  
(Type/Print Name)  
Notary Public in and for the State of Washington  
Residing at Lacey  
My Commission Expires 8-1-17

Standard Port Management Agreement Amendment  
Approved as to Form in August 2010  
by Terry Pruit  
Assistant Attorney General  
State of Washington

**EXHIBIT A**

Legal Description of Premises and Encumbrances

Current Survey recorded with Thurston County

Auditor's File No. 3016812

Dated the 27th day of February 1996

## CR 2A AGREEMENT

THIS CR2A AGREEMENT (“Agreement”) is entered into on this 9<sup>th</sup> day of February, 2016, by The Port of Olympia (“Port”), a Washington Municipal Corporation, and the Washington State Department of Natural Resources, (“DNR”), a Washington State governmental agency (collectively, the “Parties”).

### I. RECITALS

- A. In 1924 the City of Olympia by Ordinance No. 1866 vacated the portion of North Columbia Street on the Port peninsula in Olympia abutting Olympia Tideland blocks 4 and 5.
- B. North Columbia Street was first platted as part of the plat of Olympia Tidelands in 1891.
- C. At the time of the street vacation in 1924, and at all other times relevant hereto, state-owned harbor area abutted on the western side of Columbia Street and first class platted tidelands abutted on the eastern side of Columbia Street.
- D. Beginning in 1903, the State of Washington began selling the first class platted tidelands on the east side of Columbia Street.
- E. The Port of Olympia as the successor to the parties who purchased Olympia Tideland blocks 4 and 5 from the State of Washington owns the filled tidelands abutting on the eastern side of the vacated portion on North Columbia Street.
- F. The State of Washington is the owner of the harbor area abutting the western side of the vacated Columbia Street.
- G. Both DNR on behalf of the State of Washington and the Port as the successor to the tideland owners abutting on North Columbia Street at the time it was vacated in 1924 claim title to the western half of vacated Columbia Street fronting blocks 4 and 5 of the Olympia Tidelands, (“the Dispute” or “Disputed Property”).
- H. The Disputed Property is currently occupied by a restaurant building and an office building under a ground lease with the Port.
- I. As part of the Dispute, DNR claims it is owed fair market value for the Port’s use of the western half of the vacated street since 1998 when the Parties signed a letter acknowledging the other’s claim to the disputed property and allowing Port development of the property to proceed.

### II. AGREEMENT

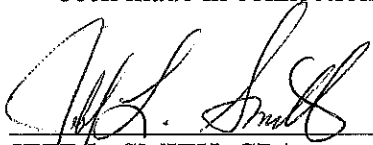
In consideration of the promises and obligations set forth below, the Parties agree as follows:

- A. **Release.** The Parties mutually completely release and forever discharge the others, their agents, employees, attorneys, insurers, and all other persons, firms, or corporations that may be liable, of and from any and all claims of any kind whatsoever which the Port or DNR now has, or may hereafter acquire, on account of, growing out of, or related to the Dispute. DNR and the Port mutually completely release and forever discharge the others, their agents, employees, attorneys, insurers, and all other persons, firms, or corporations that may be liable from any claims arising out of the Lease prior to the execution of this Agreement. This release shall

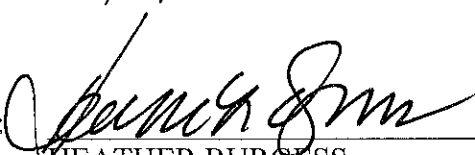
be a fully binding and complete settlement between the Parties, their assigns, and successors.

- B. **Attorneys' Fees and Costs.** Each Party shall each bear its own attorneys' fees and costs related to the Dispute.
- C. **No Admission.** It is understood and agreed by the Parties that this settlement is a compromise of a disputed claim, and the obligations set forth herein shall not be construed as an admission of liability on the part of the Port.
- D. **Title.** The Port will issue to DNR a quit claim deed granting the Port's right title and interest, if any, to the western half of the portion of North Columbia Street fronting blocks 4 and 5 of Olympia Tidelands from the south line of Corky Avenue to the north line of vacated E Ave ("the Property").
- E. **Rent.** Beginning March 22, 2016 and on a monthly basis thereafter the Port shall pay DNR per the following formula: 35 percent of the base rent (which by definition excludes any percentage rent) that the Port receives for under its leases for the Property, including the eastern half of vacated Columbia Street abutting the Property, multiplied by 85 percent. The Port shall not change the formula for setting the base rent set forth in the leases for the Property in existence at the time of this Agreement without the consent of DNR, which consent shall not be unreasonably withheld. Future leases shall determine base rent for the Property in the same manner as in the existing leases for the Property unless the Port obtains DNR's consent to change the method for computing base rent, which consent DNR shall not unreasonably withhold.
- F. **No Back Rent.** The Port shall not be obligated to pay back rent for its use the Property prior to March 22, 2016.
- G. **Exchange Proposal:** As soon as possible the Port shall submit the exchange proposal for the West Bay parcel to DNR for consideration. DNR shall explain in writing to the Port no later than February 17, 2016 why DNR does not believe the West Bay parcel meets the exchange criteria set forth in RCW 79.105.400 and WAC 332-30-170. DNR's written proposal may be presented to the Port Commission as support for this Agreement but may not be used for any other purpose by the Port.
- H. **Amendment of PMA.** DNR and the Port agree to amend the Port's Port Management Agreement (PMA) so that the Property is within the PMA and managed by the Port.
- I. **Confidentiality.** While both parties acknowledge this Agreement is subject to public disclosure both parties agree that they will not use this agreement for any purposes other than enforcing the terms of this agreement. The parties specifically agree that this agreement shall not be used as precedent for any purposes in discussions with third parties.
- J. **Approval.** The Parties agree to seek and recommend approval of this agreement without reservation by the Port's Commission and the Commissioner of Public Lands. The Agreement shall be presented to the Port Commission at its February 18, 2016 Work Session and its February 22, 2016 regular meeting for final approval. The Agreement shall be presented to the Commissioner of Public Lands for approval as soon as possible but no later than February 22, 2016. If for any reason, the Port Commission or the Commissioner of Public Lands fails to approve this Agreement by February 29, 2016 this Agreement shall be null and void as if it had never been made.

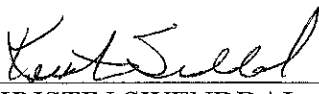
- K. Mediation Fees.** The Parties shall share equally the responsibility to pay all mediation fees billed by the mediator in this matter.
- L. Warranty of Capacity to Execute Agreement.** The Parties represent and warrant that no other person or entity has, or has had, any interest in any claims, demands, obligations, or causes of action referred to in this Agreement except as otherwise set forth in this Agreement. The Parties represent and warrant that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any claims, demands, obligations, or causes of action referred to in this Agreement.
- M. Understanding of Document.** In entering into this Agreement, the Parties represent that they have read the terms of this Agreement and have relied upon the legal advice of their attorneys. The Parties represent that the terms of this Agreement have been completely explained to them by their attorneys and that the terms of this Agreement are fully understood and voluntarily accepted.
- N. Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington.
- O. Additional Documents.** The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.
- P. Entire Agreement and Successors in Interest.** This Agreement contains the entire agreement between the Parties with regard to the matters set forth herein and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each. No promises of any kind have been made in connection with this settlement, other than as stated in this Agreement.

BY:   
 \_\_\_\_\_  
 JEFF L. SMITH, CPA  
 Finance Director & Port Auditor  
 Port of Olympia

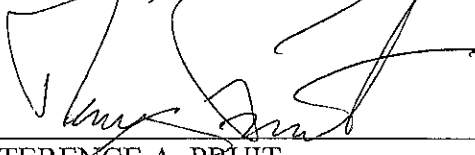
Date: 2/9/2016

BY:   
 \_\_\_\_\_  
 HEATHER BURGESS  
 Phillips Burgess PLLC  
 Attorney for the Port of Olympia

Date: 2/9/2016

BY:   
 \_\_\_\_\_  
 KRISTIN SWENDDAL  
 Aquatics Division Manager  
 Washington State Department of  
 Natural Resources

Date: Feb. 9, 2016

BY:   
 \_\_\_\_\_  
 TERENCE A. PRUIT  
 Assistant Attorney General  
 Attorney for Washington State  
 Department of Natural Resources

Date: 2/9/2016



RETURN ADDRESS

Phillips Burgess PLLC  
724 Columbia Street  
Suite 320  
Olympia, WA 98501

**Document Title(s)**

Second Amendment to Port Management  
Agreement

**Reference Numbers(s) of related documents**

4418921

Additional Reference #-s on page

**Grantor(s)** (Last, First and Middle Initial)

State of Washington

Additional grantors on page

**Grantee(s)** (Last, First and Middle Initial)

Port of Olympia

Additional grantees on page

**Legal Description** (abbreviated form: i.e. lot, block, plat or section, township, range, quarter/quarter)

Additional legal is on page

**Assessor's Property Tax Parcel/Account Number**

Additional parcel #-s on page

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

*Jayne Kane*  
Signature of Requesting Party





When recorded, return to:  
Port of Olympia  
606 Columbia Street NW, Suite 300  
Olympia, WA 98501



PETER GOLDMARK  
COMMISSIONER OF PUBLIC LANDS

## SECOND AMENDMENT TO PORT MANAGEMENT AGREEMENT (PMA)

### Agreement No. 20-080006

This Agreement is made between the STATE OF WASHINGTON acting through the Department of Natural Resources (the "State"), whose address is 1111 Washington Street SE, Olympia, Washington 98504-7027, and the PORT OF OLYMPIA (the "Port"), a Government Agency, whose address is 915 Washington Street NE, Olympia, Washington 98501-6931.

WHEREAS, the Port, located in Thurston County, Washington, and the State entered into Port Management Agreement No. 20-080006 (PMA) on the 1st day of October 1984, for certain state-owned aquatic lands, commonly known as the Port of Olympia; and

WHEREAS, the PMA was amended effective October 1, 2014 to extend the term of the PMA ten (10) years, to expire on the 30th day of September 2024, by the First Amendment to the Port Management Agreement; and

WHEREAS, the Port has requested this Second Amendment to the PMA to add the tideland parcels identified in the attached Exhibit A, "the Property", to the PMA as PMA Parcel 2; and

WHEREAS, on April 1, 2016, the Port and DNR entered into the settlement agreement, attached as Exhibit B, "the Settlement Agreement", in which State agreed to add the Property to the PMA as PMA Parcel 2; and

WHEREAS, the Port has entered into the ground leases for portions of the Property with Market Place Building, LLC, as Tenant, and the Port of Olympia, as Lessor, on July 15, 1997, and with Mad Anthony's, Inc. as Tenant and the Port of Olympia, as Lessor, on July 31, 1997, "the Leases", attached as Exhibit C, which identify and authorize the improvements on the Property, ("the Improvements"); and

WHEREAS, the Port has agreed to update the PMA record of survey to include the area subject to the settlement agreement as PMA Parcel 2; and

WHEREAS, the State believes that it is in the best interest of the State of Washington to add Parcel 2 to the PMA by this Second Amendment;

IT IS THEREFORE AGREED:

- 1) Exhibit A to PMA 20-080006 is hereby amended to add the parcel identified in Exhibit A to this Second Amendment as PMA Parcel 2.
- 2) The Port agrees to submit for state review an updated record of survey for the PMA describing Parcel 1 and Parcel 2, within two years of the effective date of this Second Amendment.
- 3) Subject to the provisions of Section 15 of the PMA, the improvements on PMA Parcel 2 remain owned by the Port and Port tenants as determined in accordance with the Leases and are the responsibility of the Port.
- 4) Rent to be remitted to DNR for non-water dependent uses within PMA Parcel 2 will be determined as specified in the Settlement Agreement.
- 5) The Parties agree that this Second Amendment to the PMA will not change the liability of either party for any future remediation on the site. The Port agrees to retain all the responsibilities and liabilities associated with PMA 20-080006.
- 6) The Port acknowledges that it continues to have an ongoing obligation to report to the Department of Natural Resources Ports Program any of the following:
  - a) Changes in Port ownership of uplands abutting the PMA parcels.
  - b) Changes in planned or actual uses of the PMA property.
  - c) Documentation of water-dependent / nonwater-dependent use areas and classifications.
  - d) Development of improvements.
  - e) Development of authorized fills, confined aquatic disposal sites, or mitigation sites.
  - f) Easements over PMA property.

- 7) The Port represents and warrants to State that (i) the PMA is in full force and effect; (ii) Port is not in default or breach of the PMA; (iii) Port has no knowledge of any claims, offsets, or defenses of the Port under the PMA; and (iv) to the best of Port's knowledge, the Property is in full compliance with all applicable federal, state, and local governmental permits, rules, ordinances, and laws.
- 8) All other terms of the PMA not inconsistent with this Agreement are hereby affirmed and ratified.


This Second Amendment requires the signature of all Parties and is effective as of the date of the last signature below.

Dated: 9-19-2016 PORT OF OLYMPIA

  
By: ED GALLIGAN  
Title: Executive Director  
Address: 606 Columbia Street NW, Suite 300  
Olympia, WA 98501  
Phone: 360-528-8000

Dated: 9/30 2016

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES

  
By: PETER GOLDMARK  
Title: Commissioner of Public Lands  
Address: 1111 Washington Street SE; MS 47000  
Olympia, WA 98504-7000  
Phone: 360-902-1000

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 ) ss.  
County of Thurston )

I certify that I know or have satisfactory evidence that Ed Galligan 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 Executive Director of the Port of Olympia to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: September 19, 2016

Jessie Binsley  
(Signature)

(Seal or stamp)

Jessie Binsley  
(Print Name)

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

Olympia



My appointment expires July 18, 2019

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 ) ss.  
County of Thurston )

On this 30<sup>th</sup> day of September, 2017, personally appeared before me PETER GOLDMARK, 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 he was authorized to execute said instrument and that the seal affixed is the official seal of the Commissioner of Public Lands for the State of Washington.

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



Andrea Wagner  
(Type/Print Name)  
Notary Public in and for the State of Washington  
Residing at Olympia, WA  
My Commission Expires 9-16-18

Standard Port Management Agreement Amendment  
Approved as to Form in July 2016  
by Terry Pruit  
Assistant Attorney General  
State of Washington

## EXHIBIT A

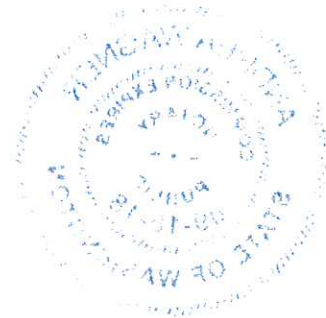
### Legal Description of Premises and Encumbrances

#### LEGAL DESCRIPTION

A part of North Columbia Street (formerly Stevens Avenue) being 125 feet wide as shown on Plate II of the Map of Olympia Tidelands dated April 1892 and said street was vacated by the City of Olympia by Ordinance No. 1866 dated September 5, 1924 and together with the vacated intersection of "E" Avenue West and said Columbia Street vacated by the City of Olympia by Ordinance No. 2678 dated May 23, 1950; described as follows: The west half of North Columbia Street lying north of the north line of "C" Avenue and lying south of the center line of "E" Avenue West.

Subject to a reservation for the City of Olympia with the right for all time to construct, keep and maintain any sewer, water pipe, or other public utility in said vacated street, together with the right of ingress and egress of said vacated street for the purpose of inspection, repairing, or replacing such sewer, water pipe, or any other public utility therein.

Condition 2 of this Second Amendment commits the Port to providing a Record of Survey for Parcel 1 and Parcel 2 within 2 years of this Second Amendment. When approved by DNR those surveys will become part of Exhibit A to the PMA.





## EXHIBIT B

### The Settlement Agreement

#### SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by the Port of Olympia ("Port"), a Washington municipal corporation, and the Washington State Department of Natural Resources ("DNR"), a Washington State governmental agency (collectively, the "Parties").

#### I. RECITALS

WHEREAS, a portion of North Columbia Street was first platted as part of the plat of Olympia Tidelands in 1892; and

WHEREAS, beginning in 1907, the State of Washington began selling the first-class platted tidelands on the east side of North Columbia Street; and

WHEREAS, in 1924 the City of Olympia by Ordinance No. 1866 vacated that portion of North Columbia Street on the Port Peninsula in Olympia abutting Olympia Tideland Blocks 4 and 5 (the "Property"); and

WHEREAS, at the time of the street vacation in 1924, and at all other times relevant hereto, state-owned harbor area abutted on the western side of North Columbia Street and first-class platted tidelands abutted on the eastern side of North Columbia Street; and

WHEREAS, the Port of Olympia as the successor to the parties who purchased Olympia Tideland blocks 4 and 5 from the State of Washington owns the filled tidelands abutting on the eastern side of the vacated portion on North Columbia Street; and

WHEREAS, the State of Washington is the owner of the harbor area abutting the western side of the vacated Columbia Street; and

WHEREAS, both DNR on behalf of the State of Washington and the Port as the successor to the tideland owners abutting on North Columbia Street at the time it was vacated in 1924 claim title (the "Dispute") to the western half of the portion of North Columbia Street fronting blocks 4 and 5 of the plat of Olympia Tidelands from the south line of Corky Avenue to the north line of vacated E Ave (the "Disputed Property") (the Disputed Property is depicted in Exhibit A attached hereto); and

WHEREAS, the Disputed Property is currently occupied by a restaurant building and an office building each under a ground lease (collectively the "Leases") with the Port; and

WHEREAS, as part of the Dispute, DNR claims it is owed fair market value for the Port's use of the Disputed Property since 1998 when the Parties signed a letter acknowledging the other's claim to the Disputed Property and allowing Port development of the property to proceed; and

WHEREAS, as a potential means of resolving the Dispute, the Port had requested that DNR consider a land exchange involving the Disputed Property and certain Port-owned parcels within the West Bay Tidelands; and

WHEREAS, DNR provided the Port with a written analysis dated February 17, 2016 explaining ~~DNR's consideration of the Port's request and the reasons why the proposed exchange did not satisfy relevant legal criteria for DNR to accept the proposed exchange; and~~

WHEREAS, the Port and DNR wish to fully and finally resolve the Dispute without resort to litigation.

## II. AGREEMENT

In consideration of the promises and obligations set forth below, the Parties agree as follows:

A. Recitals. The Recitals contained above are incorporated herein as though set forth in full.

B. Mutual Release. With the exception of any of their respective rights and obligations created pursuant to this Agreement, upon execution of this Agreement DNR and the Port mutually completely release and forever discharge the other, their agents, employees, attorneys, insurers, and all other persons, firms, or corporations that may be liable, of and from any and all claims of any kind whatsoever which the Port or DNR now has, or may hereafter acquire, on account of, growing out of, or related to the Dispute. Further, with the exception of any of their respective rights and obligations created pursuant to this Agreement, upon execution of this Agreement DNR and the Port mutually completely release and forever discharge the other, their agents, employees, attorneys, insurers, and all other persons, firms, or corporations that may be liable from any claims arising out of the Leases prior to the execution of this Agreement. The releases set forth in this Agreement shall be a fully binding and complete settlement between the Parties, their assigns, and successors.

C. No Admission. It is understood and agreed by the Parties that this Agreement is a compromise of a disputed claim, and the obligations set forth herein shall not be construed as an admission of liability on the part of the Port.

D. Title. The Port will recognize the State of Washington has title to the Disputed Property. DNR will draft and provide to the Port the legal description of the Disputed Property, after which the Port will draft and issue to DNR a quit claim deed granting the Port's right, title, and interest, if any, to the Disputed Property to the State of Washington, subject to the Leases. Such quit claim deed will have an effective date no earlier than the effective date of the amendment to the Port Management Agreement as provided for in Section G herein.

E. Rent. Beginning July 10, 2016 the Port shall pay DNR rent per the following formula: 35 percent of the base rent (which by definition excludes any percentage rent) that the Port is due under its leases for the Property, including the eastern half of vacated Columbia Street abutting the Property, multiplied by 85 percent.

1. Payment. The July 10, 2016 rent payment shall include rent for the period March 22, 2016 through June 30, 2016. On or before October 10, 2016 and quarterly on or before the 10<sup>th</sup> day of each quarter thereafter through October

10, 2017, the Port shall pay DNR the quarterly rent as calculated using the formula provided in this Section for the preceding quarter. Beginning on October 1, 2017, the Port shall pay DNR rent as calculated using the formula provided in this Section in a single annual payment for the following year (measured from October 1 to September 30), which shall be due no later than October 1 of each year.

2. **Base Rent Calculation.** For purposes of this Agreement base rent under the Leases shall be calculated using the following formula set forth in the Leases: The assessed value of the Property (Thurston County tax parcel numbers 61020000100 and 61020000200) multiplied by 9.5 percent multiplied by 70 percent. The formula results in a current annual base rent for the Property under the Leases of \$53,668.80 for tax parcel number 61020000200 and \$65,699.14 for tax parcel number 61020000100.
3. **Rent Revision.** Beginning on the anniversary date of the leases in 2017 and every five (5) years thereafter, the Port shall revise the rent to reflect the then current assessed value of the Property using the formula set forth above. If for any reason a current tax assessment is not available for the Property or any portion of the Property used for non-water dependent purposes, rent shall be calculated as set forth above using the fair market value for the Property or such portion of the Property as determined by appraisal in accordance with Section 37 of the Port of Olympia Ground Lease between Market Place Building, LLC, as Tenant, and the Port of Olympia, as Lessor, as such provision was written when made on July 15, 1997 and Section 1(c), "Value Disagreement," of Lease Amendment No. 3 of the Port of Olympia Ground Lease between Mad Anthony's, Inc. as Tenant and the Port of Olympia, as Lessor, dated September 9, 2013 provided that DNR shall have the right to consent to the appraiser selected pursuant to the referenced lease provisions, unless DNR consents to another method for calculating fair market value.
4. **Amendment and Future Leases.** The Port shall not change the formula for setting the base rent in the Leases as described above in Section E(2) without the consent of DNR, which consent shall not be unreasonably withheld. Future leases shall determine base rent for the Property in the same manner as set forth above unless the Port obtains DNR's consent to change the method for computing base rent.

F. **No Back Rent.** The Port shall not be obligated to pay back rent for its use of the Property prior to March 22, 2016.

G. **Amendment of PMA.** DNR and the Port agree to amend the Port's Port Management Agreement (PMA) so that the Disputed Property is within the PMA and managed by the Port. As of the date this Agreement is fully executed, (the Application Date), the Agreement shall constitute an application from the Port to DNR for amendment of the PMA to include the Disputed Property within the PMA. As of the Application Date, the Port and DNR will diligently pursue formal amendment of the PMA until such time as a formal amendment to the PMA is completed. From the Application Date the Port will manage the Disputed Property

and pay rent pursuant to Section E as if the PMA had been amended to include the Disputed Property.

**H. Mediation Fees.** The Parties shall share equally the responsibility to pay all mediation fees billed by the mediator in this matter.

**I. Attorneys' Fees and Costs.** Each Party shall each bear its own attorneys' fees and costs related to the Dispute.

**J. Confidentiality.** While both Parties acknowledge this Agreement is subject to public disclosure, both Parties agree that they will not use this Agreement for any purposes other than enforcing the terms of this Agreement. The Parties specifically agree that this Agreement shall not be used as precedent for any purposes in discussions with third parties.

**K. Approval Deadline.** If for any reason, the Port Commission or the Commissioner of Public Lands fails to approve this Agreement by April 5, 2016, this Agreement shall be null and void as if it had never been made.

**L. Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington.

**M. Venue and Enforcement.** Any dispute arising under or out of this Agreement shall first be mediated with the Honorable Thomas McPhee (Retired). If Retired Judge McPhee is unavailable, the parties will jointly select a mediator from the Seattle office of IAMS. Venue for any lawsuit filed under this Agreement shall be in the Superior Court of Washington for Thurston County.

**N. Entire Agreement and Successors in Interest.** This Agreement contains the entire agreement between the Parties with regard to the matters set forth herein and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each. No promises of any kind have been made in connection with this settlement, other than as stated in this Agreement.

**O. Modification.** No change or addition to this Agreement shall be binding or valid upon any Party unless such change or addition is in writing and agreed to by the Parties or their heirs, successors, or assigns.

**P. Notices.** Notices required or made under this Agreement shall be effective if made in writing via U.S. Mail and electronically to the Parties as provided below:

For the Port:                   Jeff Smith  
Finance Director  
Port of Olympia  
606 Columbia St. NW Suite 300  
Olympia, WA 98501  
[jeffs@portolympia.com](mailto:jeffs@portolympia.com)

With a Copy to: Heather L. Burgess  
Phillips Burgess PLLC  
724 Columbia St. NW Suite 320  
Olympia, WA 98501  
[hburgess@phillipsburgesslaw.com](mailto:hburgess@phillipsburgesslaw.com)

For DNR: Kristin Swenddal  
Aquatic Resources Division Manager  
Department of Natural Resources  
1111 Washington St. SE  
M.S. 47027  
Olympia, WA 98504-7027

With a Copy to: Terence A. Pruitt  
Assistant Attorney General  
Washington Attorney General's Office  
1125 Washington St. SE  
P.O. Box 40100  
Olympia, WA 98504-0100

**Q. Additional Documents.** The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

**R. Warranty of Capacity to Execute Agreement.** The Parties represent and warrant that no other person or entity has, or has had, any interest in any claims, demands, obligations, or causes of action referred to in this Agreement except as otherwise set forth in this Agreement. The Parties represent and warrant that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any claims, demands, obligations, or causes of action referred to in this Agreement. To the extent applicable, the officer, agent, or employee signing this Agreement on behalf of the Port hereby warrants that he or she is duly authorized to execute this Agreement. To the extent applicable, the officer, agent, or employee signing this Agreement on behalf of the State hereby warrants that he or she is duly authorized to execute this Agreement.

**S. Understanding of Document.** In entering into this Agreement, the Parties represent that they have read the terms of this Agreement and have relied upon the legal advice of their attorneys. The Parties represent that the terms of this Agreement have been completely explained to them by their attorneys and that the terms of this Agreement are fully understood and voluntarily accepted.

**T. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and which together constitute one and the same instrument.

**U. Consent.** Where the terms of this Agreement require DNR consent, such consent shall not be unreasonably withheld.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year first written above.


PORT OF OLYMPIA:

By:   
E.B. Galligan  
Its: Executive Director

Dated: 3-30-16

And Approved as to Form:

PHILLIPS BURGESS, PLLC

By:   
Heather L. Burgess  
General Counsel, Port of Olympia

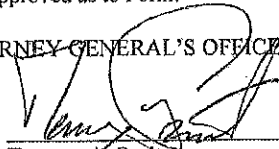
STATE OF WASHINGTON  
DEPARTMENT OF NATURAL  
RESOURCES:

By:   
Peter Goldmark  
Its: Commissioner of Public Lands

Dated: April 1, 2016

And Approved as to Form:

ATTORNEY GENERAL'S OFFICE

By:   
Terence A. Pruitt  
Assistant Attorney General

**COPY SUBMITTED  
FOR RECORDING**

# Exhibit A

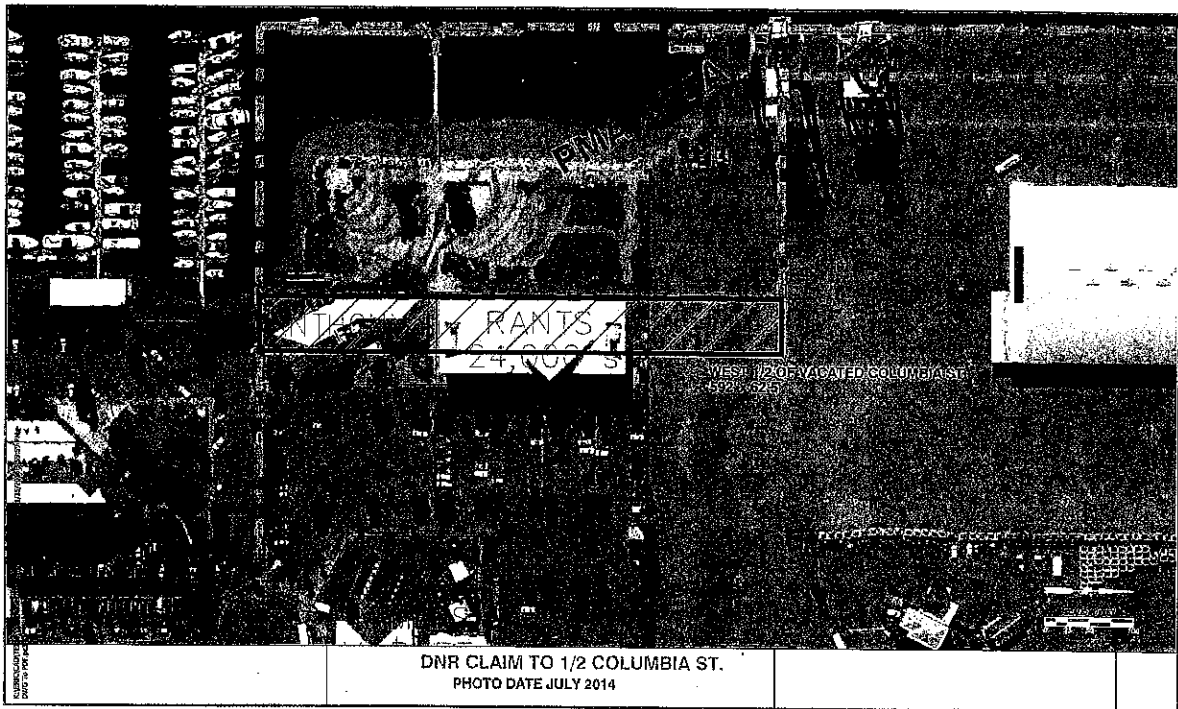


EXHIBIT C

COPY SUBMITTED  
FOR RECORDING

The Leases

ORIGINAL

PORT OF OLYMPIA GROUND LEASE

THIS LEASE is made this 15<sup>th</sup> day of July, 1997 by and between the PORT OF OLYMPIA, a Washington municipal corporation, Lessor, hereinafter referred to as "the Port," and the Tenant described below, hereinafter referred to as "Tenant," on the following terms and conditions:

1. LEASE SUMMARY.

TENANT.

Name: MARKET PLACE BUILDING, L.L.C.  
%o THE RANTS GROUP  
Address: 101 N. Capitol Way, Suite 302  
City, State, Zip Code: Olympia, WA 98501  
Phone Numbers: (360) 943-8060

LEASED PREMISES.

Approximately 24,000 square feet as shown in Exhibit "D" and described in Exhibit "E":

  
LESSOR  
INITIAL  
HERE

TERM.

Fifty (50) years beginning 9-1-1997, ending 8-31-2047

  
LESSEE  
INITIAL  
HERE

Option to Renew: One (1) option to renew for an additional term of thirty (30) years. Such renewal shall be upon the terms, covenants, and conditions contained herein (except for minimum ground rent, ground rental adjustments, and the times at which ground rental adjustments shall be made, all of which shall be adjusted and determined in accordance with the then current Commission policy). The renewal term shall commence on the expiration of the immediately preceding term. Such option to renew may be exercised only by written notice to the Port no later than one hundred eighty (180) days prior to the expiration of the then current term. Tenant shall not be entitled to renew this Lease if Tenant is in default of the performance of its obligations hereunder at the date notice of renewal is due or at the date the renewal term is to commence.

RENT.

\$4,987.50 per month. Rental revisions shall be made every five (5) years during the first thirty (30) years of the term, to be effective at the commencement of each successive five (5) year period during such first thirty (30) years. The monthly rent for each succeeding five (5) year period during the first thirty (30) years during the lease term, shall be one-twelve (1/12) of nine and one-half (9½) percent of seventy (70) percent of the fair market value of the premises, determined as provided in Paragraphs 4 and 37 below. The monthly rent thereafter shall be set and adjusted in accordance with the then current Commission policy. Notwithstanding the foregoing, the rent so calculated for any period after the first thirty (30) years of the lease term will not exceed an amount calculated using one hundred



(100) percent of the fee simple fair market value of the land and a percentage rate equal to two (2) percentage points over the prime rate described in Section 4.2 of the Lease at the date of the applicable rental revision. Tenant hereby elects to have the fair market value for rental revisions of the property determined by the Assessor's valuation, as outlined in Paragraph 37, APPRAISAL PROCEDURE.

Rent shall commence on the earlier of (i) Tenant's occupancy of any portion of any improvements constructed on the premises, (ii) issuance of a temporary or final certificate of occupancy, or (iii) July 1, 1998. Notwithstanding the foregoing, for the forty-eight (48) month period commencing on the rent commencement date, monthly rent shall be payable in an amount equal to the monthly rent stated above multiplied by the ratio that the total area under lease in the building bears to the total gross leasable area in the building, calculated as of the first day of each month for the monthly rent due on that date. "Under lease" shall mean that Tenant has a signed lease with a tenant (i) who is in occupancy, whether or not paying rent, or (ii) for which the term has commenced, whether or not such tenant is in occupancy or has commenced the payment of rent. "Gross leasable area" shall exclude all common areas and facilities and all other portions of the building not available for use or occupancy by any tenant. Gross leasable area shall include any portion of the building used or occupied by Tenant, its owners or members, and such portions used or occupied by Tenant, its owners or members, shall be considered under lease.

Plus: Leasehold Tax; Insurance; Utilities; Fire Insurance; Other: Rental revisions every five (5) years.

#### PERCENTAGE RENT.

In addition to minimum rent, Tenant shall pay a percentage rent in amount equal to 5.5 percent of annual Gross Sales in accordance with the provisions of paragraph 4.3.

#### SURETY.

Amount: Two times annual rent. Initially \$119,700.00 Form: Acceptable to the Port  
Expiration Date: 90 days after expiration of lease term. To be effective on the earlier of the rent commencement date or July 1, 1998.

#### USE OF PREMISES.

For the construction and operation of a Class A office building along with the right to use the parking area as shown as Parcel "2" on Exhibit "H" in common with other tenants of the Port as described herein. Tenant (and its subtenants) may operate vending machines, espresso carts, employees only lunchrooms, and delicatessens open to the public not exceeding, in the aggregate, 1,000 square feet. No other food service operations (including delicatessens exceeding in the aggregate 1,000 square feet, restaurants open to the public, or any food service with a State of Washington Class H liquor license or its equivalent) shall be permitted within the leased premises.

INSURANCE.

Bodily Injury/Death: \$500,000 per person and \$1,000,000 per accident or occurrence.

Property Damage per Occurrence: \$500,000

ADDITIONAL PROVISIONS.

Tenant acknowledges that the leased premises are adjacent to premises owned by the State of Washington Department of Natural Resources (the "DNR Premises"). The Port has entered into a Port Management Agreement with DNR with respect to the DNR Premises. For so long as such agreement (and any renewal or extension thereof, or any lease or any other agreement under which the Port has control over the use of the DNR Premises) is in effect, the Port will not use the DNR Premises for any purpose not identified to such premises in the Port's 1995 Comprehensive Plan as of the date hereof, the relevant portions of which are attached hereto as Exhibit "F". Without limiting the foregoing, the Port agrees that it will cease to use that portion of the DNR premises adjacent to the leased premises along its western boundary for log storage once Tenant's office building is constructed and occupied. Tenant acknowledges receipt of a copy of the Port Management Agreement.

The Port will use commercially reasonable efforts to maintain control over the DNR Premises for the term, including any renewal term, of this Lease. The Port acknowledges that the value of the leased premises as an office building site is dependent on its water view. In that connection, the Port agrees to use its commercially reasonable efforts to enter into such easements or restrictive covenants with respect to the DNR Premises as Tenant may reasonably request and DNR may approve, to protect the view of the water and the Olympic Mountains from the leased premises from blockage by any facilities other than those identified in the Port's 1995 Comprehensive Plan, for the term, including any renewal term, of this Lease. Without limiting the right of the Port to conduct its cargo yard and other operations on Port premises to the north of the demised premises, and to the extent such operations will not be adversely affected, the Port will in good faith take into account the impact such operations have in restricting or blocking the view from the office building to be constructed. Further, to the extent operations are not adversely affected and subject to change based on operational considerations, the Port will endeavor to park its two cranes at the northerly end of the crane rail at berth two when neither the cranes nor berth two are in use.

It is the intent of the parties that noise from the Port operations shall not interfere with the normal operation of a first class office building. The parties recognize that the northern terminus of the demised premises borders on Port industrial operations and that some noise interference may occur from time to time. On an intermittent basis, noise levels may exceed otherwise applicable noise levels and may be measured by noise standards applicable to transmission from a Class C

EDNA to a Class C EDNA. Notwithstanding the foregoing, Tenant is not waiving any rights if the frequency and duration of such intermittent noise causes internal noise levels to interfere with normal operations. Therefore, the parties agree to work cooperatively to manage and resolve noise issues relating to the Port's terminal operations in light of uncertain future development of the Port peninsula. Notwithstanding the foregoing, it is the Port's intent to comply with all applicable laws, rules and regulations relating to noise with respect to the leased premises.

Tenant agrees to use reasonable efforts to incorporate into the design of its office building (consistent with Tenant's existing or proposed plans and budget) reasonable methods of noise abatement to mitigate, within the building, the impact of noise produced by the Port's terminal operations. Tenant will defend, indemnify and hold the Port harmless from any liability resulting from any complaints or actions with respect to noise within the levels permitted hereunder made by or related to its own tenants and others occupying the leased premises, as long as the Port complies with the applicable laws, rules and regulations referenced in the preceding paragraph.

Prior to either party exercising any legal remedies with respect to any disputes, complaints or claims regarding noise, the parties agree to meet and work cooperatively and in good faith to resolve such disputes, complaints or claims, and agree to use all reasonable means available to them to manage and mitigate noise disturbance.

The Port hereby reserves a noise easement over, across and upon the leased premises consistent with the foregoing limitations.

#### ADDITIONAL AMENDMENTS.

The following paragraphs of the Lease are amended as set forth below:

- 4.3 For all purposes of Section 4.3, references to goods or services provided at retail shall mean, and shall be defined in the same manner as the terms "sale at retail" or "retail sale" are defined in RCW 82.04.050, as in effect on the lease commencement date.
- 4.3.3. "Gross Sales" shall also exclude rent or percentage rents collected by Tenant from subtenants of the leased premises; provided, however, that this provision shall not be construed to exclude actual retail sales by subtenants from Gross Sales subject to percentage rent.
6. Notwithstanding the provisions of Section 6, the Port represents and warrants that, as of the date hereof, no environmentally significant amount of Hazardous Substances (as defined in paragraph 27), have been generated, stored, or disposed of or exist on, under or in the leased premises, and to the best of the Port's knowledge, the condition of the leased premises complies with all applicable law, rules, and regulations relating to Hazardous Substances. The Port shall indemnify and hold Tenant harmless from and against any and all claims, demand, damages,

losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and costs and expenses, (including, without limitation the cost of any clean up), which accrue to or are incurred by Tenant on or after the date hereof, and which arise directly or indirectly from or out of the Port's breach or the foregoing representations and warranties. In addition, the Port agrees to provide reasonable security fencing and screening along the North property line of the Leased premises to separate and screen the Port's marine terminal operations. Tenant acknowledges that disturbances may be generated by activities from the Port's ocean terminal operations on Port property adjacent to or in the vicinity of the leased premises, including, without limitation, traffic, vibrations, fumes, deposits of dust or other particulate matter and any other effects that may alleged to be inherent in, incident to or caused by the operation of a container yard and container crane activity. Tenant is taking the leased premises subject to such conditions, whether now existing or hereafter arising, changing or increasing.

8. Any dispute regarding Tenant's compliance with the restriction on use set forth in Section 8 shall be subject to arbitration under paragraph 38, ARBITRATION PROCEDURE.

12. A new section 12.5 is added as follows:

12.5 Parking. The Port agrees that it will provide to Tenant sufficient parking to support a first class office building of approximately 52,000 square feet during the term of this Lease and any renewals hereof. Tenant acknowledges that the parking area shown on Exhibit "H" (which includes not less than 394 parking stalls), as shared with the tenants of parcels 1 and 3 and given the days and hours of operation of the Farmers' Market as of the date hereof and the anticipated operations of the restaurant, together with that portion of the auxiliary parking area shown on Exhibit "J" that is leased by Tenant, will be sufficient to support such first class office building. If the parking area shown as on Parcel "2" Exhibit "H" is reduced from 394 stalls as a result of City of Olympia landscaping requirements, the Port agrees to make up any shortfall by providing a number of additional stalls in the auxiliary parking area equal to such shortfall. Tenant further acknowledges and agrees that changes in parking availability or requirements resulting from changes in the use or intensity of use of Tenant's building shall not be considered in determining whether the Port has provided sufficient parking.

The Port agrees that Tenant may lease not less than forty (40) nor more than seventy (70) dedicated parking spaces for use by Tenant, its subtenants, customers, clients and invitees from 7 a.m. through 5 p.m., Monday through Friday, the exact number, design and location of which is subject to the mutual agreement of the Port and Tenant. Tenant may increase or decrease the numbers of such dedicated parking spaces (within such limits) at the end of each of each five (5) year period by providing not less than one hundred eighty (180) days prior written notice to the Port. In consideration of the dedication of such parking

spaces to Tenant's use, Tenant shall pay to the Port a monthly rent per dedicated parking space for the first five (5) years of the lease term as follows:

<u>Number of Actual Dedicated Spaces</u>	<u>Monthly Rent Per Space</u>
40 - 49	\$ 41.00
50 - 59	\$ 36.00
60 - 69	\$ 33.00
70	\$ 29.00

The monthly rent determined from the foregoing table is not cumulative, but shall be applicable to all of the spaces. For example, the total monthly rent for 55 spaces would be  $55 \times \$36.00 = \$1,980.00$

Notwithstanding the foregoing, for the forty-eight (48) month period commencing on the rent commencement date, Tenant may lease fewer than forty (40) dedicated parking spaces, with the monthly rent therefor to be in amount equal to Forty-One Dollars (\$41) times the number of dedicated spaces so leased as of the first day of the month. Tenant may increase or decrease the number of dedicated spaces so leased during such forty-eight (48) month period by giving the Port not less than one hundred twenty (120) days prior written notice of the increase or decrease. Until such time as Tenant is leasing forty (40) dedicated spaces and has agreed, or is obligated, not to decrease such number below forty (40), the Port shall not be required to pave the auxiliary parking area or provide associated improvements such as curbs and gutters. The Port shall cause the auxiliary parking area to be paved within eight (8) months after such time.

At the end of such first five (5) years and at five (5) year intervals thereafter, such monthly fees shall be increased in the same proportion and at the same time as the monthly base rent under this Lease. Stalls within such dedicated parking area shall be striped and marked in the same manner as stalls striped and marked in the entire main parking area. With respect to use of the auxiliary parking area, the Port shall make available a number of spaces equal to the number of spaces in the main parking area dedicated to Tenant, during the same hours and days. Unless the Port determines that adequate customer parking will be available in the area shown as Parcel "2" on Exhibit "H" (at any particular time), Tenant shall cause a number of vehicles equal to the number of such dedicated parking spaces to be parked in such auxiliary area rather than in any portion of the main parking area not dedicated to Tenant. Such vehicles shall be vehicles associated with the leased premises that would otherwise use the main parking area.

The Port shall have the right to enforce the use of the auxiliary parking area as follows. Tenant shall provide to the Port the license plate numbers and other reasonable identifying information (such as year, make, model, and color) of each vehicle required to be parked in the auxiliary parking area and, if requested by the Port, shall cause each such vehicle to exhibit a parking sticker issued by the

Port. In the case of any such vehicle parked in any portion of the main parking area not dedicated to Tenant, the Port may, in its sole discretion:

- (I) issue a written warning that such vehicle is improperly parked;
- (II) have such vehicle towed, with or without prior warning, at the owner's cost and expense; or,
- (III) bill Tenant for the use of such parking space at a daily rate equal to the then current City of Olympia charge for overtime parking violations,

The Port further acknowledges and agrees that the parking lot included within the common areas subject to this Lease is or shall be constructed solely to meet the needs of tenants of the Port for that property identified as Parcels one (1) and three (3) on Exhibit "H" attached hereto and by this reference incorporated herein. The Port agrees that no development on Port property, other than such property, shall share the use of the parking areas. The Port further agrees that it will act reasonably in exercising management and control of the parking lot.

12. A new section 12.6 is added as follows:

12.6 Any dispute regarding this paragraph 12 shall be subject to arbitration under the paragraph 38, ARBITRATION PROCEDURE; provided that Tenant shall not be excused from payment under this paragraph pending the outcome of such arbitration.

18. Without limiting the provisions of paragraph 18, Alterations and Improvements, the Port and Tenant agree as follows with respect to installation of utilities. The "Utility Plan" referred to in this section is Sheet C-3 (Utility Plan) of Port of Olympia contract document, "Market District Parking Lot Improvements Contract" dated May 5, 1997.

(a) Water lines and Fire Hydrants The Port agrees to install all water lines located outside of the demised premises, as shown on the Utility Plan attached hereto as Exhibit K and by this reference incorporated herein. Tenant acknowledges that a portion of such water lines are being installed solely to serve the demised premises and not to serve any other property of the Port. Therefore, the following portions of the waterlines and two fire hydrants will be included in the Port's contract to construct the parking lot improvements and to extend the utilities. The Port will solicit bids using unit pricing rather than a lump sum bid for purposes of cost accounting. The Tenant shall reimburse the Port for the cost of installing the same within (30) days after receipt of an invoice therefor from the Port, provided such reimbursement shall not exceed \$24,858.

(i) the eight (8) inch north water main extension up to fire hydrant assembly which serves the northeast fire hydrant, the buildings fire sprinkler piping, and the domestic water line stub to the property line as shown on the Utility Plan, which are indicated as "by others";

(ii) the six (6) inch water line and other necessary piping required to install the fire hydrant at the southwest corner of the proposed building including the fire hydrant assembly, as shown on the Utility Plan which is indicated as "by others".

(iii) one-half of the cost of one (1) fire hydrant to be located in the parking lot at the northeastern end of the demised premises.

(b) Sewer lines. The Port agrees to install all sewer lines located outside of the demised premises, including the 6" stub to the property line as shown on the Utility Plan.

(c) Pavement. The Port will cut and remove the existing pavement from the east property line of the demised premises east (30) feet, the full north-south length of the demised premises. The Port will construct the new paving at the fire lane after the tenant improvements have been made. The Tenant shall notify the Port in writing 30 days prior to having all preparatory work for the paving completed. The Tenant improvements shall include all grading and grade preparation for the paving, all curbs, entry approach slabs, sidewalks and other improvements that will meet the new pavement.

(d) Trenching and Excavation. The Port will perform all trench and vault excavation and backfill for gas, power, and telephone outside of the property lines of the demised premises, and will also perform all vault excavation and backfill necessary for the northeast transformer vault located within the demised premises.

(e) Payments to Puget Sound Energy. Tenant shall pay \$2,318.10 to Puget Sound Energy for electrical service to serve the demised premises. Electrical service provided to the site will be through a transformer operating at 277v/480v, 3 phase. In the event Tenant has not made this payment by July 28, 1997, Port may advance the funds and Tenant shall repay Port within 90 days.

(f) The Port shall pay for the installation of one (1) fire hydrant to be located in the parking lot between the Tenant's office building and the adjacent proposed restaurant site.

25. Notwithstanding the provisions of paragraph 25, ASSIGNMENT OR SUBLEASE, the Port's consent shall not be required for transfers of membership interests in Tenant, so long as the Rants Group and Evergreen Olympic Properties,

Inc. or any of their respective affiliates, continue to hold, in the aggregate, not less than a twenty (20) percent interest in Tenant.

38. The first sentence of paragraph 38, ARBITRATION PROCEDURE shall read as follows:

“In the event of a dispute between the Port and Tenant (other than: (i) non-payment of rent; (ii) any matter to be determined or set, as a policy matter, by the Port of Olympia commission; (iii) any dispute in connection with any action brought by or involving a third party; (iv) any matter for which injunctive relief is sought and (v) any action brought pursuant to RCW chapter 59.12), such dispute shall be determined by arbitration as provided in this paragraph.”

CONFLICTING PROVISIONS

To the extent any of the provisions of the foregoing Paragraph 1, LEASE SUMMARY, conflict with any other provisions of this lease, the provisions of paragraph 1, LEASE SUMMARY, shall govern.



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**THE PARTIES HEREBY AGREE AS FOLLOWS:**

2. **LEASED PREMISES.** The Port hereby leases to Tenant, and Tenant hereby leases from the Port, the premises consisting of the ground described in paragraph 1 above, located in Thurston County, hereinafter called "the premises."

3. **TERM.** This Lease shall be for the term specified in paragraph 1 above.

4. **RENT.**

4.1 It is the intention of the parties hereto that the rent specified in the Lease shall be net to the Landlord in each year during the term of the Lease. Accordingly, all costs, expenses and obligations of every kind relating to the leased premises (except as otherwise, specifically provided in the Lease) which may arise or become due during the term of the Lease shall be paid by Tenant and the Port shall be indemnified by the Tenant against such costs, expenses and obligations. Tenant agrees to pay as rent for the use and occupancy of the premises during the term of this Lease, without deduction or offset, the rent specified in paragraph 1 above, payable to the Port in advance on or before the first day of each and every month and payable at such place as the Port may designate. During the first thirty (30) years of the term, rent shall be subject to revision by the appraisal procedure as outlined in paragraph 37, **APPRAISAL PROCEDURE** and the revised monthly rent shall be determined as one-twelfth (1/12) of nine and one-half percent (9-1/2%) of seventy percent (70%) of the fair market value of the leased premises.

Thereafter, the timing and calculation of rent and rental revisions shall be determined in accordance with the then current Commission policy. Any revised monthly rent shall not be less than the then-current monthly rent payment immediately prior to the time the revision becomes effective.

4.2 If the Tenant does not pay the rent by the 10th of the month, then in addition to the overdue rent, Tenant shall pay interest on the rent payment then due at a rate per annum equal to the greater of eighteen percent (18%) per annum or two (2) percentage points over the prime rate charged by commercial banks in the Olympia, Washington area. Such interest commences on the date the rent is due and continues until such rent is paid. If the Tenant does not pay the rent when due and interest is incurred each month for three (3) consecutive months, the rent called for herein shall automatically become due and payable quarterly in advance rather than monthly, notwithstanding any other provision in this Lease to the contrary, and regardless of whether or not the interest is paid or collected. The imposition of such interest does not prevent the Port from exercising any other rights and remedies under this Lease.

4.3 Percentage Rent.

4.3.1 Tenant shall be liable to pay to the Landlord in addition to the minimum ground rent, for each calendar year (or portion thereof), percentage rent ("Percentage Rent") in the annual amount determined by multiplying all Gross Sales (as defined in Subsection 4.3.3) for such calendar year (or portion thereof) times the Gross Sales Multiplier defined below. The term "calendar year" when used with respect to Percentage Rent shall also include any portion of a calendar year during the Lease Term, at the commencement of or upon the termination of this Lease.

4.3.2 The "Gross Sales Multiplier" shall be five and one-half (5.5) percent.

4.3.3 The term "Gross Sales" as used in this Lease shall mean the actual retail sales price of all goods, food, meals, beverages, wares and merchandise sold at retail, and the actual charges for all services performed by Tenant or any subtenant of the leased premises at retail, whether such sales and charges are made for cash, on credit or for any other consideration, and including gift certificates, or like vouchers, and including merchandise certificates, coupons or other similar instruments, however designated (sales on credit being treated as a sale for the full price thereof the month in which such sale shall have been made, regardless of time of collection of payment), where such sales and charges are made in or from the premises, including but not limited to telephone sales or services and orders taken in or from the premises (including off-premises catering from the premises) and receipts from vending machines and amusement devices. Gross Sales shall not include the sales price or charges for promotional giveaways and employee meals for which the Tenant does not receive cash consideration nor shall it include sales at wholesale. The term "Gross Sales" as used in this Lease shall exclude the following:

1. The selling price of all merchandise returned by customers and accepted for full credit or the amount of discounts and credit allowances made thereon;
2. Sums and credits received by Tenant in the settlement of claims for loss of or damage to merchandise;
3. Cash refunds made to customers in the ordinary course of business, but this exclusion shall not include any amount paid or payable for what are commonly referred to as trading stamps;
4. Returns to shippers or manufacturers;
5. Receipts from public telephones, stamp machines, public toilet locks, or cigarette vending machines.
6. Sales taxes, so-called luxury taxes, consumers' excise taxes, gross receipts taxes and other similar taxes now or hereafter imposed upon the sale of merchandise or services, but only if stated separately from the selling price of merchandise or services;
7. Sales of trade fixtures, equipment or personal property which are not stock in trade;
8. The exchange of merchandise between stores of the Tenant where such exchanges are made solely for the convenient operation of the Tenant's business and not for the purpose of consummating a sale which has theretofore been made at, in, on or from the premises, and/or for the purpose of depriving the Port of the benefit of a sale which otherwise would have been made at, in, on or from the premises;
9. Fees paid by Tenant to credit card companies and/or banking institutions in accordance with credit card purchase plans not to exceed a total of two percent (2%) of Tenant's Gross Sales in any single calendar year;

10. Gift certificates until redeemed or taken into income and not to exceed a total of one percent (1%) of Tenant's Gross Sales in any single calendar year; and

11. Discounts from coupons rung up as sales, but where no cash is received by Tenant.

12. Actual losses from bad debts not to exceed a total of two percent (2%) of Tenant's Gross Sales in any single calendar year.

All sales originating at the premises shall be considered as made and completed therein, even though bookkeeping and payment of the account may be transferred to another place for collection and even though actual filing of the sale or service order and actual delivery of the merchandise may be made from a place other than the premises.

4.3.4 Tenant shall record at the time of sale, in the presence of the customer, all receipts from sales or other transactions, whether cash or credit, in a cash register or registers having a sealed and continuous tape which cumulates and consecutively numbers all purchases. Tenant shall keep, and Tenant shall cause any and all subtenants to keep, complete and accurate books and records of all of their respective Gross Sales during the term of this Lease, including, without limitation, (a) a sales journal, general ledger, and all bank account statements showing deposits of Gross Sales revenue, (b) all such cash register receipts with regard to the Gross Sales and credits, refunds and other pertinent transactions made from or upon the premises (including the Gross Sales of any subtenant, licensee or concessionaire), and (c) detailed original records of any exclusions or deductions from Gross Sales (including any exclusions or deductions from Gross Sales of any subtenant, licensee or concessionaire). Tenant shall preserve, and shall require all subtenants to preserve, for a period of three (3) years following each respective calendar year during the lease term, all such books and records. Tenant shall (i) give the Port or require any subtenant to give the Port during reasonable hours upon forty-eight (48) hours prior written notice, access to the books and records relating to the operation of the business transacted on the premises, including the right to copy a portion or portions thereof; and (ii) give the Port or require any subtenant to give to the Port access to the registers on a reasonable basis as the Port may from time to time desire. In addition, upon request of the Port, Tenant agrees to furnish to the Port a copy of Tenant's state and local sales and use tax returns.

4.3.5 Said Percentage Rent shall be computed each calendar month during the lease term, and, on or before the twentieth (20th) day of the calendar month immediately following the close of each such calendar month. Tenant shall pay to the Port the amount so computed.

4.3.6 The Tenant agrees to furnish or cause to be furnished to the Port a statement of Gross Sales of the Tenant within twenty (20) days after the close of each calendar month, and an annual statement of Gross Sales within thirty (30) days after the close of each calendar year. Such statements shall be signed by a responsible officer of Tenant. The receipt by the Port of any statement or any payment of Percentage Rent for any period shall not bind it as to the correctness of the statement or the payment. Within two (2) years after the receipt of any such statement, the Port at any time shall be entitled to an audit of such Gross Sales either by the Port or by a certified public accountant to be designated by the Port. Such audit shall be limited to the determination of the "Gross Sales" as defined in this Lease and shall be conducted during normal

business hours at the principal place of business of Tenant. If it shall be determined as a result of such audit that there has been a deficiency in the payment of Percentage Rent, then such deficiency shall become immediately due and payable with interest at the rate set forth in Paragraph 4.1 above from the date when said payment should have been made. In addition, if Tenant's statement for the pertinent calendar year shall be found to have understated Gross Sales by more than two percent (2%), and the Port is entitled to any additional Percentage Rent as a result of said understatement, or if such audit shows that Tenant has failed to maintain the books of account and records required hereunder so that the Port is unable to verify the accuracy of Tenant's statement, then the Tenant shall pay all of the Port's reasonable costs and expenses (including reasonable auditor and attorney fees) which may be incurred by the Port in conducting such audit and collecting such underpayment, if any. If Tenant understates Gross Sales by more than three percent (3%) more than twice in any five-year period, then, in addition to the Port's aforesaid rights, the Port may terminate this Lease. Any information gained from such statements or inspection shall be confidential and shall not be disclosed other than to carry out the purposes hereof; provided, however the Port shall be permitted to divulge the contents of any such statements in connection with any contemplated sales, transfers, encumbrances, financing arrangement or assignments of the Port's interest in all or any portion of the Property or in connection with any administrative or judicial proceeding in which the Port is involved or in which the Port may be required to divulge such information.

5. **LEASE SURETY BOND.** Tenant shall, upon the earlier of (i) the date at which Tenant's obligation to pay rent commences or (ii) July 1, 1998, file with the Port a good and sufficient surety bond in accordance with the requirements of state law. The form and terms of the surety bond and the identity of the surety shall be subject to approval of the Port and the surety shall guaranty the full performance by Tenant of all the terms and conditions of this Lease, including the payment by Tenant of the rents and all other amounts herein provided for the full term hereof. Any acceptable surety instrument having an expiration earlier than the full lease term shall be renewed or replaced not less than ninety (90) days prior to its expiration. Any company issuing such a surety instrument must give the Port at least ninety (90) days advance written notice prior to the effective date of cancellation or expiration of such surety instrument. Initially, the required amount of the surety bond is set forth in paragraph 1 above. These provisions as to lease surety are subject to the continued approval of the Port and to revision and adjustment as may hereafter result from changes in state requirements or as established by the Port Commission; provided, however, that the amount of such surety shall not be required to exceed two times the then current minimum annual ground rent.

6. **ACCEPTANCE OF PREMISES.** Tenant has examined the premises, and the adjoining premises of which the premises are a part, and accepts them in their present condition. There are no warranties expressed or implied as to any condition apparent or unknown except as otherwise stated in this Lease. Tenant agrees to make any changes in the premises necessary to conform to any federal, state or local law applicable to Tenant's use of the premises. Notwithstanding the foregoing, Tenant shall not be liable to the Port for injury or damage to the extent caused or sustained as a result of any condition existing on the leased premises as of the date hereof.

7. **POSSESSION.** If the Port shall be unable for any reason to deliver possession of the premises or any portion thereof at the time of the commencement of this Lease, the Port shall not be liable for any damage caused thereby to Tenant, nor shall this Lease thereby become void or voidable, nor shall the term specified herein be in any way extended, but in such event Tenant shall

not be liable for any rent until such time as the Port can deliver possession; provided that if Tenant shall take possession of any portion of the premises in the interim, it shall pay the full rent specified herein reduced pro rata for the portion of the premises not available for possession by Tenant; and provided further, that if the Port shall be unable to deliver possession of the premises at the commencement of this Lease, Tenant shall have the option to terminate this Lease by giving at least thirty (30) days' written notice of such termination, and this Lease shall terminate unless the Port shall deliver possession of the premises prior to the effective date of termination specified in such notice. If Tenant shall, with the Port's consent, take possession of all or any part of the premises prior to the commencement of the term of this Lease, all of the terms and conditions of this Lease shall immediately become applicable, with the exception that Tenant shall not be obligated to pay any rental for the period prior to the commencement of the term of this Lease unless otherwise mutually agreed.

8. **USE OF PREMISES.** Tenant shall use the premises only for those purposes stated in paragraph 1 above and shall not use them for any other purpose without the written consent of the Port, which consent may be withheld in the Port's reasonable discretion. The premises shall be used only for lawful purposes; and only in accordance with all applicable building, fire and zoning codes. Tenant shall use the entire premises for the conduct of said business in a first-class manner continuously during the entire term of this Lease. Tenant agrees that it will not disturb the Port or any other Tenant of the Port by making or permitting any public or private nuisance or disturbance or any unusual noise, vibration or other condition on or in the premises. No signs or other advertising matter, symbols, canopies or awnings shall be attached to or painted on or within the premises, including the windows and doors thereof, without the approval of the Port. At the termination or sooner expiration of this Lease, all such signs, advertising matter, symbols, canopies or awnings attached to or painted by Tenant shall be removed by Tenant at its own expense, and Tenant shall repair any damage or injury to the premises and correct any unsightly condition caused by such removal. At no time shall the Tenant have the right to remove or otherwise disturb timber, valuable minerals, sand, gravel or water, from the site, which materials belong to the Port and may only be used with consent and appropriate compensation.

9. **REQUIREMENTS AS TO IMPROVEMENTS.** The specific requirements as to the planning, construction and completion of any major improvements planned by Tenant on the subject premises are attached hereto as Exhibit "A" to this Lease, which by this reference is incorporated herein as if set forth in full. Prior to the submission of any plans for contemplated improvements on the leased premises, Tenant shall furnish a survey of the appropriate leased premises as prepared by a registered and licensed surveyor, all at Tenant's own expense.

10. **RIGHTS-OF-WAY.** The Port agrees to grant other such right-of-way easements across the property of the Port reasonably available therefor for the installation and maintenance of necessary and adequate services to the premises of Tenant.

11. **RESERVATION OF RIGHTS.** The Port reserves to itself from the premises herein leased rights of way upon, across, onto or beneath the above-described lands by power lines, gas, water and sewage pipes and mains, conduits or any other utilities or industrial or business area facilities of all kinds now existing or to be constructed and maintained by it, either in addition to or in the substitution for those now existing from any point or points and in any direction and also reasonable rights of entry upon the demised premises for the construction, repair, inspection and maintenance of them in efficient use and condition, providing such action by the Port shall not

materially interfere with or interrupt Tenant's operation and shall be at the expense of the Port. The Port is hereby granted a continuous, perpetual easement or easements that the Port believe are necessary within the leased premises for such purposes, which easement or easements may be further granted by the Port to third parties; provided, however, that such easements shall not materially restrict or interfere with Tenant's use of the leased premises.

12. **COMMON AREAS.** The Port grants to Tenant and to its employees, agents, customers, and invitees the non-exclusive right for and during the term of this lease to use the common areas identified herein; such use to be in common with all other users of the Market area, whether as tenants or as owners, and their employees, agents, customers and invitees. The Port reserves the unrestricted right to make reasonable changes in the common areas. Parking areas may be elevated, surface or subterranean. The Port shall have the right to make such changes in the common areas as Port deems necessary and consistent with the purposes and intent of operating and in respect thereto, shall have the right to erect additional buildings or structures, and include landscaping and landscaping devices or features; provided, however, that the Port: (i) will not make changes to the parking area that would reduce the parking currently available to Tenant; (ii) will not alter that portion of the parking area immediately adjacent to the leased premises, as shaded on the sketch attached hereto as Exhibit G without Tenant's prior written consent, which shall not be unreasonably withheld; and (iii) will not charge (by meter or otherwise) for any parking in such shaded area except for parking spaces dedicated or reserved for the exclusive use of Tenant, or any other tenant of the Port. The common areas include, but are not limited to, all automobile parking areas, access roads, driveways, entrances, exits, retaining walls, sidewalks and loading docks, courts, ramps, landscaping, irrigation sprinkler systems, landscaped areas, lighting, curbs, facilities and special services provided by the Port for the general use, in common, of tenants of the Market area, and their employees, customers and invitees, as located on the property identified as Parcel 2 in the sketch attached hereto as Exhibit H and by this reference incorporated herein. With the prior written approval of the Port, which shall not be unreasonably withheld, Tenant may use agreed upon, designated portions of the common area parking for valet parking.

12.1 The common areas shall at all times be subject to the exclusive control and management of the Port. The Port shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to the common areas; to construct surface or elevate parking areas and facilities; to establish, and from time to time change, the level of parking surfaces; to employ personnel; construct, maintain and operate lighting facilities; police the common area; restrict parking by Tenant, its agents and employees to employee parking areas; close temporarily all or any portion of the common areas to prevent a dedication thereof or the accrual of any interest therein by any person or the public; and close temporarily all or any portion of the parking areas or facilities for the purpose of resurfacing, restriping, maintaining or repairing the parking areas or other common areas.

12.2 The Tenant agrees to pay the Port a proportionate share of the operating costs, as hereafter defined, of maintaining the common areas. The term "operating costs" as used in this paragraph, shall mean the total costs and expenses incurred (including the value of goods and services provided in kind) in operating, maintaining, and repairing the common areas, including without limitation, taxes or fees, and personal and real property taxes; surcharges levied upon or assessed against parking spaces or areas, payments toward mass transit or car pooling facilities or otherwise as required by federal, state or local authorities; costs and expenses in connection with maintaining federal, state or local ambient air and environmental standards; the cost of all materials, supplies and services purchased or hired therefor; sweeping and the removal



of snow, trash garbage and other refuse; the cost and expense of maintaining landscaping, gardening and planting, cleaning, painting (including line painting), paving, lighting, and sanitary control; fire protection and security protection; directional signs and other markers and bumpers; water, sewage, and stormwater fees or charges; the cost of all types of insurance coverages carried by the Port covering the common areas, including, without limitation, public liability, personal and bodily injury and property damage liability and automobile coverage, fire and extended coverage, vandalism and malicious mischief and all broad form coverages, sign insurance and other insurance that may be carried by the Port covering the common areas, all in limits selected by the Port; maintenance and repair (which may include replacement) of utility systems serving the common areas including water, sanitary sewer and stormwater lines, equipment owned and used in operation, maintenance and repair of the common areas, or the rental charges for machinery or equipment; and the cost of personnel (including applicable payroll taxes, workmen's compensation insurance, disability insurance and other benefits) to implement all of the foregoing, including the policing of the common areas and the directing of traffic and parking of automobiles on the parking areas thereof. The Port may cause any or all of said services to be provided by an independent contractor or contractors.

12.3 The Tenant's proportionate share of the "operating costs" shall be a percentage equal to two-thirds (2/3) of the ratio (the "Ratio") (as such ratio may change from time to time) (i) the number of parking spaces that would be required by the City of Olympia (based on its downtown zoning) for Tenant's building if it were a stand-alone operation bears to (ii) the aggregate number of parking spaces that would be required for all existing buildings in the market area (exclusive of the Farmer's Market itself and determined on a stand-alone basis), at the time of permitting. Tenant shall pay to the Port monthly, with its payment of minimum ground rent, Tenant's share of the monthly operating cost budget, as provided below, for the common area operating costs. Tenant shall also pay the Port monthly a reasonable charge made by the Port for accounting, bookkeeping and collection of the common area operating costs, in an amount not to exceed ten (10) percent of the total of Tenant's proportionate share of the common area operating costs for each calendar month. An illustration of the determination of Tenant's proportionate share of operating costs based on this paragraph is attached hereto as Exhibit I.

12.4 On or about the first day of the lease term, the Port shall submit to Tenant a statement of the anticipated monthly common area operating costs for the calendar year. Tenant shall pay Tenant's proportionate share of said statement and all subsequent monthly statements concurrently with the payment of minimum ground rent. Tenant shall continue to make said monthly payments until notified by the Port of a change in common area operating costs. By April 1 of each calendar year, the Port shall provide Tenant with a statement showing the total common area operating costs actually incurred during the prior calendar year and Tenant's share thereof, together with a proposed common area operating cost budget showing anticipated expenses for the current calendar year, including any reasonable reserve for the current calendar year. The first and last such statement shall be prorated from the first day of the lease term to the expiration of the lease term, as appropriate. If the total of the monthly payments which Tenant made for the prior calendar year is less than the Tenant's proportionate share of actual common area operating costs for said calendar year, then Tenant shall pay any difference in a lump sum within thirty (30) calendar days after receipt of such statement from the Port and shall concurrently pay the difference in monthly payments made in the current calendar year and the amount of monthly payments which are then calculated as monthly common area operating costs next coming due. The Port reserves the right to charge Tenant for its share of, and Tenant agrees to pay its share of, any common area operating costs not previously charged due to third party billing errors. If such

total monthly payment shall be more than Tenant's proportionate share, then such overpayment shall be given as a credit against the monthly common area operating costs next coming due.

13. **UTILITIES AND SERVICES.** Tenant shall be liable for and shall pay throughout the term of this lease all charges for all utility services furnished to the premises, including but not limited to, light, heat, gas, janitorial services, garbage disposal, security, electricity, water, stormwater and sewerage, including any connection fees, and any fire protection, police protection, or emergency health services as furnished by local authorities and as may be the subject of a contract between the Port and such local authorities or as imposed by ordinance or statute. If the premises are part of a building or part of any larger premises to which any utility services are furnished on a consolidated or joint basis, Tenant agrees to pay to the Port Tenant's pro-rata share of the cost of any such utility services. Tenant's pro-rata share of any such services may be computed by the Port on any reasonable basis, and separate metering or other exact segregation of cost shall not be required.

14. **INDEMNIFICATION/LIABILITY INSURANCE.** The Port, its employees and agents shall not be liable for any injury (including death) to any persons or for damage to any property, regardless of how such injury or damage be caused, sustained or alleged to have been sustained by Tenant or by others (including, but not limited to all persons directly or indirectly employed by Tenant, and any agents, contractors, subcontractors, suppliers, customers or invitees of Tenant) as a result of any condition (including existing or future defects in the premises), or occurrence (including failure or interruption of utility service) whatsoever related in any way to the premises and the areas adjacent thereto or related in any way to Tenant's use or occupancy of the premises and areas adjacent thereto; provided, however, that the foregoing provisions shall not be construed to make Tenant responsible for loss, damage, liability or expense resulting from injuries to third parties caused by the sole negligence of the Port or any agent or employee of the Port; and provided further, however, if and to the extent that any of the activities covered by this indemnity are construed to be subject to Section 4.24.115 of the Revised Code of Washington, it is agreed that where such items of actual or alleged liability, damages, costs or expenses arise from the concurrent negligence of Tenant and the Port, it is expressly agreed that Tenant's obligations of indemnity under this paragraph shall be effective only to the extent of Tenant's negligence. Tenant agrees to indemnify, defend and to hold and save the Port harmless from all liability or expense (including attorneys' fees, costs and all other expenses of litigation) in connection with any such items of actual or alleged injury or damage. In addition, Tenant shall, at its own expense, maintain proper liability insurance with a reputable insurance company or companies satisfactory to the Port in the minimum policy limits set forth in paragraph 1 above, together with such additional types and amounts of liability insurance (e.g., liquor liability) as the Port may deem reasonably necessary for the type of activities or services offered by Tenant. The coverage offered by such policies shall thereafter be in such increased amounts as the Port may specify to indemnify both the Port against such liability or expense. The Port shall be named as one of the insureds on the policies (and, at the Port's option, shall be furnished with a copy of such policy or policies of insurance) which shall provide that such insurance may not be canceled without the insurance company first having given the Port thirty (30) days' advance written notice of such intent to cancel. Tenant shall submit certificates evidencing compliance with this paragraph in lieu of furnishing the actual policies or copies thereof. Tenant shall furnish the Port with evidence of renewal of such policies not less than thirty (30) days prior to their expiration. In consideration of the Port's execution of this Lease, Tenant hereby waives any immunity Tenant may have under industrial insurance, Title 51 RCW, in connection with the foregoing indemnity.

15. **WAIVER OF SUBROGATION.** The Port and Tenant hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective fire insurance contracts, including any extended coverage endorsements thereto, and for any loss resulting from business interruption or rental loss which may be covered by policies applicable thereto provided, that this paragraph shall be inapplicable to the extent it would have the effect of invalidating any insurance coverage of the Port or Tenant. Each party agrees to cause their respective insurance carriers to include in its policies a waiver of subrogation clause or endorsement.

16. **TAXES.** Tenant shall be liable for, and shall pay, throughout the term of this lease, all license fees and taxes covering or relating to the premises and its use, including, without limitation, (a) all real estate taxes assessed and levied against the premises; (b) all amounts due and payable for general or special assessments against the premises during the term of this lease (whether assessed prior to or during the term of this lease), including any assessments for LIDs or ULIDs; and (c) all personal property taxes upon Tenant's fixtures, furnishings, equipment and stock in trade, Tenant's leasehold interest under this lease or upon any other personal property situated in or upon the Premises. If any governmental authority at any time levies a tax on rentals payable under this lease or a tax in any form against Landlord because of or measured by income derived from the leasing or rental of the premises, such tax shall be paid by Tenant; provided, however, that Tenant shall not be liable for the payment of any tax imposed generally on Landlord's gross or net income without regard to the source of such income. Tenant represents that it is familiar with the provisions of RCW 82.29A Leasehold Excise Tax, which imposes a tax, to be paid by Tenant, on the rental payments due under this Lease.

17. **MAINTENANCE AND REPAIR.** Tenant shall, at its own expense, keep the premises, structures, tenant refuse storage areas, and other improvements and the adjoining roadways, sidewalks and areas in a neat, clean, safe and sanitary condition and maintain and keep all of the premises maintained equal in quality to of other owners of similar class properties and conditions in the Thurston County, Washington area, reasonable wear and tear excepted, and to maintain the landscape and undeveloped areas of the leased premises (exclusive of common areas) in a clean, sanitary, orderly and attractive condition free from rubbish and debris. Tenant shall keep all areas in the vicinity of the premises free from the accumulation of disposable products and other litter generated by the operation of Tenant's business. Tenant shall also, at its own expense, at all times keep the premises free from infestation of pests and conditions which might result in harborage for, or infestation of, pests. (Pests shall include, without limitation, rodents, insects, and birds in numbers to the extent that a nuisance is created.) Tenant shall keep the glass of all windows and doors on the premises clean and presentable, and shall maintain and keep the premises in a good state of repair, and shall commit no waste of any kind, and, without limiting the generality of the foregoing, shall replace all cracked or broken glass in the premises, and keep the electrical system and all drains clean and in a good state of repair, and shall use its best efforts to protect all sprinkler systems and all pipes and drains so that they will not freeze or become clogged. Tenant shall replace any and all improvements which become worn out, obsolescent, deteriorated, unsafe or unusable and shall replace such improvements with new fixtures and improvements of at least as good a quality as originally installed at the commencement of this Lease. In the event Tenant fails to properly maintain, repair and replace the premises or any improvements thereon, and if the Port shall give a ten (10) day written notice to Tenant, Tenant shall comply with Tenant's responsibilities under this paragraph, and the Port shall be entitled, but shall not be obligated, to enter the leased premises and perform such work as may be necessary to

restore the leased premises and improvements to the conditions set forth herein. The cost of such repairs shall be billed to Tenant by the Port and shall be payable upon receipt and subject to the same penalties for late payment as if such payment was additional rent.

Tenant shall keep the premises free and clear of any liens and encumbrances arising or growing out of the use and occupancy of the premises by Tenant. At the Port's request, Tenant shall furnish the Port with written proof of payment (or adequate provision for payment) of any item which would or might constitute the basis for such a lien on the premises if not paid. Notwithstanding Tenant's obligations to keep the Premises free and clear of any liens and encumbrances, Tenant shall have the right to defend any disputed lien or encumbrances (and may appeal any tax assessment), but shall as a condition thereto, provide a bond or make a deposit with the Port in an amount equal to one and one-half (1½) times the amount of the claimed lien or encumbrances to provide sufficient funds for the Port to discharge such lien or encumbrance if Tenant is unsuccessful. Any dispute under this section shall be subject to arbitration under paragraph 38, **ARBITRATION PROCEDURE**. Tenant shall also be wholly responsible for any and all repairs, maintenance, and improvements to maintain building structure integrity, (including foundations, bearing columns, bearing walls and exterior walls), and to the roof, utility service and lines, whether located on or off the premises, provided, however, Tenant shall only be responsible for any sewer line repairs occurring on the premises. Tenant shall have no claim as deduction or offset any monies or charges against the rent paid to the Port for maintenance or repairs. Tenant has inspected the premises and accepts the premises "as is, where is".

18. **ALTERATIONS AND IMPROVEMENTS.** Tenant shall make no alterations or improvements to or upon the premises or install any fixtures (other than trade fixtures which can be removed without injury to the premises) without first obtaining written approval of the Port. The Port's response to Tenant's requests for approval shall be prompt, and such approval shall not be unreasonably withheld. From time to time Tenant may close the entire premises to the general public for the limited purpose of remodeling or maintaining the premises. Any plans for remodeling and the timing and duration of the closure must be approved by the Port pursuant to this paragraph 18 which approval shall not be unreasonably withheld. The Port agrees that Tenant may make minor modifications to the interior of any improvements without the prior approval of the Port; provided, however, that any alterations or improvements requiring a permit from any governmental authority, or any alteration or improvement that alters the footprint of the building(s) or alters the exterior appearance of the building(s) will require the prior written approval of the Port which will not be unreasonably withheld. Any request for approval to which the Port has not responded within twenty (20) days after its receipt of such request shall be deemed granted. Whenever feasible, Tenant shall undertake such remodeling or maintenance during the time of year when the closure would have the least impact on the gross sales of Tenant. During such closure, Tenant shall not be obligated to pay the Port percentage rental for the days during which such closure exists. Upon installation, Tenant shall furnish the Port with a copy of the "as-built" drawings including utility installations and site plans detailing the nature of the additions, alterations or improvements. If any alterations or improvements shall be made or fixtures (other than trade fixtures which can be removed without injury to the premises) installed by Lessee they shall become the property of the Port upon any expiration or termination of this Lease unless the Port exercises its right provided below to have Tenant remove the same. Movable furniture and trade fixtures which are removable without injury to the premises shall be and remain the property of Tenant. The Port reserves the right to have Tenant remove, at Tenant's sole expense, all of such alterations, additions or improvements at the end of the Lease term upon giving Tenant sixty (60) days' advance written notice of the Port's exercise of this option. If the Port exercises this option,

all such alterations and improvements be removed by Tenant prior to the last day of the Lease term. Any dispute under this section shall be subject to arbitration under paragraph 38, **ARBITRATION PROCEDURE**.

**19. DISPOSITION OF IMPROVEMENTS.**

a. Within sixty (60) days after the expiration or earlier termination of this Lease, the Tenant shall at Tenant's expense, promptly and diligently remove, demolish or clear off from the leased premises all or any designated portion of the improvements and other property owned by Tenant, and after such removal or clearance, Tenant shall restore the surface of the ground to a graded, properly filled, level and uniform condition, free from all debris; provided, however, that if Tenant at such time shall be in default in the payment of rents or any other charges hereunder, the Port shall have a lien on the improvements to secure payment of such rents or charges.

b. Provided, however, that the Port may, at its sole discretion, elect to have the buildings remain, in which event title to the same shall automatically pass to the Port, free of any right, title, interest of Tenant therein, or its successors or assigns, without the necessity of executing any further instrument and without any allowance, compensation, or payment by the Port. Tenant hereby grants and conveys to the Port all of its right, title and interest in and to such improvements, to be effective for all purposes upon any termination of this Lease. Notwithstanding the foregoing, if the Port does not elect to have Tenant remove the improvements, Tenant agrees to execute, acknowledge and deliver to the Port prior to the expiration of such sixty-day (60) period a proper recordable instrument quit claiming and releasing to the Port to any right, title and interest of Tenant in and to the leased premises and all improvements thereon, and giving such further assurances of title as may be required by the Port. Tenant shall, upon such lease termination, surrender and deliver the leased premises and all remaining improvements to the Port, without delay and in good order, condition and repair, ordinary wear and tear excepted, and in a neat and clean condition, excepting only Tenant's or any subtenant's movable trade fixtures, machinery, equipment and personal property. Tenant shall also deliver to the Port all documents necessary or appropriate for the proper operation, maintenance and management of the leased premises and improvements.

c. Any dispute under this section shall be subject to arbitration under paragraph 38, **ARBITRATION PROCEDURE**.

**20. INSPECTION.** The Port reserves the right to inspect the premises at any and all reasonable times throughout the term of this Lease, provided that it shall not interfere unduly with Tenant's operations. The right of inspection reserved to the Port hereunder shall impose no obligation on the Port to make inspections to ascertain the condition of the premises, and shall impose no liability upon the Port for failure to make such inspections. The Port shall have the right to place and maintain "For Rent" signs in conspicuous places on the premises for a reasonable period of time prior to the expiration or sooner termination of this Lease.

**21. RESTORATION.**

a. At all times during the term of this Lease, Tenant shall maintain in effect upon the leased premises and Tenant's improvements thereon, fire and extended coverage property insurance for physical loss and damage including earthquake insurance and flood insurance,

written by companies authorized to do business in the State of Washington and approved by the Port's insurance carrier. Such policy or policies (a) shall be written in the form of replacement cost insurance in an amount not less than 100% of the full replacement cost of the leased premises and Tenant's improvements thereon, which amount shall be adjusted not less frequently than annually, (b) shall contain an endorsement waiving any and all rights of subrogation against the Port and (c) shall provide that notice of cancellation of the policy or any endorsement shall be given to the Port and any other party designated by the Port at least 10 days prior to cancellation. The Port and each other party designated by the Port shall be named as additional insureds and loss payees on all such policies. Tenants shall provide the Port and each other party designated by the Port with certificates of insurance evidencing such coverage and shall provide evidence of renewal at least 30 days prior to the expiration of such policy or policies. Tenant will also take out and maintain policies of insurance to cover the loss, damage or destruction of Tenant's furniture, fixtures, equipment and other items owned by Tenant on the leased premises, with limits based on the reasonable value thereof. Tenant and the Port acknowledge that insurance coverage for earthquakes may not be available at a reasonable cost at the commencement of this lease, but that at such time during the term hereof that such coverage becomes available at a reasonable cost, Tenant shall obtain such coverage and have such coverage in effect at all times it is available at a reasonable cost. If the Port and Tenant cannot agree whether such coverage is available at a reasonable cost, such disagreement shall be submitted to arbitration as provided in paragraph 38, ARBITRATION PROCEDURE.

b. If any building or improvement erected by Tenant on the leased premises or any part thereof shall be damaged or destroyed by fire or other casualty during the term of this Lease, Tenant may, at its option, at its own cost and expense, repair or restore the same according to the original plans thereof or according to such modified plans as shall be previously approved in writing by the Port. Such work of repair or restoration shall be commenced within sixty (60) days after receipt of permits therefor (which Tenant shall obtain within one (1) year after the damage or loss occurs) and shall be completed with due diligence but not longer than one (1) year after such work is commenced, and such work shall be otherwise done in accordance with the requirements of the provisions hereof pertaining to the construction of improvements upon the leased premises. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration, or if Tenant elects not to repair or restore, to the cost of removing, demolishing, or clearing off the building or improvements. If (i) there are not insurance proceeds, or (ii) the same shall be insufficient for said purpose, Tenant shall make up the deficiency out of its own funds. Should Tenant fail or refuse to make the repair, restoration or removal as hereinabove provided, then in such event said failure or refusal shall constitute a default under the covenants and conditions hereof, and all insurance proceeds so collected shall be forthwith paid over to and be retained by the Port on its own account, and the Port may, but shall not be required to, sue and apply the same for and to the repair, restoration or removal of said leased premises or improvements, and the Port may, at its option, terminate this Lease as elsewhere provided herein.

c. Notwithstanding anything to the contrary contained in the preceding section, if any building erected on said leased premises shall be damaged by fire or other casualty, and if the cost of repairing or restoring the same shall exceed the insurance payable for such damage, and if such damage shall occur during the term so that the remaining term of this Lease is of insufficient length to allow Tenant to finance such cost in a commercially reasonable manner, the Tenant shall have the option, to be exercised within one hundred twenty (120) days after such event, to repair or restore said building as hereinabove provided, or to terminate this Lease by written notice thereof to the Port.

d. Any dispute under this section shall be subject to arbitration under paragraph 38, **ARBITRATION PROCEDURE**.

22. **DEFAULTS.** Time is of the essence of this Lease, and in the event of the failure of Tenant to pay the rental, interest or other charges provided in this Lease at the time and in the manner herein specified, or to keep any of Tenant's covenants or agreements herein, the Port may elect to terminate this Lease and reenter and take possession of the premises with or without process of law, provided, however, that Tenant shall be given fifteen (15) days' notice in writing if the default is for the nonpayment of rent or other monetary default, or thirty (30) days' notice in writing for any other default, stating the nature of the default in order to permit such default to be remedied by Tenant within the applicable time period. If the Port issues a notice of default for the nonpayment of rent, in order to cure such default, Tenant must pay the overdue rent, together with interest as set forth in paragraph 4.1 above, plus a Fifty Dollar (\$50.00) lease reinstatement fee.

If upon such reentry there remains any personal property of Tenant or of any other person upon the premises, the Port may, but without the obligation to do so, remove said personal property and hold it for the owners thereof or may place the same in a public garage or warehouse, all at the expense and risk of the owners thereof, and Tenant shall reimburse the Port for any expense incurred by the Port in connection with such removal and storage. The Port shall have the right to sell such stored property, without notice to Tenant, after it has been stored for a period of thirty (30) days or more, the proceeds of such sale to be applied first to the cost of such sale, second to the payment of the charges for storage, and third to the payment of any other amounts which may then be due from Tenant to the Port, and the balance, if any, shall be paid to Tenant. Notwithstanding any such reentry, the liability of Tenant for the full rental provided for herein shall not be extinguished for the balance of the term of this Lease, and Tenant shall make good to the Port any deficiency arising from a reletting of the premises at a lesser rental than that chargeable to Tenant. Tenant shall pay such deficiency each month as the amount thereof is ascertained by the Port. Payment by Tenant to the Port of interest on rents and/or any other charges due and owing under this Lease shall not cure or excuse Lessee's default in connection with rents and/or other charges. All remedies of the Port hereunder are cumulative and not alternative.

23. **ADVANCES BY PORT FOR TENANT.** If Tenant shall fail to do anything required to be done by it under the terms of the Lease, except to pay rent, the Port may, at its sole option, do such act or thing on behalf of Tenant, and upon notification to Tenant of the cost thereof to the Port, Tenant shall promptly pay the Port the amount of that cost. However, if the Port shall pay any monies on Tenant's behalf, Tenant shall repay such monies, together with interest thereon commencing on the date the Port paid such monies and calculated at the greater of the rate of eighteen percent (18%) per annum, or two (2) percentage points over the composite prime rate of interest set forth in the Wall Street Journal "Money Rates" column (or its successor) most recently prior to such date.

24. **HOLDING OVER.** If Tenant shall, without the consent of the Port, hold over after the expiration or sooner termination of this Lease, the resulting tenancy shall, unless otherwise mutually agreed, be on a month-to-month basis. During such month-to-month tenancy, Tenant shall pay to the Port the rate of four (4) times the then-current rental under the terms of the Lease, unless a different rate shall be agreed upon, and the Tenant shall be bound by all of the additional provisions of this Lease.

25. **ASSIGNMENT OR SUBLEASE.** Except as provided below, Tenant shall not assign or transfer (including any assignment or transfer for security purposes) this Lease or any interest therein nor sublet the whole or any part of the premises, nor shall this Lease or any interest hereunder be assignable or transferable by operation of law or by any process or proceeding of any court, or otherwise, without the advance written consent of the Port, which may be withheld in the Port's reasonable discretion. Landlord agrees that it will consent to the assignment of this Lease (or any interest herein) for security purposes to a bona fide lender, but only on the terms and conditions contained in the form of Landlord's Consent and Agreement attached hereto as Exhibit C, which must be signed by such lender. Tenant further agrees that if at any time during the term of this Lease, more than one-half (1/2) of the outstanding shares of any class of stock of the Tenant corporation shall belong to any stockholders other than those who own the outstanding shares of that class of stock at the time of the execution of this Lease or to members of their immediate families, including their estates, such change in the ownership of the stock of Tenant shall be deemed an assignment of this Lease within the meaning of this paragraph. If Tenant is a partnership or a limited liability company, Tenant further agrees that if at any time during the term of this Lease, more than one-half (1/2) of the interest of the partnership or the limited liability company, as the case may be, shall belong to any partner or member other than those who own an interest in such entity at the time of the execution of this Lease or to members of their immediate families, including their estate, such change in the ownership of interest in Tenant shall be deemed an assignment of this Lease within the meaning of the paragraph. Tenant shall remain liable under the terms of this Lease, and this paragraph shall nevertheless continue in full force and effect and no further assignment or sublease shall be made without the Port's consent pursuant to this paragraph.

26. **COMPLIANCE WITH PORT REGULATIONS/ALL LAWS.** Tenant agrees to comply with all applicable rules and regulations of the Port pertaining to the building or other realty of which the premises are a part or to Tenant's use or occupancy thereof, now in existence or hereafter promulgated for the general health, welfare, safety and convenience of the Port, its various tenants, invitees, licensees and the general public. Tenant further agrees to comply with all applicable federal, state and municipal laws, ordinances and regulations, including, without limitation, those relating to environmental matters, and Americans with Disabilities Act, and to indemnify the Port for any liability, damages, costs or fees incurred by the Port due to Tenant's failure to comply with the requirements of this section. Costs and fees shall include all direct and indirect costs and professional fees, including engineering and attorney's fees. Any fees for any federal, state or local inspections and/or certificates required for use and occupancy of the leased premises shall be paid by Tenant.

27. **HAZARDOUS SUBSTANCES.** Tenant certifies, represents, warrants, covenants and agrees that:

(a) For itself, its contractors, subcontractors and agents, Tenant will comply with all applicable local, state and federal environmental laws, regulations, ordinances and administrative and judicial orders relating to the generation, recycling, treatment, use, sale, storage, handling, transport and disposal of any Hazardous Substances (as defined below) by any person on the leased premises. Lessee will not, without the Port's prior written consent, keep on or around the leased premises or any common areas, for use, disposal, treatment, generation, storage, or sale, any Hazardous Substances except those normally used in the operation of a restaurant, and then only in such amounts as are normal and only in full compliance with all applicable laws, rules and regulations.



(b) With respect to any Hazardous Substance, Tenant shall:

(i) Comply promptly, timely and completely with all governmental requirements for reporting, keeping and submitting manifests and obtaining and keeping current identification numbers;

(ii) Make available for the Port's review and copying during normal business hours, true and correct copies of all reports, manifests and identification numbers at the time as they are required to be and/or are submitted to the appropriate governmental authorities;

(iii) Within five (5) business days of the Port's request, submit written reports to the Port regarding Tenant's use, storage, treatment, transportation, generation, disposal or sale of Hazardous Substances and provide evidence satisfactory to the Port of Tenant's compliance with the applicable laws, rules and regulations;

(iv) Allow the Port or the Port's agents or representatives to come on the leased premises at all reasonable times to check Tenant's compliance with all applicable laws, rules and regulations regarding Hazardous Substances; and

(v) Comply with minimum levels, standards or other performance standards or requirements which may be set forth or established for certain Hazardous Substances (if minimum standards or levels are applicable to Hazardous Substances) present on the leased premises, including those levels or standards established by an on-site inspection by the appropriate governmental authorities.

In the event of a material violation of any of the items (i) through (v) listed above, any and all costs incurred by the Port and associated with the Port's inspections of Tenant's leased premises and the Port's monitoring of Tenant's compliance with this section, and including the Port's attorney's fees and costs, shall be additional rent and shall be due and payable to the Port immediately upon demand by the Port.

(c) Tenant has not and will not release or waive the liability of any party who may be potentially responsible for the presence or removal of Hazardous Substances on or from the leased premises.

(d) Tenant agrees to immediately notify the Port if Tenant becomes aware of (a) any Hazardous Substances or other environmental problem or liability with respect to the leased premises or any Other Property (as defined below); or (b) any lien, action or notice resulting from violation of any laws, regulations, ordinances or orders described in this Section 26. At its own cost, Tenant will take all actions which are necessary or desirable to clean up any Hazardous Substances affecting the leased premises, including removal, containment or any other remedial action whether or not required by governmental authorities.

(e) If Tenant is in violation of any governmental law, rule or regulation concerning Hazardous Substances or is in violation of this Lease relating thereto, it shall promptly take such action as is necessary to mitigate and correct the violation. If Tenant does not act in a prudent and prompt manner, the Port reserves the right, but not the obligation to come onto the premises, to act in place of the Tenant (with Tenant hereby appointing the Port as its agent for

such purposes), and to take such action as the Port deems necessary to insure compliance or to mitigate the violation. If the Port has a reasonable belief that Tenant is in violation of any such regulation, or that Tenant's actions or inactions present a threat of violation or a threat of damage to the premises, the Port reserves the right to enter the premises and take such action as the Port deems necessary to mitigate, abate or correct the threat thereof. All costs and expenses incurred by the Port in connection with any such action shall be payable by the Tenant and shall become immediately due and payable as additional rent upon presentation of an invoice therefor.

(f) Tenant shall be fully and completely liable to the Port for, and shall indemnify and hold the Port harmless from and against any and all actual or alleged claims, demands, damages, losses, liens, liabilities, penalties, fines, lawsuits and other proceedings and costs and expenses (including attorneys' fees and disbursements), which accrue to or are incurred by Tenant or the Port which arise or are alleged to arise directly or indirectly from or out of, or are in any way connected with (a) the inaccuracy of the representations and warranties contained herein, (b) the breach of any covenant contained herein, (c) any operations or activities (including, without limitation, use, disposal, transportation, storage, generation or sale of Hazardous Substances) on or about the leased premises during Tenant's possession or control of the leased premises which directly or indirectly result in the leased premises or any Other Property becoming contaminated with Hazardous Substances or otherwise violating any applicable law, rule or regulation pertaining to Hazardous Substances, and (d) the cleanup of Hazardous Substances from the leased premises or any Other Property. Tenant acknowledges that it will be solely responsible for all costs and expenses relating to investigation (including preliminary investigation) and cleanup of Hazardous Substances from the leased premises or from any Other Property arising as described above. Tenant specifically agrees that the bond provided pursuant to this Lease shall extend to the indemnity agreed to in this subparagraph.

(g) Tenant's obligations under this Section 27 are unconditional and shall not be limited by any other limitations of liability provided for in this Lease. The representations, warranties and covenants of Tenant set forth in this Section 27 (a) are separate and distinct obligations from Tenant's other obligations under the Lease and (b) shall survive and continue in effect after any termination or expiration of this Lease for any reason.

(h) As used in this Section 27, "Hazardous Substances" means any chemical, substance, material, waste or similar matter defined, classified, listed or designated as harmful, hazardous, extremely hazardous, dangerous, toxic or radioactive, or as a contaminant or pollutant, or other similar term, by, and/or which are subject to regulation under, any federal, state or local environmental statute, regulation or ordinance presently in effect or that may be promulgated in the future, and as they may be amended from time to time.

(i) As used in this Section 27, "Other Property" means any real or personal property (including, without limitation, surface or ground water) which becomes contaminated with Hazardous Substances as a result of operations or other activities on, or the contamination of, the leased premises arising as described in subsection (f) above.

(j) Upon expiration or sooner termination of this Lease, Tenant shall have removed from the leased premises any contaminated soils or other contaminated or hazardous materials or substances deposited thereon by Tenant. Any failure to complete such removal by the expiration or sooner termination of this Lease shall be deemed a holding over by Tenant subject to the provision of paragraph 24, **HOLDING OVER**. At the Port's request, within 30 days

thereafter, Tenant shall deliver to the Port a certificate from the Thurston County Health Department certifying that the leased premises comply with all applicable requirements of the Health Department concerning levels of Hazardous Substances. At such time, Tenant shall also reconfirm its representations and warranties contained herein and shall represent and warrant that upon termination of the Lease all Hazardous Substances have been removed from the leased premises and have been properly and lawfully disposed of.

(k) Tenant shall be responsible for applying for and obtaining all necessary and desirable federal, state or local governmental permits or approvals for the use of the leased premises; shall not commence any activity on the leased premises until all permits or approvals required for such activity have been issued; and shall conduct all of its activities on the leased premises in full compliance with all applicable permits and approvals.

28. **STORAGE TANK LICENSES.** All storage on site, whether permanent or mobile, capable of holding more than one hundred ten (110) gallons either in bulk or in separate containers or any material identified in Exhibit "B" shall require a separate hazardous materials license. Such license shall provide for appropriate handling and storage facilities, inspections, testing and clean up procedures and any special insurance provisions which may be required. Tenant shall comply with all laws, rules and regulations applicable thereto. Tenant shall provide Landlord with full and complete copies of any reports or other results of inspections within five (5) days after any remedial or other action required as a result of any inspection. Upon request, Tenant shall provide Landlord with a certificate of insurance evidencing Tenant's compliance with insurance requirements applicable to storage tanks.

29. **INSPECTIONS AND NOTICE OF CHANGE.**

a. Tenant agrees that inspections may be required by the Port at the Tenant's expense to assure compliance with paragraphs 27, **HAZARDOUS SUBSTANCES**, and 28, **STORAGE TANK LICENSES**. Such inspections shall be made once every five (5) years or at any time the Port has good cause to believe a problem may exist.

b. The Tenant shall annually identify any materials listed in Exhibit "B" used in the course of its ordinary business.

30. **EMINENT DOMAIN.** If the premises shall be taken or condemned for any public purpose, or for any reason whatsoever, to such an extent as to render the premises untenable, either Landlord or Tenant shall have the option to terminate this Lease effective as of the date of taking or condemnation, which shall be the earlier of the date the final condemnation judgment or the date possession is taken by the condemning authority. If the taking or condemnation does not render the premises untenable, this Lease shall continue in effect, and Landlord shall, if the condemnation award is sufficient therefor, promptly restore the portion not taken to the extent possible to the condition existing prior to the taking. If, as a result of such restoration, the area of the premises is reduced, the rental shall be reduced proportionately. Tenant shall be entitled to any award separately designated for Tenant's relocation expenses or for damage or taking of Tenant's improvements, trade fixtures or other personal property; provided, however, that if the taking does not render the premises untenable, this Lease shall continue in effect and Tenant shall restore its improvements to the extent possible to the conditions existing prior to the taking. Landlord and Tenant agree to cooperate in Tenant's obtaining such a separately designated award. All other proceeds from any taking or condemnation shall be paid to Landlord. A

voluntary sale or conveyance in lieu of but under the threat of condemnation shall be considered a taking or condemnation for public purpose, and shall include the Port's use of the premises for any purpose for public use in connection with the operation of the business of the Port. If the Port so requires the use of the premises, then this Lease may be terminated by the Port by written notice delivered or mailed by the Port to Tenant not less than six (6) months or more before the termination date specified in the notice, and damages to Tenant, if any resulting therefrom shall be determined by agreement between the parties hereto, or in the absence of agreement, by arbitration as hereafter provided. Damages or other compensation shall be determined in accordance with RCW 53.08.010 and Title 8 as appropriate. The Port agrees that it will not exercise any right under this paragraph for the purpose of reletting the premises to another commercial retail user.

31. **TERMINATION FOR GOVERNMENT USE.** In the event that the United States government, the State of Washington or any agency or instrumentality thereof other than the Port shall, by condemnation or otherwise, take title, possession or the right to possession of the premises or any part thereof, the Port may, at its option, terminate this Lease as of the date of such taking, and if Tenant is not in default under any of the provisions of this Lease on said date, any rental prepaid by Tenant shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly returned to Tenant. All proceeds from any taking or condemnation shall be paid to the Port, and Tenant waives all claim against such proceeds; provided, however, that Tenant shall be entitled to any awards separately designated for Tenant's relocation expenses or for damage or taking of Tenant's building and other improvements, trade fixtures or other property of Tenant. Landlord and Tenant agree to cooperate in Tenant's obtaining such a separately designated award.

32. **INSOLVENCY.** If Tenant shall: solicit acceptances of a plan of reorganization to be filed in any subsequent case under the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as hereafter amended or any successor statute thereto (the "Bankruptcy Code"); negotiate with one or more creditors for any workout, including, but not limited to, an extension agreement, composition agreement, standoff, standby, or standstill agreement whereby the creditors agree to forebear in any fashion from their rights to collect a debt of Tenant; cease to pay Tenant's debts as they come due; admit in writing the inability to pay its debts as they come due; make an assignment for the benefit of creditors; become a party to any liquidation or dissolution action or proceeding; have appointed (voluntarily or involuntarily), a trustee, custodian, receiver, conservator, or liquidator for Tenant or for a significant portion of Tenant's assets; have entered against it any order by a district court or bankruptcy court of the United States or any of its territories that dismisses a voluntary petition under the Bankruptcy Code because the bankruptcy petition was filed in bad faith; have entered against it an order, judgment, or decree; have any of its assets levied against by writ of execution, attachment (including pre-judgment attachment), garnishment, recording of a judgment or any similar process whereby a creditor seeks to obtain a legal right to dispose of particular assets of Tenant to satisfy to any extent a debt of the Tenant to the creditor; file a voluntary petition under the Bankruptcy Code or have filed against it an involuntary petition under the Bankruptcy Code creating any automatic stay or other injunctive force protecting the assets of Tenant from the immediate collection actions of a creditor (where such involuntary petition is not subsequently dismissed within 60 days in response to pleadings filed by the Tenant by entry of an order of any district court or bankruptcy court of the United States or any of its territories); have appointed voluntarily or involuntarily, a trustee, custodian, or examiner with special powers by any district court or bankruptcy court in the United States or any of its territories; admit in an answer filed in response to an involuntary petition filed under the Bankruptcy Code that Tenant is insolvent because Tenant's assets are exceeded by Tenant's debts

or that Tenant is unable to pay Tenant's debts as they come due; then, in the event any of the foregoing shall occur, the Port may, at its option, terminate this Lease.

33. **PROMOTION OF PORT COMMERCE.** The purpose of the Port is to encourage the development of commerce within the Port district, and to every reasonable extent possible, increase the movement of passengers and freight through Port facilities. In furtherance of this purpose, Tenant agrees to cooperate with the Port in the promotion of these purposes during the term of this Lease, and wherever reasonably possible, to utilize the Port's facilities in the movement of freight and passengers as a part of Tenant's business activities. Nothing in this paragraph shall be construed to obligate Tenant to spend monies in the Port's promotional advertising, but Tenant does agree to supply such information and data for the Port's promotional and advertising activities.

34. **ATTORNEY'S FEES AND COSTS.** Should a dispute arise between the parties hereto as to the effect of any provision hereof and said dispute is referred to an attorney, whether for enforcement in court or for decision under arbitration, the losing party shall pay the prevailing party's actual and incurred attorney's fees; costs of court or arbitration, including such fees and costs of any appeal; other legal expenses; and collection costs, except that the amount of such fees, costs or expenses taken separately or in the aggregate, shall not be unreasonable. If such dispute arises and is later settled by the parties, such settlement shall include a specific allocation of disposition of attorney's fees on both sides.

35. **NONDISCRIMINATION - SERVICES.** Tenant agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, sex, age, creed, color or national origin in furnishing, or by refusing to furnish, to such person or persons the use of the facility herein provided, including any and all services, privileges, accommodations and activities provided thereby.

36. **NONDISCRIMINATION - EMPLOYMENT.** Tenant covenants and agrees that in all matters pertaining to the performance of this Lease, Tenant shall at all times conduct its business in a manner which assures fair, equal and nondiscriminatory treatment of all persons without respect to race, creed or national origin, and in particular:

a. Tenant will maintain open hiring and employment practices and will welcome applications for employment in all positions from qualified individuals who are members of racial or other minorities; and

b. Tenant will comply strictly with all requirements of federal, state or local laws or regulations issued pursuant thereto relating to the establishment of nondiscriminatory requirements in the hiring and employment practices, and assuring the service of all patrons or customers without discrimination as to any person's race, sex, age, creed, color or national origin.

37. **APPRAISAL PROCEDURE.** The fair market value of the property shall be determined, at Tenant's election, either (a) by reference to the most recent land valuation for the parcel as determined by the Thurston County Assessor's Office (for so long as Washington State law requires the Assessor to assess land at 100% of its fair market value) or (b) by an appraisal conducted by an independent appraiser selected by Tenant and approved by the Port, which approval will not be unreasonably withheld. Such appraiser shall be a qualified MAI appraiser, with not less than 10 years experience appraising commercial real estate in Thurston County,

Washington. A qualified MAI appraiser shall mean a member in good standing of the American Institute of Real Estate Appraisers, or equivalent professional organization. In conducting an appraisal of the property, the appraiser (a) shall consider sales of fee simple comparable properties in the general area; (b) shall appraise the property as if in private ownership and without discount or consideration for the property being owned by a municipal corporation; and (c) shall appraise the property without regard to the premises being leased or the existence of any buildings or structures thereon. If Tenant fails to choose an appraiser within 180 days prior to the date a rental revision is to become effective, Tenant shall be deemed to have elected to have the rental revised as provided in clause (a). If fair market value is not or cannot be determined by either method described above, fair market value shall be determined by an appraiser selected by the Port who meets the qualifications described above. Such determination, and any rental revision resulting therefrom shall be retroactive to the date the rental revision was to be effective. The cost of any appraisal shall be shared equally by the Port and Tenant. The Port agrees to assist Tenant in any effort to have any percentage rent disregarded by the Thurston County Assessor when using an income approach to value the leased premises for assessment purposes.

38. **ARBITRATION PROCEDURE.** In the event of a dispute between the Port and Tenant with respect to any issue specifically mentioned elsewhere in this Lease as a matter to be decided by arbitration, such dispute shall be determined by arbitration as provided in this paragraph. The Port and Tenant shall each appoint a person as arbitrator who shall have had at least ten (10) years of experience in Thurston, King or Pierce County in the subject matter of the dispute. The appointment shall be in writing and given by each party to the other, and the arbitrators so appointed shall consider the subject matter of the dispute, and if agreement can be reached between them, their opinion shall be the opinion of the arbitration. In the event of their failure to agree upon the matter so submitted, they shall appoint a third arbitrator. In the case of the failure of such arbitrators to agree upon the third arbitrator, the same shall be appointed by the American Arbitration Association from its qualified panel of arbitrators, with similar qualifications. If the Port or Tenant shall fail to so appoint an arbitrator for a period of ten (10) days after written notice from the other party to make such appointment, then such party will have defaulted its right to make such appointment, and the arbitrator appointed by the nondefaulting party shall determine and resolve the dispute. In the event the three arbitrators are appointed, after being duly sworn to perform their duties with impartiality and fidelity, they shall proceed to determine the question submitted. The decision of the arbitrators shall be rendered within thirty (30) days after their appointment, and such decision shall be in writing, with copies thereof delivered to each of the parties. The award of the arbitrators shall be final, binding, and conclusive on the parties. The fees of the arbitrators and the expenses incident to the proceedings shall be borne equally between the Port and Tenant. The arbitrators shall award to the prevailing party the fees of that party's counsel, expert witnesses, or other witnesses called by the prevailing party.

39. **JOINT AND SEVERAL LIABILITY.** Each and every party who signs this Lease, other than in a representative capacity, as Tenant, shall be jointly and severally liable hereunder.

40. **INVALIDITY OF PARTICULAR PROVISIONS.** If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

41. **NOTICES.** All default and other substantial notices required under the provisions of this Lease may be personally delivered or mailed. If mailed, they shall be sent by certified mail, return receipt requested to the following addresses:

To the Port:  
Port of Olympia  
P. O. Box 827  
Olympia, WA 98507-0827

To the Tenant:  
Market Place Building, L.L.C.  
c/o Rants Group  
101 N. Capitol Way, Suite 302  
Olympia, WA 98501

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing. Notices given by personal delivery shall be deemed given upon receipt. Notices sent by mail shall be deemed given when properly mailed, and the postmark affixed by the United States Post Office shall be conclusive evidence of the date of mailing.

42. **WAIVER.** The acceptance of rental by the Port for any period or periods after a default by Tenant hereunder shall not be deemed a waiver of such default unless the Port shall so intend and shall so advise Tenant in writing. No waiver by the Port of any default hereunder by Tenant shall be construed to be or act as a waiver of any subsequent default by Tenant. After any default shall have been cured by Tenant, it shall not thereafter be used by the Port as a ground for the commencement of any action under the provisions of paragraph 25, DEFAULTS.

43. **BINDER.** This Lease is binding upon the parties hereto, their heirs, personal representatives, successors in interest and assigns.

44. **NO RECORDING.** Without the prior written consent of the Port, this Lease shall not be placed of record. At the request of either party, the parties will execute and record a memorandum of this lease.





**EXHIBIT "A"**  
**REQUIREMENTS AS TO IMPROVEMENTS**

These conditions relating to improvements in this Exhibit "A" shall control unless the Port and Tenant have otherwise separately agreed to more specific time periods for production and coordination of drawings, financing and commencement of construction. In the event such additional documentation becomes a part of this Lease, then the time periods set forth in such documents shall be logically coordinated, the intent being that the shorter time periods should control the parties' respective performances.

**1. PORT APPROVAL OF TENANT IMPROVEMENTS**

As used herein, the terms "improvements" or "structures" shall mean and include without limitation all permanent buildings, and all other major structures or improvements of any kind located above the ground level of any site, plus any replacements, additions, repairs or alterations thereto. No improvement shall be constructed or maintained on the leased premises until the Port has first approved the design, density, size, appearance and location thereof. Before commencing any work of improvement or applying for any governmental permit or approval, Tenant shall first deliver to the Port for approval two (2) sets of schematic plans and preliminary specifications, including grading and drainage plans, exterior elevations, floor plans, site plans, and showing in reasonable detail existing topography and proposed type of use, size, land coverage, shape, height, location, material and elevation of each proposed improvement, all proposed ingress and egress to public or private streets or roads, all utilities and service connections, and all proposed landscaping, exterior materials and fences, parking, exterior lighting, signs, cut and fill, finished grade, runoff and concentration points. Nothing in this paragraph shall imply a submission standard higher than that required for a building permit, except as it relates to land use(s), utilities, infrastructure and impact upon adjoining properties and use(s) of adjoining properties.

The Port shall then have twenty (20) days during which to accept and approve or reject such preliminary plans and specifications. Once the preliminary plans and specifications have been approved, but prior to commencing any such work, Tenant shall submit to the Port for approval of final plans and specifications for any proposed improvements in the same manner as a provided above.

All plans and specifications for grading or improvements to be submitted to the Port hereunder shall be prepared by a licensed or registered architect or engineer, as the case may be. All grading, piling, footing and foundation work must be conducted under the supervision of an appropriate licensed engineer. At the Port's option, a final certification by a licensed soils engineer or geologist must be filed with the Port upon completion of the grading work. The Port shall not unreasonably withhold its approval of any such plans or specifications.

The Port shall be conclusively deemed to have given its approval unless, within thirty (30) days after all such plans and specifications have been received by the Port, the Port shall give Tenant written notice of each item of which the Port disapproves. Unless so disapproved, the Port shall endorse its approval on at least one set of plans and return the same to Tenant. The Port may disapprove any plans which are not in harmony or conformity with other existing or proposed improvements on or in the vicinity of the leased premises, or with the Port Master Plan or other plans or criteria for the leased premises in the general area in which the leased premises are

located, the sole discretion as to such adequacy remaining with the Port. Notwithstanding the foregoing, Tenant may, in accordance with the lease, repair, replace, alter or reconstruct any improvement on the leased premises for which plans were previously approved by the Port as provided above, but only if such repair, replacement, alteration or reconstruction is substantially identical to the improvement previously approved.

Concerning utility installations, Tenant, at Tenant's sole cost, including any connection fees, assessments or changes, shall be responsible for the installation on the leased premises of all utilities required by Tenant's use of the premises, assuming such utility services are available to the leased premises. Any contractual arrangements with any municipal supplier with respect to the improvements or utility installation shall not be entered into by Tenant without first obtaining the Port's approval. In the event that such utility services are not readily available at the leased premises, Tenant, at Tenant's sole cost, shall pay for the extension of such utilities to the leased premises.

The Port shall not be liable for any damages in connection with the approval or disapproval of any plans or specifications, any construction or performance by Tenant on the leased premises in connection with the erection of such improvements, any mistake in judgment, negligence or omission in exercising its rights and responsibilities hereunder, or the enforcement or failure to enforce any provisions contained in the Lease. The Port's approval of plans and specifications shall not constitute the assumption of any responsibility by the Port or its representatives for the accuracy, efficacy or sufficiency hereof, and Tenant shall be solely responsible therefor.

## 2. CERTIFICATES OF COMPLIANCE

Tenant shall obtain all necessary permits and shall send copies of same to the Port, as well as copies of Certificates of Completion/Occupancy associated with such permits and pay the cost thereof. Prior to any commencement of any such work of improvements, Tenant shall supply to the Port a certificate from a licensed civil engineer or land surveyor verifying that the proposed improvements will be located on the correct parcel and in accordance with plans previously approved by the Port. The Port may waive such requirement if the Port has already surveyed the proposed premises. Upon completion of any such improvements, Tenant shall supply to the Port a further certification by Tenant's architect (including the landscape architect in the case of improvements consisting of landscaping) that the improvements, as designed by the architect, have been completed in accordance with the plans previously approved by the Port. Final landscaping as approved by the Port shall be completed within sixty (60) days after completion of the structure.

Tenant shall also supply to the Port one (1) set of "as-built" grading plans showing all underground installations within sixty (60) days following completion of any substantial improvement within the leased premises. Tenant shall also furnish the Port with a complete set of "as-built" building plans and an itemized statement of the actual construction cost of such improvements, not later than sixty (60) days after completion.

## 3. DILIGENT COMPLETION AND COMPLIANCE

After commencement of construction, Tenant shall diligently complete the construction so that the improvements will not remain in a partly finished condition any longer than is reasonably necessary. Tenant shall comply with all applicable governmental laws, ordinances and other requirements or conditions and restrictions which may affect the leased premises, (whether prior to,

during or after construction) including, without limitation, the Americans with Disabilities Act, and shall make such corrections, alterations or other improvements which may be necessary to remedy any non-complying condition (subject to the reasonable approval of the Port), all at the sole cost and expense of Tenant.

EXHIBIT "B"

TOXIC, DANGEROUS AND HAZARDOUS SUBSTANCES STORAGE LICENSE

(License required for any material covered by  
Dangerous Waste Regulations in WAC 173-303  
as amended and 40 CFR Part 116-117 as amended,  
copies are on file in the Port of Olympia offices)

Licensee: \_\_\_\_\_

Lease: \_\_\_\_\_

Term: \_\_\_\_\_

(Not to exceed 5 years.)

Fee: \_\_\_\_\_

Insurance: \_\_\_\_\_

(The Port must be named insured and entitled notice prior to cancellation.)

Renewable: For life of underlying lease so long as conditions below are met:

1. Facilities approved for installation and use:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Preconstruction approvals required:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Preoccupancy approvals required:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Inspections required:

a.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. At any time the Port has good reason to believe a problem may exist.

c. At a minimum, all tanks shall be pressure tested at least once every five (5) years to assure no loss of product into the environment (air, soil, surface or ground water).

5. Materials authorized for storage:  
a.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. Any additional materials require the consent of the Port.

6. Additional terms:

a. The Port Engineer shall have the right to terminate this license at any time and in his own discretion, if the facilities fail to meet all federal, state or local requirements or otherwise pose a hazard of unlawful contamination or pollution and such failures are not cured within thirty (30) days of written notice or such lesser time as appropriate under emergency circumstances.

b. The licensee agrees to bear all costs of construction, operation, maintenance, inspection or repair of the approved facilities and to keep the same in good operating repair during the term of this license, and the cost of any cleanup or other activities required in the event of a spill, leak or other pollution causing event.

c. The licensee agrees at any time that the approved facilities cease to be subject to a valid license agreement, for any reason, that the licensee shall, at its own cost, remove the facilities and restore the site to its original condition (including removal of all contaminated soils or water).

d. The Port shall have the right to terminate this license upon breach of any term herein or termination of the specified lease. Breach of any term of this license shall constitute a breach of the specified lease.

e. The licensee shall compensate the Port for all costs incurred by reason of any breach of this license.

LICENSEE:

PORT OF OLYMPIA;

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
License Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT "C"

LANDLORD'S CONSENT AND AGREEMENT  
(For Financing Purposes)

Description of Ground Lease.

"Landlord"	The Port of Olympia
"Tenant"	<u>MARKET PLACE BUILDING, L.L.C.</u>
"Lease":	Ground Lease dated <u>July 15, 1997</u>
"Leasehold":	Tenant's interest in the Lease and all Leasehold Improvements
"Lender(s)":	<u>Sterling Savings Bank</u> <u>c/o Intervest</u> <u>5285 SW Meadows Road, Suite 320</u> <u>Lake Oswego, Oregon 97035</u>

NOW, THEREFORE, Landlord represents, warrants, covenants and agrees as follows:

1. Consents. Landlord hereby consents to the assignment of Tenant's interest in the Leasehold to Lender for security purposes under the Lender's Deed of Trust upon closing of the loan. Herein the term "Deed of Trust" shall mean the Lender's Deed of Trust as may be applicable and the "Lender" shall mean Sterling Savings Bank, as its/their interests appear in the Deed of Trust.

2. Status of Lease. A true and correct copy of the Lease, together with all amendments, supplements, and modifications thereto, is attached as Schedule A to this Agreement. The Lease is presently in full force and effect, is valid and enforceable according to its terms and has not been modified or amended in any way except as shown on the copy of the Lease attached hereto.

3. Non-Default. Tenant is not in default (a) in the payment of rent or any other amounts due and payable by Tenant to Landlord under the Lease or (b) to the knowledge of Landlord, in the observance or performance of any other covenant or condition to be observed or performed by Tenant under the Lease. To the knowledge of Landlord, no event has occurred which now does or hereafter will authorize Landlord to terminate the Lease.

4. Right to Foreclose Deed of Trust. Lender recognizes that any Deed of Trust taken by Lender affects and applies only to Tenant's interest in the Leasehold and that Landlord will not

permit any security interest to be taken in any of its land. In the event of default by Tenant under the terms of the Deed of Trust, Lender may enforce or foreclose the Deed of Trust including the acceptance of a Deed in Lieu of Foreclosure. Landlord agrees that in connection with any such foreclosure, Lender may:

- a. acquire Tenant's interest in the Leasehold either by Deed in Lieu of Foreclosure or actual foreclosure without further consent of Landlord, subject to the requirements of paragraph 6.4 below.
- b. rent the Leased Premises pending foreclosure of the Leasehold by Lender without further consent of Landlord.
- c. assign and sell the Leasehold in whole or in part to any person or entity, subject to the requirements set forth in paragraph 6.5 below.

In the event the successful purchaser at the foreclosure sale is a person or entity other than Lender, such purchaser shall not automatically succeed to Tenant's interest in the Leasehold, but must first qualify as an acceptable part as set forth in paragraph 6.5 below and Lender agrees to insert the following language in its Deed of Trust: *"Trustee's and Beneficiary's right to sell/assign the Leasehold interest secured by this Deed of Trust upon foreclosure to any person other than beneficiary, is limited to such person reasonably being approved by the Port of Olympia (or its successors/lessor under the Lease) pursuant to that certain 'Landlord's Consent and Agreement' between the Port of Olympia and Beneficiary."*

5. Surrender of the Leased Premises. No surrender of the Leased Premises or any other act of Tenant shall be deemed to terminate the Lease and Landlord will not terminate voluntarily by agreement with Tenant unless Lender has been previously notified in writing and has consented to the termination in writing.

6. Notice of Default and Lender's Rights.

6.1 Notice of Default. If Tenant defaults under the Lease or if any event occurs which would give Landlord the right to terminate, modify, amend or shorten the term of the Lease, Landlord shall take no steps to exercise any right it may have under the Lease without first giving Lender written notice of such default. A copy of each and every Notice of Default served or sent by Landlord or its agent to or upon Tenant pursuant to the Lease shall be sent contemporaneously to Lender in accordance with paragraph 13 below. Such Notice of Default shall specify the event or events of default then outstanding and the time period at the end of which the indicated action would become effective.

6.2 Termination for Monetary Default. If the Notice of Default given by Landlord to Lender relates to a monetary default and Tenant has not cured such monetary default within 15 days as provided in the Lease and Tenant's failure to cure results in Landlord desiring to terminate the Lease, Landlord may terminate the Lease if such monetary default is not cured by either Tenant or Lender within twenty (20) days of Lender's receipt of Notice, and kept current thereafter.

6.3 Termination for Non-Monetary Default. If the notice given by Landlord to

Lender relates to a non-monetary default and Tenant has not cured such non-monetary default within the 30-day period specified in the Lease, Landlord shall take no action to terminate the Lease if:

(a) within 20 days after Landlord's notice to Lender to Tenant's failure to cure (or failure to diligently pursue a cure) Lender notifies Landlord of its intent to realize upon its security interest and commences realization within 60 days thereafter, and diligently pursues realization; and

(b) Lender notifies Landlord that it will assume the Lease when Lender is legally entitled to the ownership and/or possession of Tenant's interests in the Leasehold; and

(c) Lender pays Landlord at time of notification all back rent or other monies or performances due that may be in default up to the date Lender notifies Landlord of Lender's intent and further pays all rent that accrues during the period after Lender so notifies Landlord and completes such other performances that may be required or come due under the Lease.

Landlord shall not terminate the Lease because of Tenant's breach of any term(s) of the Lease relating to the solvency of Tenant or the institution of any bankruptcy, insolvency, receivership or related action by or against tenant as long as Lender cures any default under the Lease by Tenant as provided in this Consent and Agreement.

6.3.1 If the non-monetary default is of a nature which requires immediate abatement as a result of which Lender would not normally pursue realization on the collateral, and Tenant has not taken steps to immediately cure the default, then Lender must take immediate steps to cure such default within ten (10) days of receipt of notice or else the Landlord may terminate the Lease.

6.3.2 Upon termination of the Lease as provided herein, Lender will release its Deed of Trust within fifteen (15) days thereafter.

6.4 Assumption of the Lease. If Lender acquires the interest of Tenant at any time or takes possession of the collateral, then Lender shall formally assume the Lease within twenty (20) days thereafter. Failure to so assume the Lease shall give Landlord the right to immediately terminate the Lease.

6.5 Right to Assign. Lender shall not have the right to assign its interest in the Leasehold nor in the case of a foreclosure under the Deed of Trust shall the Trustee under the Deed of Trust transfer the Leasehold to any person or entity (other than Lender) without first obtaining the written consent of Landlord for such assignment or transfer, which consent will not be unreasonably withheld or delayed provided that Lender has disclosed to Landlord (a) the identity of the proposed purchaser, assignee or transferee; (b) shown that the purchaser's, assignee's or transferee's credit standing would reasonably be acceptable to a commercially prudent lender; and (c) provided evidence to Landlord that the use of the property by such purchaser, assignee or transferee shall be consistent with the terms of the Lease or Tenant's prior use of the Leasehold. Upon the purchaser's, assignee's or transferee's assumption and agreement to perform and to be bound by all of the terms of the Lease, Lender shall be relieved of further liability under the Lease, however, if Lender finances the purchaser, assignee or transferee, Lender shall again be subject to all the obligations set forth in this Agreement.

7. Disposition of Insurance and Condemnation Proceeds. Landlord shall be named as an additional insured under any of Tenant's casualty policies on the Leased Premises to the extent



of the interests limited in this paragraph 7. Should the Leased Premises suffer any loss which is covered by casualty insurance, and the insurance proceeds are used to restore any improvements made by Tenant, Landlord agrees that Tenant and Lender shall have the right to such proceeds so long as none of Landlord's property, utilities or other services therein are damaged or such damages are repaired. In the event the Leased Premises are substantially damaged and Tenant's improvements have been repaired, Landlord shall only participate in the insurance proceeds to the extent necessary to repair and restore Landlord's ground and any of Landlord's or Tenant's improvements (excluding buildings and personal property) on or in the ground to the same condition the land was in at the commencement of the Lease, or in the same condition at the time of the casualty. Under the Lease, Landlord has the option of requiring Tenant to demolish the improvements at the end of the Lease term, or to have Tenant convey title to Landlord Tenant's interests in the Leasehold Improvements. In the event Leased Premises and the Leasehold are so severely damaged that Tenant's and Lenders' decision is not to repair or restore the premises, Landlord shall participate in the insurance proceeds to the extent necessary to remove the remainder of the damaged improvements and to restore the Leased Premises and any utilities or other such improvements (excluding rebuilding the improvements or restoring other personal property of Tenant) to the same condition the land was in at the commencement of the Lease, or in the same condition at the time of the casualty. Other than as described herein, Landlord shall have no claim to insurance proceeds or condemnation proceeds that are attributable to Tenant's interest in the Leasehold, nor shall Lender have any interest in Landlord's condemnation proceeds, if any.

8. Right to Participate in Litigation. Lender shall have the right to participate in any litigation, arbitration or dispute directly affecting the Leased Premises or the interests of Tenant or Lender therein, including without limitation, any suit, action, arbitration proceeding, condemnation proceeding or insurance claim. Landlord, upon instituting or receiving notice of any such litigation, arbitration or dispute will promptly notify Lender of the same.

9. Incorporation of Mortgagee Protection Provisions. To the extent not inconsistent with this Agreement, all provisions of the Lease which by their terms are for the benefit of any leasehold mortgagee, are hereby incorporated herein for the benefit of Lender.

10. Right to Remove Collateral. In the event Lender exercises its rights under its collateral and realizes upon the collateral, Landlord agrees that Lender is entitled to remove Tenant's furniture, movable trade fixtures and equipment installed by Tenant from the Leased Premises at any reasonable time and that the collateral shall remain personal property even though the trade fixtures may be affixed to or placed upon the Leased Premises. "Trade fixtures" means the movable personal property of Tenant which is free standing or attached to floors, walls or ceiling, but does not include installed light fixtures, floor coverings, doors, windows, heating, plumbing or electrical systems or components thereof, including any roof-mounted HVAC equipment and/or units thereof, or permanent walls or partitions installed by Tenant. In the event Lender so realizes on its collateral, Landlord waives any right, title, claim, lien or interest in the above trade fixtures by reason of such fixtures being attached to or located on the Leased Premises. Lender shall use reasonable care in removing the trade fixtures from the premises and shall repair any damage that may result from such removal which shall be completed in accordance with the terms of the Lease.

11. Interpretation of Agreement. This Agreement sets forth the complete understanding of Lender with respect to this transaction; may be amended only in writing signed by the party against whom it is sought to be enforced; and, without limiting the generality of the foregoing shall not be deemed modified by any course of dealing. No provision in the Assignment of Tenant's Interest in

Lease, Security Agreement and Deed of Trust shall vary, modify or expand the covenants herein contained. In the event of any conflict between the terms of this Agreement and the Lease, this Agreement shall control.

12. In the event of litigation or arbitration between the parties to enforce or interpret this Agreement, the arbitrator, Board of Arbitration or Judge, as may be appropriate, may award the prevailing party in such arbitration or litigation a reasonable attorney's fee not to exceed 20 percent of the amount in controversy, plus costs and costs of collection.

13. Notices. All notices, copies of notices, consents or other communications given under this Agreement must be in writing and shall be effective when received. Such communications shall be given in person to an officer of Lender or to Landlord or shall be delivered to one of such persons by registered or certified U.S. mail or by public or private courier or wire service or facsimile transmission addressed to the parties at their respective addresses set forth below, unless by such notice a different person or address shall have been designated in writing:

If to Lender:

If to Landlord: Port of Olympia  
915 Washington St. NE  
Olympia, Washington 98501  
Attn: Heber Kennedy

March 20~~00~~ IN WITNESS WHEREOF, Landlord has executed these presents this 20 day of 199

LANDLORD:  
PORT OF OLYMPIA, a Washington Municipal corporation

By: [Signature]  
Its: Exec Director

AGREED to this \_\_\_\_\_ day \_\_\_\_\_, 199\_

LENDER: Sterling Savings Bank

By: [Signature]  
Its: John M. Harlow, Vice President

**EXHIBIT A**  
**To Landlord's Consent and Agreement**

Copy of Lease

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EXHIBIT A

Page 58 of 115

EXHIBIT "E"

Description for Market Square Office Building lease. July 14, 1997

Lot 1 of City of Olympia short plat SS-5888, EXCEPT the south 200.00 feet.

Containing approximately 24,080 square feet as shown on attached Exhibit "D".

EXHIBIT "E"

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EXHIBIT F

Page 60 of 115

1. MARKET DISTRICT 12

**Intent** The Market should be a vibrant waterfront development which supports a variety of uses and encourages people to walk along the waterfront and shop in the downtown area. This District is the transition area between downtown and the marine terminal and cargo areas. It should be home to multiple retail, commercial and light industrial uses, such as the local farmer's market, micro-brewery, restaurants, offices and waterfront pier.

**Use** Retail, commercial, and light industrial.

**Character** The design intent for the Market is Pacific Northwest, possibly featuring native Indian designs and architecture, or the Granville Island character of a mix of building styles of a more rural flavor than urban. Retail building windows should have transoms and canopies, with boardwalk-style entries.

Vehicle access is via a diagonal street from Capitol Way to D Avenue, and from Columbia Street. Pedestrian access is from Percival Landing. The traffic circle and other street treatments such as pavers and trees creates an atmosphere of an entry instead of a through-street.

**Placement** Buildings are oriented around a central plaza, with shared parking and open space. A traffic circle and road re-alignment connects this district to East Bay, as well as to downtown via Capitol Way.

**Setbacks** Buildings setbacks would conform to the requirements set forth in this district by the Port Peninsula Design Guidelines.

**Coverage** 100%, minus all landscaped and stormwater areas.

**Height** Maximum: 45 feet.

**Parking** Parking ratios and design would conform to the requirements set forth in the Port Peninsula Design Guidelines.

6. OCEAN TERMINAL 52

**Intent** The Ocean Terminal and supporting cargo yards should continue to handle inbound and outbound cargoes. Future development of this District will be opportunity and market-driven, so development flexibility must be maintained.

**Use** Industrial, commercial, warehousing and accessory.

**Character** Industrial.

**Placement** The placement of buildings and other support activities should support the efficient loading and unloading of cargo.

**Setbacks** Buildings setbacks would conform to the requirements set forth by the Port Peninsula Design Guidelines.

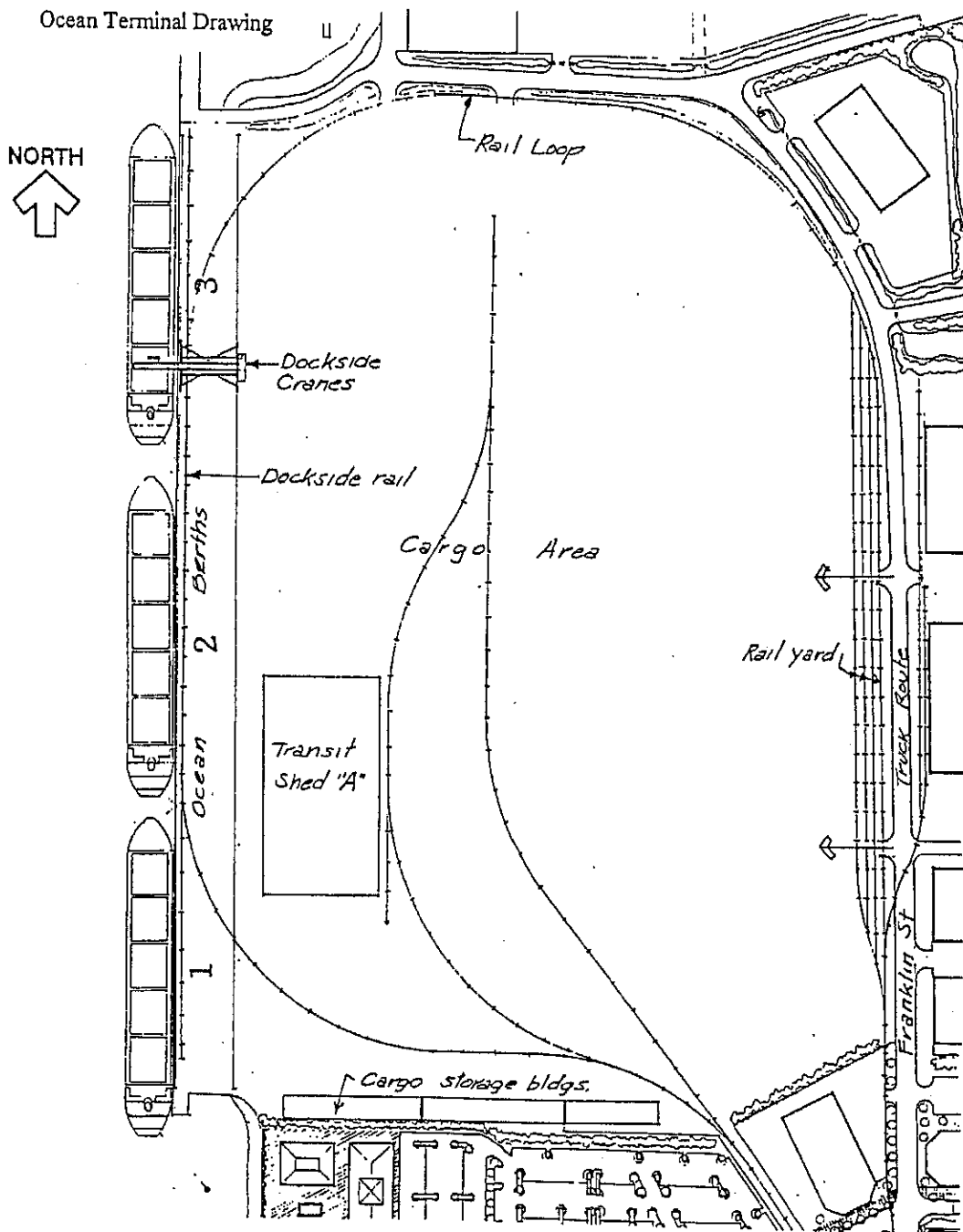
**Coverage** 100%.

**Height** Maximum building height: 60 feet. Operational equipment such as cranes and ships are not included in this height restriction.

**Parking** Parking ratios and design would conform to the requirements set forth in the Port Peninsula Design Guidelines.



ADDENDUM TO EXHIBIT "F"



Port of Olympia Comprehensive Plan - May 1995  
Page 34

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ADDENDUM TO EXHIBIT F

Page 64 of 115

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EXHIBIT H

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**EXHIBIT "I"**

**COMMON AREA OPERATING COSTS ALLOCATION**  
(For illustration purposes only)

**MARKET PLACE OFFICE BUILDING**

**EXAMPLE 1.**

- a. Market Square Office Building has a requirement of 120 parking stalls
- b. Mad Anthony's Inc. building has a requirement of 80 parking stalls
- c. "Ratio" for Market Square Office Building equals 60.0% [ $120 \div (120 + 80) = 60.0\%$ ]

TOTAL OPERATING COSTS (including Port charges)	2/3 OF TOTAL OPERATING COSTS	RATIO	MARKET SQUARE SHARE OF COSTS
\$60,000	\$40,000	60.0%	\$24,000

**EXAMPLE 2.**

- a. Market Square Office Building has a requirement of 120 parking stalls
- b. Mad Anthony's Inc. building has a requirement of 80 parking stalls
- c. Building A in Market District has a requirement of 22 parking stalls.
- d. "Ratio" for Market Square Office Building equals 54% [ $120 \div (120 + 80 + 22) = 54\%$ ]

TOTAL OPERATING COSTS (including Port charges)	2/3 OF TOTAL OPERATING COSTS	RATIO	MARKET SQUARE SHARE OF COSTS
\$60,000	\$40,000	54%	\$21,600

**EXAMPLE 3.**

- a. Market Square Office Building has a requirement of 120 parking stalls.
- b. There are no other buildings in the Market District.
- c. "Ratio" for Market Square Office Building equals 100% [ $120 \div (120 + 0) = 100\%$ ]

TOTAL OPERATING COSTS (including Port charges)	2/3 OF TOTAL OPERATING COSTS	RATIO	MARKET SQUARE SHARE OF COSTS
\$60,000	\$40,000	100%	\$40,000

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EXHIBIT I

Page 67 of 115

ORIGINAL

PORT OF OLYMPIA GROUND LEASE

THIS LEASE is made this 31st day of July, 1997, by and between the PORT OF OLYMPIA, a Washington municipal corporation, Lessor, hereinafter referred to as "the Port," and the Tenant described below, hereinafter referred to as "Tenant," on the following terms and conditions:

1. LEASE SUMMARY.

TENANT.

Name: Mad Anthony's Inc.  
Address: P.O. Box 3805  
City, State, Zip Code: Bellevue, WA 98009  
Phone Numbers: (425) 455-0732

LEASED PREMISES.

Twenty thousand (20,000) square feet of ground more particularly described on Exhibits "D" and "E" attached hereto and by this reference incorporated herein, together with a license to use a 26 foot by 13 foot portion of other Port property for a refuse and recycling area, as depicted on Exhibit "D".

TERM.

Thirty (30) years beginning August 1, 1997, ending July 31, 2027.

Option to Renew: One (1) option to renew for an additional term of thirty (30) years. Such renewal shall be upon the terms, covenants, and conditions contained herein (except for minimum ground rent, ground rental adjustments, and the times at which ground rental adjustments shall be made, all of which shall be adjusted and determined in accordance with the then current Commission policy based on the formula or method for determining minimum ground rental in effect nine (9) months prior to the commencement of such renewal term, but without affecting or changing percentage rental). The renewal term shall commence on the expiration of the immediately preceding term. Such option to renew may be exercised only by written notice to the Port no later than one hundred eighty (180) days prior to the expiration of the then current term. Tenant shall not be entitled to renew this Lease if there is a material uncured default by Tenant in the performance of its obligations hereunder at the date notice of renewal is due or at the date the renewal term is to commence.

MINIMUM GROUND RENT.

\$3,740.00 per month. Rental revisions shall be made every five (5) years during the thirty (30) year initial term, to be effective at the commencement of each successive five (5) year period during such first thirty (30) years. Tenant elects to have such rental revisions made by reference to the Thurston County Assessor's land valuation, as described in paragraph 37.

CAWPS\IS\PORT\ANTHONY\ANTHONY 13

Plus: Leasehold Tax.

PERCENTAGE RENT.

Commencing January 1, 2002 and, in addition to minimum rent, Tenant shall pay a percentage rent in amount equal to a percentage of annual Gross Sales in accordance with the provisions of paragraph 4.3.

SURETY.

Amount: Two times minimum annual ground rent. Initially \$89,760  
Form: **Acceptable to the Port.** An irrevocable letter of credit, surety bond or assigned deposit account will be acceptable forms of lease surety.  
Expiration Date: Ninety (90) days after expiration of the Lease. To be effective on the earlier of the rent commencement date or January 1, 1999

USE OF PREMISES.

Tenant shall use the Premises for the operation of a full-service restaurant and food service facility similar in menu concept, price structure and decor to restaurants as currently operated by Tenant at other Washington public port locations, and for no other purpose or purposes without the written consent of owner.

INSURANCE.

Bodily Injury/Death: \$500,000 per person and \$1,000,000 per accident or occurrence.

Property Damage per Occurrence: \$500,000

ADDITIONAL PROVISIONS.

Tenant acknowledges that the leased premises are adjacent to premises owned by the State of Washington Department of Natural Resources (the "DNR Premises"). The Port has entered into a Port Management Agreement with DNR with respect to the DNR Premises. For so long as such agreement (and any renewal or extension thereof, or any lease or any other agreement under which the Port has control over the use of the DNR Premises) is in effect, the Port will not use the DNR Premises for any purpose not identified to such premises in the Port's 1995 Comprehensive Plan as of the date hereof, the relevant portions of which are attached hereto as Exhibit "F". Tenant acknowledges receipt of a copy of the Port Management Agreement.

The Port will use commercially reasonable efforts to maintain control over the DNR Premises for the term, including any renewal term, of this lease. In that connection, the Port agrees to use its commercially reasonable efforts, to enter into such easements or restrictive covenants as Tenant may reasonably request and DNR may approve, to protect the view of the water and the Olympic Mountains from the leased premises from blockage by any facilities other than those identified in the Port's 1995 Comprehensive Plan, for the term, including any renewal term, of this lease.

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**THE PARTIES HEREBY AGREE AS FOLLOWS:**

2. **LEASED PREMISES.** The Port hereby leases to Tenant, and Tenant hereby leases from the Port, the premises consisting of the ground described in paragraph 1 above, located in Thurston County, hereinafter called "the premises."

3. **TERM.** This Lease shall be for the term specified in paragraph 1 above.

4. **RENT.**

4.1 It is the intention of the parties hereto that the rent specified in the Lease shall be net to the Landlord in each year during the term of the Lease. Accordingly, all costs, expenses and obligations of every kind relating to the leased premises (except as otherwise, specifically provided in the Lease) which may arise or become due during the term of the Lease shall be paid by Tenant and the Port shall be indemnified by the Tenant against such costs, expenses and obligations. Tenant agrees to pay as rent for the use and occupancy of the premises during the term of this Lease, without deduction or offset, the rent specified in paragraph 1 above, payable to the Port in advance on or before the first day of each and every month, commencing on the earlier of January 1, 1999 or the date Tenant opens for business on the leased premises (the "Rent Commencement Date") and payable at such place as the Port may designate. During the first thirty (30) years of the term, minimum rent shall be subject to revision by the appraisal procedure as outlined in paragraph 37, **APPRAISAL PROCEDURE** and the revised monthly rent shall be determined as one-twelfth (1/12) of nine and one-half percent (9-1/2%) of seventy percent (70%) of the fair market value of the leased premises (which is the formula adopted as Commission policy for the calculation of rent for substantially all long term ground leases of properties on the Port peninsula as of the date hereof). Thereafter, the timing and calculation of minimum rent and rental revisions shall be determined in accordance with the then current Commission policy. Any revised monthly rent shall not be less than the then-current monthly rent payment immediately prior to the time the revision becomes effective.

4.2 If the Tenant does not pay the rent by the 15th of the month, then in addition to the overdue rent, Tenant shall pay interest on the rent payment then due at a rate per annum equal to the greater of eighteen percent (18%) per annum or two (2) percentage points over the prime rate charged by commercial banks in the Olympia, Washington area. Such interest commences on the date the rent is due and continues until such rent is paid. If the Tenant does not pay the rent when due and interest is incurred each month for three (3) consecutive months, the rent called for herein shall automatically become due and payable quarterly in advance rather than monthly, notwithstanding any other provision in this Lease to the contrary, and regardless of whether or not the interest is paid or collected. The imposition of such interest does not prevent the Port from exercising any other rights and remedies under this Lease.

4.3 Percentage Rent.

4.3.1 Tenant shall be liable to pay to the Landlord in addition to the minimum ground rent, for each calendar year (or portion thereof) commencing on January 1, 2002, percentage rent ("Percentage Rent") in the annual amount determined by multiplying all Gross Sales (as defined in Subsection 4.3.3) for such calendar year (or portion thereof) times the Gross Sales Multiplier defined below) and then subtracting from the product thus obtained the minimum ground rent paid by Tenant for such calendar year (or portion thereof). The term "calendar year" when used with respect to Percentage

Rent shall also include any portion of a calendar year during the Lease Term, at the commencement of or upon the termination of this Lease.

4.3.2 The "Gross Sales Multiplier" shall be two (2) percent through December 31, 2011; two and one-quarter (2¼) percent from January 1, 2012 through December 31, 2016; and two and one-half (2½) percent for the remainder of the term and the renewal term.

4.3.3 The term "Gross Sales" as used in this Lease shall mean the actual sales price of all goods, food, meals, beverages, wares and merchandise sold, and the actual charges for all services performed by Tenant or any subtenant of the leased premises, whether such sales and charges are made for cash, on credit or for any other consideration, and including gift certificates, or like vouchers, and including merchandise certificates, coupons or other similar instruments, however designated (sales on credit being treated as a sale for the full price thereof the month in which such sale shall have been made, regardless of time of collection of payment), where such sales and charges are made in or from the premises, including but not limited to telephone sales or services and orders taken in or from the premises (including off-premises catering from the premises) and receipts from vending machines and amusement devices. Gross Sales shall not include the sales price or charges for promotional giveaways and employee meals for which the Tenant or its subtenant(s), as the case may be, does not receive cash consideration (or the cash received for such employee meals is intended only to reimburse for part or all of the expense thereof) nor shall it include meals provided in trade for services normally required for the operation of a restaurant. The term "Gross Sales" as used in this Lease shall exclude the following:

1. The selling price of all merchandise returned by customers and accepted for full credit or the amount of discounts and credit allowances made thereon;
2. Sums and credits received by Tenant or its subtenant(s), as the case may be, in the settlement of claims for loss of or damage to merchandise;
3. Refunds made to customers in the ordinary course of business, but this exclusion shall not include any amount paid or payable for what are commonly referred to as trading stamps;
4. Returns to shippers or manufacturers;
5. Receipts from public telephones, stamp machines, public toilet locks, or cigarette vending machines.
6. Sales taxes, so-called luxury taxes, consumers' excise taxes, gross receipts taxes and other similar taxes now or hereafter imposed upon the sale of merchandise or services, but only if stated separately from the selling price of merchandise or services;
7. Sales of trade fixtures, equipment or personal property which are not stock in trade;
8. The exchange of merchandise between stores of the Tenant or its subtenant(s), as the case may be, where such exchanges are made solely for the convenient operation of the Tenant's or its subtenant's(s'), as the case may be, business and not for the purpose of consummating

a sale which has theretofore been made at, in, on or from the premises, and/or for the purpose of depriving the Port of the benefit of a sale which otherwise would have been made at, in, on or from the premises;

9. Fees paid by Tenant, or its subtenant(s), as the case may be, to credit card companies and/or banking institutions in accordance with credit card purchase plans not to exceed a total of two percent (2%) of Tenant's Gross Sales in any single calendar year;

10. Gift certificates until redeemed; and

11. Discounts from coupons rung up as sales, but where no cash is received by Tenant.

12. Gratuities received from patrons for Tenant's, or its subtenant's(s'), as the case may be, employees.

13. Employee or promotional meals.

All sales occurring from the premises shall be considered as made and completed therein, even though bookkeeping and payment of the account may be transferred to another place for collection and even though actual filing of the sale or service order may be made from a place other than the premises.

4.3.4 Tenant shall, and shall cause any and all subtenants to, record at the time of sale, all receipts from sales or other transactions, whether cash or credit, in a cash register or registers having a sealed and continuous tape which cumulates and consecutively numbers all purchases. Tenant shall keep, and Tenant shall cause any and all subtenants to keep, complete and accurate books and records of all of their respective Gross Sales during the term of this Lease, including, without limitation, (a) a sales journal, general ledger, and all bank account statements showing deposits of Gross Sales revenue, (b) all such cash register receipts with regard to the Gross Sales and credits, refunds and other pertinent transactions made from or upon the premises (including the Gross Sales of any subtenant, licensee or concessionaire), and (c) detailed original records of any exclusions or deductions from Gross Sales (including any exclusions or deductions from Gross Sales of any subtenant, licensee or concessionaire). Tenant shall preserve, and shall require all subtenants to preserve, for a period of three (3) years following each respective calendar year during the lease term, all such books and records. Tenant shall (i) give the Port or require any subtenant to give the Port during reasonable hours upon forty-eight (48) hours prior written notice, access to the books and records relating to the operation of the business transacted on the premises, including the right to copy a portion or portions thereof; and (ii) give the Port or require any subtenant to give to the Port access to the registers on a reasonable basis as the Port may from time to time desire. In addition, upon request of the Port, Tenant agrees to furnish to the Port a copy of Tenant's state and local sales and use tax returns.

4.3.5 Said Percentage Rent shall be computed each calendar quarter commencing January 1, 2002, and reported to the Port on or before the twentieth (20th) day of the calendar quarter immediately following the close of each such calendar quarter. Such report shall identify the amount by which the sum so computed as a percentage of Gross Sales of the Tenant during such quarter exceeds the installments of minimum ground rent payable by Tenant during such quarter. At the close of each calendar year commencing with calendar year 2002 and within thirty (30) days thereafter, there shall be determined the Gross Sales of the Tenant during said calendar year and the amounts paid

to the Port as minimum ground rent for said calendar year; and Tenant shall pay the amount of Percentage Rent due based on such figures.

4.3.6 The Tenant agrees to furnish or cause to be furnished to the Port a statement of Gross Sales within twenty (20) days after the close of each calendar quarter commencing January 1, 2002, and an annual statement of Gross Sales within thirty (30) days after the close of each calendar year commencing with calendar year 2002. Such statements shall be signed by a responsible officer of Tenant. The receipt by the Port of any statement or any payment of Percentage Rent for any period shall not bind it as to the correctness of the statement or the payment. Within two (2) years after the receipt of any such statement, the Port at any time shall be entitled to an audit of such Gross Sales either by the Port or by a certified public accountant to be designated by the Port. Such audit shall be limited to the determination of the "Gross Sales" as defined in this Lease and shall be conducted during normal business hours at the principal place of business of Tenant. If it shall be determined as a result of such audit that there has been a deficiency in the payment of Percentage Rent, then such deficiency shall become immediately due and payable with interest at the rate set forth in Paragraph 4.1 above from the date when said payment should have been made. In addition, if Tenant's statement for the pertinent calendar year shall be found to have understated Gross Sales by more than two percent (2%), and the Port is entitled to any additional Percentage Rent as a result of said understatement, or if such audit shows that Tenant has failed to maintain the books of account and records required hereunder so that the Port is unable to verify the accuracy of Tenant's statement, then the Tenant shall pay all of the Port's reasonable costs and expenses (including reasonable auditor and attorney fees) which may be incurred by the Port in conducting such audit and collecting such underpayment, if any. If Tenant understates Gross Sales by more than three percent (3%) more than twice in any five-year period, then, in addition to the Port's aforesaid rights, Tenant shall pay to the Port an amount equal to twice the amount of additional Percentage Rent due as a result of such understatement of Gross Sales. Any information gained from such statements or inspection shall be confidential and shall not be disclosed other than to carry out the purposes hereof; provided, however the Port shall be permitted to divulge the contents of any such statements in connection with any contemplated sales, transfers, encumbrances, financing arrangement or assignments of the Port's interest in all or any portion of the Property or in connection with any administrative or judicial proceeding in which the Port is involved or in which the Port may be required to divulge such information.

5. **LEASE SURETY BOND.** Tenant shall, upon the earlier of (i) the date at which Tenant's obligation to pay rent commences or (ii) January 1, 1999, file with the Port a good and sufficient surety instrument (acceptable forms of which are described in paragraph 1, **LEASE SUMMARY, SURETY**) in accordance with the requirements of state law. The form and terms of the surety instrument and the identity of the surety shall be subject to approval of the Port and the surety shall guaranty the full performance by Tenant of all the terms and conditions of this Lease, including the payment by Tenant of the rents and all other amounts herein provided for the full term hereof. Any acceptable surety instrument having an expiration earlier than the full lease term shall be renewed or replaced not less than ninety (90) days prior to its expiration. Any company issuing such a surety instrument must give the Port at least ninety (90) days advance written notice prior to the effective date of cancellation or expiration of such surety instrument. Initially, the required amount of the surety instrument is set forth in paragraph 1 above. These provisions as to lease surety are subject to the continued approval of the Port and to revision and adjustment as may hereafter result from changes in state requirements or as established by the Port Commission; provided, however, that the amount of such surety shall not be required to exceed two times the then current minimum annual ground rent.

6. **ACCEPTANCE OF PREMISES.** The Port represents and warrants to Tenant that it has good and marketable fee title to the leased premises and that it has full power and authority to enter into this Lease. Tenant has examined the premises, and the adjoining premises of which the premises are a part, and accepts them in their present condition. There are no warranties expressed or implied as to any condition apparent or unknown except as otherwise stated in this Lease. Tenant agrees to make any changes in the premises necessary to conform to any federal, state or local law applicable to Tenant's use of the premises. Notwithstanding the foregoing, Tenant shall not be liable to the Port for injury or damage to the extent caused or sustained as a result of any condition existing on the leased premises as of the date hereof.

7. **POSSESSION.** If the Port shall be unable for any reason to deliver possession of the premises or any portion thereof at the time of the commencement of this Lease, the Port shall not be liable for any damage caused thereby to Tenant, nor shall this Lease thereby become void or voidable, but the term and Rent Commencement Date (if the Rent Commencement Date would become effective as of a date certain and not due to Tenant's occupancy) shall be extended for the period of such delay; provided that if the Port shall be unable to deliver possession of the premises at the commencement of this Lease, Tenant shall have the option to terminate this Lease by giving at least thirty (30) days' written notice of such termination, and this Lease shall terminate unless the Port shall deliver possession of the premises prior to the effective date of termination specified in such notice. If Tenant shall, with the Port's consent, take possession of all or any part of the premises prior to the commencement of the term of this Lease, all of the terms and conditions of this Lease shall immediately become applicable, with the exception that Tenant shall not be obligated to pay any rental for the period prior to the Rent Commencement Date unless otherwise mutually agreed.

8. **USE OF PREMISES.** Tenant shall use the premises only for those purposes stated in Paragraph 1 above and shall not use them for any other purpose without the written consent of the Port, which consent may be withheld in the Port's reasonable discretion. The premises shall be used only for lawful purposes; and only in accordance with all applicable building, fire and zoning codes. Tenant shall use the entire premises for the conduct of said business continuously during the entire term of this Lease, in the manner described in Paragraph 1, **LEASE SUMMARY, USE OF PREMISES.** For this purpose and subject to the provisions of Paragraph 18, **ALTERATIONS AND IMPROVEMENTS,** Tenant will, at a minimum, operate its business at all times during normal business hours which are typical for the type of restaurant activity contemplated under this Lease and will be open not less than seven (7) days or evenings per week excluding Christmas, Thanksgiving and two (2) additional holidays each year. Notwithstanding the foregoing, Tenant shall not be required to comply with the requirements of the preceding two sentences on any day (or time of day) Washington State law prohibits the sale of liquor. Tenant agrees that it will not disturb the Port or any other Tenant of the Port by making or permitting (to the extent within Tenant's control) any public or private nuisance or disturbance or any unusual noise, vibration or other condition on or in the premises. No signs or other advertising matter, symbols, canopies or awnings shall be attached to or painted on the exterior of the premises, or, if visible from the exterior of the premises, within the premises, including the windows and doors thereof, without the approval of the Port, which shall not be unreasonably withheld. At the termination or sooner expiration of this Lease, all such signs, advertising matter, symbols, canopies or awnings attached to or painted by Tenant shall be removed by Tenant at its own expense, and Tenant shall repair any damage or injury to the premises and correct any unsightly condition caused by such removal. At no time shall the Tenant have the right to remove or otherwise disturb timber, valuable minerals, sand, gravel or water, from the site, which materials belong to the Port and may only be used with consent and appropriate compensation.

9. **REQUIREMENTS AS TO IMPROVEMENTS.** The specific requirements as to the planning, construction and completion of any major improvements planned by Tenant on the subject premises are attached hereto as Exhibit "A" to this Lease, which by this reference is incorporated herein as if set forth in full. Prior to the submission of any plans for contemplated improvements on the leased premises, Tenant shall furnish a survey of the appropriate leased premises as prepared by a registered and licensed surveyor, all at Tenant's own expense.

10. **RIGHTS-OF-WAY.** The Port agrees to grant other such right-of-way easements across the property of the Port reasonably available therefor for the installation and maintenance of necessary and adequate services to the premises of Tenant.

11. **RESERVATION OF RIGHTS.** The Port reserves to itself from the premises herein leased rights of way upon, across, onto or beneath the above-described lands by power lines, gas, water and sewage pipes and mains, conduits or any other utilities or industrial or business area facilities of all kinds now existing or to be constructed and maintained by it, either in addition to or in the substitution for those now existing from any point or points and in any direction and also reasonable rights of entry upon the demised premises for the construction, repair, inspection and maintenance of them in efficient use and condition, providing such action by the Port shall not materially interfere with or interrupt Tenant's operation and shall be at the expense of the Port. The Port is hereby granted a continuous, perpetual easement or easements that the Port believe are necessary within the leased premises for such purposes, which easement or easements may be further granted by the Port to third parties; provided, however, that such easements shall not materially restrict or interfere with Tenant's use of the leased premises.

12. **COMMON AREAS.** The Port grants to Tenant and to its employees, agents, customers, and invitees the non-exclusive right for and during the term of this Lease to use the common areas identified herein; such use to be in common with all other users of the Market area, whether as tenants or as owners, and their employees, agents, customers and invitees except for those portions of the common areas shown as reserved for the exclusive use of any other tenant of the Port (which reservation shall be limited to the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday). The Port reserves the unrestricted right to make changes in the common areas. Parking areas may be elevated, surface or subterranean. The Port shall have the right to make such changes in the common areas as Port deems necessary and consistent with the purposes and intent of operating and in respect thereto, shall have the right to erect additional buildings or structures, and include landscaping and landscaping devices or features; provided, however, that the Port: (i) will not make changes to the parking area that would reduce the parking currently available to Tenant; (ii) will not alter that portion of the parking area immediately adjacent to the leased premises, as shaded on the sketch attached hereto as Exhibit "G", without Tenant's prior written consent, which shall not be unreasonably withheld; (iii) will not charge (by meter or otherwise) for any parking in such shaded area except for parking spaces dedicated or reserved for the exclusive use of Tenant, or any other tenant of the Port; (iv) will not change the ratio of compact to full-size parking stalls; and (v) will manage that portion of the parking area in front of the premises to the east as short-term parking and, after the Farmer's Market closing time and after 5:00 p.m. with respect to the office building, will manage it for the convenience of restaurant patrons. The common areas include, but are not limited to, all automobile parking areas, access roads, driveways, entrances, exits, retaining walls, sidewalks and loading docks, courts, ramps, landscaping, irrigation sprinkler systems, landscaped areas, lighting, curbs, facilities and special services provided by the Port for the general use, in common, of tenants of the Market area, and their employees, customers and invitees, as located on the property identified as Parcel 2 in the sketch attached hereto as Exhibit "J" and

by this reference incorporated herein, which shall show the entire parking lot plan, including any dedicated stalls. With the prior written approval of the Port, which shall not be unreasonably withheld, Tenant may use agreed upon, designated portions of the common area parking for valet parking.

12.1 The common areas shall at all times be subject to the exclusive control and management of the Port. The Port shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to the common areas; to construct surface or elevate parking areas and facilities; to establish, and from time to time change, the level of parking surfaces; to employ personnel; construct, maintain and operate lighting facilities; police the common area; restrict parking by Tenant, its agents and employees to employee parking areas; close temporarily all or any portion of the common areas to prevent a dedication thereof or the accrual of any interest therein by any person or the public; and close temporarily all or any portion of the parking areas or facilities for the purpose of resurfacing, restriping, maintaining or repairing the parking areas or other common areas.

12.2 The Tenant agrees to pay the Port a proportionate share of the operating costs, as hereafter defined, of maintaining the common areas. The term "operating costs" as used in this paragraph, shall mean the total costs and expenses incurred (including the value of goods and services provided in kind) in operating, maintaining, and repairing the common areas, including without limitation, taxes or fees, and personal and real property taxes; surcharges levied upon or assessed against parking spaces or areas; payments toward mass transit or car pooling facilities or otherwise as required by federal, state or local authorities; costs and expenses in connection with maintaining federal, state or local ambient air and environmental standards; the cost of all materials, supplies and services purchased or hired therefor; sweeping and the removal of snow, trash garbage and other refuse; the cost and expense of maintaining landscaping, gardening and planting, cleaning, painting (including line painting), paving, lighting, and sanitary control; fire protection and security protection; directional signs and other markers and bumpers; water, sewage, and stormwater fees or charges; the cost of all types of insurance coverages carried by the Port covering the common areas, including, without limitation, public liability, personal and bodily injury and property damage liability and automobile coverage, fire and extended coverage, vandalism and malicious mischief and all broad form coverages, sign insurance and other insurance that may be carried by the Port covering the common areas, all in limits selected by the Port (and with Tenant named as an additional insured); maintenance and repair (which may include replacement) of utility systems serving the common areas including water, sanitary sewer and stormwater lines, equipment owned and used in operation, maintenance and repair of the common areas, or the rental charges for machinery or equipment; and the cost of personnel (including applicable payroll taxes, workmen's compensation insurance, disability insurance and other benefits) to implement all of the foregoing, including the policing of the common areas and the directing of traffic and parking of automobiles on the parking areas thereof. The Port may cause any or all of said services to be provided by an independent contractor or contractors. The term "operating costs" shall not include the cost and expense of any additional buildings or structures.

12.3 The Tenant's proportionate share of the "operating costs" shall be a percentage equal to two-thirds (2/3) of the ratio (the "Ratio") (as such Ratio may change from time to time) (i) the number of parking spaces that would be required by the City of Olympia (based on its downtown zoning) for Tenant's restaurant if it were a stand-alone operation bears to (ii) the aggregate number of parking spaces that would be required for all existing buildings in the market area (exclusive of the Farmer's Market itself and determined on a stand-alone basis), determined with respect to each building, at the time of permitting. Tenant shall pay to the Port monthly, with its payment of minimum ground rent, Tenant's share of the monthly operating cost budget, as provided below, for the common area operating costs.



Tenant shall also pay the Port monthly a reasonable charge made by the Port for accounting, bookkeeping and collection of the common area operating costs, in an amount not to exceed ten (10) percent of the total of Tenant's proportionate share of the common area operating costs for each calendar month. An illustration of the determination of Tenant's proportionate share of operating costs based on this paragraph is attached hereto as Exhibit "I".

12.4 On or about the first day of the lease term, the Port shall submit to Tenant a statement of the anticipated monthly common area operating costs for the calendar year. Tenant shall pay Tenant's proportionate share of said statement and all subsequent monthly statements concurrently with the payment of minimum ground rent. Tenant shall continue to make said monthly payments until notified by the Port of a change in common area operating costs. By April 1 of each calendar year, the Port shall provide Tenant with a statement showing the total common area operating costs actually incurred during the prior calendar year and Tenant's share thereof, together with a proposed common area operating cost budget showing anticipated expenses for the current calendar year, including any reasonable reserve for the current calendar year. The first and last such statement shall be prorated from the first day of the lease term to the expiration of the lease term, as appropriate. If the total of the monthly payments which Tenant made for the prior calendar year is less than the Tenant's proportionate share of actual common area operating costs for said calendar year, then Tenant shall pay any difference in a lump sum within thirty (30) calendar days after receipt of such statement from the Port and shall concurrently pay the difference in monthly payments made in the current calendar year and the amount of monthly payments which are then calculated as monthly common area operating costs next coming due. For a period of one (1) year following the occurrence of any third party billing error, the Port reserves the right to charge Tenant for its share of, and Tenant agrees to pay its share of, any common area operating costs not previously charged due to such third party billing error. If such total monthly payment shall be more than Tenant's proportionate share, then such overpayment shall be given as a credit against the monthly common area operating costs next coming due.

12.5 Notwithstanding the provisions of paragraph 4.3, **PERCENTAGE RENT**, Tenant shall be permitted to offset a portion of the percentage rent paid against certain common area charges payable under this paragraph 12 as follows:

12.5.1 During the first five (5) years of the lease term, Tenant may offset any percentage rent paid for any lease year against any common area charges payable with respect to that lease year, and Tenant shall be required to pay common area charges only to the extent such charges exceed any percentage rent paid.

12.5.2 For the sixth (6th) year of the lease term, and for each lease year thereafter, Tenant may offset fifty percent (50%) of the percentage rent paid on Gross Sales in excess of Three Million Dollars (\$3,000,000) for any lease year against any common area charges payable with respect to that lease year, and Tenant shall be required to pay common area charges only to the extent such charges exceed fifty percent (50%) of the percentage rent paid on Gross Sales in excess of Three Million Dollars (\$3,000,000). Such \$3,000,000 limit shall be adjusted annually, on each anniversary of the Rent Commencement Date commencing with the tenth anniversary for the purpose of reflecting the increase, if any, in the cost of living. The adjustment, if any, shall be calculated based upon the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for all Urban Consumers, Subgroup "All Items" for Seattle, Washington (1982-1984 = 100) (the "Index"). The Index published most recently prior to the tenth anniversary shall be considered the "Base" to be used for calculating the adjusted amount at each applicable adjustment date. The Index published most recently prior to the

applicable adjustment date shall be considered the Index to be used for calculating adjusted amount at the applicable adjustment date. On each adjustment date, such amount shall be increased by a percentage equal to the percentage increase, if any, in the Index over the Base. If at any adjustment date, the Index does not have the format recited in this section, there shall be substituted therefor any such official successor index as may be published by the Bureau of Labor Statistics or by an successor or similar government agency as may be available.

13. **UTILITIES AND SERVICES.** Tenant shall be liable for and shall pay throughout the term of this Lease all charges for all utility services furnished to the premises, including but not limited to, light, heat, gas, janitorial services, garbage disposal, security, electricity, water, stormwater and sewerage, including any connection fees, and any fire protection, police protection, or emergency health services as furnished by local authorities and as may be the subject of a contract between the Port and such local authorities or as imposed by ordinance or statute. If the premises are part of a building or part of any larger premises to which any utility services are furnished on a consolidated or joint basis, Tenant agrees to pay to the Port Tenant's pro-rata share of the cost of any such utility services. Tenant's pro-rata share of any such services may be computed by the Port on any reasonable basis, and separate metering or other exact segregation of cost shall not be required. The Port agrees to make the following utilities available at the property line of the leased premises: sewer, water, electrical power, telephone and natural gas. Without limiting the provisions of paragraph 18, **ALTERATIONS AND IMPROVEMENTS**, the Port and Tenant agree as follows with respect to installation of utilities. The "Utility Plan" referred to in this section is Sheet C-3 (Utility Plan) of Port of Olympia contract document "Market District Parking Lot Improvements Contract" dated May 5, 1997, as attached hereto as Exhibit "K" and by this reference incorporated herein. Tenant shall pay the sum of \$3,404.09 to Puget Sound Energy for electrical lines to serve the demised premises; provided that the Port may make such payment directly, and, if so, Tenant shall reimburse the Port therefor within ninety (90) days. In addition, Tenant shall reimburse the Port for costs incurred by the Port in installing the four (4) inch line from the refuse/recycling area to the sewer line into which it feeds. Such reimbursement shall be based upon the unit prices contracted therefor by the Port, and shall be paid within thirty (30) days after Tenant's receipt of an invoice therefor from the Port. The Port will cut and remove the existing pavement from the east property line of the demised premises east thirty (30) feet the full north-south length of the demised premises. The Port will construct the new paving at the fire lane after the tenant improvements have been made. The Tenant shall notify the Port in writing thirty (30) days prior to having all preparatory work for the paving completed. The tenant improvements shall include all grading and grade preparation for the paving, all curbs, entry approach slabs, sidewalks and other improvements that will meet the new pavement. The paving work will be contracted in unit prices by the Port. The Tenant will reimburse the Port for the paving work within thirty (30) days after receipt of an invoice therefor from the Port.

14. **INDEMNIFICATION/LIABILITY INSURANCE.** The Port, its employees and agents shall not be liable for any injury (including death) to any persons or for damage to any property, regardless of how such injury or damage be caused, sustained or alleged to have been sustained by Tenant or by others (including, but not limited to all persons directly or indirectly employed by Tenant, and any agents, contractors, subcontractors, suppliers, customers or invitees of Tenant) as a result of any condition (including existing or future defects in the premises), or occurrence (including failure or interruption of utility service) whatsoever related in any way to the premises and the areas adjacent thereto or related in any way to Tenant's use or occupancy of the premises and areas adjacent thereto; provided, however, that the foregoing provisions shall not be construed to make Tenant responsible for, or release the Port from liability with respect to, loss, damage, liability or expense resulting from injuries to third parties or Tenant to the extent caused by the negligence of the Port or any agent or employee of

the Port; and provided further, however, if and to the extent that any of the activities covered by this indemnity are construed to be subject to Section 4.24.115 of the Revised Code of Washington, it is agreed that where such items of actual or alleged liability, damages, costs or expenses arise from the concurrent negligence of Tenant and the Port, it is expressly agreed that Tenant's obligations of indemnity under this paragraph shall be effective only to the extent of Tenant's negligence. Tenant agrees to indemnify, defend and to hold and save the Port harmless from all liability or expense (including attorneys' fees, costs and all other expenses of litigation) in connection with any such items of actual or alleged injury or damage. In addition, Tenant shall, at its own expense, maintain proper liability insurance with a reputable insurance company or companies satisfactory to the Port in the minimum policy limits set forth in paragraph 1 above, together with such additional types and amounts of liability insurance (e.g., liquor liability) as the Port may deem reasonably necessary for the type of activities or services offered by Tenant. The coverage offered by such policies shall thereafter be in such increased amounts as the Port may specify and as may be commercially reasonable to indemnify both the Port against such liability or expense. The Port shall be named as one of the insureds on the policies which shall provide that such insurance may not be canceled without the insurance company first having given the Port thirty (30) days' advance written notice of such intent to cancel. Tenant shall submit certificates evidencing compliance with this paragraph. At the Port's option, the Port shall be furnished with a copy of such policy or policies of insurance within thirty (30) days after the Port's written request therefor. Tenant shall furnish the Port with evidence of renewal of such policies not less than thirty (30) days prior to their expiration. In consideration of the Port's execution of this Lease, Tenant hereby waives any immunity Tenant may have under industrial insurance, Title 51 RCW, in connection with the foregoing indemnity.

15. **WAIVER OF SUBROGATION.** The Port and Tenant hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective fire insurance contracts, including any extended coverage endorsements thereto, and for any loss resulting from business interruption or rental loss which may be covered by policies applicable thereto provided, that this paragraph shall be inapplicable to the extent it would have the effect of invalidating any insurance coverage of the Port or Tenant. Each party agrees to cause their respective insurance carriers to include in its policies a waiver of subrogation clause or endorsement.

16. **TAXES.** Tenant shall be liable for, and shall pay, throughout the term of this Lease, all license fees and taxes covering or relating to the premises and its use, including, without limitation, (a) all real estate taxes assessed and levied against the premises; (b) all amounts due and payable for general or special assessments against the premises during the term of this Lease (whether assessed prior to or during the term of this Lease), including any assessments for LIDs or ULIDs; and (c) all personal property taxes upon Tenant's fixtures, furnishings, equipment and stock in trade, Tenant's leasehold interest under this Lease or upon any other personal property situated in or upon the Premises. If any governmental authority at any time levies a tax on rentals payable under this Lease or a tax in any form against Landlord because of or measured by income derived from the leasing or rental of the premises, such tax shall be paid by Tenant; provided, however, that Tenant shall not be liable for the payment of any tax imposed generally on Landlord's gross or net income without regard to the source of such income. Tenant represents that it is familiar with the provisions of RCW 82.29A Leasehold Excise Tax, which imposes a tax, to be paid by Tenant, on the rental payments due under this Lease.

17. **MAINTENANCE AND REPAIR.** Tenant shall, at its own expense, keep the premises, structures, tenant refuse storage areas, and other improvements and the adjoining sidewalks and areas in a neat, clean, safe and sanitary condition and maintain and keep all of the premises maintained equal in

quality to of other owners of similar class properties and conditions in the Thurston County, Washington area, reasonable wear and tear excepted, and to maintain the landscape and undeveloped areas of the leased premises (exclusive of common areas) in a clean, sanitary, orderly and attractive condition free from rubbish and debris. Tenant shall keep all areas in the vicinity of the premises free from the accumulation of disposable products and other litter generated by the operation of Tenant's business. Tenant shall also, at its own expense, use its best reasonable efforts to control and minimize pests and conditions which might result in harborage for, or infestation of, pests. (Pests shall include, without limitation, rodents, insects, and birds in numbers to the extent that a nuisance is created.) Tenant shall keep the glass of all windows and doors on the premises clean and presentable, and shall maintain and keep the premises in a good state of repair, and shall commit no waste of any kind, and, without limiting the generality of the foregoing, shall replace all cracked or broken glass in the premises, and keep the electrical system and all drains clean and in a good state of repair, and shall use its best efforts to protect all sprinkler systems and all pipes and drains so that they will not freeze or become clogged. Tenant shall replace any and all improvements which become worn out, obsolescent, deteriorated, unsafe or unusable and shall replace such improvements with new fixtures and improvements of at least as good a quality as originally installed at the commencement of this Lease. In the event Tenant fails to properly maintain, repair and replace the premises or any improvements thereon, and if the Port shall give a thirty (30) day written notice to Tenant, Tenant shall comply with Tenant's responsibilities under this paragraph, and the Port shall be entitled, but shall not be obligated, to enter the leased premises and perform such work as may be necessary to restore the leased premises and improvements to the conditions set forth herein. The cost of such repairs shall be billed to Tenant by the Port and shall be payable upon receipt and subject to the same penalties for late payment as if such payment was additional rent.

Tenant shall keep the premises free and clear of any liens and encumbrances arising or growing out of the use and occupancy of the premises by Tenant. At the Port's request, Tenant shall furnish the Port with written proof of payment (or adequate provision for payment) of any item which would or might constitute the basis for such a lien on the premises if not paid. Notwithstanding Tenant's obligations to keep the Premises free and clear of any liens and encumbrances, Tenant shall have the right to defend any disputed lien or encumbrances (and may appeal any tax assessment), but shall as a condition thereto, provide a bond or make a deposit with the Port in an amount equal to one and one-half (1½) times the amount of the claimed lien or encumbrances to provide sufficient funds for the Port to discharge such lien or encumbrance if Tenant is unsuccessful. Any dispute under this section shall be subject to arbitration under paragraph 38, **ARBITRATION PROCEDURE**. Tenant shall also be wholly responsible for any and all repairs, maintenance, and improvements to maintain building structure integrity, (including foundations, bearing columns, bearing walls and exterior walls), and to the roof, utility service and lines, whether located on or off the premises, provided, however, Tenant shall only be responsible for any sewer line repairs occurring on the premises. Tenant shall have no claim as deduction or offset any monies or charges against the rent paid to the Port for maintenance or repairs. Tenant has inspected the premises and accepts the premises "as is, where is".

18. **ALTERATIONS AND IMPROVEMENTS.** Tenant shall make no alterations or improvements to or upon the premises or install any fixtures (other than trade fixtures which can be removed without injury to the premises) without first obtaining written approval of the Port. The Port's response to Tenant's requests for approval shall be prompt, and such approval shall not be unreasonably withheld. From time to time Tenant may close the entire premises to the general public for the limited purpose of remodeling or maintaining the premises. Any plans for remodeling and the timing and duration of the closure must be approved by the Port pursuant to this paragraph 18 which approval shall not be unreasonably withheld. The Port agrees that Tenant may make modifications costing not more

than Twenty-Five Thousand Dollars (\$25,000) (adjusted as provided below) to the interior of any improvements without the prior approval of the Port; provided, however, that any alterations or improvements requiring a permit from any governmental authority, or any alteration or improvement that alters the footprint of the building(s) or alters the exterior appearance of the building(s) will require the prior written approval of the Port which will not be unreasonably withheld. Such \$25,000 limit shall be adjusted annually, on each anniversary of the Rent Commencement Date for the purpose of reflecting the increase, if any, in the cost of living. The adjustment, if any, shall be calculated based upon the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for all Urban Consumers, Subgroup "All Items" for Seattle, Washington (1982-1984 = 100) (the "Index"). The Index published most recently prior to the Rent Commencement Date shall be considered the "Base" to be used for calculating the adjusted amount at each applicable adjustment date. The Index published most recently prior to the applicable adjustment date shall be considered the Index to be used for calculating adjusted amount at the applicable adjustment date. On each adjustment date, such amount shall be increased by a percentage equal to the percentage increase, if any, in the Index over the Base. If at any adjustment date, the Index does not have the format recited in this section, there shall be substituted therefor any such official successor index as may be published by the Bureau of Labor Statistics or by an successor or similar government agency as may be available. Any request for approval to which the Port has not responded within twenty (20) days after its receipt of such request shall be deemed granted. Whenever feasible, Tenant shall undertake such remodeling or maintenance during the time of year when the closure would have the least impact on the gross sales of Tenant. During such closure, Tenant shall not be obligated to pay the Port percentage rental for the days during which such closure exists. Upon installation, Tenant shall furnish the Port with a copy of the "as-built" drawings including utility installations and site plans detailing the nature of the additions, alterations or improvements. If any alterations or improvements shall be made or fixtures (other than trade fixtures which can be removed without injury to the premises) installed by Lessee they shall become the property of the Port upon any expiration or termination of this Lease unless the Port exercises its right provided below to have Tenant remove the same. Movable furniture and trade fixtures which are removable without injury to the premises shall be and remain the property of Tenant. The Port reserves the right to have Tenant remove, at Tenant's sole expense, all of such alterations, additions or improvements at the end of the Lease term upon giving Tenant sixty (60) days' advance written notice of the Port's exercise of this option. If the Port exercises this option, all such alterations and improvements be removed by Tenant prior to the last day of the Lease term. Any dispute under this section shall be subject to arbitration under paragraph 38, **ARBITRATION PROCEDURE.**

19. **DISPOSITION OF IMPROVEMENTS.**

a. Within sixty (60) days after the expiration or earlier termination of this Lease, the Tenant shall at Tenant's expense, promptly and diligently remove, demolish or clear off from the leased premises all or any designated portion of the improvements and other property owned by Tenant, and after such removal or clearance, Tenant shall restore the surface of the ground to a graded, properly filled, level and uniform condition, free from all debris; provided, however, that if Tenant at such time shall be in default in the payment of rents or any other charges hereunder, the Port shall have a lien on the improvements to secure payment of such rents or charges; provided, further, however, that Tenant shall not be required to remove any pilings, but shall, at the Port's request, cut any pilings at the original grade level.

b. Provided, however, that the Port may, at its sole discretion, elect to have the buildings remain, in which event title to the same shall automatically pass to the Port, free of any right,

title, interest of Tenant therein, or its successors or assigns, without the necessity of executing any further instrument and without any allowance, compensation, or payment by the Port. Tenant hereby grants and conveys to the Port all of its right, title and interest in and to such improvements, to be effective for all purposes upon any termination of this Lease. Notwithstanding the foregoing, if the Port does not elect to have Tenant remove the improvements, Tenant agrees to execute, acknowledge and deliver to the Port prior to the expiration of such sixty-day (60) period a proper recordable instrument quit claiming and releasing to the Port to any right, title and interest of Tenant in and to the leased premises and all improvements thereon, and giving such further assurances of title as may be required by the Port. Tenant shall, upon such lease termination, surrender and deliver the leased premises and all remaining improvements to the Port, without delay and in good order, condition and repair, ordinary wear and tear excepted, and in a neat and clean condition, excepting only Tenant's or any subtenant's movable trade fixtures, machinery, equipment and personal property. Tenant shall also deliver to the Port all documents necessary or appropriate for the proper operation, maintenance and management of the leased premises and improvements.

c. Any dispute under this section shall be subject to arbitration under paragraph 38, **ARBITRATION PROCEDURE.**

20. **INSPECTION.** The Port reserves the right to inspect the premises at any and all reasonable times throughout the term of this Lease, provided that it shall not interfere unduly with Tenant's operations. The right of inspection reserved to the Port hereunder shall impose no obligation on the Port to make inspections to ascertain the condition of the premises, and shall impose no liability upon the Port for failure to make such inspections. The Port shall have the right to place and maintain "For Rent" signs in conspicuous places on the premises for a reasonable period of time prior to the expiration or sooner termination of this Lease.

21. **RESTORATION.**

a. At all times during the term of this Lease, Tenant shall maintain in effect upon the leased premises and Tenant's improvements thereon, fire and extended coverage property insurance for physical loss and damage, written by companies authorized to do business in the State of Washington and approved by the Port's insurance carrier. Such policy or policies (a) shall be written in the form of replacement cost insurance in an amount not less than 100% of the full replacement cost of the leased premises and Tenant's improvements thereon, which amount shall be adjusted not less frequently than annually, (b) shall contain an endorsement waiving any and all rights of subrogation against the Port and (c) shall provide that notice of cancellation of the policy or any endorsement shall be given to the Port and any other party designated by the Port at least 10 days prior to cancellation. The Port and each other party designated by the Port shall be named as additional insureds and loss payees on all such policies. Tenants shall provide the Port and each other party designated by the Port with certificates of insurance evidencing such coverage and shall provide evidence of renewal at least 30 days prior to the expiration of such policy or policies. Tenant will also take out and maintain policies of insurance to cover the loss, damage or destruction of Tenant's furniture, fixtures, equipment and other items owned by Tenant on the leased premises, with limits based on the reasonable value thereof. Tenant acknowledges that insurance coverage for earthquakes is not required, but that the Port recommends that Tenant obtain such coverage.

b. If any building or improvement erected by Tenant on the leased premises or any part thereof shall be damaged or destroyed by fire or other casualty during the term of this Lease, Tenant may, at its option, at its own cost and expense, repair or restore the same according to the original plans

thereof or according to such modified plans as shall be previously approved in writing by the Port. Such work of repair or restoration shall be commenced within sixty (60) days after receipt of permits therefor (which Tenant shall obtain within one (1) year after the damage or loss occurs) and shall be completed with due diligence but not longer than one (1) year after such work is commenced, and such work shall be otherwise done in accordance with the requirements of the provisions hereof pertaining to the construction of improvements upon the leased premises. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration, or if Tenant elects not to repair or restore, to the cost of removing, demolishing, or clearing off the building or improvements. If (i) there are not insurance proceeds, or (ii) the same shall be insufficient for said purpose, Tenant shall make up the deficiency out of its own funds. Should Tenant fail or refuse to make the repair, restoration or removal as hereinabove provided, then in such event said failure or refusal shall constitute a default under the covenants and conditions hereof, and all insurance proceeds so collected shall be forthwith paid over to and be retained by the Port on its own account, and the Port may, but shall not be required to, sue and apply the same for and to the repair, restoration or removal of said leased premises or improvements, and the Port may, at its option, terminate this Lease as elsewhere provided herein.

c. Notwithstanding anything to the contrary contained in the preceding section, if any building erected on said leased premises shall be damaged by fire or other casualty, and if the cost of repairing or restoring the same shall exceed the insurance payable for such damage, and if such damage shall occur during the term so that the remaining term of this Lease is of insufficient length to allow Tenant to finance such cost in a commercially reasonable manner, the Tenant shall have the option, to be exercised within one hundred twenty (120) days after such event, to repair or restore said building as hereinabove provided, or to terminate this Lease by written notice thereof to the Port.

d. Any dispute under this section shall be subject to arbitration under paragraph 38, **ARBITRATION PROCEDURE.**

22. **DEFAULTS.** Time is of the essence of this Lease, and in the event of the failure of Tenant to pay the rental, interest or other charges provided in this Lease at the time and in the manner herein specified, or to keep any of Tenant's covenants or agreements herein, the Port may elect to terminate this Lease and reenter and take possession of the premises with or without process of law, provided, however, that Tenant shall be given fifteen (15) days' notice in writing if the default is for the nonpayment of rent or other monetary default, or thirty (30) days' notice in writing for any other default, stating the nature of the default in order to permit such default to be remedied by Tenant within the applicable time period; provided, however, that with respect to any non-monetary default which by its nature is susceptible of cure but not within thirty (30) days, Tenant shall have such additional period of time to cure as may be reasonable provided that Tenant commences such cure within the thirty (30) day period and diligently prosecutes such cure to completion. If the Port issues a notice of default for the nonpayment of rent, in order to cure such default, Tenant must pay the overdue rent, together with interest as set forth in paragraph 4.1 above, plus a Fifty Dollar (\$50.00) lease reinstatement fee. Monetary defaults shall include failure to pay any rent, percentage rent, leasehold tax or other tax payable by Tenant to the Port hereunder, common area charges (including administrative charges), interest or lease reinstatement fees payable under this Lease when due or to reimburse the Port on demand for any funds expended by the Port on behalf of Tenant to cure Tenant's failure to perform any obligation of Tenant under this Lease.

If upon such reentry there remains any personal property of Tenant or of any other person upon the premises, the Port may, but without the obligation to do so, remove said personal property and hold

it for the owners thereof or may place the same in a public garage or warehouse, all at the expense and risk of the owners thereof, and Tenant shall reimburse the Port for any expense incurred by the Port in connection with such removal and storage. The Port shall have the right to sell such stored property, without notice to Tenant, after it has been stored for a period of thirty (30) days or more, the proceeds of such sale to be applied first to the cost of such sale, second to the payment of the charges for storage, and third to the payment of any other amounts which may then be due from Tenant to the Port, and the balance, if any, shall be paid to Tenant. Notwithstanding any such reentry, the liability of Tenant for the full rental provided for herein shall not be extinguished for the balance of the term of this Lease, and Tenant shall make good to the Port any deficiency arising from a reletting of the premises at a lesser rental than that chargeable to Tenant. Tenant shall pay such deficiency each month as the amount thereof is ascertained by the Port. Payment by Tenant to the Port of interest on rents and/or any other charges due and owing under this Lease shall not cure or excuse Lessee's default in connection with rents and/or other charges. All remedies of the Port hereunder are cumulative and not alternative.

23. **ADVANCES BY PORT FOR TENANT.** If Tenant shall fail to do anything required to be done by it under the terms of the Lease, except to pay rent, the Port may, at its sole option, do such act or thing on behalf of Tenant, and upon notification to Tenant of the cost thereof to the Port, Tenant shall promptly pay the Port the amount of that cost. However, if the Port shall pay any monies on Tenant's behalf, Tenant shall repay such monies, together with interest thereon commencing on the date the Port paid such monies and calculated at the greater of the rate of eighteen percent (18%) per annum, or two (2) percentage points over the composite prime rate of interest set forth in the Wall Street Journal "Money Rates" column (or its successor) most recently prior to such date.

24. **HOLDING OVER.** If Tenant shall, without the consent of the Port, hold over after the expiration or sooner termination of this Lease, the resulting tenancy shall, unless otherwise mutually agreed, be on a month-to-month basis. During such month-to-month tenancy, Tenant shall pay to the Port the rate of four (4) times the then-current rental under the terms of the Lease (excluding percentage rent), unless a different rate shall be agreed upon, and the Tenant shall be bound by all of the additional provisions of this Lease; provided, however, this paragraph shall not apply for the sixty (60) day period set forth in Paragraph 19.a if the Port has not elected to have Tenant's improvements remain on the premises pursuant to Paragraph 19.b and Tenant completes the removal of the same within such sixty (60) day period.

25. **ASSIGNMENT OR SUBLEASE.** Except as provided below, Tenant shall not assign or transfer (including any assignment or transfer for security purposes) this Lease or any interest therein nor sublet the whole or any part of the premises, nor shall this Lease or any interest hereunder be assignable or transferable by operation of law or by any process or proceeding of any court, or otherwise, without the advance written consent of the Port, which may be withheld in the Port's reasonable discretion. Notwithstanding the foregoing, the Port agrees that it will not unreasonably withhold its consent to any proposed assignment or sublease for which the Port has been provided satisfactory evidence that the proposed assignee or sublessee: (i) has sufficient net worth and financial ability to perform all obligations of Tenant under this Lease and (ii) has sufficient experience in, and will use the leased premises for, the uses to which the leased premises are subject. The Port agrees that it will consent to the assignment of this Lease (or any interest herein): (i) for security purposes to a bona fide lender, but only on the terms and conditions contained in the form of Landlord's Consent and Agreement attached hereto as Exhibit "C", which must be signed by such lender; (ii) to any stockholders of Tenant at the time of execution of this Lease or to members of their immediate families, including their estates or trusts, so long as such assignee(s) subleases the leased premises to Mad Anthony's Inc. for the duration



of the lease term, including any renewals; and (iii) in connection with the sale of all or substantially all of the assets of Mad Anthony's, Inc., or all or substantially all of the stock of Mad Anthony's, Inc., so long as the proposed assignee is the purchaser of all or substantially all of such assets or stock. Except as provided in the foregoing sentence, Tenant further agrees that if at any time during the term of this Lease, more than one-half (1/2) of the outstanding shares of any class of voting stock of the Tenant corporation shall belong to any stockholders other than those who own the outstanding shares of that class of stock at the time of the execution of this Lease or to members of their immediate families, including their estates or trusts, such change in the ownership of the stock of Tenant shall be deemed an assignment of this Lease within the meaning of this paragraph subject to the Port's consent. Tenant shall remain liable under the terms of this Lease, and this paragraph shall nevertheless continue in full force and effect and no further assignment or sublease shall be made without the Port's consent pursuant to this paragraph.

26. **COMPLIANCE WITH PORT REGULATIONS/ALL LAWS.** Tenant agrees to comply with all applicable rules and regulations of the Port pertaining to the building or other realty of which the premises are a part or to Tenant's use or occupancy thereof, now in existence or hereafter promulgated for the general health, welfare, safety and convenience of the Port, its various tenants, invitees, licensees and the general public. Tenant further agrees to comply with all applicable federal, state and municipal laws, ordinances and regulations, including, without limitation, those relating to environmental matters, and Americans with Disabilities Act, and to indemnify the Port for any liability, damages, costs or fees incurred by the Port due to Tenant's failure to comply with the requirements of this section. Costs and fees shall include all direct and indirect costs and professional fees, including engineering and attorney's fees. Any fees for any federal, state or local inspections and/or certificates required for use and occupancy of the leased premises shall be paid by Tenant. The Port hereby permits Tenant to apply for and operate a Class H restaurant and lounge as licensed by the Washington State Liquor Control Board. The Port agrees not to permit other tenants of the Port on Parcels 1, 2 or 3 of the Farmers Market area as described on Exhibit "H" attached hereto and by this reference incorporated herein to apply for and operate a Class H establishment, but the Port contemplates that other tenants will apply for licenses to serve beer and/or wine in such area, as, for example, provided in the use clause for Market Place Building, L.L.C., which is attached hereto as Exhibit "L" and by this reference incorporated herein. Tenant agrees that it has no objection to such other licenses being applied for or being issued, to the operation of such other licensed premises or to the operation of other food service facilities on property owned by the Port. Should Tenant not be granted permission to have a Class H license for the premises by the commencement date, the parties agree to renegotiate the rent terms of this Lease to provide compensation to both parties appropriate for restaurant operation without a Class H license. If the parties are unable to agree upon renegotiated rental amounts, such amounts shall be determined by three arbitrators, each of whom shall be a member of either the Society of Industrial Realtors or the Washington-British Columbia chapter of the American Institute of Real Estate Appraisers and shall be experienced in the evaluation of the type of premises subject to this Lease. Each party shall select and fully compensate one of these arbitrators, and the third arbitrator shall be selected by the other two and compensated in equal shares by the parties. If the two arbitrators so chosen fail to agree upon the appointment of the third arbitrator, then either party may request the American Arbitration Association to appoint a third person. If either party fails to choose its respective arbitrator within thirty (30) days after the other has chosen its arbitrator, then such sole appointed arbitrator shall determine the rental amounts. If Tenant is subsequently granted a Class H license for the premises, all terms and conditions of this Lease, as now written, shall then become effective.

27. **HAZARDOUS SUBSTANCES.** Tenant certifies, represents, warrants, covenants and agrees that:

(a) For itself, its contractors, subcontractors and agents, Tenant will comply with all applicable local, state and federal environmental laws, regulations, ordinances and administrative and judicial orders relating to the generation, recycling, treatment, use, sale, storage, handling, transport and disposal of any Hazardous Substances (as defined below) by any person on the leased premises. Lessee will not, without the Port's prior written consent, keep on or around the leased premises or any common areas, for use, disposal, treatment, generation, storage, or sale, any Hazardous Substances except those normally used in the operation of a restaurant, and then only in such amounts as are normal and only in full compliance with all applicable laws, rules and regulations.

(b) With respect to any Hazardous Substance, Tenant shall:

(i) Comply promptly, timely and completely with all governmental requirements for reporting, keeping and submitting manifests and obtaining and keeping current identification numbers;

(ii) Make available for the Port's review and copying during normal business hours, true and correct copies of all reports, manifests and identification numbers at the time as they are required to be and/or are submitted to the appropriate governmental authorities;

(iii) Within five (5) business days of the Port's request, submit written reports to the Port regarding Tenant's use, storage, treatment, transportation, generation, disposal or sale of Hazardous Substances and provide evidence satisfactory to the Port of Tenant's compliance with the applicable laws, rules and regulations;

(iv) Allow the Port or the Port's agents or representatives to come on the leased premises at all reasonable times to check Tenant's compliance with all applicable laws, rules and regulations regarding Hazardous Substances; and

(v) Comply with minimum levels, standards or other performance standards or requirements which may be set forth or established for certain Hazardous Substances (if minimum standards or levels are applicable to Hazardous Substances) present on the leased premises, including those levels or standards established by an on-site inspection by the appropriate governmental authorities.

In the event of a material violation of any of the items (i) through (v) listed above, any and all costs incurred by the Port and associated with the Port's inspections of Tenant's leased premises and the Port's monitoring of Tenant's compliance with this section, and including the Port's attorney's fees and costs, shall be additional rent and shall be due and payable to the Port immediately upon demand by the Port.

(c) Tenant has not and will not release or waive the liability of any party who may be potentially responsible for the presence or removal of Hazardous Substances on or from the leased premises.

(d) Tenant agrees to immediately notify the Port if Tenant becomes aware of (a) any Hazardous Substances or other environmental problem or liability with respect to the leased premises or any Other Property (as defined below); or (b) any lien, action or notice resulting from violation of any

laws, regulations, ordinances or orders described in this Section 26. At its own cost, Tenant will take all actions which are necessary or desirable to clean up any Hazardous Substances affecting the leased premises, including removal, containment or any other remedial action whether or not required by governmental authorities, to the extent Tenant is responsible therefor as provided in subparagraph (f) below.

(e) If Tenant is in violation of any governmental law, rule or regulation concerning Hazardous Substances or is in violation of this Lease relating thereto, it shall promptly take such action as is necessary to mitigate and correct the violation. If Tenant does not act in a prudent and prompt manner, the Port reserves the right, but not the obligation to come onto the premises, to act in place of the Tenant (with Tenant hereby appointing the Port as its agent for such purposes), and to take such action as the Port deems necessary to insure compliance or to mitigate the violation. If the Port has a reasonable belief that Tenant is in violation of any such regulation, or that Tenant's actions or inactions present a threat of violation or a threat of damage to the premises, the Port reserves the right to enter the premises and take such action as the Port deems necessary to mitigate, abate or correct the threat thereof. All costs and expenses incurred by the Port in connection with any such action shall be payable by the Tenant and shall become immediately due and payable as additional rent upon presentation of an invoice therefor.

(f) Tenant shall be fully and completely liable to the Port for, and shall indemnify and hold the Port harmless from and against any and all claims, demands, damages, losses, liens, liabilities, penalties, fines, lawsuits and other proceedings and costs and expenses (including attorneys' fees and disbursements), which accrue to or are incurred by Tenant or the Port which arise or are alleged to arise directly or indirectly from or out of, or are in any way connected with (a) the inaccuracy of the representations and warranties contained herein, (b) the breach of any covenant contained herein, (c) any operations or activities (including, without limitation, use, disposal, transportation, storage, generation or sale of Hazardous Substances) on or about the leased premises which are caused by Tenant or third parties under Tenant's control and which directly or indirectly result in the leased premises or any Other Property becoming contaminated with Hazardous Substances or otherwise violating any applicable law, rule or regulation pertaining to Hazardous Substances, and (d) the cleanup of Hazardous Substances from the leased premises or any Other Property which are the result of operations or activities of the Tenant or third parties under Tenant's control. Tenant acknowledges that it will be solely responsible for all costs and expenses relating to investigation (including preliminary investigation) and cleanup of Hazardous Substances from the leased premises or from any Other Property arising as described above.

(g) Tenant's obligations under this Section 27 are unconditional and shall not be limited by any other limitations of liability provided for in this Lease. The representations, warranties and covenants of Tenant set forth in this Section 27 (a) are separate and distinct obligations from Tenant's other obligations under the Lease and (b) shall survive and continue in effect after any termination or expiration of this Lease for any reason.

(h) As used in this Section 27, "Hazardous Substances" means any chemical, substance, material, waste or similar matter defined, classified, listed or designated as harmful, hazardous, extremely hazardous, dangerous, toxic or radioactive, or as a contaminant or pollutant, or other similar term, by, and/or which are subject to regulation under, any federal, state or local environmental statute, regulation or ordinance presently in effect or that may be promulgated in the future, and as they may be amended from time to time.

(i) As used in this Section 27, "Other Property" means any real or personal property (including, without limitation, surface or ground water) which becomes contaminated with Hazardous Substances as a result of operations or other activities on, or the contamination of, the leased premises arising as described in subsection (f) above.

(j) Upon expiration or sooner termination of this Lease, Tenant shall have removed from the leased premises any contaminated soils or other contaminated or hazardous materials or substances deposited thereon by Tenant. Any failure to complete such removal by the expiration or sooner termination of this Lease shall be deemed a holding over by Tenant subject to the provision of paragraph 24, **HOLDING OVER**. At the Port's request, within 30 days thereafter, Tenant shall deliver to the Port a certificate from the Thurston County Health Department certifying that the leased premises comply with all applicable requirements of the Health Department concerning levels of Hazardous Substances. At such time, Tenant shall also reconfirm its representations and warranties contained herein and shall represent and warrant that upon termination of the Lease all Hazardous Substances have been removed from the leased premises and have been properly and lawfully disposed of.

(k) Tenant shall be responsible for applying for and obtaining all necessary and desirable federal, state or local governmental permits or approvals for the use of the leased premises; shall not commence any activity on the leased premises until all permits or approvals required for such activity have been issued; and shall conduct all of its activities on the leased premises in full compliance with all applicable permits and approvals.

(l) The Port shall be fully and completely liable to the Tenant for, and shall indemnify and hold Tenant harmless from and against any and all claims, demands, damages, losses, liens, liabilities, penalties, fines, lawsuits and other proceedings and costs and expenses (including attorneys' fees and disbursements), which accrue to or are incurred by Tenant which arise or are alleged to arise directly or indirectly from or out of, or are in any way connected with (a) any operations or activities (including, without limitation, use, disposal, transportation, storage, generation or sale of Hazardous Substances) on or about the leased premises not conducted by Tenant or third parties under Tenant's control and which directly or indirectly result in the leased premises or any Other Property becoming contaminated with Hazardous Substances or which otherwise violate any applicable law, rule or regulation pertaining to Hazardous Substances, and (b) the cleanup of Hazardous Substances from the leased premises or any Other Property which are not the result of operations or activities of the Tenant or third parties under Tenant's control. Without limiting or waiving any rights or remedies the Port may have against any third parties, the Port acknowledges that, as between Tenant and the Port, the Port will be solely responsible for all costs and expenses relating to investigation (including preliminary investigation) and cleanup of Hazardous Substances from the leased premises or from any Other Property arising as described in this subparagraph (l).

28. **STORAGE TANKS.** Tenant shall not store on site, either permanently or temporarily, in quantities greater than one hundred ten (110) gallons either in bulk or in separate containers, any material subject to WAC 173-303 or 40 CFR Parts 116-117, as the same may be amended from time to time.

29. **INSPECTIONS AND NOTICE OF CHANGE.** Tenant agrees that inspections may be required by the Port at the Tenant's expense to assure compliance with paragraphs 27, **HAZARDOUS SUBSTANCES**, and 28, **STORAGE TANKS**. Such inspections may be made at any time the Port has good cause to believe a problem may exist.

30. **EMINENT DOMAIN.** If the premises shall be taken or condemned for any public purpose, or for any reason whatsoever based upon a determination of public use and necessity, to such an extent as to render the premises untenable, either Landlord or Tenant shall have the option to terminate this Lease effective as of the date of taking or condemnation, which shall be the earlier of the date the final condemnation judgment or the date possession is taken by the condemning authority. If the taking or condemnation does not render the premises untenable, this Lease shall continue in effect, and Landlord shall, if the condemnation award is sufficient therefor, promptly restore the portion not taken to the extent possible to the condition existing prior to the taking. If, as a result of such restoration, the area of the premises is reduced, the rental shall be reduced proportionately. Tenant shall be entitled to any award separately designated for Tenant's relocation expenses or for damage or taking of Tenant's improvements, trade fixtures or other personal property; provided, however, that if the taking does not render the premises untenable, this Lease shall continue in effect and Tenant shall restore its improvements to the extent possible to the conditions existing prior to the taking. Landlord and Tenant agree to cooperate in Tenant's obtaining such a separately designated award. All other proceeds from any taking or condemnation shall be paid to Landlord. A voluntary sale or conveyance in lieu of but under the threat of condemnation shall be considered a taking or condemnation for public purpose, and shall include the Port's use of the premises for any purpose for public use in connection with the operation of the business of the Port. If the Port so requires the use of the premises, then this Lease may be terminated by the Port by written notice delivered or mailed by the Port to Tenant not less than six (6) months or more before the termination date specified in the notice, and damages to Tenant, if any resulting therefrom shall be determined by agreement between the parties hereto, or in the absence of agreement, by arbitration as hereafter provided. Damages or other compensation shall be determined in accordance with RCW 53.08.010 and Title 8 as appropriate. The Port agrees that it will not exercise any right under this paragraph for the purpose of reletting the premises to another commercial retail user.

31. **Intentionally Omitted.**

32. **Intentionally Omitted.**

33. **PROMOTION OF PORT COMMERCE.** The purpose of the Port is to encourage the development of commerce within the Port district, and to every reasonable extent possible, increase the movement of passengers and freight through Port facilities. In furtherance of this purpose, Tenant agrees to cooperate with the Port in the promotion of these purposes during the term of this Lease, and wherever reasonably possible, to utilize the Port's facilities in the movement of freight and passengers as a part of Tenant's business activities. Nothing in this paragraph shall be construed to obligate Tenant to incur any cost or expense in cooperating in the promotion of Port commerce, but Tenant does agree to supply such information and data for the Port's promotional and advertising activities as the Port may reasonably request.

34. **ATTORNEY'S FEES AND COSTS.** Should a dispute arise between the parties hereto as to the effect of any provision hereof and said dispute is referred to an attorney, whether for enforcement in court or for decision under arbitration, the losing party shall pay the prevailing party's actual and incurred attorney's fees; costs of court or arbitration, including such fees and costs of any appeal; other legal expenses; and collection costs, except that the amount of such fees, costs or expenses taken separately or in the aggregate, shall not be unreasonable. If such dispute arises and is later settled

by the parties, such settlement shall include a specific allocation of disposition of attorney's fees on both sides.

35. **NONDISCRIMINATION - SERVICES.** Tenant agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, sex, age, creed, color or national origin in furnishing, or by refusing to furnish, to such person or persons the use of the facility herein provided, including any and all services, privileges, accommodations and activities provided thereby.

36. **NONDISCRIMINATION - EMPLOYMENT.** Tenant covenants and agrees that in all matters pertaining to the performance of this Lease, Tenant shall at all times conduct its business in a manner which assures fair, equal and nondiscriminatory treatment of all persons without respect to race, creed or national origin, and in particular:

a. Tenant will maintain open hiring and employment practices and will welcome applications for employment in all positions from qualified individuals who are members of racial or other minorities; and

b. Tenant will comply strictly with all requirements of federal, state or local laws or regulations issued pursuant thereto relating to the establishment of nondiscriminatory requirements in the hiring and employment practices, and assuring the service of all patrons or customers without discrimination as to any person's race, sex, age, creed, color or national origin.

37. **APPRAISAL PROCEDURE.** The fair market value of the property shall be determined, at Tenant's election, (made only at the execution of this Lease and as set forth in the lease summary) either (a) by reference to the most recent land valuation for the parcel as determined by the Thurston County Assessor's Office (for so long as Washington State law requires the Assessor to assess land at 100% of its fair market value) or (b) by an appraisal conducted by an independent appraiser selected by Tenant and approved by the Port, which approval will not be unreasonably withheld. Such appraiser shall be a qualified MAI appraiser, with not less than 10 years experience appraising commercial real estate in Thurston County, Washington. A qualified MAI appraiser shall mean a member in good standing of the American Institute of Real Estate Appraisers, or equivalent professional organization. In conducting an appraisal of the property, the appraiser (a) shall consider sales of fee simple comparable properties in the general area; (b) shall appraise the property as if in private ownership and without discount or consideration for the property being owned by a municipal corporation; and (c) shall appraise the property without regard to the premises being leased or the existence of any buildings or structures thereon. If Tenant fails to choose an appraiser within 180 days prior to the date a rental revision is to become effective, Tenant shall be deemed to have elected to have the rental revised as provided in clause (a). If fair market value is not or cannot be determined by either method described above, fair market value shall be determined by an appraiser selected by the Port who meets the qualifications described above. Such determination, and any rental revision resulting therefrom shall be retroactive to the date the rental revision was to be effective. The cost of any appraisal shall be shared equally by the Port and Tenant. The Port agrees to assist Tenant in any effort to have any percentage rent disregarded by the Thurston County Assessor when using an income approach to value the leased premises for assessment purposes.

38. **ARBITRATION PROCEDURE.** In the event of a dispute between the Port and Tenant with respect to any issue specifically mentioned elsewhere in this Lease as a matter to be decided by arbitration, such dispute shall be determined by arbitration as provided in this paragraph. The Port and Tenant shall each appoint a person as arbitrator who shall have had at least ten (10) years of experience

in Thurston, King or Pierce County in the subject matter of the dispute. The appointment shall be in writing and given by each party to the other, and the arbitrators so appointed shall consider the subject matter of the dispute, and if agreement can be reached between them, their opinion shall be the opinion of the arbitration. In the event of their failure to agree upon the matter so submitted, they shall appoint a third arbitrator. In the case of the failure of such arbitrators to agree upon the third arbitrator, the same shall be appointed by the American Arbitration Association from its qualified panel of arbitrators, with similar qualifications. If the Port or Tenant shall fail to so appoint an arbitrator for a period of ten (10) days after written notice from the other party to make such appointment, then such party will have defaulted its right to make such appointment, and the arbitrator appointed by the nondefaulting party shall determine and resolve the dispute. In the event the three arbitrators are appointed, after being duly sworn to perform their duties with impartiality and fidelity, they shall proceed to determine the question submitted. The decision of the arbitrators shall be rendered within thirty (30) days after their appointment, and such decision shall be in writing, with copies thereof delivered to each of the parties. The award of the arbitrators shall be final, binding, and conclusive on the parties. The fees of the arbitrators and the expenses incident to the proceedings shall be borne equally between the Port and Tenant. The arbitrators shall award to the prevailing party the fees of that party's counsel, expert witnesses, or other witnesses called by the prevailing party.

39. **JOINT AND SEVERAL LIABILITY.** Each and every party who signs this Lease, other than in a representative capacity, as Tenant, shall be jointly and severally liable hereunder.

40. **INVALIDITY OF PARTICULAR PROVISIONS.** If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

41. **NOTICES.** All default and other substantial notices required under the provisions of this Lease may be personally delivered or mailed. If mailed, they shall be sent by certified mail, return receipt requested to the following addresses:

To the Port:  
Port of Olympia  
P. O. Box 827  
Olympia, WA 98507-0827

To the Tenant:  
Mad Anthony's Inc.  
P.O. Box 3805  
Bellevue, WA 98009

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing. Notices given by personal delivery shall be deemed given upon receipt. Notices sent by mail shall be deemed given when properly mailed, and the postmark affixed by the United States Post Office shall be conclusive evidence of the date of mailing.

42. **WAIVER.** The acceptance of rental by the Port for any period or periods after a default by Tenant hereunder shall not be deemed a waiver of such default unless the Port shall so intend and shall

so advise Tenant in writing. No waiver by the Port of any default hereunder by Tenant shall be construed to be or act as a waiver of any subsequent default by Tenant. After any default shall have been cured by Tenant, it shall not thereafter be used by the Port as a ground for the commencement of any action under the provisions of paragraph 25, DEFAULTS.

43. **BINDER.** This Lease is binding upon the parties hereto, their heirs, personal representatives, successors in interest and assigns.

44. **NO RECORDING.** Without the prior written consent of the Port, this Lease shall not be placed of record. At the request of either party, the parties will execute and record a memorandum of this Lease. If this Lease may be placed of record, the party so requesting shall pay all costs and expenses of recording.

**LESSOR:**

**TENANT:**

PORT OF OLYMPIA, a Washington  
municipal corporation

MAD ANTHONY'S INC.

By: 

Executive Director

By: 

Title: President

By: 

Title: SECRETARY

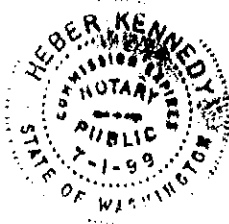
**COPY SUBMITTED  
FOR RECORDING**



STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF THURSTON )

On this 31 day of JULY, 1997, personally appeared before me NIXON HANDY, to me known to be the Executive Director of the Port of Olympia, the municipal corporation named in the within and foregoing Lease, and acknowledged to me that he signed the same on its behalf, as he is so authorized to do, as his free and voluntary act and deed for the uses and purposes therein mentioned.

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



Heber Kennedy  
NOTARY PUBLIC in and for the State of Washington,  
residing at Olympia  
Commission expires: 7-1-99

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF THURSTON )

On this 31 day of JULY, 1997, personally appeared before me HERBERT M. GOULD, and HERBERT M. GOULD, to me known to be the PRESIDENT and SECRETARY, of the entity named in the within and foregoing Lease, and acknowledged to me that they signed the same on its behalf, as they are so authorized to do, as their free and voluntary act and deed for the uses and purposes therein mentioned.

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



Heber Kennedy  
NOTARY PUBLIC in and for the State of Washington,  
residing at Olympia  
Commission expires: 7-1-99

**COPY SUBMITTED  
FOR RECORDING**

EXHIBIT "A"

REQUIREMENTS AS TO IMPROVEMENTS

These conditions relating to improvements in this Exhibit "A" shall control unless the Port and Tenant have otherwise separately agreed to more specific time periods for production and coordination of drawings, financing and commencement of construction. In the event such additional documentation becomes a part of this Lease, then the time periods set forth in such documents shall be logically coordinated, the intent being that the more specific time periods should control the parties' respective performances.

**A. PORT APPROVAL OF TENANT IMPROVEMENTS.** As used herein, the terms "improvements" or "structures" shall mean and include without limitation all permanent buildings, and all other major structures or improvements of any kind located above the ground level of any site, plus any replacements, additions, repairs or alterations thereto. No improvement shall be constructed or maintained on the leased premises until the Port has first approved the design, density, size, appearance and location thereof. Before commencing any work of improvement or applying for any governmental permit or approval, Tenant shall first deliver to the Port for approval two (2) sets of schematic plans and preliminary specifications, including grading and drainage plans, exterior elevations, floor plans, site plans, and showing in reasonable detail existing topography and proposed type of use, size, land coverage, shape, height, location, material and elevation of each proposed improvement, all proposed ingress and egress to public or private streets or roads, all utilities and service connections, and all proposed landscaping, exterior materials and fences, parking, exterior lighting, signs, cut and fill, finished grade, runoff and concentration points. Nothing in this paragraph shall imply a submission standard higher than that required for a building permit, except as it relates to land use(s), utilities, infrastructure and impact upon adjoining properties and use(s) of adjoining properties.

The Port shall then have twenty (20) days during which to accept and approve or reject such preliminary plans and specifications. Once the preliminary plans and specifications have been approved, but prior to commencing any such work, Tenant shall submit to the Port for approval of final plans and specifications for any proposed improvements in the same manner as provided above.

All plans and specifications for grading or improvements to be submitted to the Port hereunder shall be prepared by a licensed or registered architect or engineer, as the case may be. All grading, piling, footing and foundation work must be conducted under the supervision of an appropriate licensed engineer. At the Port's option, a final certification by a licensed soils engineer or geologist must be filed with the Port upon completion of the grading work. The Port shall not unreasonably withhold its approval of any such plans or specifications.

The Port shall be conclusively deemed to have given its approval unless, within thirty (30) days after all such plans and specifications have been received by the Port, the Port shall give Tenant written notice of each item of which the Port disapproves. Unless so disapproved, the Port shall endorse its approval on at least one set of plans and return the same to Tenant. The Port may disapprove any plans which are not in harmony or conformity with other existing or proposed improvements on or in the vicinity of the leased premises, or with the Port Master Plan or other plans or criteria for the leased premises in the general area in which the leased premises are located, the sole discretion as to such adequacy remaining with the Port. Notwithstanding the foregoing, Tenant may, in accordance with the

lease, repair, replace, alter or reconstruct any improvement on the leased premises for which plans were previously approved by the Port as provided above, but only if such repair, replacement, alteration or reconstruction is substantially identical to the improvement previously approved.

Concerning utility installations, Tenant, at Tenant's sole cost, including any connection fees, assessments or changes, shall be responsible for the installation on the leased premises of all utilities required by Tenant's use of the premises, assuming such utility services are available to the leased premises. Any contractual arrangements with any municipal supplier with respect to the improvements or utility installation shall not be entered into by Tenant without first obtaining the Port's approval. In the event that such utility services are not readily available at the leased premises, Tenant, at Tenant's sole cost, shall pay for the extension of such utilities to the leased premises.

The Port shall not be liable for any damages in connection with the approval or disapproval of any plans or specifications, any construction or performance by Tenant on the leased premises in connection with the erection of such improvements, any mistake in judgment, negligence or omissions in exercising its rights and responsibilities hereunder, or the enforcement or failure to enforce any provisions contained in the Lease. The Port's approval of plans and specifications shall not constitute the assumption of any responsibility by the Port or its representatives for the accuracy, efficacy or sufficiency thereof, and Tenant shall be solely responsible therefor.

**B. CERTIFICATES OF COMPLIANCE.** Tenant shall obtain all necessary permits and shall send copies of same to the Port, as well as copies of Certificates of Completion/Occupancy associated with such permits and pay the cost thereof. Prior to commencement of any such work of improvements, Tenant shall supply to the Port a certificate from a licensed civil engineer or land surveyor verifying that the proposed improvements will be located on the correct parcel and in accordance with plans previously approved by the Port. The Port may waive such requirement if the Port has already surveyed the proposed premises. Upon completion of any such improvements, Tenant shall supply to the Port a further certification by Tenant's architect (including the landscape architect in the case of improvements consisting of landscaping) that the improvements, as designed by the architect, have been completed in accordance with the plans previously approved by the Port. Final landscaping as approved by the Port shall be completed within sixty (60) days after completion of the structure. Tenant shall also supply to the Port one (1) set of "as-built" grading plans showing all underground installations within sixty (60) days following completion of any substantial improvement within the leased premises. Tenant shall also furnish the Port with a complete set of "as-built" building plans and an itemized statement of the actual construction cost of such improvements, not later than sixty (60) days after completion.

**C. DILIGENT COMPLETION AND COMPLIANCE.** After commencement of construction, Tenant shall diligently complete the construction so that the improvements will not remain in a partly finished condition any longer than is reasonably necessary. Tenant shall comply with all applicable governmental laws, ordinances and other requirements or conditions and restrictions which may affect the leased premises, (whether prior to, during or after construction) including, without limitation, the Americans With Disabilities Act, and shall make such corrections, alterations or other improvements which may be necessary to remedy any non-complying condition (subject to the reasonable approval of the Port), all at the sole cost and expense of Tenant

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**EXHIBIT "B"**  
**INTENTIONALLY OMITTED**

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31

EXHIBIT "C"

LANDLORD'S CONSENT AND AGREEMENT  
(For Financing Purposes)

Description of Ground Lease.

"Landlord"	The Port of Olympia
"Tenant"	_____
"Lease":	Ground Lease dated _____
"Leasehold":	Tenant's interest in the Lease and all Leasehold Improvements
"Lender(s)":	_____ _____ _____ _____

NOW, THEREFORE, Landlord represents, warrants, covenants and agrees as follows:

1. **Consents.** Landlord hereby consents to the assignment of Tenant's interest in the Leasehold to Lender for security purposes under the Lender's Deed of Trust upon closing of the loan. Herein the term "Deed of Trust" shall mean the Lender's Deed of Trust as may be applicable and the "Lender" shall mean \_\_\_\_\_, as its/their interests appear in the Deed of Trust and any successors and assigns of such Deed of Trust.

2. **Status of Lease.** A true and correct copy of the Lease, together with all amendments, supplements, and modifications thereto, is attached as Schedule A to this Agreement. The Lease is presently in full force and effect, is valid and enforceable according to its terms and has not been modified or amended in any way except as shown on the copy of the Lease attached hereto.

3. **Non-Default.** Tenant is not in default (a) in the payment of rent or any other amounts due and payable by Tenant to Landlord under the Lease or (b) to the knowledge of Landlord, in the observance or performance of any other covenant or condition to be observed or performed by Tenant under the Lease. To the knowledge of Landlord, no event has occurred which now does or hereafter will authorize Landlord to terminate the Lease.

4. **Right to Foreclose Deed of Trust.** Lender recognizes that any Deed of Trust taken by Lender affects and applies only to Tenant's interest in the Leasehold and that Landlord will not permit any security interest to be taken in any of its land. In the event of default by Tenant under the terms of the Deed of Trust, Lender may enforce or foreclose the Deed of Trust including the acceptance of a Deed in Lieu of Foreclosure. Landlord agrees that in connection with any such foreclosure, Lender may:

a. acquire Tenant's interest in the Leasehold either by Deed in Lieu of Foreclosure or actual foreclosure without further consent of Landlord, subject to the requirements of paragraph 6.4 below.

b. rent the Leased Premises prior to or after foreclosure of the Leasehold by Lender or acceptance of a deed in lieu of foreclosure by Lender without further consent of Landlord.

c. assign and sell the Leasehold in whole or in part to any person or entity, subject to the requirements set forth in paragraph 6.5 below.

5. **Surrender of the Leased Premises.** No surrender of the Leased Premises or any other act of Tenant shall be deemed to terminate the Lease and Landlord will not terminate voluntarily by agreement with Tenant unless Lender has been previously notified at least thirty (30) days in advance in writing and has consented to the termination in writing, which consent may be withheld by Lender in its sole discretion.

6. **Notice of Default and Lender's Rights.**

6.1 **Notice of Default.** If Tenant defaults under the Lease or if any event occurs which would give Landlord the right to terminate, modify, amend or shorten the term of the Lease, Landlord shall take no steps to exercise any such right it may have under the Lease without first giving Lender written notice of such default and the applicable time period (s) under Section 6.2 or Section 6.3, as the case may be, has expired without such default being cured. A copy of each and every Notice of Default served or sent by Landlord or its agent to or upon Tenant pursuant to the Lease shall be sent contemporaneously to Lender in accordance with paragraph 13 below. Such Notice of Default shall specify the event or events of default then outstanding and the time period at the end of which the indicated action would become effective, which time period shall not be less than that provided in Section 6.2 or 6.3, as the case may be.

6.2 **Termination for Monetary Default.** If the Notice of Default given by Landlord to Lender relates to a monetary default and Tenant has not cured such monetary default within 15 days as provided in the Lease and Tenant's failure to cure results in Landlord desiring to terminate the Lease, Landlord may terminate the Lease if such monetary default is not cured by either Tenant or Lender within thirty (30) days after Lender's receipt of notice.

6.3 **Termination for Non-Monetary Default.** If the notice given by Landlord to Lender relates to a non-monetary default and Tenant has not cured such non-monetary default within the 30-day period specified in the Lease, Landlord shall take no action to terminate the Lease if: (i) either Lender or Tenant cures such default within thirty-five (35) days after Lender's receipt of Landlord's notice or (ii):

(a) within sixty (60) days after Lender's receipt of Landlord's notice of Tenant's failure to cure (or failure to diligently pursue a cure) Lender notifies Landlord of its intent to realize upon its security interest and thereafter diligently commences and diligently pursues realization; and

(b) Lender notifies Landlord that, if and when Lender becomes the legal owner of the lessee's interest in the leasehold estate created by the Lease, Lender will assume all of the lessee's obligations under the Lease arising during the time that Lender is the legal owner of the said leasehold estate.

(c) Lender pays Landlord at the time of notification to Landlord of its intent to realize upon its security interest all back rent or other monies due that may be in default up to the date Lender notifies Landlord of Lender's intent to realize upon its security interest and further pays all rent that accrues during the period after Lender so notifies Landlord for so long as Lender continues to diligently pursue realization of its security interest and completes such other performances that may be required or come due under the Lease during such period until such time as either a foreclosure of the deed of trust is completed or Lender accepts a deed in lieu of foreclosure of the deed of trust; provided, however, that Lender shall not be required to cure any non-monetary default, or perform any obligation, of Tenant, if such default or performance is by its nature not reasonably feasible for Lender to perform, such as, without limitation, the operation of a restaurant.

**6.4 Assumption of the Lease.** If Lender becomes owner of the lessee's interest in the leasehold estate created by the Lease, then within twenty (20) days thereafter, Lender shall formally assume all of the lessee's obligations under the Lease arising during the time that Lender is the legal owner of the leasehold estate. Failure to so assume the Lease shall give Landlord the right to immediately terminate the Lease. Notwithstanding the foregoing, Lender shall not be required: (i) to comply with the requirements of the third and fourth sentences of Section 8 of the Lease, **USE OF PREMISES**; (ii) to provide the lease surety described in Section 5 of the Lease, **LEASE SURETY BOND**; or (iii) to waive industrial insurance immunity under Title 51 RCW. Notwithstanding that Lender is required to assume only those obligations of the lessee under the Lease arising during the time that the Lender is the legal owner of the leasehold estate, Landlord may pursue any remedies it may have (including termination) with respect to any defaults existing under the Lease as of the time Lender assumes such obligations that are not cured; provided, however, that Landlord may not pursue any such remedies with respect to any non-monetary default if such default is by its nature not reasonably feasible for Lender to cure.

**6.5 Right to Assign.** Lender shall not have the right to assign its interest in the Leasehold (except in the case of an assignment of Lender's Deed of Trust) without first obtaining the written consent of Landlord for such assignment or transfer, which consent will not be unreasonably withheld or delayed provided that Lender has disclosed to Landlord (a) the identity of the proposed purchaser, assignee or transferee; (b) shown that the purchaser's, assignee's or transferee's credit standing would reasonably be acceptable to a commercially prudent lender; and (c) provided evidence to Landlord that the use of the property by such purchaser, assignee or transferee shall be consistent with the terms of the Lease or Tenant's prior use of the Leasehold; provided, however, that any use of the property shall be permitted at such time as long as it meets all requirements of the then current: (x) zoning, (y) Port of Olympia Comprehensive Plan and (z) City of Olympia Shoreline Master Program. Upon the purchaser's, assignee's or transferee's assumption and agreement to perform and to be bound by all of the terms of the Lease, Lender shall be relieved of further liability under the Lease, however, if Lender takes a security interest in the lessee's interest in the leasehold estate created by the Lease to secure funds

lent to the purchaser, assignee or transferee, Lender shall again be subject to all the obligations set forth in this Agreement.

6.6 **Arbitration.** Any dispute regarding any default or performance under the Lease and Lender's obligation to cure such default or render such performance shall be determined by arbitration as provided in paragraph 3 of the Lease. Any such arbitration shall be limited to the single issues of (i) whether there has been a default, and (ii) whether Lender is required under the terms of this Agreement to cure such default or render the required performance.

7. **Disposition of Insurance and Condemnation Proceeds.** Landlord shall be named as an additional insured under any of Tenant's casualty policies on the Leased Premises to the extent of the interests limited in this paragraph 7. Lender shall cause Tenant to procure and maintain coverage for debris removal. Should the Leased Premises suffer any loss which is covered by casualty insurance, and the insurance proceeds are used to restore any improvements made by Tenant, Landlord agrees that Tenant and Lender shall have the right to such proceeds so long as none of Landlord's property, utilities or other services therein are damaged or such damages are repaired. In the event the Leased Premises are substantially damaged and Tenant's improvements have been repaired, Landlord shall only participate in the insurance proceeds to the extent necessary to repair and restore Landlord's ground and any of Landlord's or Tenant's improvements (excluding buildings and personal property) on or in the ground to the same condition the land was in at the commencement of the Lease, or in the same condition at the time of the casualty. Under the Lease, Landlord has the option of requiring Tenant to demolish the improvements at the end of the Lease term, or to have Tenant convey title to Landlord Tenant's interests in the Leasehold Improvements. In the event Leased Premises and the Leasehold are so severely damaged that Tenant's and Lenders' decision is not to repair or restore the premises, Landlord shall participate in the insurance proceeds attributable to debris removal to the extent necessary to remove the remainder of the damaged improvements and to restore the Leased Premises and any utilities or other such improvements (excluding rebuilding the improvements or restoring other personal property of Tenant) to the same condition the land was in at the commencement of the Lease, or in the same condition at the time of the casualty. Other than as described herein, Landlord shall have no claim to insurance proceeds or condemnation proceeds that are attributable to Tenant's interest in the Leasehold, nor shall Lender have any interest in Landlord's condemnation proceeds, if any.

8. **Right to Participate in Litigation.** Lender shall have the right to participate in any litigation, arbitration or dispute directly affecting the Leased Premises or the interests of Tenant or Lender therein, including without limitation, any suit, action, arbitration proceeding, condemnation proceeding or insurance claim. Landlord, upon instituting or receiving notice of any such litigation, arbitration or dispute will promptly notify Lender of the same.

9. **Incorporation of Mortgagee Protection Provisions.** To the extent not inconsistent with this Agreement, all provisions of the Lease which by their terms are for the benefit of any leasehold mortgagee, are hereby incorporated herein for the benefit of Lender.

10. **Right to Remove Collateral.** In the event Lender exercises its rights under its collateral and realizes upon the collateral, Landlord agrees that Lender is entitled to remove Tenant's furniture, movable trade fixtures and equipment installed by Tenant from the Leased Premises at any reasonable time and that the collateral shall remain personal property even though the trade fixtures may be affixed to or placed upon the Leased Premises. "Trade fixtures" means the movable personal property of Tenant which is free standing or attached to floors, walls or ceiling, but does not include installed light



fixtures, floor coverings, doors, windows, heating, plumbing or electrical systems or components thereof, including any roof-mounted HVAC equipment and/or units thereof, or permanent walls or partitions installed by Tenant. In the event Lender so realizes on its collateral, Landlord waives any right, title, claim, lien or interest in the above trade fixtures by reason of such fixtures being attached to or located on the Leased Premises. Lender shall use reasonable care in removing the trade fixtures from the premises and shall repair any damage that may result from such removal which shall be completed in accordance with the terms of the Lease.

11. **Interpretation of Agreement.** This Agreement sets forth the complete understanding of Lender with respect to this transaction; may be amended only in writing signed by the party against whom it is sought to be enforced; and, without limiting the generality of the foregoing shall not be deemed modified by any course of dealing. No provision in the Assignment of Tenant's Interest in Lease, Security Agreement and Deed of Trust shall vary, modify or expand the covenants herein contained. In the event of any conflict between the terms of this Agreement and the Lease, this Agreement shall control.

12. **Attorney Fees.** In the event of litigation or arbitration between the parties to enforce or interpret this Agreement, the arbitrator, Board of Arbitration or Judge, as may be appropriate, may award the prevailing party in such arbitration or litigation a reasonable attorney's fee not to exceed 20 percent of the amount in controversy, plus costs and costs of collection.

13. **Notices.** All notices, copies of notices, consents or other communications given under this Agreement must be in writing and shall be effective when received. Such communications shall be given in person to an officer of Lender or to Landlord or shall be delivered to one of such persons by registered or certified U.S. mail or by public or private courier or wire service or facsimile transmission addressed to the parties at their respective addresses set forth below, unless by such notice a different person or address shall have been designated in writing:

If to Lender:

If to Landlord: Port of Olympia  
915 Washington St. NE  
Olympia, Washington 98501  
Attn: Heber Kennedy

IN WITNESS WHEREOF, Landlord has executed these presents this \_\_\_\_ day of \_\_\_\_\_, 199\_\_.

LANDLORD:  
PORT OF OLYMPIA, a Washington  
Municipal corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

AGREED to this \_\_\_\_ day \_\_\_\_\_, 199\_\_

LENDER:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Exhibit A  
To Landlord's Consent and Agreement

Copy of Lease

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EXHIBIT A

To Landlord's Consent and Agreement

Page 106 of 115

EXHIBIT "E"

Description for Anthony's parcel

The south 200.00 feet of Lot 1 of City of Olympia Short Plat SS-5888, Subject to a revised easement and agreement across the south 11 feet for City of Olympia improvements of LID 754.

Containing 20,000 square feet as shown on attached Exhibit "D".

EXHIBIT "E"

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EXHIBIT F

Page 108 of 115

EXHIBIT "F"  
Portion of the Port's Comprehensive Plan

1. MARKET DISTRICT 12

**Intent** The Market should be a vibrant waterfront development which supports a variety of uses and encourages people to walk along the waterfront and shop in the downtown area. This District is the transition area between downtown and the marine terminal and cargo areas. It should be home to multiple retail, commercial and light industrial uses, such as the local farmer's market, micro-brewery, restaurants, offices and waterfront pier.

**Use** Retail, commercial, and light industrial.

**Character** The design intent for the Market is Pacific Northwest, possibly featuring native Indian designs and architecture, or the Granville Island character of a mix of building styles of a more rural flavor than urban. Retail building windows should have transoms and canopies, with boardwalk-style entries.

Vehicle access is via a diagonal street from Capitol Way to D Avenue, and from Columbia Street. Pedestrian access is from Percival Landing. The traffic circle and other street treatments such as pavers and trees creates an atmosphere of an entry instead of a through-street.

**Placement** Buildings are oriented around a central plaza, with shared parking and open space. A traffic circle and road re-alignment connects this district to East Bay, as well as to downtown via Capitol Way.

**Setbacks** Buildings setbacks would conform to the requirements set forth in this district by the Port Peninsula Design Guidelines.

**Coverage** 100%, minus all landscaped and stormwater areas.

**Height** Maximum: 45 feet.

**Parking** Parking ratios and design would conform to the requirements set forth in the Port Peninsula Design Guidelines.

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EXHIBIT F

Page 110 of 115



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EXHIBIT H

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EXHIBIT "I"

COMMON AREA OPERATING COSTS ALLOCATION  
(For illustration purposes only)

MAD ANTHONY'S INC.

EXAMPLE 1.

- a. Mad Anthony's Inc. building has a requirement of 80 parking stalls
- b. Building A in Market District has a requirement of 120 parking stalls
- c. "Ratio" for Mad Anthony's Inc. equals 40.0%  $[80 \div (120 + 80) = 40.0\%]$

TOTAL OPERATING COSTS (including Port charges)	2/3 OF TOTAL OPERATING COSTS	RATIO	MAD ANTHONY'S SHARE OF COSTS
\$60,000	\$40,000	40.0%	\$16,000

EXAMPLE 2.

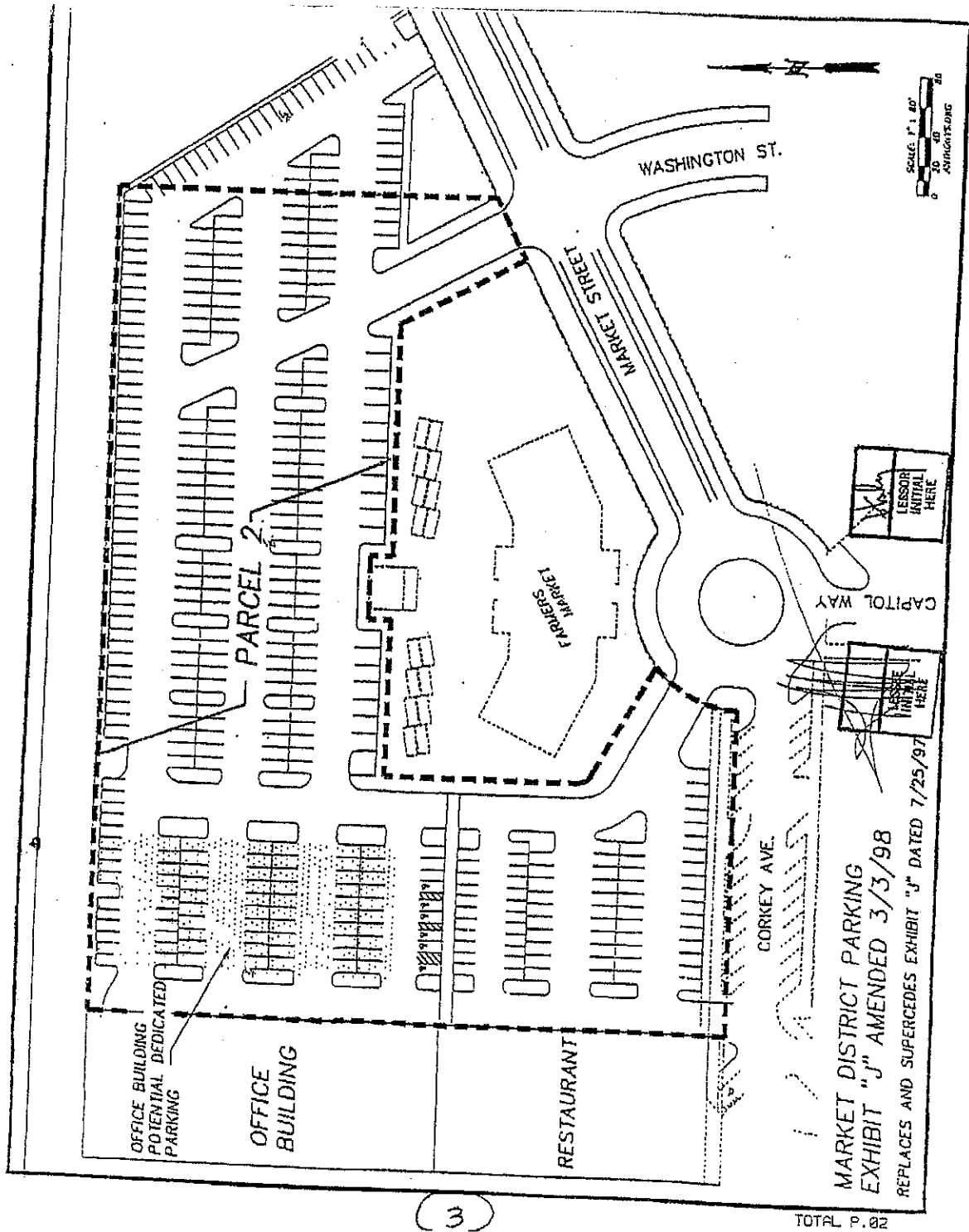
- a. Mad Anthony's Inc. building has a requirement of 80 parking stalls
- b. Building A in Market District has a requirement of 120 parking stalls
- c. Building B in Market District has a requirement of 22 parking stalls.
- d. "Ratio" for Mad Anthony's Inc. equals 36%  $[80 \div (120 + 80 + 22) = 36\%]$

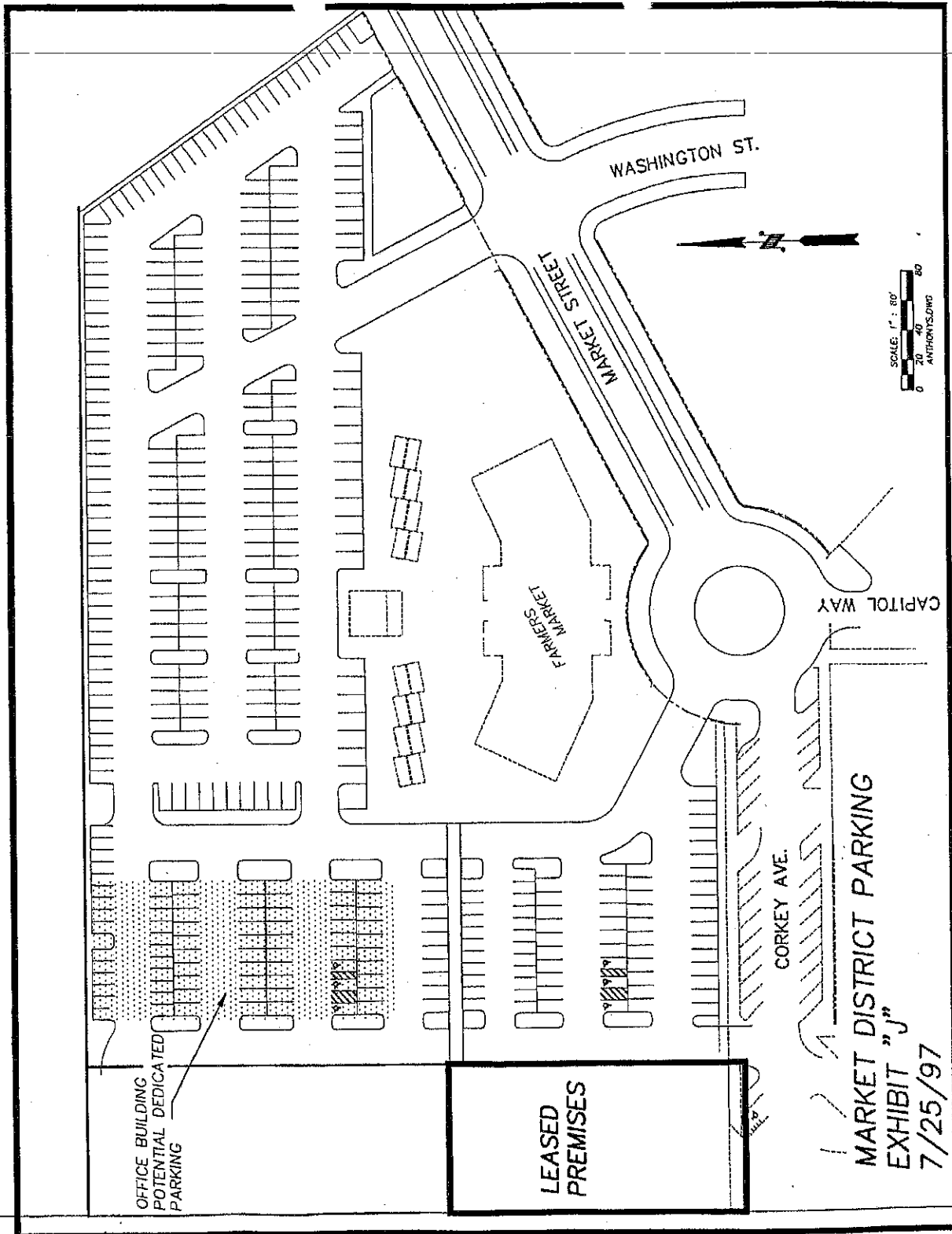
TOTAL OPERATING COSTS (including Port charges)	2/3 OF TOTAL OPERATING COSTS	RATIO	MAD ANTHONY'S SHARE OF COSTS
\$60,000	\$40,000	36%	\$14,400

EXAMPLE 3.

- a. Mad Anthony's Inc. building has a requirement of 80 parking stalls.
- b. There are no other buildings in the Market District.
- c. "Ratio" for Mad Anthony's Inc. equals 100%  $[80 \div (80 + 0) = 100\%]$

TOTAL OPERATING COSTS (including Port charges)	2/3 OF TOTAL OPERATING COSTS	RATIO	MAD ANTHONY'S SHARE OF COSTS
\$60,000	\$40,000	100%	\$40,000





MARKET DISTRICT PARKING  
 EXHIBIT "J"  
 7/25/97

EXHIBIT "L"

MARKET PLACE BUILDING USE CLAUSE

USE OF PREMISES

For the construction and operation of a Class A office building along with the right to use the parking area as shown as Parcel "2" on Exhibit "H" in common with other tenants of the Port as described herein. Tenant (and its subtenants) may operate vending machines, espresso carts, employees only lunchrooms, and delicatessens open to the public not exceeding, in the aggregate, 1,000 square feet. No other food service operations (including delicatessens exceeding in the aggregate 1,000 square feet, restaurants open to the public, or any food service with a State of Washington Class H liquor license or its equivalent) shall be permitted within the leased premises.



**THE FOLLOWING EXHIBITS WERE OMITTED  
FROM RECORDED AGREEMENT DUE TO NONSTANDARD FONT SIZE:**

EXHIBIT A	Page 58 of 115
EXHIBIT F	Page 60 of 115
ADDENDUM TO EXHIBIT F	Page 64 of 115
EXHIBIT H	Page 65 of 115
EXHIBIT I	Page 67 of 115
EXHIBIT A To Landlord's Consent and Agreement	Page 106 of 115
EXHIBIT F	Page 108 of 115
EXHIBIT F	Page 110 of 115
EXHIBIT H	Page 111 of 115



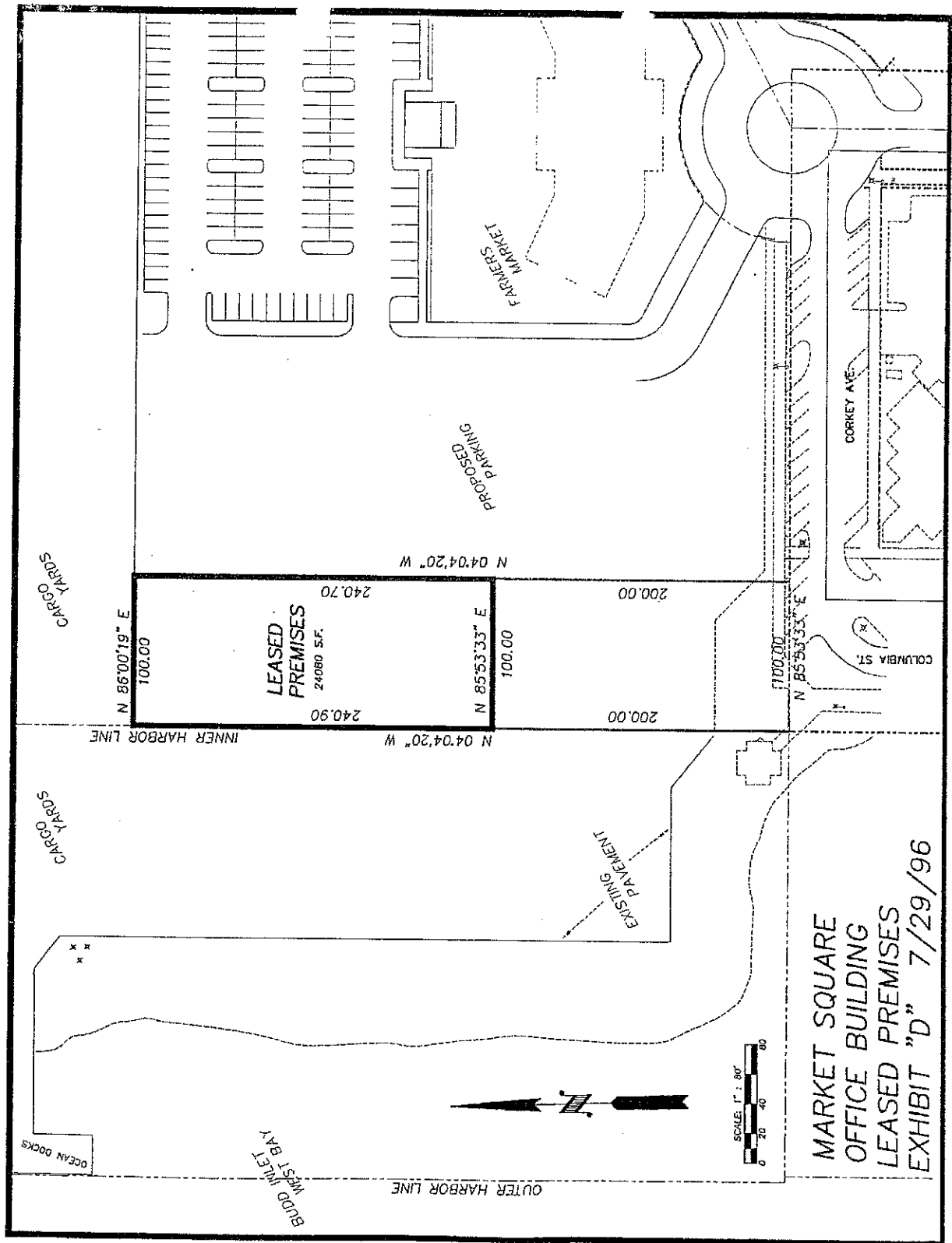


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EXHIBIT A

Page 58 of 115







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EXHIBIT F

Page 60 of 115

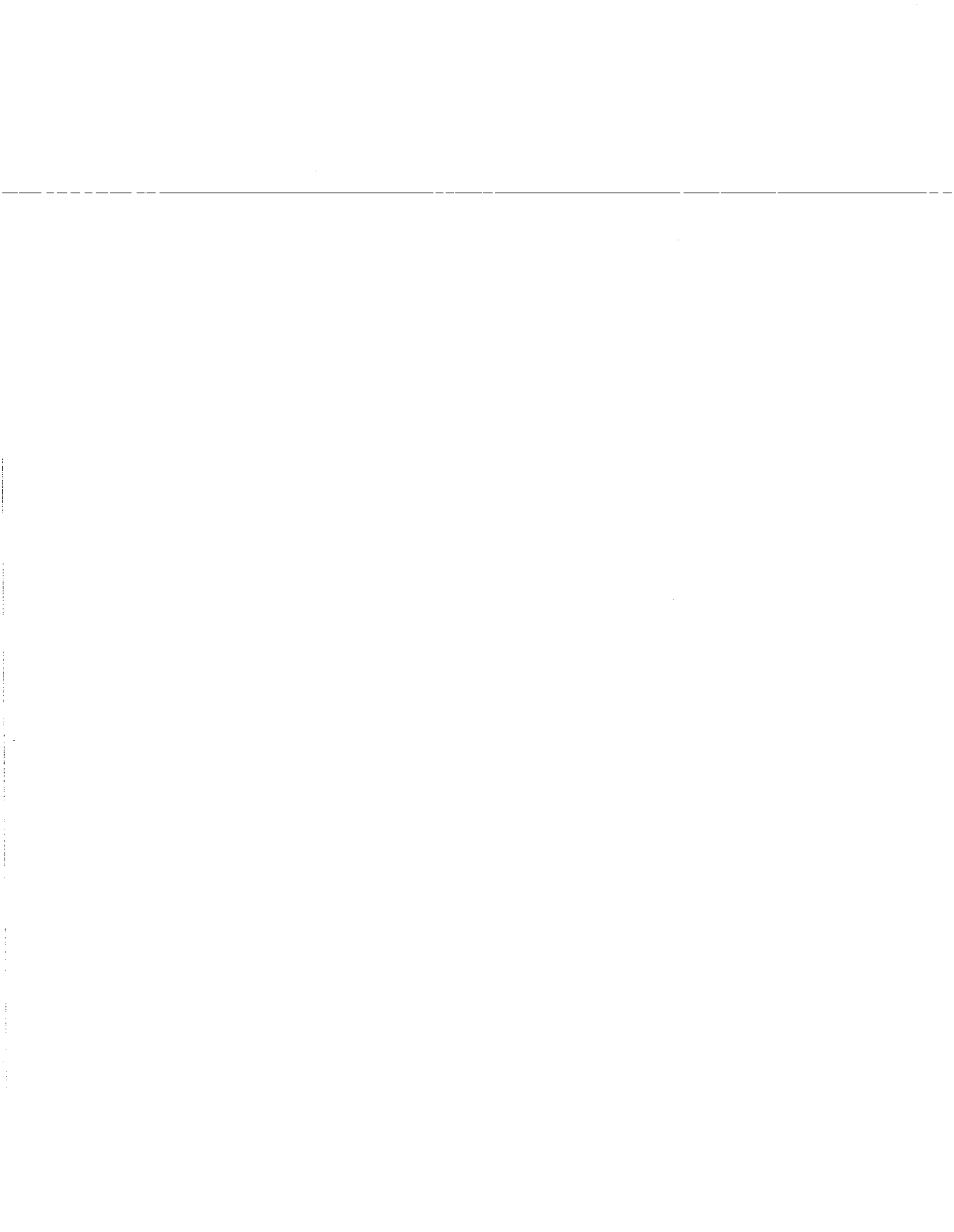
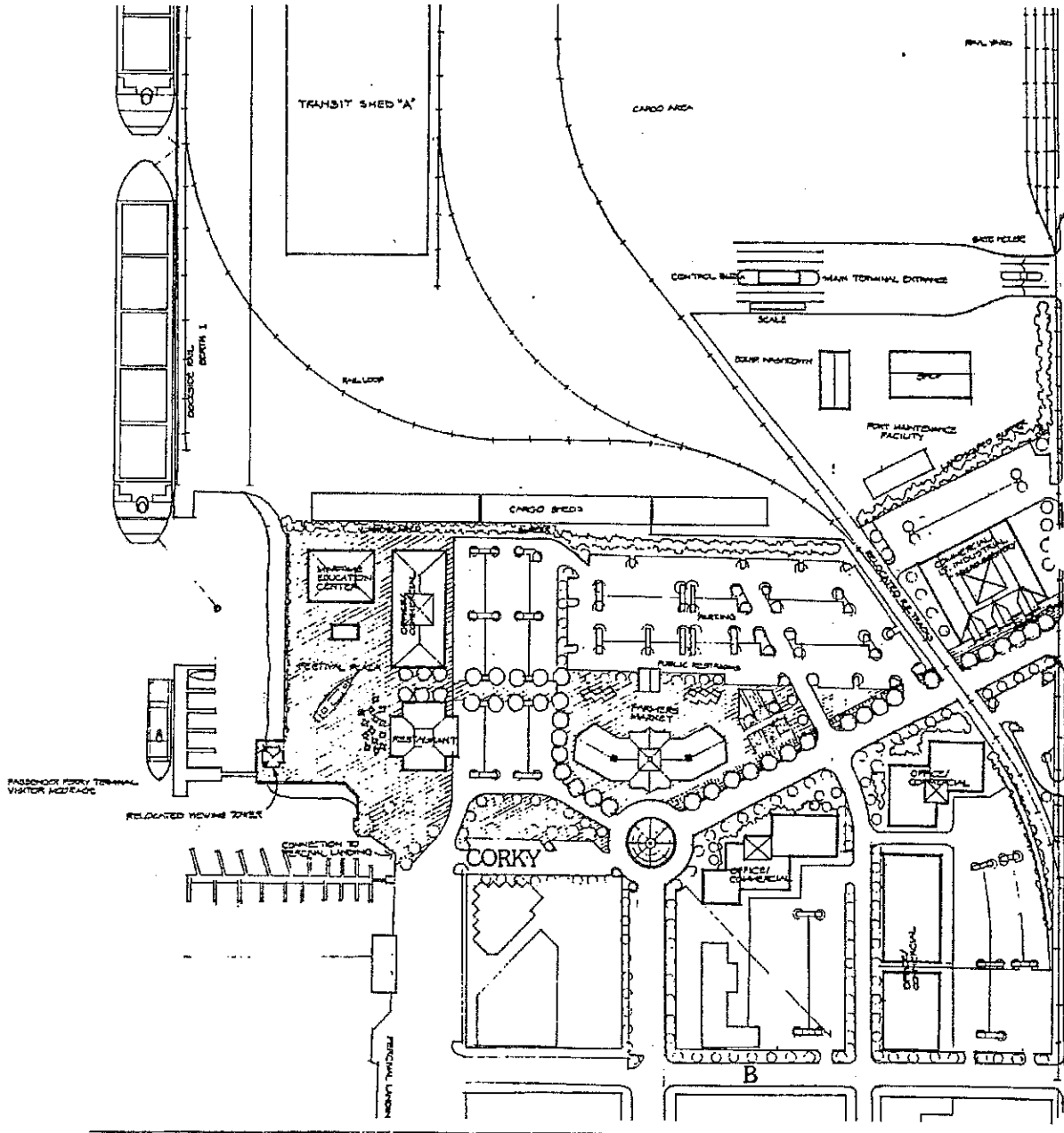


EXHIBIT "F"

Market District Drawing



Port of Olympia Comprehensive Plan -- May 1995  
Page 26



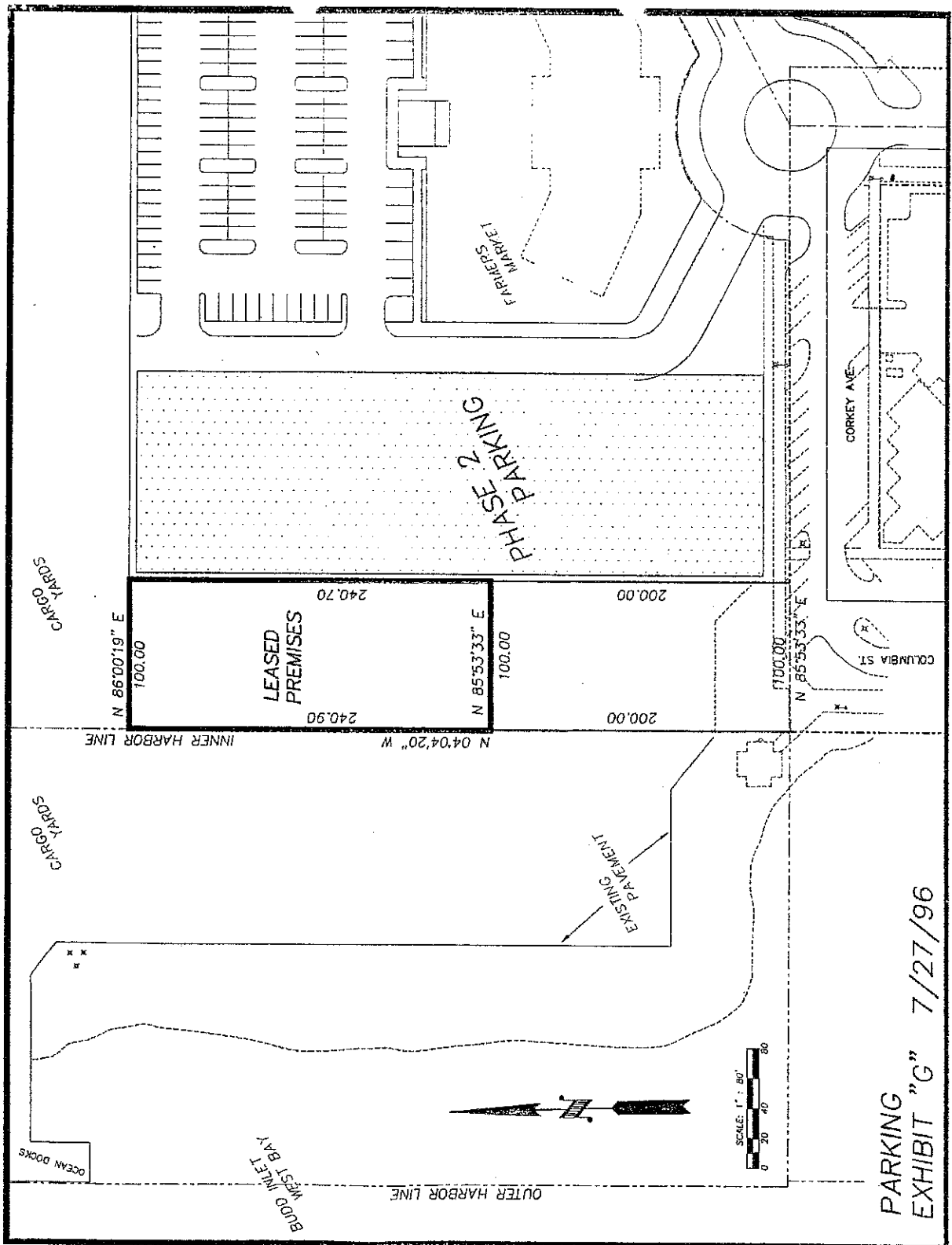


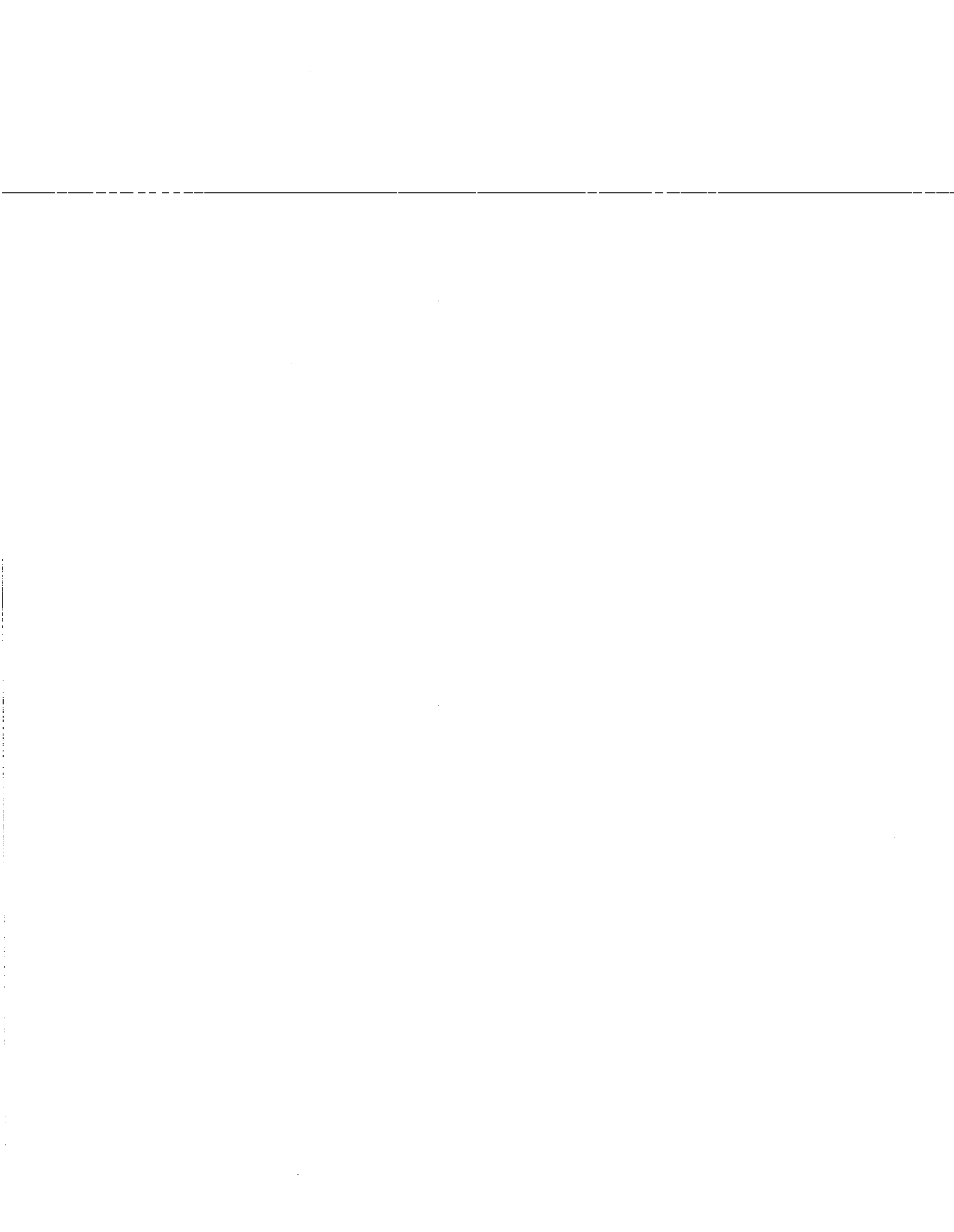
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ADDENDUM TO EXHIBIT F

Page 64 of 115







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EXHIBIT H

Page 65 of 115

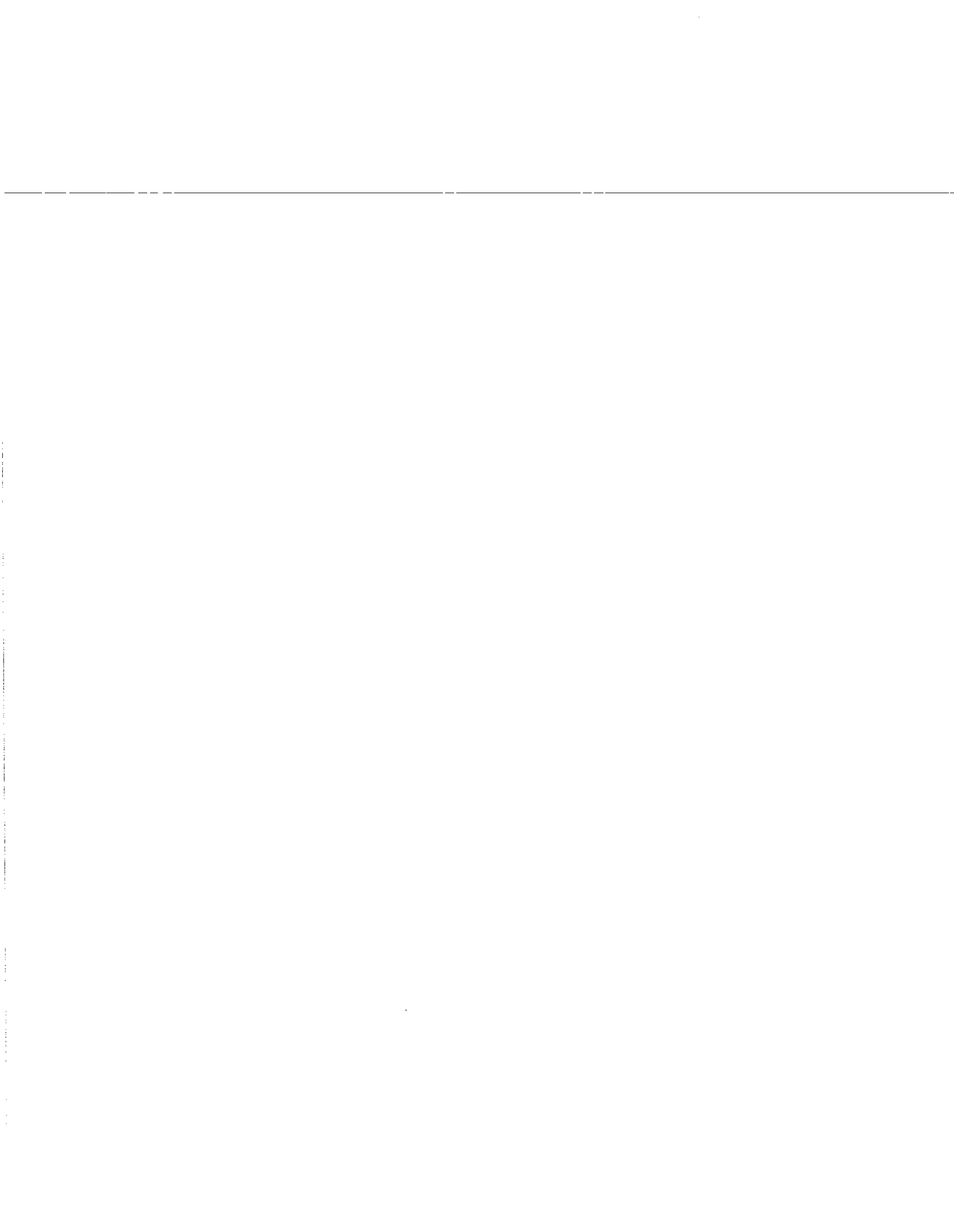
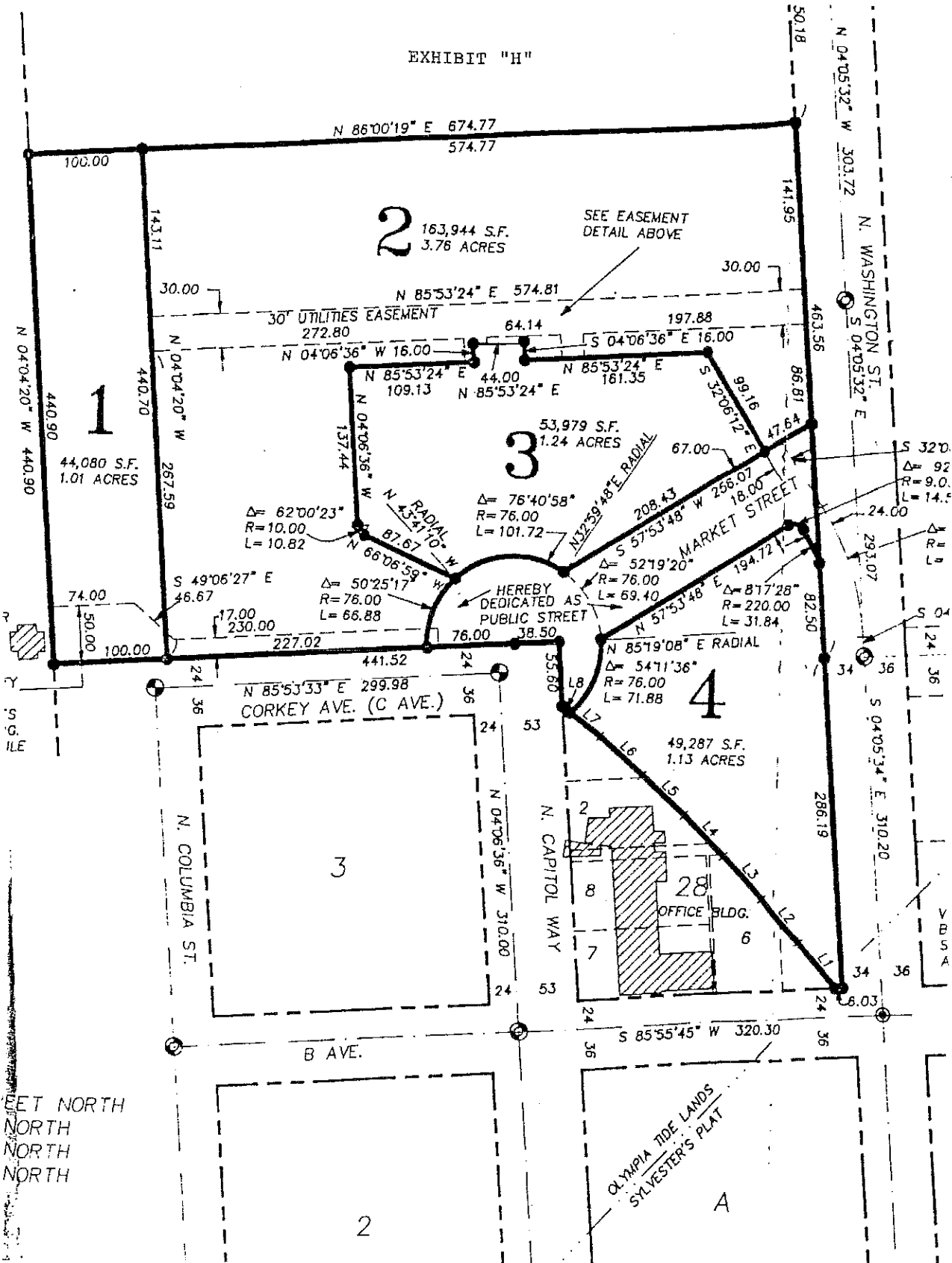
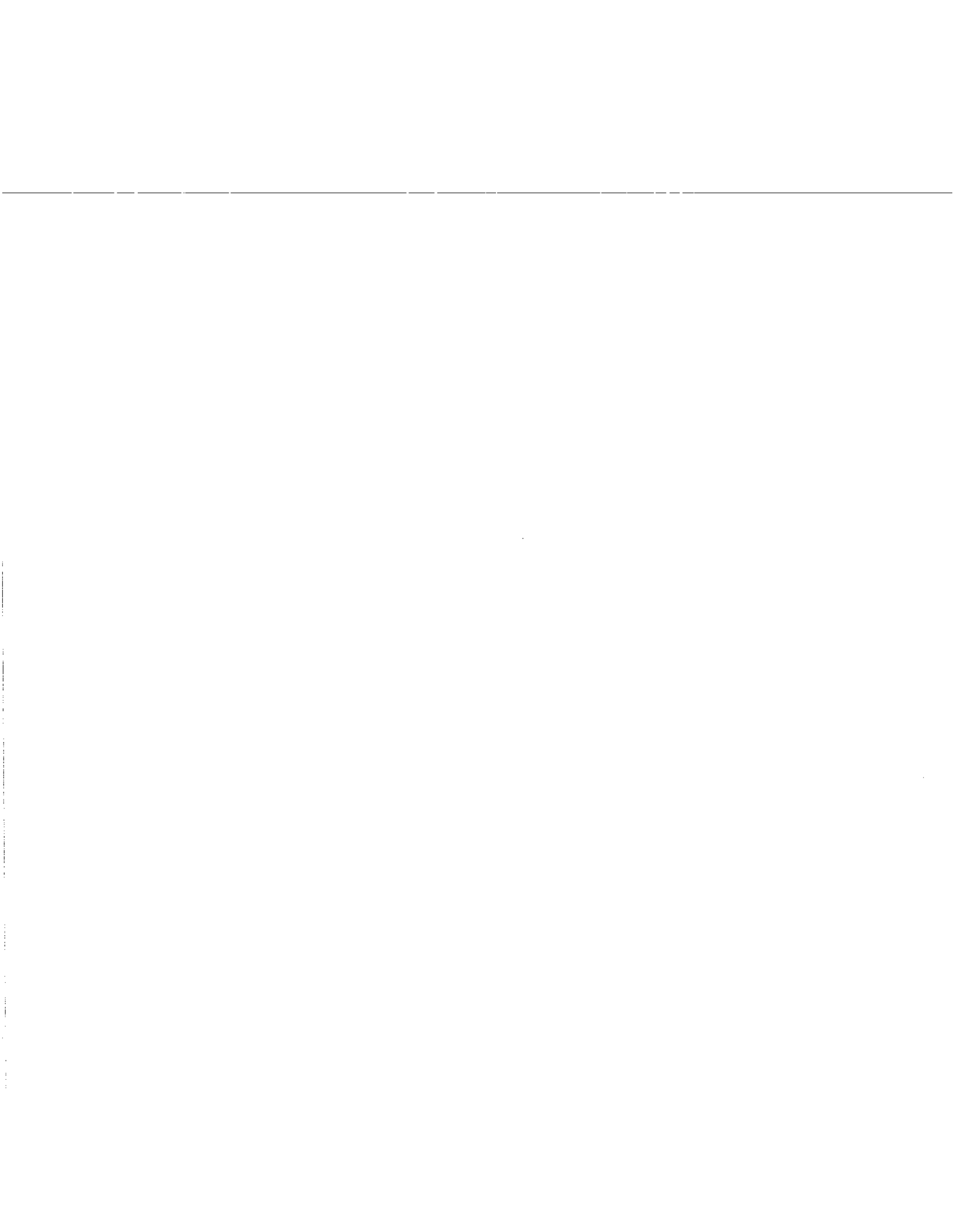


EXHIBIT "H"



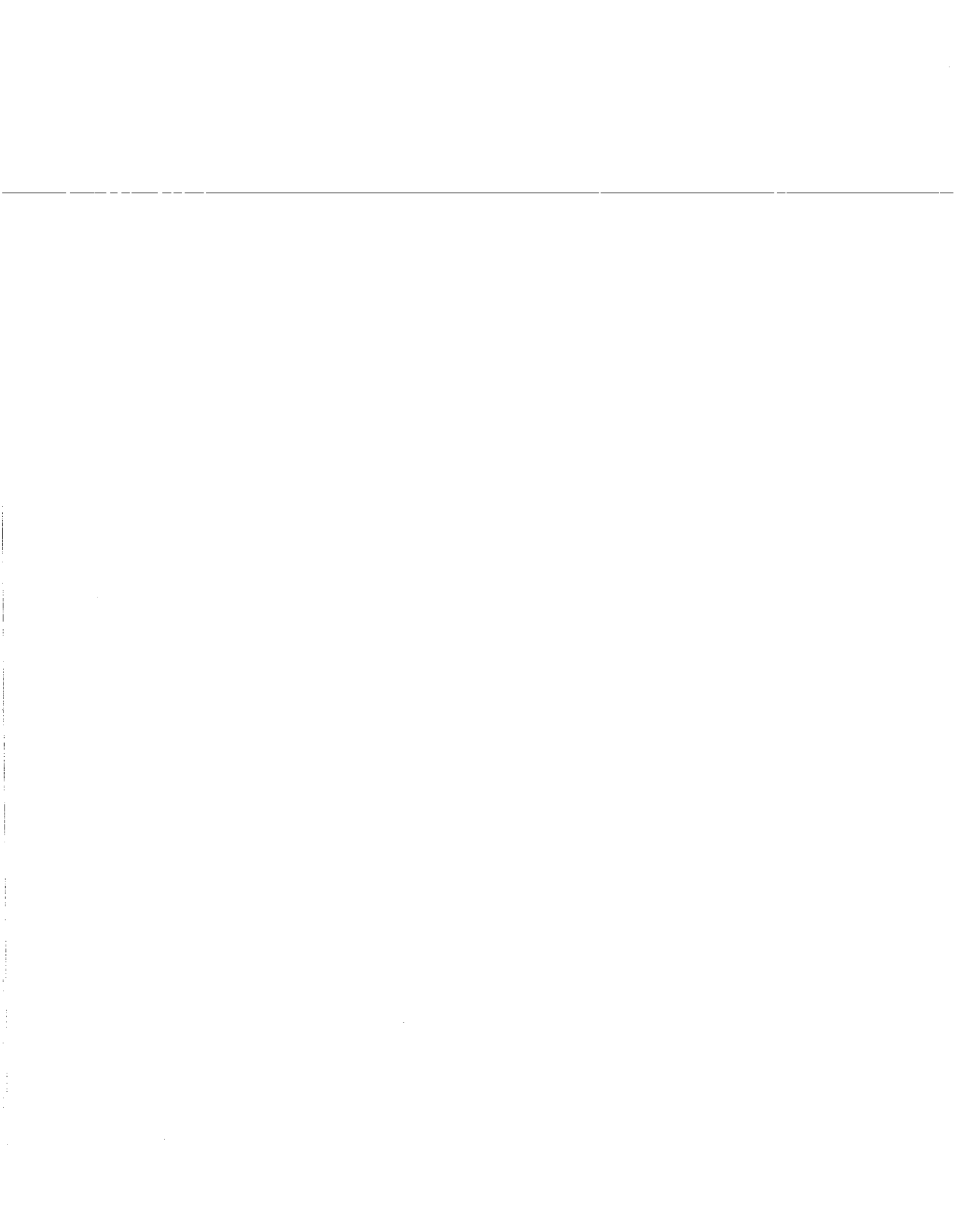


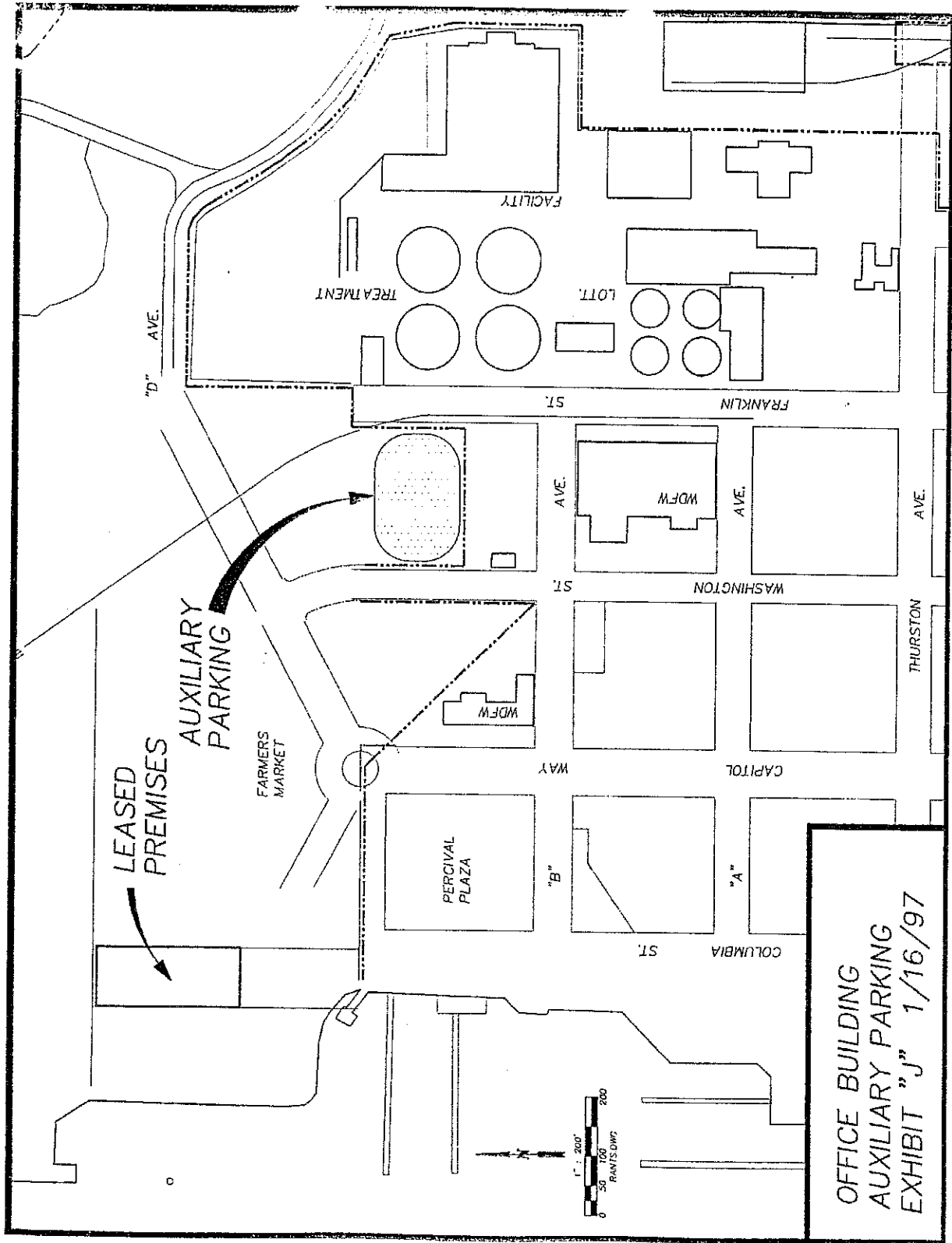


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EXHIBIT I

Page 67 of 115





OFFICE BUILDING  
 AUXILIARY PARKING  
 EXHIBIT "J" 1/16/97



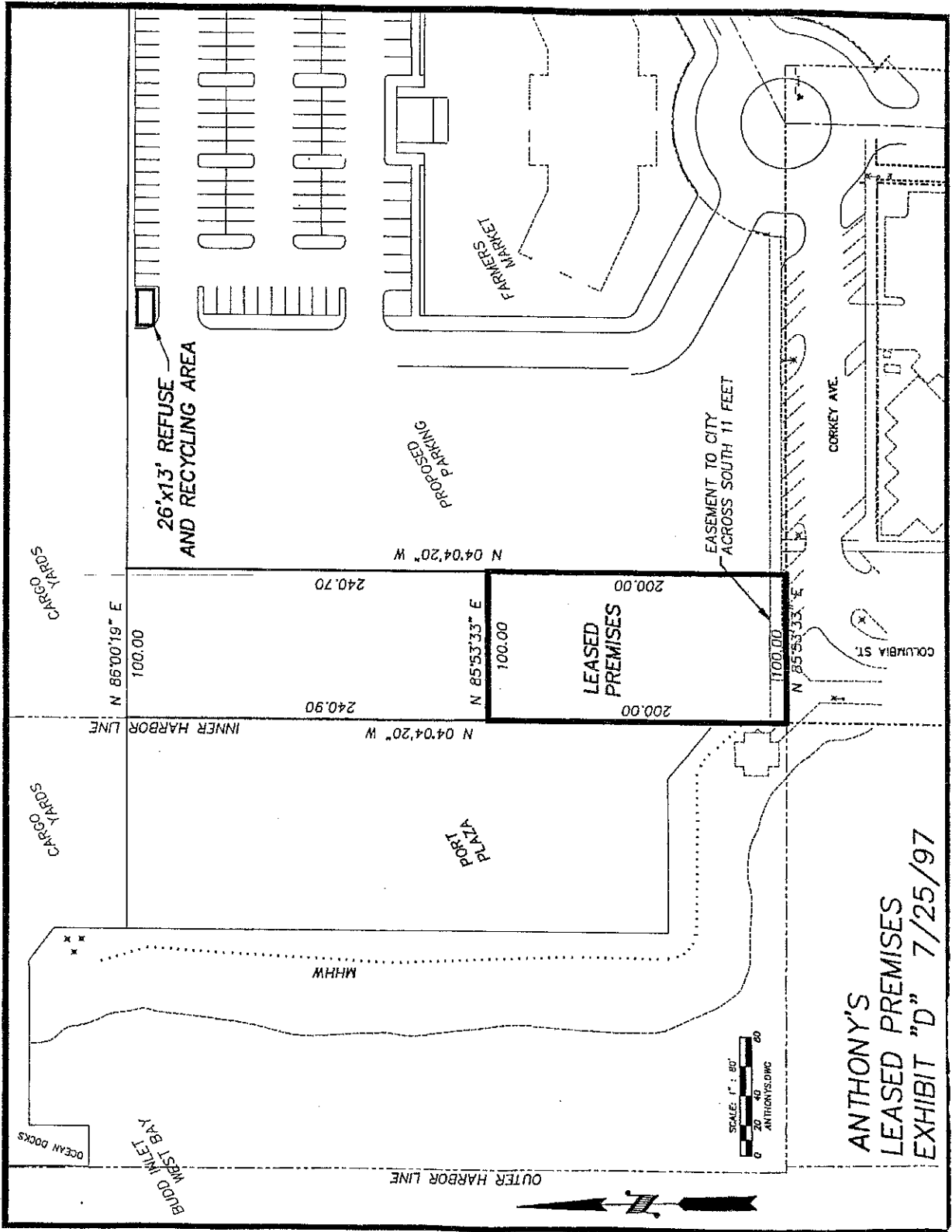
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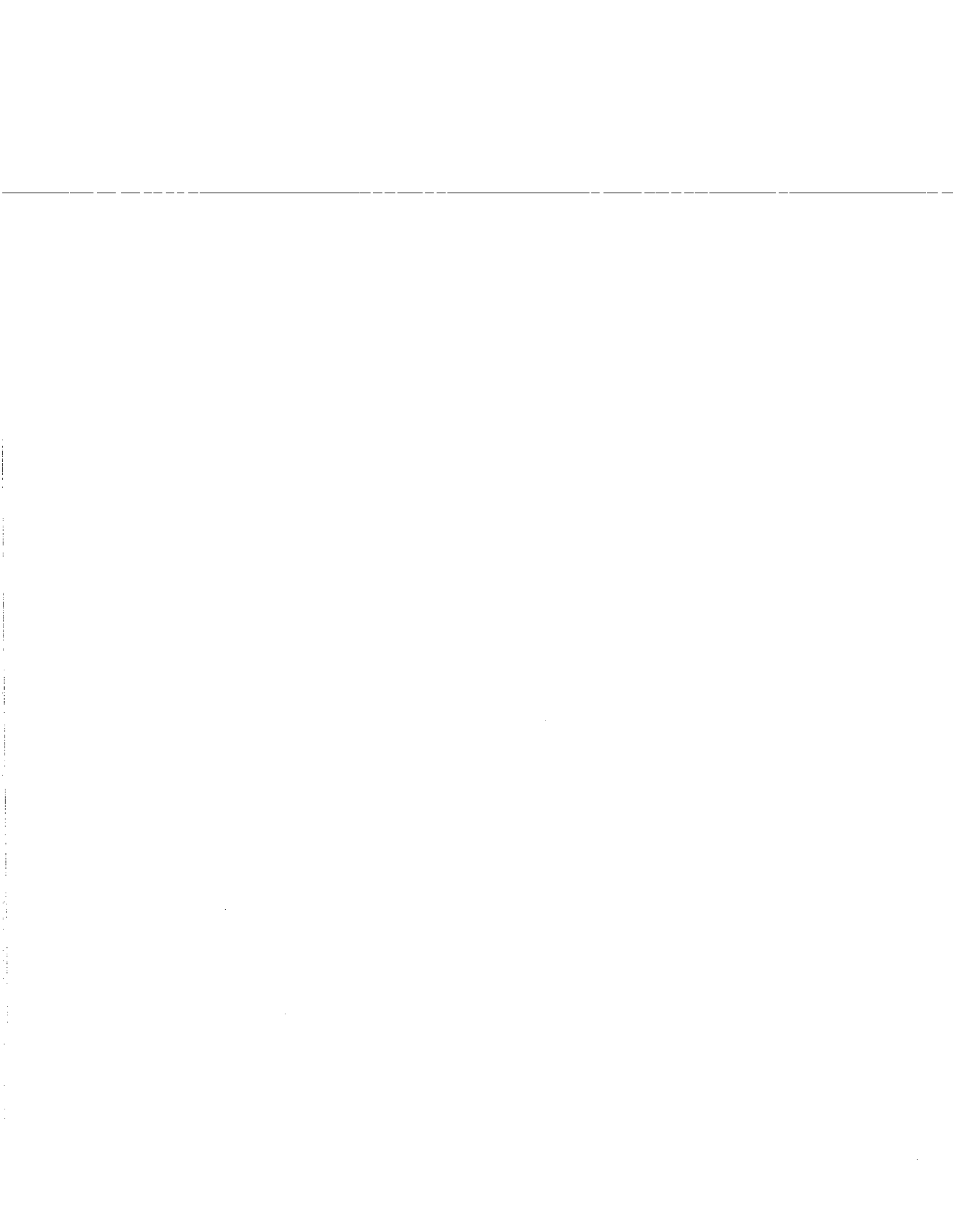
To Landlord's Consent and Agreement

Page 106 of 115





ANTHONY'S  
 LEASED PREMISES  
 EXHIBIT "D" 7/25/97





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EXHIBIT F

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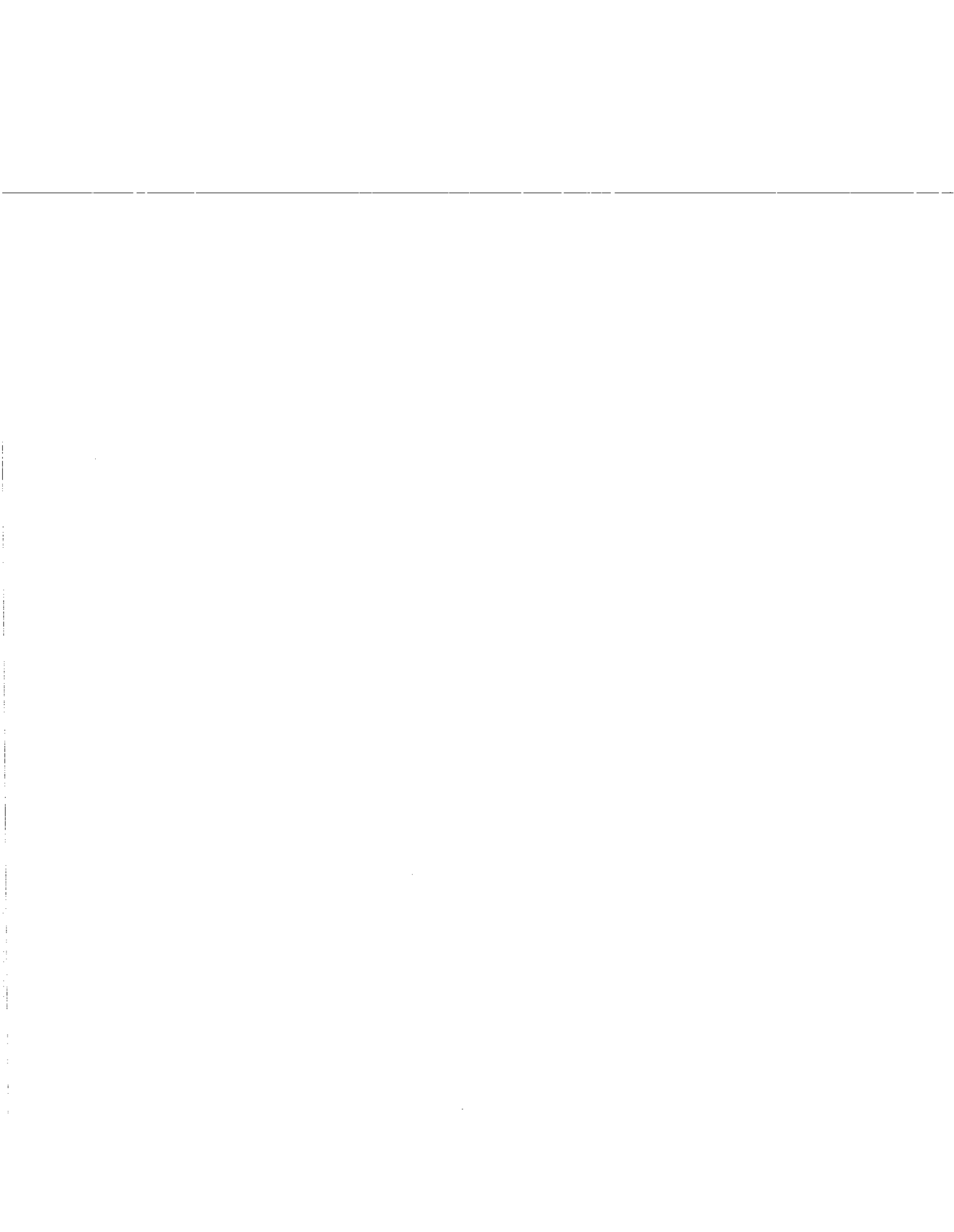
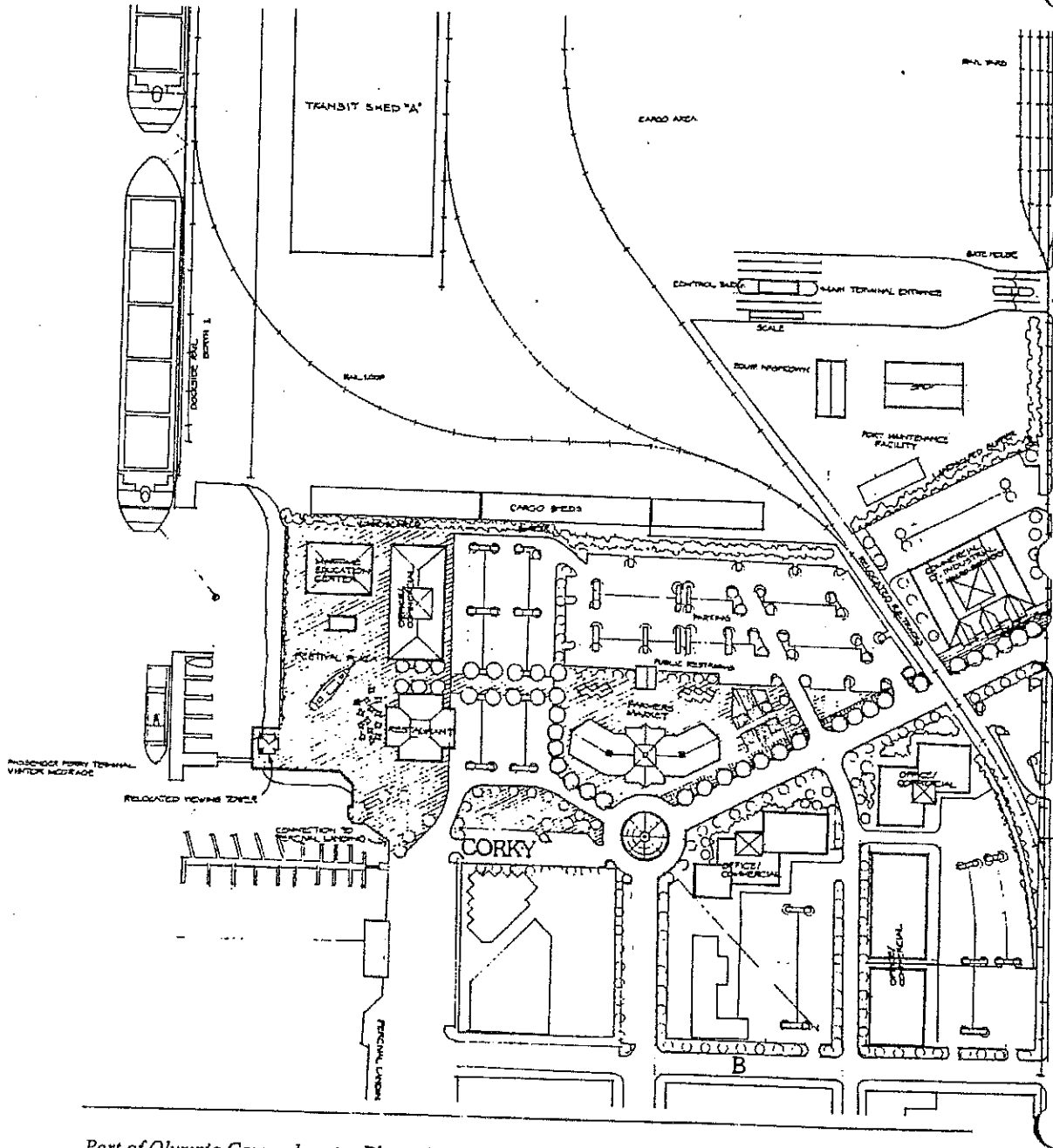
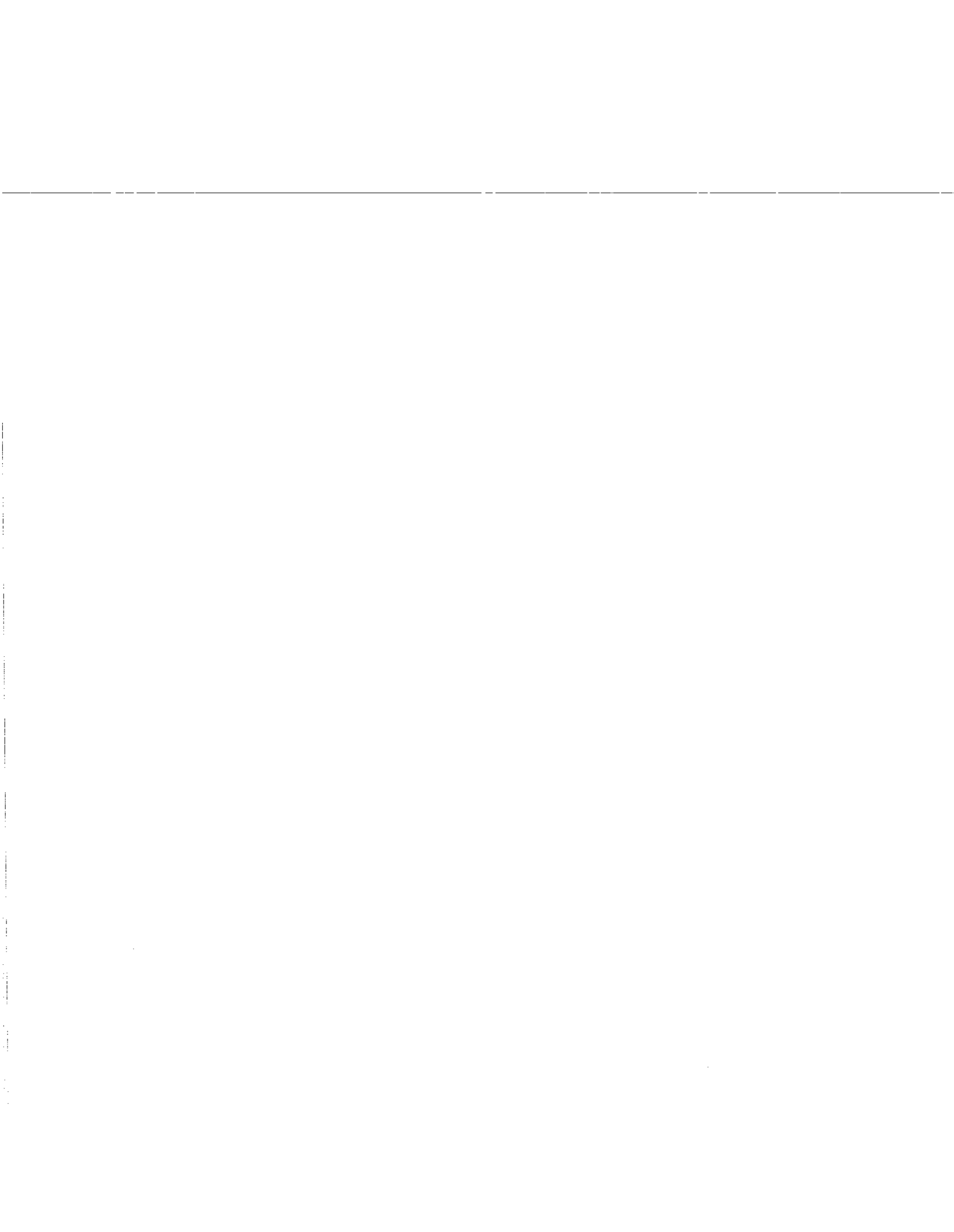


EXHIBIT "F"  
Portion of the Port's Comprehensive Plan

Market District Drawing



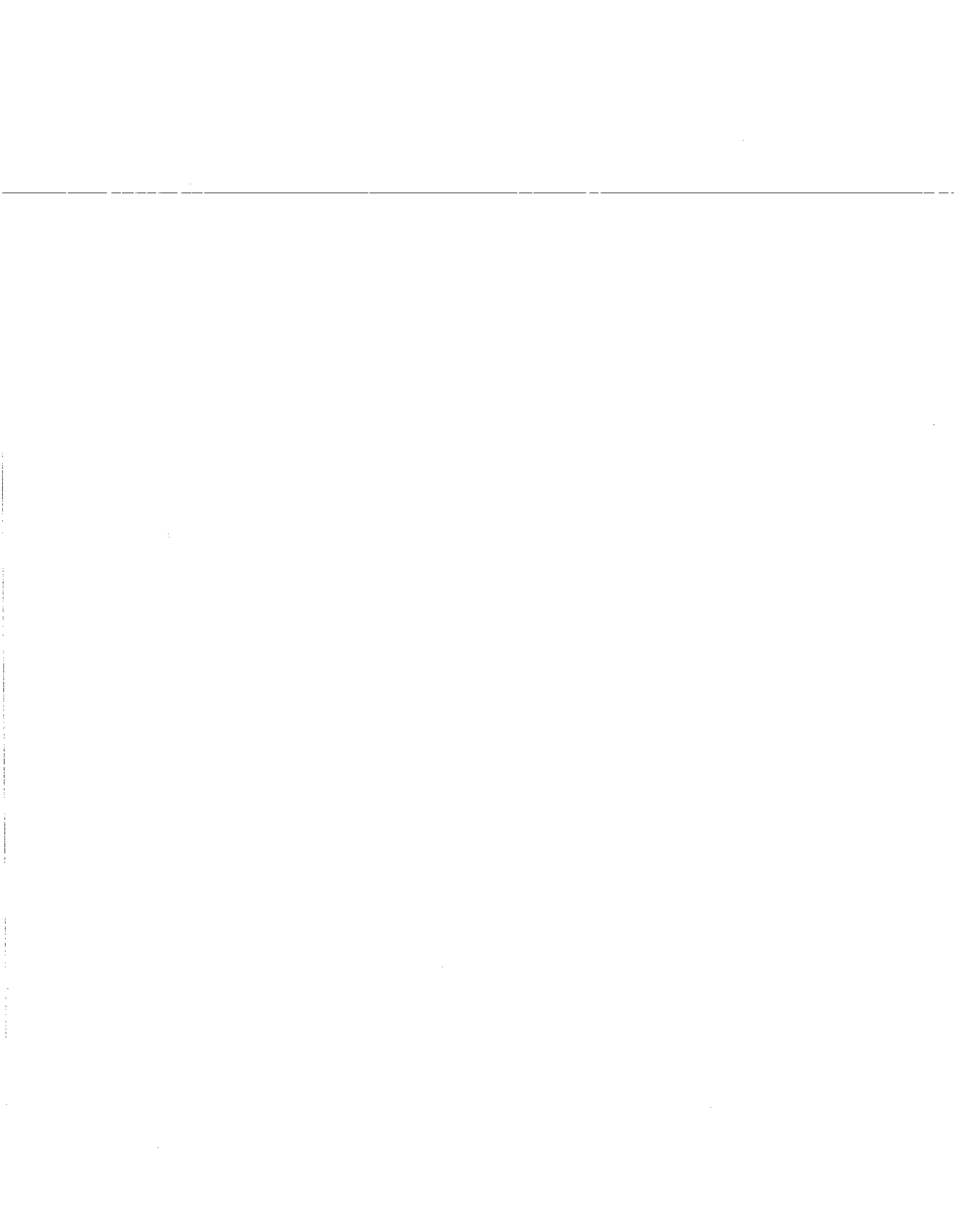
Port of Olympia Comprehensive Plan - May 1995  
Page 26

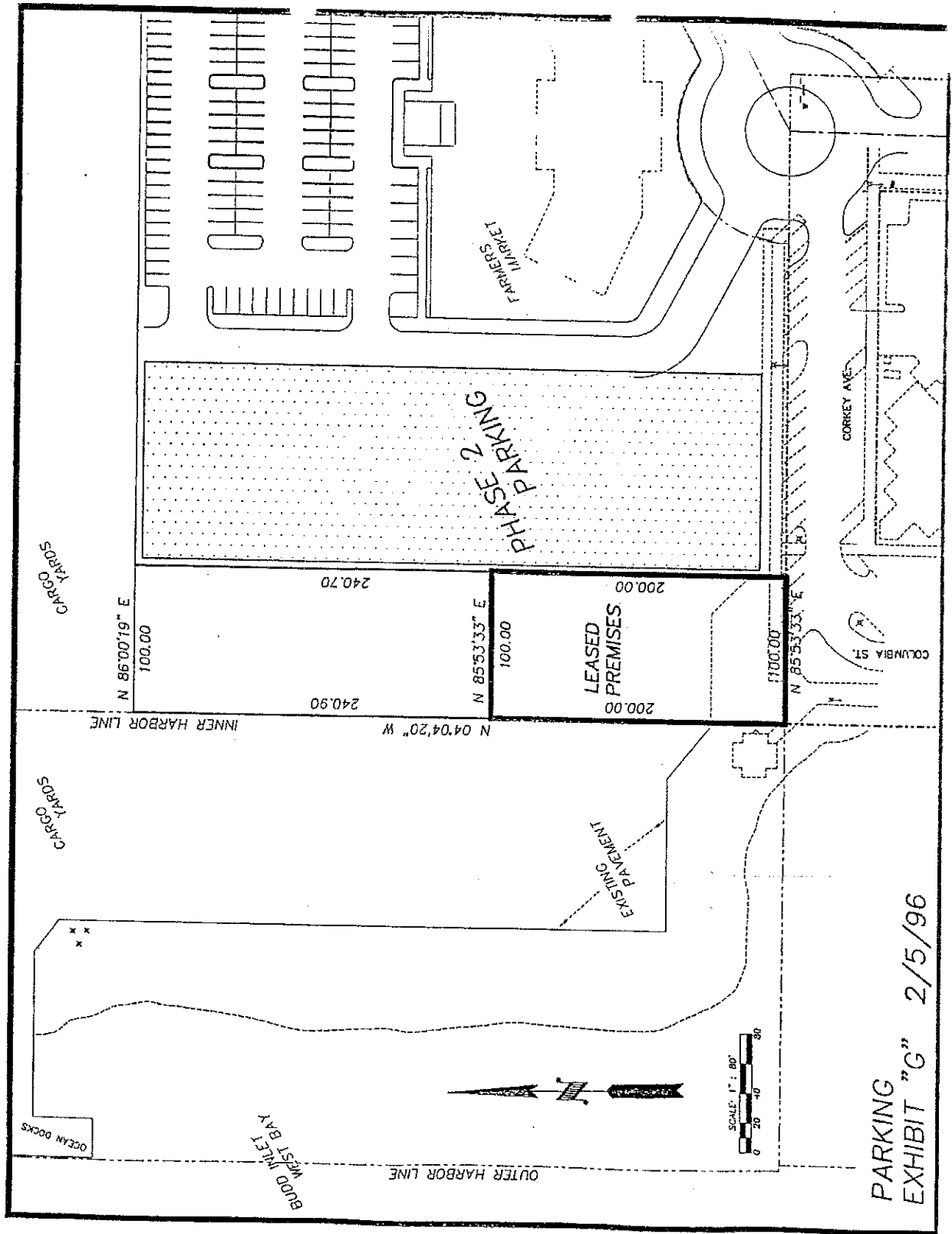


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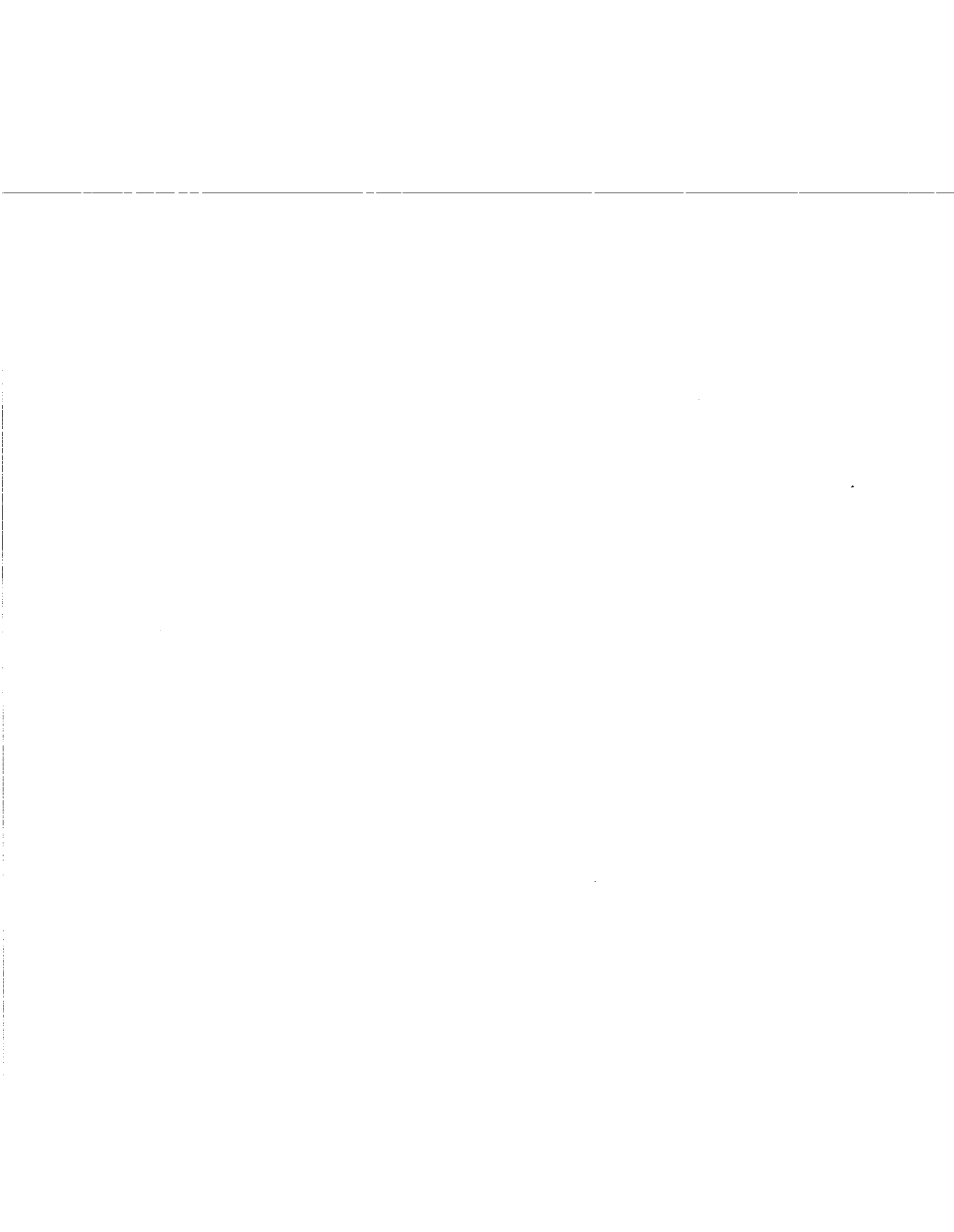
EXHIBIT F

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PARKING EXHIBIT "G" 2/5/96





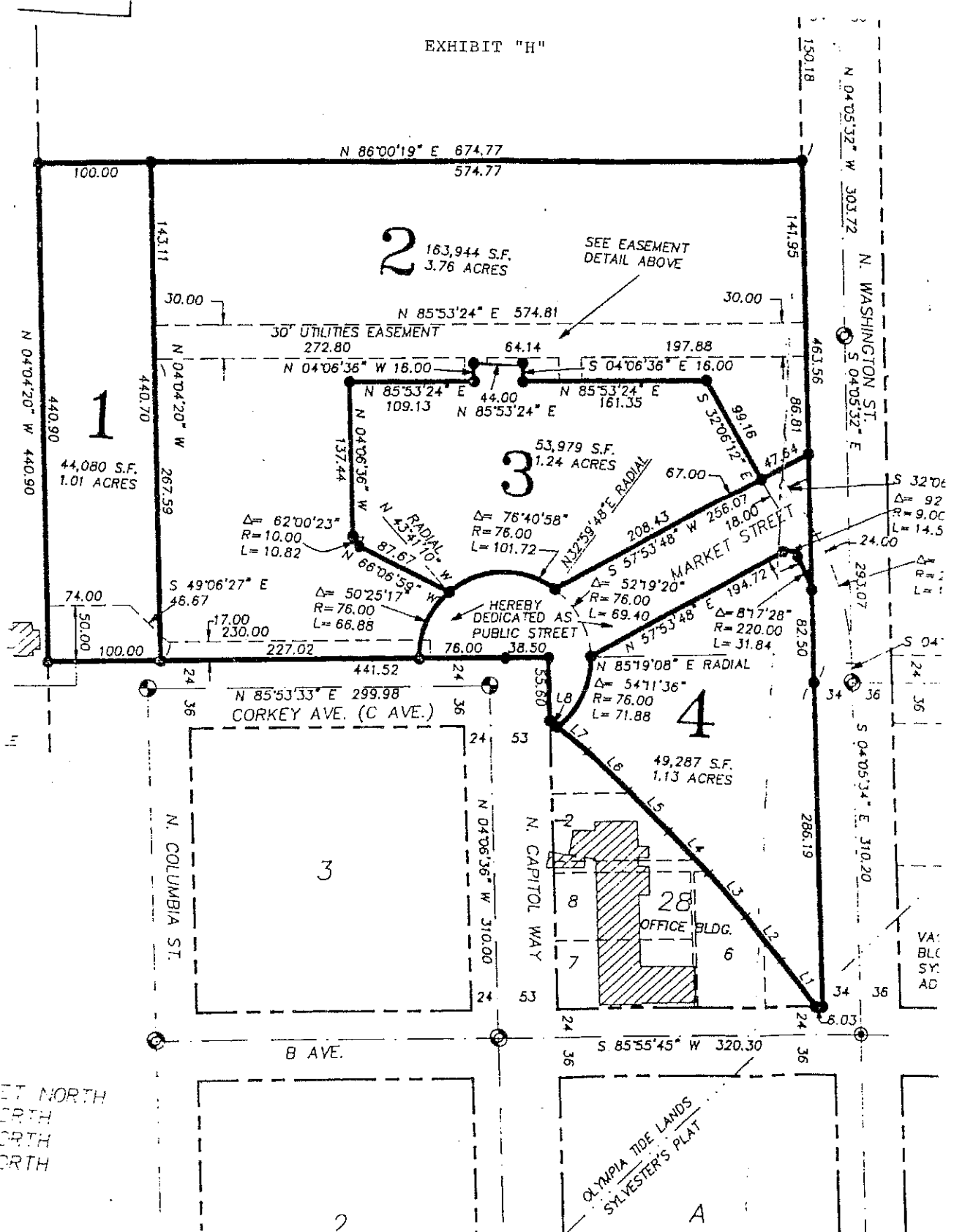
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EXHIBIT H

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EXHIBIT "H"





## COVER MEMO

<b>Briefing Date/Time:</b>	July 8, 2024
<b>Staff Contact/Title:</b>	Warren Hendrickson, Director of Operations 360.528.8050, <a href="mailto:warrenh@portolympia.com">warrenh@portolympia.com</a>
<b>Subject:</b>	Comprehensive Scheme of Harbor Improvements (CSHI)
<b>Purpose:</b>	<input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Decision Needed

### **Overview:**

- Type of agenda item: Advisory – No Action Required
- Approval planned via Action agenda item at the July 22 Commission meeting. Public hearing required.

### **Definition:**

A Comprehensive Scheme of Harbor Improvements (CSHI) is the RCW-required Port plan with two primary purposes:

1. Portray the port’s geographical boundaries, and
2. Identify the specific property/facility improvements anticipated requiring the expenditure of public funds.

### **Background:**

#### **References for additional information:**

- RCWs
- Port website
  - <https://portolympia.com/about-us/planning>
- WPPA Port Governance and Management Guide
  - <https://www.washingtonports.org/publications-guides>

Three keystone documents serve as the foundation for all ports:

- Strategic plan
  - Mission statement
  - Vision statement
- CSHI
- Annual budget

Each of these documents is formally approved by the Port Commission.

The Port District Act of 1911 created Port authorities, including the legal requirement to seek community input on capital plans and fund expenditures through formal public hearing. This process first established the fundamental concept of the public trust doctrine in Washington state.

Ports are considered special purpose districts with unique authorities that have significantly expanded over succeeding decades, including economic development and real estate and airport ownership. Nonetheless the original CSHI terminology remains unchanged, both by tradition and as embodied in state law.

As intended by the original legislation, a “scheme” is a plan or program of action that details a port’s intentions and its high-level plan to construct physical improvements with public monies. It is the functional equivalent of city/county comprehensive plans. It was enacted into law by [RCW 53.20](#) with six subsections. The legislative intent is to require ports to share with the public – in advance of expenditures – its plans to invest in any type of physical improvement. Public hearings are therefore required to first establish or later amend the CSHI.

Generally, there are five components of a CSHI:

1. Map of Port lands
2. General statement of objectives
3. Description and inventory of existing/planned facilities
4. Description of planned improvements for facilities
5. Capital improvement plan and schedule

A current CSHI is not only important for public involvement and awareness, it is also required to establish eligibility for certain grant awards.

The Port’s current CSHI includes the following geographical areas and subareas:

1. Budd Inlet properties
  - a. NorthPoint
  - b. Swantown
  - c. East Bay
  - d. Market District
  - e. West Bay
  - f. Marine Terminal
2. Airport and New Market Industrial Campus properties
  - a. Olympia Regional Airport
  - b. New Market Industrial Campus
  - c. Cleanwater Center
3. Lacey properties

The following revisions will be needed to update the existing CSHI:

1. Removals:
  - a. Market District: 608 Washington property – Sold
  - b. Lacey properties – Sold
2. Future additions:
  - a. Airport Master Plan Update
  - b. Integrated Port Peninsula Master Plan

Additionally, the following items will also be incorporated into an amended CSHI:

- The Port’s increased focus on environmental initiatives
  - Budd Inlet remediation
  - Sea level rise
  - Habitat Conservation Plan completion
  - Energy sustainability
- 5-Year Capital Investment Plan
  - Annual capital budget

It is a best management practice to formally update the CSHI annually and the Commission will be asked to endorse such a process. It is most easily done by incorporating the annual update with adoption of the annual budget and tax levy. A public hearing is also required for those latter events, so such a hearing can thus serve multiple objectives.

It is also good practice to include relevant components as appendices to the CSHI. Examples for the Port of Olympia include:

- Capital Investment Plan and annual capital budget
- Airport Master Plan Update
- Integrated Port Peninsula Master Plan
- EIS, as amended, and/or SEPA Checklist

**Next Steps for the Commission:**

- Determine the desired CSHI components.
- Establish the CSHI Update frequency and timing.
- Approve the amended CSHI at the July 22 Commission meeting by formal resolution.
  - This amendment will be to the CSHI text only (Word/PDF).
  - A public hearing will be required; advance notice requirements will be met.

**Next Step for Port Staff:**

- Develop a more formal CHSI document, similar to the Port's Vision 2050 and Strategic Plan 2025 documents.

**Document Attached:**

- PowerPoint presentation

**Staff Recommendations:**

- Approve an amended CHSI by formal resolution at the July 22 Commission meeting.
- Adopt a process that updates the CHSI annually, in concert with the annual budget approval process.





# Comprehensive Scheme of Harbor Improvements

Warren Hendrickson  
Director of Operations  
July 8, 2024



1



## Today's Presentation

*Advisory Only – No Action Required*

- Comprehensive Scheme of Harbor Improvements (CSHI)
  - Background
  - 2024 amendment



2



## References

### *Source Documents*

- RCWs
- Port website  
<https://portolympia.com/about-us/planning/>
- WPPA Port Governance and Management Guide  
<https://www.washingtonports.org/publications-guides>



3

## CSHI Definition



- RCW-required Port plan
  - Portrays the Port's geographical boundaries
  - Identifies the specific property/facility improvements anticipated requiring the expenditure of public funds



4

## Background

### *Port Keystone Documents*

- Strategic plan
  - Mission statement
  - Vision statement
- CSHI
- Annual budget



5

5

## Background (cont'd)

### *Comprehensive Scheme of Harbor Improvements (CSHI)*

- Port District Act of 1911 created Port authorities
- To ensure transparency, legislature created the legal requirement to seek community input on capital plans and fund expenditures through formal public hearing
- Fundamental concept of public trust doctrine

6

6

## Background

### *Comprehensive Scheme of Harbor Improvements (CSHI)*

- Port District Act of 1911 created Port authorities
- To ensure transparency, legislature created the legal requirement to seek community input on capital plans and fund expenditures through formal public hearing
- Fundamental concept of public trust doctrine
- Significant note: This requirement preceded open public meeting laws

7



7

## Background (cont'd)

### *CSHI Terminology*

- Ports: Special purpose districts
- Unique authorities, significantly expanded over decades
  - Real estate, economic development, airports
- Terminology remains unchanged, embodied in state law

8



8

## Background (cont'd)

### *Comprehensive Scheme of Harbor Improvements (CSHI)*

- Scheme: A plan or program of action
- Port's intentions and high-level plan to construct physical improvements with public monies
- Functional equivalent of city/county comprehensive plans

9



9

## Background (cont'd)

### *RCW 53.20.010*

- "It shall be the duty of the port commission of any port district, before creating any improvements hereunder, to adopt a comprehensive scheme of harbor improvement in the port district, after a public hearing thereon..."
- Balance of RCW 53.20 addresses related statutory requirements

10



10

## Background (cont'd)

### *Legislative Intent Remains Unchanged*

- To require ports to share with the public – in advance of expenditures – its plans to invest in any type of physical improvement
- CSHI adoption/amendment requires a public hearing
- Advance notice requirements apply
- Allowance for public comments

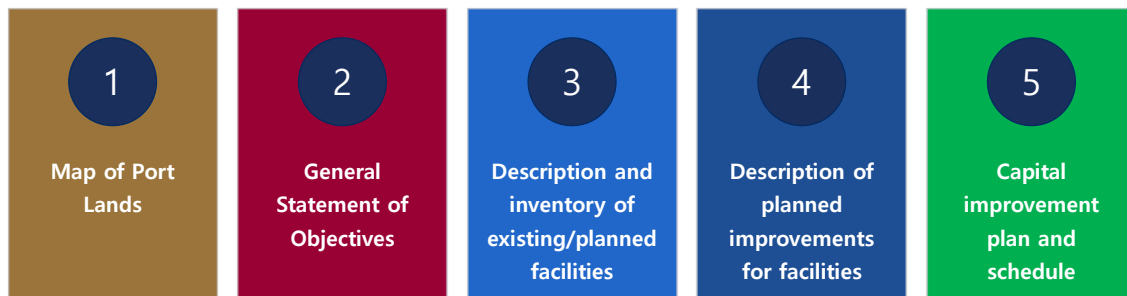
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11

## CSHI Contents

### *Describing the Port Within the Context of the Community*



12



12

## Significance of CSHI Currency

### *Grant Eligibility*



13



13

## Port of Olympia CSHI

### *Current Contents*

- Introduction
- Budd Inlet properties
  - NorthPoint
  - Swantown
  - East Bay
  - Market District
  - West Bay
  - Marine Terminal



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## Port of Olympia CSHI

### *Current Contents (cont'd)*

- Airport and New Market Industrial Campus properties
  - Olympia Regional Airport
  - New Market Industrial Campus
  - Cleanwater Center
- Lacey properties



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## Port of Olympia CSHI

### *Revisions Required*

- Removals:
  - Market District: 608 Washington property – Sold
  - Lacey properties – Sold
- Future additions:
  - Airport Master Plan Update
  - Integrated Port Peninsula Master Plan

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## Port of Olympia CSHI

### *Staff Recommendations for Incorporation*

- Port focus on environmental initiatives
  - Budd Inlet remediation
  - Sea level rise
  - Habitat Conservation Plan completion
  - Energy sustainability
- 5-Year Capital Investment Plan
  - Annual capital budget
- SEPA Checklist

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## Port of Olympia CSHI

### *Suggested Best Management Practices*

- Annual formal amendment of CSHI
- Incorporate annual CSHI amendment with the adoption of the annual budget and tax levy
  - Automatically incorporates annual capital budget
  - Public hearing already planned
- Include additional components as appendices to CSHI, including
  - Capital Investment Plan and annual capital budget
  - Airport Master Plan Update
  - Integrated Port Peninsula Master Plan

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## Next Steps

### *Commission Direction, Future Action Planned*

- Desired CSHI components
- CSHI amendment frequency and timing
- Step 1: Commission approval of CSHI amendment via resolution
  - Content revision of text (Word/PDF)
  - Public hearing required
  - Commission meeting July 22
- Step 2: Development of formal CHSI document
  - Examples: Vision 2050, Strategic Plan 2025

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## Questions, Comments, and Commission Guidance

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