

**PORT OF BREMERTON**  
**BOARD OF COMMISSIONERS**  
**REGULAR BUSINESS MEETING**

**REVISED AGENDA**

July 11, 2023  
10:00 AM

Bill Mahan Conference Room  
Port Administration Offices  
Bremerton Nat'l Airport Terminal Bldg  
8850 SW State Hwy 3, Bremerton

The Port of Bremerton Board of Commissioners have resumed in-person meetings but are maintaining the option for the public to participate remotely as well. The public is invited to view and/or participate in the hybrid meeting by attending in person or through one of the following options:

- To stream online only (via BKAT feed, with no interaction possible):  
<https://bremerton.vod.castus.tv/vod/?nav=live%2Fch2>
- To join the online Zoom meeting: <https://us02web.zoom.us/j/3359030010>
- For audio only; dial 1.253.215.8782; Meeting ID: 335 903 0010

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**Call to Order**

**Pledge of Allegiance**

**Approval of Agenda**

**Consent Items**

All matters listed under Consent Items have been distributed to each member of the Commission for reading and study, are considered to be routine, and will be enacted by one motion of the Commission with no separate discussion. If separate discussion is desired, that item may be removed from the Consent Items and placed under Action Items by request.

- A. Minutes of the regular business meeting of June 27, 2023.
- B. Payment of checks #901862 and #901863 through #901866 and #901867 through #901869 and #85020 through #85032 and #E01548 through #E01553 from the General Fund for \$143,142.59.  
  
Payment of checks #901870 and #901871 through #901872 and #901873 through #901876 and #901877 and #85033 through #85044 and #E01554 through #E01565 and #901878 through #901880 from the General Fund for \$93,747.62.

**Citizen Comments:** *Open to the public for comment. Speakers are asked to keep their comments to less than 3 minutes. Please feel free to submit further comments in writing to the Clerk of the Board ([gingerw@portofbremerton.org](mailto:gingerw@portofbremerton.org)).*

**Action Items**

1. Department of Natural Resources (DNR) Sub-Lease Agreement with the City of Port Orchard
- ~~2. Memorandum of Agreement with City of Port Orchard for Marina Waterfront Parking~~
3. Final Acceptance of Hangar 7 Stormwater Repair Project with Henderson Partners, LLC
4. Final Acceptance of Multi-Purpose Facility Project with Henderson Partners, LLC
5. *Seabeck Community Center*

**Staff Reports**

**Commission Reports / New Business**

**Executive Session** *(if necessary)*

**Adjournment**

*Regular business and other meetings that may be attended by members of the Board*

<u><i>Date</i></u>	<u><i>Time</i></u>	<u><i>Meeting</i></u>
<i>07/11</i>	<i>10:00 am</i>	<i>*Commission Regular Business Meeting</i>
<i>07/20</i>	<i>10:00 am</i>	<i>Kitsap Regional Coordinating Council Executive Committee</i>
<i>07/24-26</i>		<i>Washington Public Ports Association Commissioner Seminar</i>

*Meetings are subject to change or cancellation*

*\*Denotes events in which two (2) or more Commissioners may attend*

**PORT OF BREMERTON**  
**BOARD OF COMMISSIONERS**  
**REGULAR BUSINESS MEETING**

**MINUTES**

June 27, 2023  
6:00 PM

Bill Mahan Conference Room  
Port Administration Offices  
Bremerton Nat'l Airport Terminal Bldg  
8850 SW State Hwy 3, Bremerton  
Remote Option via Zoom

**Commissioners and Staff Present**

Commissioners

Axel Strakeljahn  
Gary Anderson  
Cary Bozeman

Staff Members

Jim Rothlin  
Arne Bakker  
Jeremiah Wiley  
James Weaver  
James Goodman

Monroe Whitman IV  
Ginger Waye  
Stephanie Frame  
Anne Montgomery, Atty

**Call to Order**

President Strakeljahn called the meeting to order at 6:00 p.m. and led the Pledge of Allegiance.

**Approval of Agenda**

**It was moved by BOZEMAN, seconded by ANDERSON to:**

Approve the Agenda as presented.

**MOTION CARRIES, 3-0**

**Consent Items**

- A. Minutes of the regular business meeting of June 13, 2023.
- B. Payment of checks #901840 through #901843 and #901844 through #901845 and #901846 through #901851 and #901852 and #84972 through #84994 and #E01519 through #E01532 and #901853 and #E01533 and #E01534 through #E01535 and #84995 through #85019 and #E01536 through #E01547 and #901854 through #901856 and #901858 through #901861 from the General Fund for \$350,216.18. Void Ck #83124.

**It was moved by STRAKELJAHN, seconded by BOZEMAN to:**

Approve the Consent Items as presented.

**MOTION CARRIES, 3-0**

### **Information Items**

1. Seabeck Community Update – Paul Reimer, Seabeck Community Center

Dr. Reimer thanked the Port for its previous funding support of the state-of-the-art pickleball facility (Phase I) and expressed hope that the Port will remain in support.

He provided a PowerPoint presentation detailing the following:

- Recap of Phase I and the results
- Phase II plan
- Long-term vision of the Center and how Phase II fits in
- Phase II budget and funding plan
  - \$100,000 shelter and seating
  - \$40,000 for natural playground
  - \$10,000 for landscaping, donor signage, and education signage
- Request for funding support

The Board requested a formal proposal be provided to CEO Rothlin so it can be presented at a future meeting.

2. Quarterly Financial Review – Jeremiah Wiley, Chief Financial Officer

CFO Wiley provided detail on the following:

- 2023 theme of maintaining world class facilities
- Budget-to-Actual for the three months ending March 31, 2023
- Reserves / Rainy Day Fund
- 2023 Capital Projects

Questions and comments from the Board were addressed and CEO Jim Rothlin provided closing comments.

**Citizen Comments - None**

## Action Items

1. Hangar 7 Stormwater Repair Project Change Order 5  
*Presented by Arne Bakker, Chief Operations Officer*

Following presentation and after questions were addressed;

**It was moved by BOZEMAN, seconded by ANDERSON to:**

Approve Change Order 5 for the Hangar 7 Stormwater Repair Project in the amount of \$48,832.53 with Henderson Partners LLC and authorize the CEO to execute the change order.

**MOTION CARRIES, 3-0**

## Staff Reports

*Jim Rothlin, Chief Executive Officer*

- Employee milestones reached in June:
  - Chris Johnson, Port Maintenance II, celebrated 34 years with the Port
  - Ian Stensrud, Port Attendant, 2-year anniversary
  - Mick Shultz, Port Attendant, 1-year anniversary
  - Erica Filler, Marketing & Communications Coordinator, 1-year anniversary
- Northwest Formation Flying Clinic was held at Bremerton National Airport over the past weekend.
- Port received \$9.4 million from US Department of Transportation for the Port Orchard Marina breakwater replacement project. Senator Patty Murray and Congressman Derek Kilmer personally delivered the extraordinary news noting the Port would not have received those funds without their support.
- Received \$800,000 from Environmental Protection Agency (EPA) for cleanup of the Bay Street properties. Met with Congressman Kilmer and EPA Regional Director Casey Sixkiller at those properties yesterday.
- Developers of the Marina Square project are honoring Commissioner Cary Bozeman and dedicating the Marina Square Plaza area to him. It is being named Cary Bozeman Place.

## Commission Reports / New Business

*Commissioner Anderson*

- Attended a Washington Autonomous Vehicle Cluster (WAV-C) meeting and reported that the Port would probably not use it by itself but maybe in combination with other area Ports.
- Reported on recent Peninsula Regional Transportation Planning Organization (PRTPO) board meeting.

*Commissioner Bozeman*

- In response to Commissioner Bozeman's query about the condition of the Lone Sailor statue on the Bremerton breakwater, Marina Operations Manager, Kathy Garcia, explained the tiles around the statue are beginning to fall away but it is on the maintenance schedule to repair as soon as possible.
- At Commissioner Bozeman's request, Ms. Garcia reported on the American Cruise Line visits to Bremerton Marina and outlined their shore excursions.
- Remarked that the funding received for the breakwater and the Bay Street properties is really a big deal as it is a very competitive process. He thanked staff and lobbyist for doing an exceptional job.

*Commissioner Strakeljahn*

- Reported on the following meetings:
  - Puget Sound Regional Council (PSRC) General Assembly which was in person for the first time since the pandemic.
  - PSRC Executive Board

**Executive Session - None**

**Adjournment**

There being no further business before the Board, the meeting was adjourned at 7:20 p.m.

Submitted,

Approved,

Jim Rothlin  
Chief Executive Officer  
July 6, 2023

Cary Bozeman  
Commission Secretary  
July 11, 2023

## **PORT OF BREMERTON**

### **AGENDA SUMMARY**

Agenda Item No: Action Item #1  
Subject: Dept of Natural Resources (DNR) Sublease with City of Port Orchard  
Exhibits: City of Port Orchard Pump Station DNR Sublease  
Prepared By: James Weaver, Director of Marine Facilities  
Meeting Date: July 11, 2023

#### **Summary:**

This Sublease before the Commission is with the City of Port Orchard to provide a Sublease agreement for Department of Natural Resources land that would be needed for the construction of the new City Wastewater Pump Station project.

The City's owns and operates an existing sewerage pump station located within the Port Orchard Harbor Area in Sinclair Inlet, subject to an Aquatics Land Lease from the Department of Natural Resources (DNR) (Lease No. 22-A02582). The Port of Bremerton owns and operates the Port Orchard Marina adjacent to the City's sewerage pump station, subject to both a Port Management Agreement and an Aquatics Land Lease both with DNR (PMA No. 22-080016 and Lease No. 22-B02235).

The City has designed the Marina Pump Station project to replace the existing sewerage pump station (the "Project"), and the Project will necessitate the use of the Port's property for construction and associated staging, and the construction will result in an encroachment into the Port of Bremerton's leased area, which triggers a required modification to the DNR-issued Aquatics Land Lease for both the City and the Port.

In December 2022, the City and Port executed a Memorandum of Understanding to govern the relationship between the two agencies during the pendency of the Project's construction as well as communications/submissions to DNR for the parties' lease agreements. The City and the Port have worked with DNR to prepare a sublease agreement to govern the City's construction work and encroachment, consistent with the terms of the MOU. This Sublease will be replaced in 2024 when the parties execute lease amendments to reflect the long-term encroachment, consistent with the MOU.

#### **Fiscal Impact:**

The sub-lease agreement includes a provision for the City of Port Orchard to reimburse the Port of Bremerton for the proportional share of DNR lease payments each year.

Strategic Purpose:

This action conforms with the Port's strategic plan in Goal 6. Develop and fund a 20-year asset replacement/major maintenance schedule.

Recommendation:

Recommendation is to approve the Sublease Agreement with the City of Port Orchard

Motion for Consideration:

**Approve the Department of Natural Resources Sublease Agreement with the City of Port Orchard and authorize the CEO to execute the agreement.**



**When recorded, return to:**

City of Port Orchard  
216 Prospect Street  
Port Orchard, WA 98366  
Attn: Brandy Wallace, City Clerk/Assistant to the Mayor  
bwallace@portorchardwa.gov

**SUBLEASE FOR AQUATIC LANDS**

**DNR Lease No.:** 22-B02235 **Region:** South Puget Sound  
**Sublessor:** Port of Bremerton  
**Sublessee:** City of Port Orchard  
**Assessor's Tax Parcel for Upland parcel used in conjunction with this Sublease:**  
262401-1-007-2008

**Legal Description of Subleased Area:** See Exhibit A

City of Port Orchard  
Contract No.: 050-23  
Date Filed: \_\_\_\_\_

**Description of Sublease:** To address a City-owned public structure that currently encroaches on the area leased by the Port of Bremerton from the State of Washington, Department of Natural Resources (DNR) pursuant to DNR Aquatic Lands Lease No. 22-B02235, located in the filled Sidney Harbor Area (now Port Orchard), as well as to address associated construction to improve and expand encroaching public structure. Consistent with the terms of that Lease, this Sublease is subject to review and approval by DNR.

\*\*\*

**THIS SUBLEASE** is between the PORT OF BREMERTON, a government entity ("Port") and the CITY OF PORT ORCHARD, a Washington municipal corporation ("City"), with the approval of the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State").

**BACKGROUND**

The Port leases the aquatic lands commonly known as the west end of the Port Orchard waterfront, which are tidelands and a harbor area located in Kitsap County, Washington, from the State pursuant to DNR Aquatic Lands Lease No. 22-B02235 ("Port's DNR Lease"). The Port utilizes the area covered by the Port's DNR Lease for equipment and water dependent uses associated with the Port's ownership and operation of the Port Orchard Marina subject to DNR Port Management Agreement (PMA) No. 22-080016.

The City leases adjacent aquatic lands for a parking lot, public access, and a City-owned and operated public sewage pump station, pursuant to DNR Aquatic Lands Lease no. 22-A02582

(“City’s DNR Lease”). As constructed, the City’s sewage pump station impacts and encroaches into the Port’s DNR Lease area. The City’s project includes construction staging, construction, and operation/use for the following:

Demolition and replacement of an existing above-grade bathroom and entrance to a below-grade pump station with a new above-grade multi-use facility housing odor control, electrical equipment, a bathroom, and a diesel-engine driven emergency pump that would prevent sewer overflows into Puget Sound; and

Replacement of existing pumps and piping in the below-grade pump station and the addition of larger access hatches for wet well and dry well access; and

Improvements would include the excavation of 30-foot by 60-foot by 40-foot space to house a below-grade emergency storage structure that would be used to capture wastewater overflows in the event of an equipment failure; installation of a diesel-engine generator set to power the pump station and a second force main connection and valve vault; upsizing the diameter of approximately 340 linear feet of water main from six inches to eight inches; and

Removal of the top portion of an existing control building to bring it down to grade for use as a viewing or picnic area; and converting approximately 0.11 acres of existing impervious parking lot to lawn and driveway. (the “Work”). The time-sensitive Work will expand the City’s encroachment on the Port’s DNR Lease area.

This Sublease authorizes the encroachment and is subject to a future amendment to the Port’s DNR Lease and the City’s DNR Lease as set forth herein.

Both parties to this Sublease agree that the intent is for the City to work in good faith with DNR to assume that portion of the Port’s DNR lease which is the subject of this Sublease as set forth in Exhibit B.

THEREFORE, the Parties agree as follows:

## **SECTION 1 – SUBLEASE AREA**

1. The City subleases from the Port, with the approval of DNR, the real property described in Exhibit A and depicted on Exhibit B (“Sublease Area”).
2. The City prepared Exhibits A and B and warrant that these Exhibits are true and accurate descriptions of the Sublease Area, including its boundaries and improvements to be constructed or already existing in the Sublease Area. The City’s obligation to provide a true and accurate description of the Sublease Area is a material term of this Sublease.
3. This Sublease shall be subject to all terms and conditions of the Lease. The City has received a copy of the Lease and acknowledges receipt of same by executing this Sublease.
4. In the event any terms of this Sublease conflict with the terms of the Lease, the terms of the Lease shall control.

## **SECTION 2 – PERMITTED USES**

1. The City shall use the Sublease Area for uses that are authorized by DNR, including a parking lot, public use and access, and public sewage pump station, including a multi-use facility housing odor control, electrical equipment, a public bathroom, and a diesel-engine driven emergency pump (the “Permitted Use”), and for no other purpose.
2. This Sublease shall permit construction, alteration and addition to existing improvements within the Sublease Area as an authorized “Permitted Use”, subject to the terms of the Memorandum of Understanding between the Port and Bremerton, Contract No. 133-22, a copy of which is attached to this Sublease as Exhibit C and incorporated herein by this reference, provided all construction, alteration and addition(s) shall be authorized by DNR pursuant to the terms of the Lease. In addition to fixed encroachments depicted on Exhibits A and B, the Parties have negotiated the terms of Temporary Construction Easements for the purpose of construction and associated staging, which shall be temporary encroachments into the Port’s DNR Lease Area as depicted on Exhibit B hereto and further described in Exhibit C.

### **SECTION 3 – TERM**

1. The term of this Sublease shall be for eighteen years, beginning on mutual execution (the “Commencement Date”), and ending on the thirty-first day of March 2041 (the “Termination Date”), unless terminated sooner under the terms of this Lease.
2. The parties acknowledge that the MOA attached here as Exhibit C and incorporated by reference, indicates a much shorter term. The parties intend to be bound by the term as set forth in this paragraph as to the obligations and entitlements set forth in this Sublease.
3. There shall be no option to renew this Sublease.
4. This Sublease shall automatically terminate if the City, Port, and DNR execute amendments to the City’s DNR Lease and Port’s DNR Lease that: (1) expands the City’s DNR Lease area to encompass the Sublease Area; and (2) reduces the Port’s DNR Lease area to remove the Sublease Area.
5. This Sublease shall automatically terminate if the Lease terminates for any reason.
6. Upon termination of the Sublease, the City shall remove all improvements and personal property within the Sublease Area at the City’s sole expense, unless otherwise approved in writing by the DNR.

### **SECTION 4 – RENT**

1. The City shall provide the Port of Bremerton annual financial compensation for the proportion share of the annual DNR lease rate for the Port’s DNR Lease based upon square footage of 1,524.25 square feet, as identified on Exhibits A and B to this Sublease. For the duration of this Agreement, the City shall financially compensate the Port each year for the proportional share of the DNR annual lease rate in the proportional amount of 5.85% of the total amount.
2. The City shall provide compensation and payment to the Port each year for the proportional share to be provided on or before December 31 of each year, with the initial annual, proportional sub-lease payment due to the Port by December 31, 2023.

3. The terms of the Memorandum of Understanding, Exhibit C hereto, at Section 7, shall apply to the terms of this Sublease.
4. This Sublease prohibits the prepayment to the Port by the City of more than the annual rent.

## **SECTION 5 – GENERAL TERMS**

1. By this Sublease the parties confirm there is no privity of contract between the City and the State of Washington and DNR.
2. The City shall meet all obligations set out in the Lease, including but not limited to the requirements set out in Section 10, Indemnification, Financial Security, and Insurance.
3. All referenced exhibits are incorporated into the Sublease unless expressly identified as unincorporated, including but not limited to the following:
  - a. Exhibit A – Legal Description of Sublease Area
  - b. Exhibit B – Depiction of Sublease Area
  - c. Exhibit C – Memorandum of Understanding between City of Port Orchard and Port of Bremerton for Use of DNR Aquatics Land Area (Contract No. 133-22)
  - d. Exhibit D – Port’s DNR Lease Agreement
4. Notices and submittals required or permitted under this Sublease and the Lease shall be supplied to the following:

State: Department of Natural Resources  
Aquatic Resources Division, Ports Program  
111 Washington Street SE MS 47027  
Olympia, WA 98504-7027

Port: Port of Bremerton  
8850 SW State Highway 3  
Port Orchard, WA 98367-7487

City: City of Port Orchard  
Mayor  
216 Prospect Street  
Port Orchard, WA 98366

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

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

**LESSOR/PORT OF BREMERTON:**

**LESSEE/CITY OF PORT ORCHARD:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title:

Title: Mayor

Address:

Address: 216 Prospect Street

Phone:

Port Orchard, WA 98366

Phone: (360) 876-4407

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**REPRESENTATIVE/LESSOR ACKNOWLEDGEMENT**

STATE OF WASHINGTON )  
 ) SS  
COUNTY OF KITSAP )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, and who executed the foregoing instrument and acknowledged to me that HE/SHE was authorized to execute said instrument on behalf of the Port of Bremerton for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

(seal)

**REPRESENTATIVE/LESSEE ACKNOWLEDGEMENT**

STATE OF WASHINGTON )  
 ) SS  
COUNTY OF KITSAP )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Robert Putaansuu, and who executed the foregoing instrument and acknowledged to me that he was authorized to execute said instrument on behalf of the City of Port Orchard for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_ (seal)



**AES**  
CONSULTANTS, INC.

PROFESSIONAL LAND SURVEYORS

P.O. BOX 930 • 3472 N.W. LOWELL "OLD TOWNE" • SILVERDALE, WA 98383 • 360-692-6400 • FAX 360-692-8927

### TEMPORARY CONSTRUCTION EASEMENT

THAT PORTION OF THE HARBOR AREA SITUATE WITHIN GOVERNMENT LOT 3, SECTION 26, TOWNSHIP 24 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

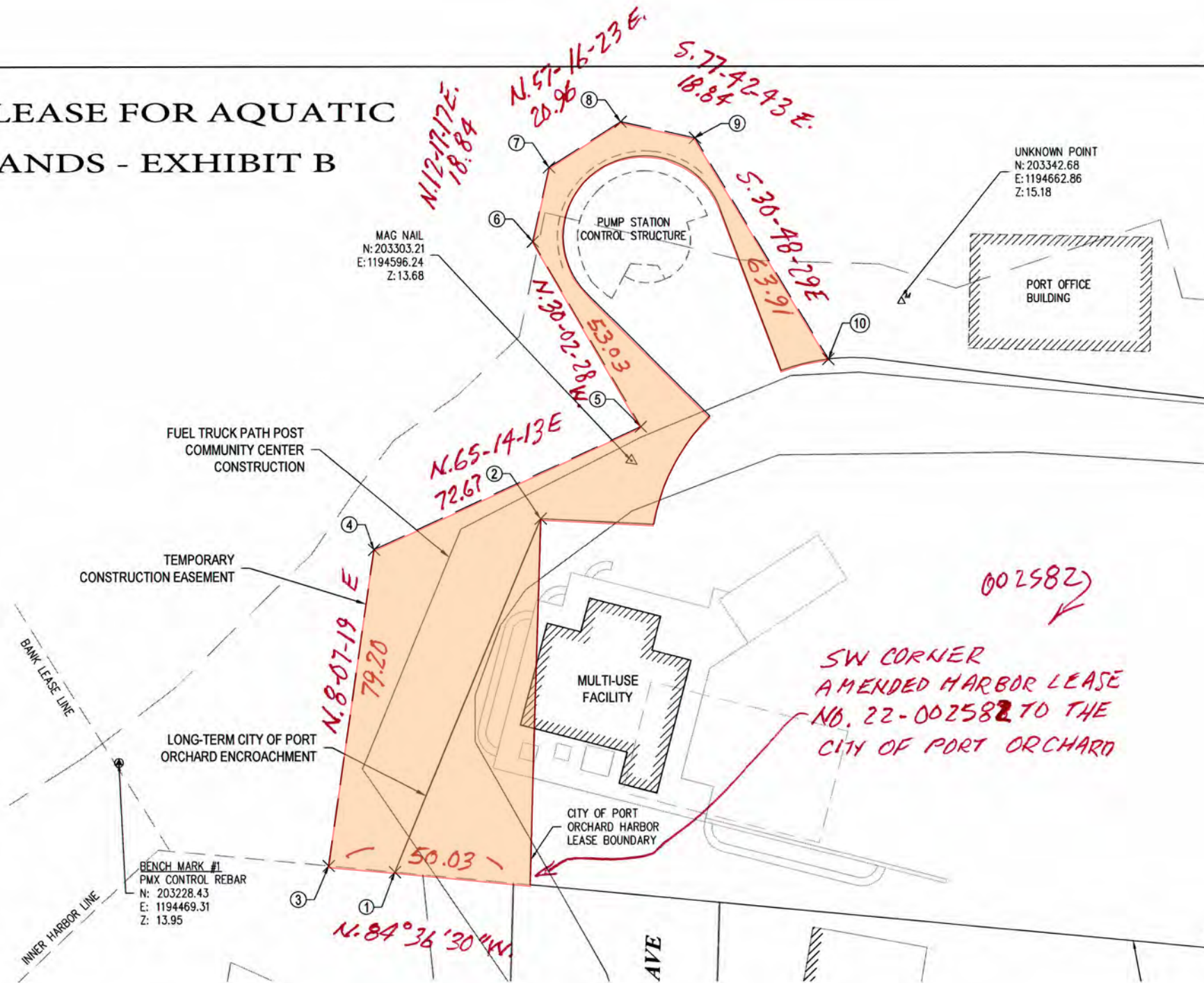
BEGINNING AT THE SOUTHWEST CORNER OF AMENDED HARBOR LEASE NUMBER 22-002582 TO THE CITY OF PORT ORCHARD AS DEPICTED AND DESCRIBED ON A RECORD-OF-SURVEY RECORDED IN VOLUME 74 OF SURVEYS, PAGES 50 THROUGH 52, INCLUSIVE, UNDER AUDITOR'S FILE NO. 201005260101; THENCE NORTH  $84^{\circ}36'30''$  WEST ALONG THE INNER HARBOR LINE 50.03 FEET; THENCE LEAVING SAID INNER HARBOR LINE NORTH  $8^{\circ}07'19''$  EAST 79.20 FEET; THENCE NORTH  $65^{\circ}14'13''$  EAST 72.67 FEET; THENCE NORTH  $30^{\circ}02'28''$  WEST 53.03 FEET; THENCE NORTH  $12^{\circ}17'17''$  EAST 18.84 FEET; THENCE NORTH  $57^{\circ}16'23''$  EAST 20.96 FEET; THENCE SOUTH  $77^{\circ}42'43''$  EAST 18.84 FEET; THENCE SOUTH  $30^{\circ}48'29''$  EAST 63.91 FEET TO THE NORTHERLY LINE OF SAID AMENDED HARBOR LEASE NUMBER 22-002583; THENCE WESTERLY, NORTHERLY, AND SOUTHERLY ALONG SAID LINE TO THE POINT OF BEGINNING.



5-31-2023



# SUBLEASE FOR AQUATIC LANDS - EXHIBIT B





**Memorandum of Understanding**

**for**

**Use of Department of Natural Resources (DNR)**

**Aquatics Land Area in Port of Bremerton**

**Port Management Agreement (PMA) 22-080016**

**Between**

**City of Port Orchard**

**and**

**Port of Bremerton**

**2022**

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## **MEMORANDUM OF UNDERSTANDING**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is dated on the day of the last signature on this MOU, by and between the Port of Bremerton (“Port”), a public port district, and the City of Port Orchard (“City”), a Washington State municipal corporation.

### **RECITALS**

- A.** The Port Orchard Marina is owned and operated by the Port of Bremerton, which has a Port Management Agreement (PMA) no. 22-080016 with Department of Natural Resources (“DNR”) for use of State-owned aquatics lands for port purposes. It is located within the Port Orchard Harbor Area in Sinclair Inlet, in Kitsap County, Washington.
- B.** The Port of Bremerton has a lease no. 22-B02235 with DNR for use of State-owned aquatic lands commonly known as the Port of Bremerton Port Orchard Waterfront, for the Port use with the Port Orchard equipment and water dependent uses serving the Port Orchard Marina. The present termination date for lease no. 22-B02235 is August 31, 2041. Throughout this Agreement, this lease is referred to as the “Port’s DNR Lease”.
- C.** The City of Port Orchard has a lease no. 22-A02582 with DNR for use of State-owned aquatics lands for parking lot, public access, and City public sewage pump station. The lease area is located within the Port Orchard harbor area of Sinclair Inlet, in the City of Port Orchard, Kitsap County, Washington. The present termination date for lease no. 22-0A2582 is June 3, 2024. Throughout this Agreement, this lease is referred to as the “City’s DNR Lease”.
- D.** The State-owned aquatics lands under the Port’s DNR lease and the City’s DNR Lease for the City Pump Station are adjacent parcels.
- E.** The City of Port Orchard existing City sewage pump station impacts and encroaches into the Port of Bremerton lease area within the Port’s DNR Lease, and the City proposes to demolish the existing station and to construct a new sewage pump station, holding tanks, conveyance pipes, and power generation improvements with an increased impact and encroachment into the Port of Bremerton lease area subject to the Port’s DNR Lease. An Exhibit of those proposed, expanded encroachments are depicted in Exhibit A.
- F.** The Port is willing to allow City use of the portion of upland state-owned lands area that overlaps the Port’s DNR Lease of the Port’s PMA no. 22-0800016 shown in Exhibit A.
- G.** The Port is willing to allow the City temporary use of the upland state-owned lands for temporary project construction access and staging and that overlaps the Port’s DNR lease shown in Exhibit B.

- H. The City commits that the Port shall have use and public access to Port Marina Buildings, Marina Access Gates, and to the Port facilities for uninterrupted operations throughout the construction period for the City Marina Sewage Pump Construction project.
- I. The City commits that the Port shall have use and access for semi fuel truck delivery to the Port Orchard Marina fuel tanks for uninterrupted fuel dock operations throughout the construction period and after completion of the proposed Sewage Pump Station, subsequent Port Orchard Community Center, and proposed Bay Street Elevation improvement projects. The Port commits to provide the City with 72-hour advanced notice of deliveries, consistent with the terms of this agreement.
- J. The City agrees to coordinate with the Port for any modifications and/or updates to the aforementioned existing DNR leases, as may be required by DNR. The Port authorizes the City to communicate with DNR regarding these specific lease modifications, provided the Port is included on these communications. The City commits that it will provide all needed language and exhibits for lease modifications (if any) for the City encroachments.

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

**AGREEMENT**

**1. RECITALS**

The foregoing recitals are true and correct and are incorporated herein by this reference.

**2. PURPOSE**

2.1 The purpose of this Memorandum of Understanding is to set forth the terms and conditions by which the Port will sublet to the City that portion of property described below as the "Premises" for a time certain, conditioned upon and pending DNR approval, as well as the terms and conditions of seeking and obtaining necessary modifications to the City lease referenced above and the Port lease referenced above, conditioned upon DNR approval, which will remove the area described as the "Premises" from the Port lease and add it to the City lease. The parties acknowledge this process may be lengthy, and provide for the time frame below.

2.2 The purpose of this MOU is to also replace and rescind the existing 1987 MOU between the City of Port Orchard and the Port of Bremerton regarding the existing wastewater pump station.

**3. PREMISES**

The "Premises" consists approximately of 1,524.25 square feet of DNR aquatic lease area shown in Exhibit A, attached hereto, and as depicted and legally described in Exhibit A. By this Agreement and subject to DNR approval, the parties intend for the Premises to be removed from the Port's DNR Lease and added to the City's DNR Lease.

The City of Port Orchard acknowledges and agrees that it is familiar with the Premises, accepts the Premises in its "as is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable laws governing its use, occupancy, and possession. City acknowledges and agrees that it has investigated and inspected the condition of the Premises and the suitability of the Premises for City's intended use. City acknowledges and agrees that Port has not made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Premises, the physical or environmental condition of the Premises, the present or future suitability of the Premises for City's intended use, accessibility of the Premises or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

#### **4. EFFECTIVE DATE**

The "Effective Date" of this MOU shall be the date this MOU has been fully executed.

#### **5. TERM**

5.1 The "Term" of this MOU shall begin on the Effective Date and continue for a period of 24 months, unless earlier terminated as provided herein; provided, the City may exercise one (1) two- year extension without further action by the Port if DNR has not completed the transfer of the Premises from the Port's DNR Lease to the City's DNR Lease. It is the intention of the parties to continue this agreement until the lease "transfer" is completed, provided if the MOU terminate prior to that occurring, the parties will negotiate the terms of a MOU to govern the conditions that exist at that time.

5.2 The City may exercise their option to extend by written notice at least 30 days prior to the expiration of this MOU.

5.3 In the event a modification to the City's DNR Lease to encompass Premises within the City lease is completed, defined as executed by DNR and by the City, prior to the expiration of this MOU, the parties agree this MOU would terminate automatically upon such completion.

5.4 Either the City or the Port shall have the right to terminate this MOU with respect to the Premises by delivering 90 days of written notice to the other party.

#### **6. PERMITTED USE**

6.1 The City shall have the right to use the Premises for the provision of public access to City public facilities, for City pump station facilities, public parks, and similar allowed uses, and for incidental directly related uses identified within Port's DNR Lease and for no other purpose for the duration of this Agreement (collectively, the "Permitted Use").

6.2 Use of the Premises by City will allow for continued public use of the Port Orchard public plaza, park and its benefits and amenities at no cost to Port. Given the existing City DNR Lease, all uses proposed for the parcel shall be compliant with DNR use requirements.

6.3 Written notification shall be provided by the City to the Port within 90 days prior to any proposed use of the premises for a non-water-dependent use, commercial use, or similar use that results in a higher calculation rate for the Port's DNR lease, annual lease amount for either the Premises or the whole of the Port's DNR lease.

6.4 The City shall ensure that the Port and public shall have use and access to Port Marina Buildings, Marina Access Gates, and to the fuel dock (see below) for uninterrupted operations throughout the construction period for the City Marina Sewage Pump Construction project, subject to any closures that are unavoidable due to conditions outside of the City's control.

6.5 The City shall ensure that the Port shall have use and access for semi fuel truck delivery to the Port Orchard Marina fuel tanks for uninterrupted fuel dock operations throughout the construction period and after completion of the proposed Sewage Pump Station, subsequent Port Orchard Community Center, and proposed Bay Street Elevation improvement projects.

## **7. COMPENSATION**

7.1 The City shall provide the Port of Bremerton annual financial compensation for the proportion share of the annual DNR lease rate for the Port's DNR Lease based upon square footage of 1,524.25 square feet, as identified within Exhibit A . The Port's Lease has a total square footage of 26,051.6 square feet, as identified in Exhibit B. For the duration of this Agreement, the City shall financially compensate the Port each year for the proportional share of the DNR annual lease rate in the proportional amount of 5.85% of the total amount.

7.2 The Port shall provide notification to the City of the annual DNR lease rate amount for the Port's DNR Lease upon payment and acceptance by DNR for each year's payment. Notification and an invoice of the annual DNR proportional share amount shall be provided to the City within 90 days after the annual payment and acceptance to DNR.

7.3 The City shall provide compensation and payment to the Port each year for the proportional share to be provided on or before December 31 of each year, with the initial annual, proportional sub-lease payment due to the Port by December 31, 2023.

7.4 In the event that any City activity, projects, use, or installation results in a non-water-dependent use or commercial use that results in a higher calculation rate for the Port's DNR Lease annual lease amount for either the portion or the whole of the Port's DNR Lease, then

the City shall compensate the Port for the differential lease costs for that City directed non-water dependent or commercial use calculation.

7.5 The City shall compensate the Port for the actual cost of any surveys, legal descriptions, or required reports borne by the Port in furtherance of the purposes of this MOU. The City further agrees to compensate the Port for the actual legal costs incurred by the Port in preparing this MOU, not to exceed \$5,000. Reimbursement shall be due 30 days after presentation of billing to City.

7.6 In the event that any City activity, projects, construction or use shall disrupt the Port Orchard Marina fuel dock operations or disrupt access for semi fuel truck delivery to the Port Orchard Marina fuel tanks for uninterrupted fuel dock operations throughout the construction period and after completion of the proposed Sewage Pump Station, subsequent Port Orchard Community Center, and proposed Bay Street Elevation improvement projects, then the City will be liable for \$ 1,350.00 per day as liquidated damages, payable to the Port for each day of operations disruption, beginning the 3<sup>rd</sup> day of disruption until the resumption of fuel dock operations and/or access. Payments to the Port shall be made monthly to the Port each month after a disruption occurs.

## **8. RESTRICTIONS ON USE; COMPLIANCE WITH LAW**

8.1 City shall not use or permit the Premises, or any part thereof, to be used for any purposes other than the purposes set forth in Paragraph 6 of this MOU. City agrees not to make any material improvements or significant alterations to the Premises or the Overlap Area without the prior written consent of Port as well as obtaining any necessary regulatory permits.

8.2 City shall not perform any act which will cause a cancellation of any insurance policy covering the Premises. City, at City's expense, shall comply with all laws, regulations and requirements of any federal, state, and local government authority (including Port and City), now in force or which may hereafter be in force, which shall impose any duty upon Port or City necessitated solely by use, occupation or alteration of the Premises under this MOU, except for any such laws that impose a duty upon Port arising from the condition of the Premises prior to City's use of the Premises. City shall comply, and cause approved agents to comply, with all laws, regulations and requirements of any federal, state, and local government authority (including Port and City), now in force or which may hereafter be in force, in using the Overlap Area for access purposes.

8.3 City shall not sublet described property without written authorization from the Port of Bremerton.

8.4 City shall be responsible for all maintenance, landscape, repairs, janitorial duties, and operations of facilities or improvements located within the area identified within Exhibit A, and areas within the City's DNR Lease.

8.5 City shall comply with all provisions identified and required by the Washington State Department of Natural Requirements indicated and identified within the Port’s DNR Lease

**9. INSURANCE**

9.1 The City shall procure and maintain the following insurance policies to apply to the Premises for the duration of the MOU:

The City will maintain the following levels of insurance while this agreement is in effect

	<b>Type of coverage</b>	<b>Limits</b>	<b>Deductible</b>
<input checked="" type="checkbox"/>	All risk property coverage	\$250 million per occurrence	\$0
<input checked="" type="checkbox"/>	Liability coverage	\$15 million per occurrence	\$0
<input checked="" type="checkbox"/>	Employee fidelity blanket coverage	\$1 million per occurrence	\$0
<input checked="" type="checkbox"/>	Comprehensive auto liability	\$15 million per occurrence	\$0
<input checked="" type="checkbox"/>	Cyber liability	\$3 million per occurrence	\$0
<input checked="" type="checkbox"/>	Pollution liability	\$2 million per occurrence	\$0

Additionally, the City will require its Contractor for the Marina Lift Station project to provide the following coverages:

- a. **Primary and Excess Commercial Marine General Liability.** Primary and Excess Commercial General Liability insurance with limits no less than ten million dollars (\$10,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage. General liability coverage must be broad enough to include work on or around sewage pump station and electrical equipment, construction activities, generators, commercial activity, or parks, public event issues arising on the upland portion of the Premises. Coverage shall also include impacts due to flooding, sewage, effluent, or similar spills or public health issues, or impacts from a public sewer pump station activity.
- b. **Primary and Excess Protection and Indemnity.** Subject to a minimum coverage of not less than ten million dollars (\$10,000,000) combined single limit per accident for Crew, including Jones Act liability, and passenger’s bodily injury and property damage.
- c. **Primary and Excess Pollution Legal Liability Insurance.** Coverage for sudden and accident damages for facilities, buildings, and infrastructure with limits no less than ten million dollars (\$10,000,000).
- e. **All Risk Property.** “all risk” property insurance coverage written on a replacement cost basis for the fuel tanks, utilities, and all infrastructure serving the marina buildings, piers, ramps, gangways, and floats. City shall be named a sole Loss Payee.

9.1.1 **Additional Insured Status.** The foregoing insurance policies (except for the Hull & Machinery) shall name the Port of Bremerton and DNR as additional insureds as to occurrences arising from the activities of City and its employees. City shall provide certificates of insurance and, if requested, copies of any policy to the Port of Bremerton.



9.1.2 **Other Policy Provisions.** Furthermore, the policies of insurance required herein shall: (i) be written as a primary policy; (ii) written on an occurrence basis, (iii) expressly provide that such insurance may not be materially changed, amended, or canceled except upon thirty (30) days prior written notice; and (iv) shall be written by an insurance company licensed to do business in the State of Washington.

9.1.3 **DNR Requested Construction Bond.** Pursuant to the direction of DNR, the City will procure a construction bond equal to 125% of the Project cost of construction (as per Section 7 of the City's DNR Lease), or will require its contractor to maintain a construction bond in the same amount.

## **10. RECIPROCAL INDEMNIFICATION**

To the maximum extent permitted by law, each Party shall defend, indemnify, and hold harmless the other Party and all of its officials, Board Members, employees, principals, and agents from all claims, demands, suits, actions, and liability of any kind, including injuries to persons or damages to property ("Claims"), which arise out of, are connected with, or are due to the negligent acts or omissions of the indemnifying Party, its contractors, and/or employees, agents and representatives in performing its obligations under this Agreement, provided each Party's obligation under this section applies only to the extent of the negligence of that Party or its contractors, employees, agents, or representatives.

Each of the Parties agrees that its obligations under this section extend to any claim, demand, cause of action and judgment brought by, or on behalf of, any of its employees or agents. For this purpose, both Parties, by mutual negotiation, hereby waive, regarding the other Party only, any immunity that would otherwise be available against such claims under the industrial insurance provisions of Title 51 RCW.

## **11. PRESENCE OF HAZARDOUS MATERIALS**

11.1 Washington State law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, the City of Port Orchard is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises and the Access Area, including, but not limited to vessel fluids and janitorial products. By execution of this MOU, City of Port Orchard acknowledges that the NOA Laws require that the City of Port Orchard must disclose the information contained in this Section 11 to any subtenant, licensee, transferee, or assignee of City of Port Orchard's interest in this MOU. City of Port Orchard also acknowledges its own obligations pursuant to Washington State Code as well as the penalties that apply for failure to meet such obligations.

11.2 City of Port Orchard shall notify the Port of Bremerton of any Hazardous Materials

## **12. DEFAULT BY CITY OF PORT ORCHARD**

The occurrence of any one or more of the following events shall constitute a default by City of Port Orchard: Failure to perform any provision of this MOU if the failure to perform is not cured within ninety (90) days after Port has given written notice to City of Port Orchard,

provided any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, regulations or controls, enemy or hostile governmental action, riot, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, shall excuse the performance. If the default cannot reasonably be cured within 90 days, City of Port Orchard shall not be in default of this MOU if City of Port Orchard commences to cure the default within such ninety (90) day period and diligently and in good faith continues to cure the default.

### 13. NOTICE

Any notice given under this MOU shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier return receipt requested, with postage prepaid, at the following addresses, or at such other addresses as either the Port or City of Port Orchard may designate by notice as its new address:

Address for Port of Bremerton: Chief Executive Officer  
Port of Bremerton  
8850 SW State  
Hwy 3  
Bremerton, WA 98312

Telephone No: (360) 674-2381  
Fax No: (360) 674-2807  
Email: [jimr@portofbremerton.org](mailto:jimr@portofbremerton.org)

Address for City of Port Orchard: Mayor  
City of Port  
Orchard 216  
Prospect Street  
Port Orchard, WA 98366

Telephone No: (360) 876-4407  
Fax No: (360) 895-9029  
Email: [rputaansuu@portorchardwa.gov](mailto:rputaansuu@portorchardwa.gov)

Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first-class or certified mail, one day after the date it is mailed, if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by email, facsimile or telephone to the address or numbers set forth above or such other address or number as may be provided from time to time; however, neither the Port nor City of Port Orchard may give official or binding notice by email, telephone or facsimile.

#### **14. ENTIRE AGREEMENT**

This MOU (including attached exhibits, if any) contains the entire understanding between the parties with respect to the subject matter hereof.

[REMAINDER OF PAGE LEFT BLANK]

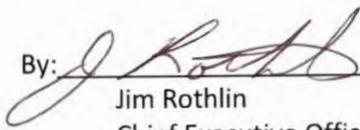
IN WITNESS WHEREOF, the parties have caused this MOU to be executed as of the date written below.

City of Port Orchard Resolution No. 124-22  
Port of Bremerton Resolution No. 2022-10

CITY OF PORT ORCHARD, a public municipality

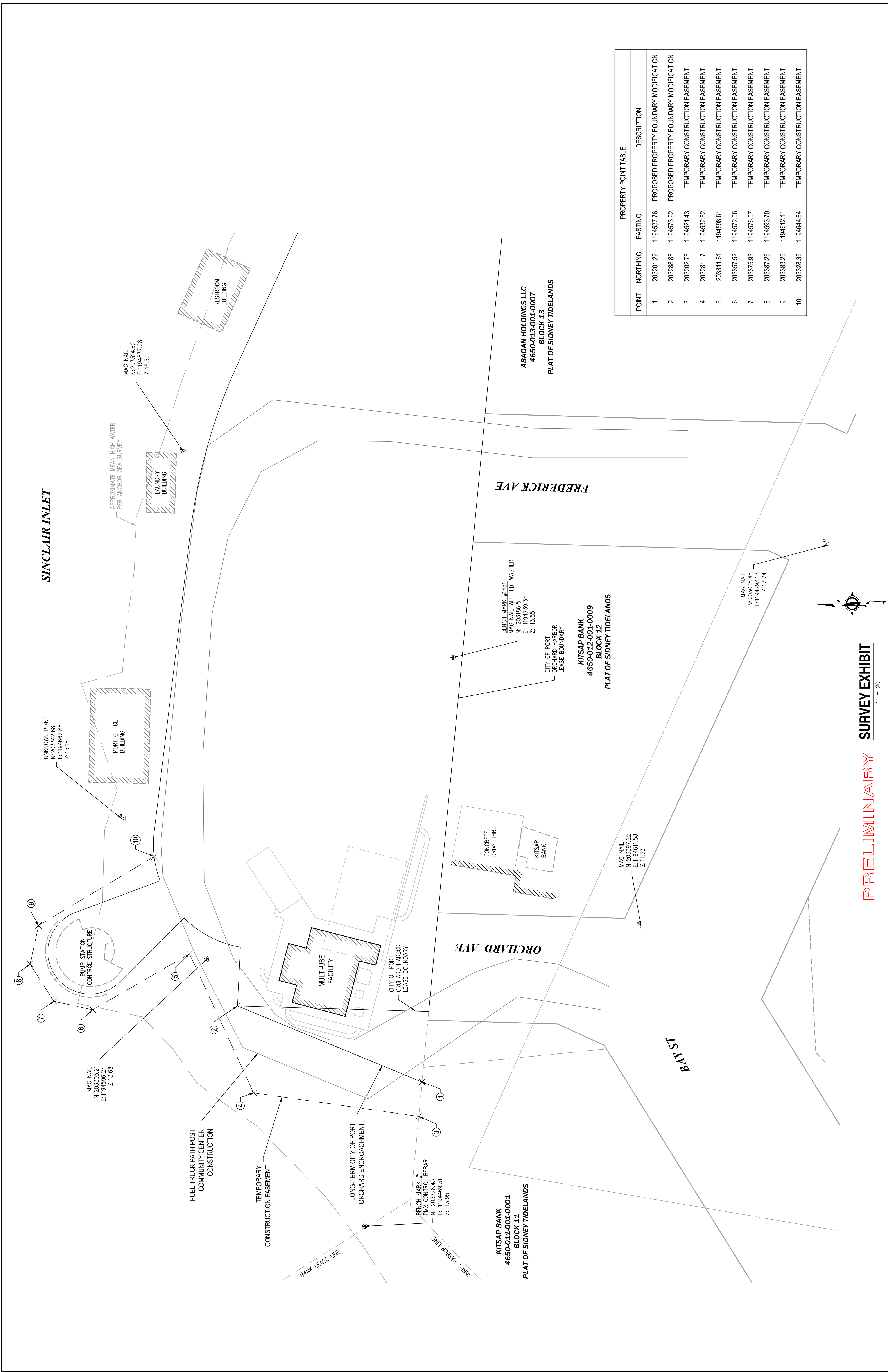
PORT OF BREMERTON, a public port district

By: \_\_\_\_\_  
Rob Putaansuu  
Mayor  
City of Port Orchard

By:  \_\_\_\_\_  
Jim Rothlin  
Chief Executive Officer  
Port of Bremerton

Date Signed: \_\_\_\_\_

Date Signed: 12/13/22



PROPERTY POINT TABLE			
POINT	NORTHING	EASTING	DESCRIPTION
1	203201.22	1194537.76	PROPOSED PROPERTY BOUNDARY MODIFICATION
2	203288.86	1194573.92	PROPOSED PROPERTY BOUNDARY MODIFICATION
3	203202.76	1194621.43	TEMPORARY CONSTRUCTION EASEMENT
4	203281.17	1194532.82	TEMPORARY CONSTRUCTION EASEMENT
5	203311.61	1194598.61	TEMPORARY CONSTRUCTION EASEMENT
6	203357.52	1194572.06	TEMPORARY CONSTRUCTION EASEMENT
7	203375.93	1194576.07	TEMPORARY CONSTRUCTION EASEMENT
8	203387.26	1194593.70	TEMPORARY CONSTRUCTION EASEMENT
9	203383.25	1194612.11	TEMPORARY CONSTRUCTION EASEMENT
10	203328.36	1194644.84	TEMPORARY CONSTRUCTION EASEMENT

# EXHIBIT B

When recorded, return to:  
Port of Bremerton  
8850 SW State Highway 3  
Port Orchard, WA 98367-7487

PORT OF BREMERTON 201109290042  
Lease Rec Fee: \$ 94.00  
09/29/2011 10:00 AM Page 1 of 33  
Walter Washington, Kitsap Co Auditor



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

## AQUATIC LANDS LEASE

### Lease No. 22-B02235

Grantor: Washington State Department of Natural Resources

Grantee(s): Port of Bremerton

Legal Description: Tract 1: That portion of the harbor area lying landward of the Mean High Water line, fronting Blocks 11 and Orchard Street in SM Stevens Town Plat of Sidney, filed in Volume 1, page 1 of Plats records of Kitsap County, Washington and Block 11 and Orchard Street lying within the Shore and Tidelands of Sidney as shown on that certain map dated May 30, 1892, being a portion of Government Lot 3, Section 26, Township 24 North, Range 1 East, W.M., more particularly described in Exhibit A; and Tract 2: That portion of the harbor area lying landward of the Mean High Water line, fronting Blocks 12 and 13, Sidney Street and a portion of Orchard Street, Fredrick Street and portion of Sidney Street in SM Stevens Town Plat of Sidney, filed in Volume 1, page 1 of Plats, records of Kitsap County, Washington, Block 13 and portion of Sidney Street in First Addition to Sidney Kitsap County, Washington, recorded in Volume 1, page 10 of Plats, records of Kitsap County, Washington and Block 12 and 13, Sidney Street, Fredrick Street and a portion of Orchard Street, lying within the Shore and Tidelands of Sidney as shown on that certain map dated May 30, 1892, being a portion of Government Lots 3 and 4, Section 26, Township 24 North, Range 1 East W.M., and more particularly described in Exhibit A.

The complete legal description is on Sheet 1 of 12 of Exhibit A, Current Survey recorded with Kitsap County, Auditor's File No. 201103010135, dated March 01, 2011.

Assessor's Property Tax Parcel or Account Number: Not Applicable

Assessor's Property Tax Parcel for Upland parcel used in conjunction with this Lease:

262401-1-007-2008

Port of Bremerton  
West End Port Orchard

Page 1 of 33

Aquatic Lands Lease No. 22-B02235

THIS LEASE is between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and PORT OF BREMERTON, a government entity ("Port").

### BACKGROUND

Port desires to lease the aquatic lands commonly known as the west end of the Port Orchard waterfront, which are tidelands and a harbor area located in Kitsap County, Washington, from State, and State desires to lease the property to Port pursuant to the terms and conditions of this Lease. State has authority to enter Lease under Chapter 43.12, Chapter 43.30 and Title 79 of the Revised Code of Washington (RCW).

In 1984, the Aquatics Land Act (RCW 79.105.420 revised) authorized a port district to manage State-owned aquatic lands abutting or used in conjunction with and contiguous to uplands owned, leased, or otherwise managed by a port district, for port purposes. Implementing rules (WAC 332-30-114) further defined eligibility for management under a Port Management Agreement requiring a port control both the dry uplands and any intervening tidelands. The State, as a matter of practice, included filled tidelands with upland characteristics as uplands controlled by a port.

Along both the Bremerton waterfront (a.k.a. Sinclair Landing) and along portions of the Port Orchard waterfront, extensive historic filling resulted in the first areas with upland characteristics being State-owned. In recognition of the intent of the Aquatics Lands Act, the State leased to the Port of Bremerton areas used for upland uses and access to Port-owned facilities allowing the abutting State Harbor Areas to be eligible for inclusion in the Port Management Agreement No. 22-080016, as amended (PMA).

This Lease is one of three areas leased to the Port by the State specifically for PMA eligibility.

The area consists of two subparcels. It abuts PMA No. 22-080016, Parcel 1 in Port Orchard. The historic Lease area consisted of parking, landscaping, utilities, and public access associated with the Port-owned marina structures. This Lease amends the historic Lease area to include the strip of filled tidelands and the bulkhead to Mean High Water. This strip was formerly managed under Aquatic Lands Lease 22-002582 between the City of Port Orchard and the State. That Lease has been amended to exclude the area now being added to this Lease, Aquatic Lands Lease 22-B02235.

THEREFORE, the Parties agree as follows:

## SECTION 1 PROPERTY

### 1.1 Property Defined.

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

### 1.2 Survey and Property Descriptions.

- (a) Port prepared Exhibit A, which describes the Property. Port warrants that Exhibit A is a true and accurate description of the Lease boundaries and the improvements to be constructed or already existing in the Lease area. Port's obligation to provide a true and accurate description of the Property boundaries is a material term of this Lease.
- (b) State's acceptance of Exhibit A does not constitute agreement that Port's property description accurately reflects the actual amount of land used by Port. State reserves the right to retroactively adjust rent if at any time during the term of the Lease State discovers a discrepancy between Port's property description and the area actually used by Port.

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

## SECTION 2 USE

**2.1 Permitted Use.** Port shall use the Property for: nonwater-dependent offices, parking, marina support services, and public access (the "Permitted Use"), and for no other purpose.



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

- (a) Port shall not cause or permit:
- (1) Damage to natural resources,
  - (2) Waste, or
  - (3) Deposit of material, unless approved by State in writing, and except to the extent expressly permitted in Exhibit B. This prohibition includes deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter.
  - (4) Except as expressly permitted in Exhibit B, Port shall not construct new bulkheads or place hard bank armoring.
  - (5) Except as expressly permitted in Exhibit B, Port shall not install fixed breakwaters.

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

**2.4 Liens and Encumbrances.** Unless expressly authorized by State in writing, Port shall keep the Property free and clear of liens or encumbrances arising from the Permitted Use or Port's occupancy of the Property.

### SECTION 3 TERM

**3.1 Term Defined.** The term of this Lease is thirty (30) years (the "Term"), beginning on the first day of September 2011 (the "Commencement Date"), and ending on the thirty-first day of August 2041 (the "Termination Date"), unless terminated sooner under the terms of this Lease.

**3.2 Renewal of the Lease.** This Lease does not provide a right of renewal. Port may apply for a new lease, which State has discretion to grant. Port must apply for a new lease at least one (1) year prior to Termination Date. State will notify Port within ninety (90) days of its intent to approve or deny a new Lease.

**3.3 End of Term.**

- (a) Upon the expiration or termination of this Lease, Port shall remove Improvements in accordance with Section 7, Improvements, and surrender the Property to State in the same or better condition as on the Commencement Date, reasonable wear and tear excepted.
- (b) Definition of Reasonable Wear and Tear.
- (1) Reasonable wear and tear is deterioration resulting from the Permitted Use that has occurred without neglect, negligence, carelessness, accident, or

abuse of the Property by Port or any other person on the premises with the permission of Port.

- (2) Reasonable wear and tear does not include unauthorized deposit of material prohibited under Paragraph 2.2 regardless of whether the deposit is incidental to or the byproduct of the Permitted Use.
- (c) If Property is in worse condition, excepting for reasonable wear and tear, on the surrender date than on the Commencement Date, the following provisions apply:
  - (1) State shall provide Port a reasonable time to take all steps necessary to remedy the condition of the Property. State may require Port to enter into a right-of-entry or other use authorization prior to the Port entering the Property if the Lease has terminated.
  - (2) If Port fails to remedy the condition of the Property in a timely manner, State may take steps reasonably necessary to remedy Port's failure. Upon demand by State, Port shall pay all costs of State's remedy, including but not limited to the costs of removing and disposing of material deposited improperly on the Property, lost revenue resulting from the condition of the Property, and administrative costs associated with the State's remedy.

### 3.4 Holdover.

- (a) If Port remains in possession of the Property after the Termination Date, the occupancy will not be an extension or renewal of the Term. The occupancy will be a month-to-month tenancy, on terms identical to the terms of this Lease, which either Party may terminate on thirty (30) days' written notice.
  - (1) The monthly rent during the holdover will be the same rent that would be due if the Lease were still in effect and all adjustments in rent were made in accordance with its terms.
  - (2) Payment of more than the monthly rent will not be construed to create a periodic tenancy longer than month-to-month. If Port pays more than the monthly rent and State provides notice to vacate the property, State shall refund the amount of excess payment remaining after the Port ceases occupation of the Property.
- (b) If State notifies Port to vacate the Property and Port fails to do so within the time set forth in the notice, Port will be a trespasser and shall owe the State all amounts due under RCW 79.02.300 or other applicable law.

## SECTION 4 RENT

### 4.1 Annual Rent.

- (a) Until adjusted as set forth below, Port shall pay to State an annual rent of Thirteen Thousand Three Hundred Twenty-one and 04/100 Dollars (\$13,321.04) related to the nonwater-dependent use.
- (b) The annual rent, as it currently exists or as adjusted or modified (the "Annual Rent"), is due and payable in full on or before the Commencement Date and on or

before the same date of each year thereafter. Any payment not paid by State's close of business on the date due is past due.

**4.2 Payment Place.** Port shall make payment to Financial Management Division, 1111 Washington St SE, MS 47041, Olympia, WA 98504-7041.

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

**4.4 Rent Adjustment Procedures.**

- (a) **Notice of Rent Adjustment.** State shall provide notice of adjustments to the Annual Rent allowed under Paragraph 4.5(b) to Port in writing no later than ninety (90) days after the anniversary date of the Lease.
- (b) **Procedures on Failure to make Timely Adjustment.** If the State fails to provide the notice required in Paragraph 4.4(a), State shall not collect the adjustment amount for the year in which State failed to provide notice. Upon providing notice of adjustment, State may adjust and prospectively bill Annual Rent as if missed or waived adjustments had been implemented at the proper interval. This includes the implementation of any inflation adjustment.

**4.5 Rent Adjustments for Nonwater-Dependent Uses.**

- (a) **Inflation Adjustment.** Except in those years in which State revalues the rent under Paragraph 4.5(b) below, State shall adjust nonwater-dependent rent annually on the Commencement Date. Adjustment is based on the percentage rate of change in the previous calendar year's Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Commerce, for the Seattle-Tacoma-Bremerton Consolidated Metropolitan Statistical Area, All Urban Consumers, all items 1982-84 = 100. If publication of the Consumer Price Index is discontinued, State shall use a reliable governmental or other nonpartisan publication evaluating the information used in determining the Consumer Price Index.
- (b) **Revaluation of Rent.**
  - (1) At the end of the first four-year period of the Term, and at the end of each subsequent four-year period, State shall revalue the nonwater-dependent Annual Rent to reflect the then-current fair market rent.
  - (2) If State and Port cannot reach agreement on the fair market rental value, the Parties shall submit the valuation to a review board of appraisers. The board must consist of three members, one selected by and at the cost of Port; a second member selected by and at the cost of State; and a third member selected by the other two members with the cost shared equally by State and Port. The decision of the majority of the board binds the Parties. Until the Parties agree to, or the review board establishes, the new rent, Port shall pay rent in the same amount established for the preceding year. If the board determines additional rent is required, Port shall pay the

additional rent within ten (10) days of the board's decision. If the board determines a refund is required, State shall pay the refund within ten (10) days of the board's decision.

## SECTION 5 OTHER EXPENSES

- 5.1 Utilities.** Port shall pay all fees charged for utilities required or needed by the Permitted Use.
- 5.2 Taxes and Assessments.** Port shall pay all taxes (including leasehold excise taxes), assessments, and other governmental charges applicable or attributable to the Property, Port's leasehold interest, the improvements, or Port's use and enjoyment of the Property.
- 5.3 Right to Contest.** If in good faith, Port may contest any tax or assessment at its sole cost and expense. At the request of State, Port shall furnish reasonable protection in the form of a bond or other security, satisfactory to State, against loss or liability resulting from such contest.
- 5.4 Proof of Payment.** If required by State, Port shall furnish to State receipts or other appropriate evidence establishing the payment of amounts this Lease requires Port to pay.
- 5.5 Failure to Pay.** If Port fails to pay amounts due under this Lease, State may pay the amount due, and recover its cost in accordance with Section 6.

## SECTION 6 LATE PAYMENTS AND OTHER CHARGES

- 6.1 Failure to Pay Rent.** Failure to pay rent is a default by the Port. State may seek remedies under Section 14 as well as late charges and interest as provided in this Section 6.
- 6.2 Late Charge.** If State does not receive full rent payment within ten (10) days of the date due, Port shall pay to State a late charge equal to four percent (4%) of the unpaid amount or Fifty Dollars (\$50), whichever is greater, to defray the overhead expenses of State incident to the delay.
- 6.3 Interest Penalty for Past Due Rent and Other Sums Owed.**
- (a) Port shall pay interest on the past due rent at the rate of one percent (1%) per month until paid, in addition to paying the late charges determined under Paragraph 6.2. Rent not paid by the close of business on the due date will begin accruing interest the day after the due date.
  - (b) If State pays or advances any amounts for or on behalf of Port, Port shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Port of the payment or advance. This includes, but is not limited to, State's payment

of taxes of any kind, assessments, insurance premiums, costs of removal and disposal of materials or Improvements under any provision of this Lease, or other amounts not paid when due.

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

**6.5 No Accord and Satisfaction.** If Port pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. State may accept payment in any amount without prejudice to State's right to recover the balance of the rent or pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment constitutes accord and satisfaction.

**6.6 No Counterclaim, Setoff, or Abatement of Rent.** Except as expressly set forth elsewhere in this Lease, Port shall pay rent and all other sums payable by Port without the requirement that State provide prior notice or demand. Port's payment is not subject to counterclaim, setoff, deduction, defense or abatement.

## SECTION 7 IMPROVEMENTS

### 7.1 Improvements Defined.

- (a) "Improvements," consistent with RCW 79.105 through 79.145, are additions within, upon, or attached to the land. This includes, but is not limited to, fill, structures, bulkheads, docks, pilings, and other fixtures.
- (b) "Personal Property" means items that can be removed from the Property without (1) injury to the Property or Improvements or (2) diminishing the value or utility of the Property or Improvements.
- (c) "State-Owned Improvements" are Improvements made or owned by State. State-Owned Improvements includes any construction, alteration, or addition to State-Owned Improvements made by Port.
- (d) "Port-Owned Improvements" are Improvements authorized by State and (1) made by Port or (2) acquired by Port from the prior tenant.
- (e) "Unauthorized Improvements" are Improvements made on the Property without State's prior consent or Improvements made by Port that do not conform to plans submitted to and approved by the State.

**7.2 Existing Improvements.** On the Commencement Date, the following Improvements are located on the Property: Boardwalk, Bulkhead, Buildings. The Improvements are Port-Owned.

**7.3 Construction, Major Repair, Modification, and Demolition.**

- (a) This Paragraph 7.3 governs construction, alteration, replacement, major repair, modification, demolition, and deconstruction of Improvements ("Work"). Section 11 governs routine maintenance and minor repair.
- (b) All Work must conform to requirements under Paragraph 7.4. Paragraph 11.3, which applies to routine maintenance and minor repair, also applies to all Work under this Paragraph 7.3.
- (c) Except in an emergency, Port shall not conduct Work, without State's prior written consent, as follows:
  - (1) State may deny consent if State determines that denial is in the best interests of the State or if proposed Work does not comply with Paragraph 7.4 and 11.3. State may impose additional conditions reasonably intended to protect and preserve the Property. If Work is for removal of Improvements at End of Term, State may waive removal of some or all Improvements.
  - (2) Except in an emergency, Port shall submit to State plans and specifications describing the proposed Work at least sixty (60) days before submitting permit applications to regulatory authorities unless Port and State otherwise agree to coordinate permit applications. At a minimum, or if no permits are necessary, Port shall submit plans and specifications at least ninety (90) days before commencement of Work.
  - (3) State waives the requirement for consent if State does not notify Port of its grant or denial of consent within sixty (60) days of submittal.
- (d) Port shall notify State of emergency Work within five (5) business days of the start of such Work. Upon State's request, Port shall provide State with plans and specifications or as-builts of emergency Work.
- (e) Port shall not commence or authorize Work until Port has:
  - (1) Obtained a performance and payment bond in an amount equal to zero percent (0.0%) of the estimated cost of construction. Port shall maintain the performance and payment bond until Port pays in full the costs of the Work, including all laborers and material persons.
  - (2) Obtained all required permits.
- (f) Before completing Work, Port shall remove all debris and restore the Property, to an orderly and safe condition. If Work is intended for removal of Improvements at End of Term, Port shall restore the Property in accordance with Paragraph 3.3, End of Term.
- (g) Upon completing work, Port shall promptly provide State with as-built plans and specifications.
- (h) State shall not charge rent for authorized Improvements installed by Port during this Term of this Lease, but State may charge rent for such Improvements when and if Port or successor obtains a subsequent use authorization for the Property and State has waived the requirement for Improvements to be removed as provided in Paragraph 7.5.

**7.4 Standards for Work.** Port shall comply with State's Standards for Improvements current at the time Port submits plans and specifications for State's approval in accordance with Paragraph 7.3(b).

**7.5 Port-Owned Improvements at End of Lease.**

(a) Disposition.

- (1) Port shall remove Port-Owned Improvements in accordance with Paragraph 7.3 upon the expiration, termination, or cancellation of the Lease unless State waives the requirement for removal.
- (2) Port-Owned Improvements remaining on the Property on the expiration, termination or cancellation date shall become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership. If RCW 79.125.300 or 79.130.040 apply at the time this Lease expires, Port could be entitled to payment by the new tenant for Port-Owned Improvements.
- (3) If Port-Owned Improvements remain on the Property after the expiration, termination, or cancellation date without State's consent, State may remove all Improvements and Port shall pay State's costs.

(b) Conditions Under Which State May Waive Removal of Port-Owned Improvements.

- (1) State may waive removal of some or all Port-Owned Improvements whenever State determines that it is in the best interests of the State and regardless of whether Port re-leases the Property.
- (2) If Port re-leases the Property, State may waive requirement to remove Port-Owned Improvements. State also may consent to Port's continued ownership of Port-Owned Improvements.
- (3) If Port does not re-lease the Property, State may waive requirement to remove Port-Owned Improvements upon consideration of a timely request from Port, as follows:
  - (i) Port must notify State at least one (1) year before the Termination Date of its request to leave Port-Owned Improvements.
  - (ii) State, within ninety (90) days of receiving Port's notification, will notify Port whether State consents to some or all Port-Owned Improvements remaining. State has no obligation to grant consent.
  - (iii) State's failure to respond to Port's request to leave Improvements within ninety (90) days is a denial of the request.

(c) Port's Obligations if State Waives Removal.

- (1) Port shall not remove Improvements if State waives the requirement for removal of some or all Port-Owned Improvements.
- (2) Port shall maintain such Improvements in accordance with this Lease until the expiration, termination, or cancellation date. Port is liable to State for cost of repair if Port causes or allows damage to Improvements State has designated to remain.

**7.6 Disposition of Unauthorized Improvements.**

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

**7.7 Disposition of Personal Property.**

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

**SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION****8.1 Definitions.**

- (a) "Hazardous Substance" means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup.
- (b) "Release or threatened release of Hazardous Substance" means a release or threatened release as defined under any law described in Paragraph 8.1(a).
- (c) "Utmost care" means such a degree of care as would be exercised by a very careful, prudent, and competent person under the same or similar circumstances; the standard of care applicable under the Washington State Model Toxics Control Act ("MTCA"), Chapter 70.105 RCW, as amended.



- (d) "Port and affiliates" when used in this Section 8 means Port or Port's subtenants, contractors, agents, employees, guests, invitees, licensees, affiliates, or any person on the Property with the Port's permission.
- (e) "Liabilities" as used in this Section 8 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys' fees and disbursements), penalties, or judgments.

## 8.2 General Conditions.

- (a) Port's obligations under this Section 8 extend to the area in, on, under, or above
  - (1) The Property and
  - (2) Adjacent State-owned aquatic lands if affected by a release of Hazardous Substances that occurs as a result of the Permitted Use.
- (b) Standard of Care.
  - (1) Port shall exercise the utmost care with respect to Hazardous Substances.
  - (2) Port shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable consequences of those acts or omissions, to the extent required to establish a viable, third-party defense under the law.

## 8.3 Current Conditions and Duty to Investigate.

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

## 8.4 Use of Hazardous Substances.

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

requirements of Chapter 90.56 RCW. Failure to comply with the requirements of Chapter 90.56 is a default under Section 14.

- (e) At a minimum, Port and affiliates shall observe the following Hazardous Substances operational standards. If the Washington Department of Ecology, U.S. Environmental Protection Agency or other regulatory agency establishes different standards applicable to Port's activities under the Permitted Use, Port shall meet the standard that provides greater protection to the environment.
- (1) Port shall not allow work on overwater structures or vessels without protective measures to prevent discharge of toxins to the water, including:
    - (i) Port shall not cause or allow underwater hull scraping and other underwater removal of paints.
    - (ii) Port shall not cause or allow underwater refinishing work from boats or temporary floats unless permitted by an industrial National Pollution Discharge Elimination System (NPDES) permit.
    - (iii) Port shall not cause or allow above the waterline boat repairs or refinishing in-water except if limited to decks and superstructures and less than 25 percent of a boat is repaired or refinished in-water per year.
    - (iv) Port shall use and require others to use tarps and other dust, drip and spill containment measures when repairing or refinishing boats in water.
  - (2) Port shall not store or allow others to store fuel tanks, petroleum products, hydraulic fluid, machinery coolants, lubricants and chemicals not in use in locations above the water surface.
  - (3) Port shall inspect all equipment using petroleum products, hydraulic fluids, machinery coolants, chemicals, or other toxic or deleterious materials on a monthly basis and immediately make all repairs necessary to stop leakage. Port shall submit to State an annual report documenting inspections and repair.
  - (4) Port shall maintain a supply of oil spill containment materials adequate to contain a spill from the largest vessel in use on the Property.
  - (5) Port shall not use or allow use of a pressure washer at any location above the water surface to clean any item that uses petroleum products.
  - (6) Port shall incorporate best management practices to prevent the release of chemical contaminants, wastewater, garbage and other pollutants, as specified in Resource Manual for Pollution Prevention in Marinas published by the Washington Department of Ecology, publication number 98-11, available at <http://www.ecy.wa.gov/biblio/9811.html>. If the Department of Ecology or other regulatory agency establishes different standards, Port shall meet the most protective standard.

**8.5 Management of Contamination, if any.**

- (a) Port and affiliates shall not undertake activities that:
  - (1) Damage or interfere with the operation of remedial or restoration activities, if any;
  - (2) Result in human or environmental exposure to contaminated sediments, if any;
  - (3) Result in the mechanical or chemical disturbance of on-site habitat mitigation, if any.
- (b) If requested, Port shall allow reasonable access to:
  - (1) Employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, health department, or other similar environmental agencies; and
  - (2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Property. Port may negotiate an access agreement with such parties, but Port may not unreasonably withhold such agreement.

**8.6 Notification and Reporting.**

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

**8.7 Indemnification.**

- (a) To the extent allowed by law, Port shall fully indemnify, defend, and hold State harmless from and against Liabilities that arise out of, or relate to:
- (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Port and affiliates occurring whenever Port occupies or has occupied the Property;
  - (2) The release or threatened release of any Hazardous Substance resulting from any act or omission of Port and affiliates occurring whenever Port occupies or has occupied the Property.
- (b) To the extent allowed by law, Port shall fully indemnify, defend, and hold State harmless for Liabilities that arise out of or relate to Port's breach of obligations under Paragraph 8.5.
- (c) Port has no duty to indemnify State for acts or omissions of third parties unless and only if an administrative or legal proceeding arising from a release or threatened release of Hazardous Substances finds or holds that Port failed to exercise care as described in Paragraph 8.2(b)(2). In such case, Port shall fully indemnify, defend, and hold State harmless from and against Liabilities arising from the acts or omissions of third parties in relation to the release or threatened release of Hazardous Substances. This includes Liabilities arising before the finding or holding in the proceeding.

**8.8 Reservation of Rights.**

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

**8.9 Cleanup.**

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

Voluntary Cleanup complies with any laws or with the provisions of this Lease. Port's completion of a Voluntary Cleanup is not a release from or waiver of any obligation for Hazardous Substances under this Lease.

#### 8.10 Sampling by State, Reimbursement, and Split Samples.

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

#### 8.11 Closeout Assessment.

- (a) State may require Port to conduct a Closeout Environmental Assessment ("Closeout Assessment") prior to Termination of the Lease.
- (b) The purpose of the Closeout Assessment is to determine the existence, scope, or effects of Hazardous Substances on the Property and associated natural resources. The Closeout Assessment may include sediment sampling.
- (c) No later than one hundred eighty (180) calendar days prior to the Termination Date, or within ninety (90) days of valid notice to early termination, State shall provide Port with written notice that State requires a Closeout Assessment.
- (d) Within sixty (60) days of State's notice that Closeout Assessment is required and before commencing assessment activities, Port shall submit a proposed plan for conducting the Closeout Assessment in writing for State's approval.
- (e) If State fails to approve or disapprove of the plan in writing within sixty (60) days of its receipt, State waives requirement for approval.
- (f) Port shall be responsible for all costs required to complete planning, sampling, analyzing, and reporting associated with the Closeout Assessment.
- (g) If the initial results of the Closeout Assessment disclose that Hazardous Substances may have migrated to other property, State may require additional Closeout Assessment work to determine the existence, scope, and effect of

- Hazardous Substances on adjacent property, any other property subject to use by Port in conjunction with its use of the Property, or on associated natural resources.
- (h) Port shall submit Closeout Assessment to State upon completion.
  - (i) As required by law, Port shall report to the appropriate regulatory authorities if the Closeout Assessment discloses a release or threatened release of Hazardous Substances.

## SECTION 9 ASSIGNMENT AND SUBLETTING

**9.1 State Consent Required.** Port shall not convey, transfer, or encumber any part of Port's interest in this Lease or the Property without State's prior written consent, which State shall not unreasonably condition or withhold.

- (a) In determining whether to consent, State may consider, among other items, the proposed transferee's financial condition, business reputation and experience, the nature of the proposed transferee's business, the then-current value of the Property, and such other factors as may reasonably bear upon the suitability of the transferee as a tenant of the Property. State may refuse its consent to any conveyance, transfer, or encumbrance if it will result in a subdivision of the leasehold. Port shall submit information regarding any proposed transferee to State at least thirty (30) days prior to the date of the proposed transfer.
- (b) State reserves the right to condition its consent upon:
  - (1) Changes in the terms and conditions of this Lease, including, but not limited to, the Annual Rent; and/or
  - (2) The agreement of Port or transferee to conduct Tests for Hazardous Substances on the Property or on other property owned or occupied by Port or the transferee.
- (c) Each permitted transferee shall assume all obligations under this Lease, including the payment of rent. No assignment, sublet, or transfer shall release, discharge, or otherwise affect the liability of Port.
- (d) State's consent under this Paragraph 9.1 does not constitute a waiver of any claims against Port for the violation of any term of this Lease.

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

**9.3 Terms of Subleases.**

- (a) Port shall submit the terms of all subleases to State for approval.
- (b) Port shall incorporate the following requirements in all subleases:
  - (1) The sublease must be consistent with and subject to all the terms and conditions of this Lease;
  - (2) The sublease must provide that this Lease controls if the terms of the sublease conflict with the terms of this Lease;

- (3) The term of the sublease (including any period of time covered by a renewal option) must end before the Termination Date of the initial Term or any renewal term;
- (4) The sublease must terminate if this Lease terminates for any reason;
- (5) The subtenant must receive and acknowledge receipt of a copy of this Lease;
- (6) The sublease must prohibit the prepayment to Port by the subtenant of more than the annual rent;
- (7) The sublease must identify the rental amount subtenant is to pay to Port;
- (8) The sublease must provide that there is no privity of contract between the subtenant and State;
- (9) The sublease must require removal of the subtenant's Improvements and Personal Property upon termination of the sublease;
- (10) The subtenant's permitted use must be within the scope of the Permitted Use; and
- (11) The sublease must require the subtenant to meet all obligations of Port under Section 10, Indemnification, Financial Security, and Insurance.

**9.4 Short-Term Subleases of Moorage Slips.** Short-term subleasing of moorage slips for a term of less than one (1) year does not require State's written consent or approval pursuant to Paragraphs 9.1 or 9.3. Port shall conform moorage sublease agreements to the sublease requirements in Paragraph 9.3.

## SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE

**10.1 Indemnity.** Each Party shall be responsible for the actions and inactions of itself and its own officers, employees, and agents acting within the scope of their authority.

### 10.2 Insurance Terms.

(a) **Insurance Required.**

- (1) At its own expense, Port shall procure and maintain during the Term of this Lease, the insurance coverages and limits described in this Paragraph 10.2 and in Paragraph 10.3, Insurance Types and Limits. State may terminate this Lease if Port fails to maintain required insurance.
- (2) Unless State agrees to an exception, Port shall provide insurance issued by an insurance company or companies admitted to do business in the State of Washington and have a rating of A- or better by the most recently published edition of Best's Reports. Port may submit a request to the risk manager for the Department of Natural Resources to approve an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies shall comply with Chapter 48.15 RCW and 284-15 WAC.
- (3) All general liability, excess, umbrella, property, builder's risk, and pollution legal liability insurance policies must name the State of

- Washington, the Department of Natural Resources, its elected and appointed officials, agents, and employees as an additional insured.
- (4) All insurance provided in compliance with this Lease must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.
- (b) Waiver.
- (1) Port waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Lease covers these damages.
- (2) Except as prohibited by law, Port waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this Lease.
- (c) Proof of Insurance.
- (1) Port shall provide State with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Lease and, if requested, copies of policies to State.
- (2) The certificate(s) of insurance must reference additional insureds and the Lease number.
- (3) Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies.
- (d) State must receive written notice before cancellation or non-renewal of any insurance required by this Lease, as follows:
- (1) Insurers subject to RCW 48.18 (admitted and regulated by the Insurance Commissioner): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State forty-five (45) days' advance notice of cancellation or non-renewal.
- (2) Insurers subject to RCW 48.15 (surplus lines): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State thirty (30) days' advance notice of cancellation or non-renewal.
- (e) Adjustments in Insurance Coverage.
- (1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.
- (2) Port shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.
- (f) If Port fails to procure and maintain the insurance described above within fifteen (15) days after Port receives a notice to comply from State, State may either:
- (1) Deem the failure an Event of Default under Section 14, or
- (2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Port shall pay to State the full amount paid by State, together with interest at the rate provided in Paragraph 6.2 from the date of State's notice of the expenditure until Port's repayment.



- (g) **General Terms.**
- (1) State does not represent that coverage and limits required under this Lease are adequate to protect Port.
  - (2) Coverage and limits do not limit Port's liability for indemnification and reimbursements granted to State under this Lease.
  - (3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to property first to restore the real property covered by this Lease, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Port.

### 10.3 Insurance Types and Limits.

- (a) **General Liability Insurance.**
- (1) Port shall maintain commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Port's use, occupation, or control of the Property and, if necessary, commercial umbrella insurance with a limit of not less than One Million Dollars (\$1,000,000) per each occurrence. If such CGL or MGL insurance contains aggregate limits, the general aggregate limit must be at least twice the "each occurrence" limit. CGL or MGL insurance must have products-completed operations aggregate limit of at least two times the "each occurrence" limit.
  - (2) CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.
  - (3) MGL insurance must have no exclusions for non-owned watercraft.
- (b) **Workers' Compensation.**
- (1) **State of Washington Workers' Compensation.**
    - (i) Port shall comply with all State of Washington workers' compensation statutes and regulations. Port shall provide workers' compensation coverage for all employees of Port. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with Port's use, occupation, and control of the Property.
    - (ii) If Port fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Port shall indemnify State. Indemnity shall include all fines; payment of benefits to Port, employees, or their heirs or

legal representatives; and the cost of effecting coverage on behalf of such employees.

- (2) Longshore and Harbor Workers' and Jones Acts. Longshore and Harbor Workers' Act (33 U.S.C. Section 901 *et seq.*) and/or the Jones Act (46 U.S.C. Section 688) may require Port to provide insurance coverage in some circumstances. Port shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with law. Port is responsible for all civil and criminal liability arising from failure to maintain such coverage.
- (c) Employers' Liability Insurance. Port shall procure employers' liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident or One Million Dollars (\$1,000,000) each employee for bodily injury by disease.
- (d) Property Insurance.
  - (1) Port shall buy and maintain property insurance covering all real property and fixtures, equipment, Port Improvements and betterments (regardless of whether owned by Port or State). Such insurance must be written on an all risks basis and, at minimum, cover the perils insured under ISO Special Causes of Loss Form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductibles. Any coinsurance requirement in the policy must be waived. The policy must include State as an insured and a loss payee.
  - (2) In the event of any loss, damage, or casualty which is covered by one or more of the types of insurance described above, the Parties to this Lease shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which State shall hold in trust, including interest earned by State on such proceeds, for use according to the terms of this Lease. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).
  - (3) When sufficient funds are available, using insurance proceeds described above, the Parties shall continue with reasonable diligence to prepare plans and specifications for, and thereafter carry out, all work necessary to:
    - (i) Repair and restore damaged building(s) and/or Improvements to their former condition, or
    - (ii) Replace and restore damaged building(s) and/or Improvements with a new building(s) and/or Improvements on the Property of a quality and usefulness at least equivalent to or more suitable than, damaged building(s) and/or Improvements.

#### 10.4 Financial Security.

- (a) At its own expense, Port shall procure and maintain during the Term of this Lease a corporate security bond or provide other financial security that State, at its option, may approve ("Security"). Port shall provide Security in an amount equal to Zero Dollars (\$0.00), which is consistent with RCW 79.105.330, and secures

Port's performance of its obligations under this Lease, with the exception of the obligations under Section 8, Environmental Liability/Risk Allocation. Port's failure to maintain the Security in the required amount during the Term constitutes a breach of this Lease.

- (b) All Security must be in a form acceptable to the State.
  - (1) Bonds must be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better, in the most recently published edition of Best's Reports, unless State approves an exception. Port may submit a request to the risk manager for the Department of Natural Resources for an exception to this requirement.
  - (2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, *et. seq.*
  - (3) Savings account assignments, if approved by State, must allow State to draw funds at will.
- (c) Adjustment in Amount of Security.
  - (1) State may require an adjustment in the Security amount:
    - (i) At the same time as revaluation of the Annual Rent,
    - (ii) As a condition of approval of assignment or sublease of this Lease,
    - (iii) Upon a material change in the condition or disposition of any Improvements, or
    - (iv) Upon a change in the Permitted Use.
  - (2) Port shall deliver a new or modified form of Security to State within thirty (30) days after State has required adjustment of the amount of the Security.
- (d) Upon any default by Port in its obligations under this Lease, State may collect on the Security to offset the liability of Port to State. Collection on the Security does not:
  - (1) Relieve Port of liability,
  - (2) Limit any of State's other remedies,
  - (3) Reinstate or cure the default, or
  - (4) Prevent termination of the Lease because of the default.

## SECTION 11. ROUTINE MAINTENANCE AND REPAIR

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

### 11.2 Port's Repairs and Maintenance

- (a) Routine maintenance and repair are acts intended to prevent a decline, lapse or, cessation of the Permitted Use and associated Improvements. Routine maintenance or repair is the type of work that does not require regulatory permits.

- (b) At Port's own expense, Port shall keep and maintain the Property and all Improvements in good order and repair and in a safe condition. State's consent is not required for routine maintenance or repair.
- (c) At Port's own expense, Port shall make any additions, repairs, alterations, maintenance, replacements, or changes to the Property or to any Improvements on the Property that any public authority may require. If a public authority requires work beyond the scope of routine maintenance and repair, Port shall comply with Section 7 of this Lease.

**11.3 Limitations.** The following limitations apply whenever Port conducts maintenance, repair or replacement. The following limitations also apply whenever Port conducts maintenance, repair, or replacement on the exterior surfaces, features, or fixtures of a floating house.

- (a) Port shall not use or install treated wood at any location above or below water, except that Port may use treated wood for above water structural framing.
- (b) Port shall not use or install tires (for example, floatation or fenders) at any location above or below water.

## SECTION 12 DAMAGE OR DESTRUCTION

### 12.1 Notice and Repair.

- (a) In the event of damage to or destruction of the Property or Improvements, Port shall promptly give written notice to State. State does not have actual knowledge of the damage or destruction without Port's written notice.
- (b) Unless otherwise agreed in writing, Port shall promptly reconstruct, repair, or replace the Property and Improvements as nearly as possible to its condition immediately prior to the damage or destruction in accordance with Paragraph 7.3, Construction, Major Repair, Modification, and Demolition and Port's additional obligations in Exhibit B, if any.

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

**12.3 Insurance Proceeds.** Port's duty to reconstruct, repair, or replace any damage or destruction of the Property or any Improvements on the Property is not conditioned upon the availability of any insurance proceeds to Port from which the cost of repairs may be paid. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).

**12.4 Rent in the Event of Damage or Destruction.** Unless the Parties agree to terminate this Lease, there is no abatement or reduction in rent during such reconstruction, repair, and replacement.

**12.5 Default at the Time of Damage or Destruction.** If Port is in default under the terms of this Lease at the time damage or destruction occurs, State may elect to terminate the Lease and

State then shall have the right to retain any insurance proceeds payable as a result of the damage or destruction.

## SECTION 13 CONDEMNATION

### 13.1 Definitions.

- (a) "Taking" means that an entity authorized by law exercises the power of eminent domain, either by judgment, settlement in lieu of judgment, or voluntary conveyance in lieu of formal court proceedings, over all or any portion of the Property and Improvements. This includes any exercise of eminent domain on any portion of the Property and Improvements that, in the judgment of the State, prevents or renders impractical the Permitted Use.
- (b) "Date of Taking" means the date upon which title to the Property or a portion of the Property passes to and vests in the condemner or the effective date of any order for possession if issued prior to the date title vests in the condemner.

**13.2 Effect of Taking.** If there is a taking, the Lease terminates proportionate to the extent of the taking. If this Lease terminates in whole or in part, Port shall make all payments due and attributable to the taken Property up to the date of taking. If Port has pre-paid rent and Port is not in default of the Lease, State shall refund Port the pro rata share of the pre-paid rent attributable to the period after the date of taking.

### 13.3 Allocation of Award.

- (a) The Parties shall allocate the condemnation award based upon the ratio of the fair market value of (1) Port's leasehold estate and Port-Owned Improvements and (2) State's interest in the Property; the reversionary interest in Port-Owned Improvements, if any; and State-Owned Improvements, if any.
- (b) If Port and State are unable to agree on the allocation, the Parties shall submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

## SECTION 14 DEFAULT AND REMEDIES

**14.1 Default Defined.** Port is in default of this Lease on the occurrence of any of the following:

- (a) Failure to pay rent or other expenses when due;
- (b) Failure to comply with any law, regulation, policy, or order of any lawful governmental authority;
- (c) Failure to comply with any other provision of this Lease;
- (d) Commencement of bankruptcy proceedings by or against Port or the appointment of a trustee or receiver of Port's property.

**14.2 Port's Right to Cure.**

- (a) A default becomes an "Event of Default" if Port fails to cure the default within the applicable cure following State's written notice of default. Upon an Event of Default, State may seek remedies under Paragraph 14.3.
- (b) Unless expressly provided elsewhere in this Lease, the cure period is sixty (60) days.
- (c) For nonmonetary defaults not capable of cure within sixty (60) days, State will not unreasonably withhold approval of a reasonable alternative cure schedule. Port must submit a cure schedule within thirty (30) days of a notice of default. The default is not an Event of Default if State approves the schedule and Port works diligently and in good faith to execute the cure. The default is an Event of Default if Port fails to timely submit a schedule or fails to cure in accordance with an approved schedule.
- (d) State may elect to deem a default by Port as an Event of Default if the default occurs within six (6) months after a default by Port for which State has provided notice and opportunity to cure and regardless of whether the first and subsequent defaults are of the same nature.

**14.3 Remedies.**

- (a) Upon an Event of Default, State may terminate this Lease and remove Port by summary proceedings or otherwise.
- (b) If the Event of Default (1) arises from Port's failure to comply with restrictions on Permitted Use and operations under Paragraph 2.2 or (2) results in damage to natural resources or the Property, State may enter the Property without terminating this Lease to (1) restore the natural resources or Property and charge Port restoration costs and/or (2) charge Port for damages. On demand by State, Port shall pay all costs and/or damages.
- (c) Without terminating this Lease, State may relet the Property on any terms and conditions as State may decide are appropriate.
  - (1) State shall apply rent received by reletting: (1) to the payment of any indebtedness other than rent due from Port to State; (2) to the payment of any cost of such reletting; (3) to the payment of the cost of any alterations and repairs to the Property; and (4) to the payment of rent and leasehold excise tax due and unpaid under this Lease. State shall hold and apply any balance to Port's future rent as it becomes due.
  - (2) Port is responsible for any deficiency created by the reletting during any month and shall pay the deficiency monthly.
  - (3) At any time after reletting, State may elect to terminate this Lease for the previous Event of Default.
- (d) State's reentry or repossession of the Property under Paragraph 14.3 is not an election to terminate this Lease or cause a forfeiture of rents or other charges Port is obligated to pay during the balance of the Term, unless (1) State gives Port written notice of termination or (2) a legal proceeding decrees termination.

- (e) The remedies specified under this Paragraph 14.3 are not exclusive of any other remedies or means of redress to which the State is lawfully entitled for Port's breach or threatened breach of any provision of this Lease.

**SECTION 15 ENTRY BY STATE**

State may enter the Property at any reasonable hour to inspect for compliance with the terms of this Lease, to monitor impacts to habitat, or survey habitat and species. State's failure to inspect the Property does not constitute a waiver of any rights or remedies under this Lease.

**SECTION 16 DISCLAIMER OF QUIET ENJOYMENT**

**16.1 No Guaranty or Warranty.**

- (a) State believes that this Lease is consistent with the Public Trust Doctrine and that none of the third-party interests identified in Paragraph 1.1(b) will materially or adversely affect Port's right of possession and use of the Property, but State makes no guaranty or warranty to that effect.
- (b) State disclaims and Port releases State from any claim for breach of any implied covenant of quiet enjoyment. This disclaimer and release includes, but is not limited to, interference arising from exercise of rights under the Public Trust Doctrine; Treaty rights held by Indian Tribes; and the general power and authority of State and the United States with respect to aquatic lands and navigable waters.
- (c) Port is responsible for determining the extent of Port's right to possession and for defending Port's leasehold interest.

**16.2 Eviction by Third-Party.** If a third-party evicts Port, this Lease terminates as of the date of the eviction. In the event of a partial eviction, Port's rent obligations abate as of the date of the partial eviction, in direct proportion to the extent of the eviction; this Lease shall remain in full force and effect in all other respects.

**SECTION 17 NOTICE AND SUBMITTALS**

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

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

Port: PORT OF BREMERTON  
 8850 SW State Highway 3  
 Port Orchard, WA 98367-7487

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

## SECTION 18 MISCELLANEOUS

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

**18.2 Successors and Assigns.** This Lease binds and inures to the benefit of the Parties, their successors, and assigns.

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

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

**18.5 Waiver.**

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

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



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

**18.8 Language.** The word "Port" as used in this Lease applies to one or more persons and regardless of gender, as the case may be. If there is more than one Port, their obligations are joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations. The word "Parties" means State and Port in the collective. The word "Party" means either or both State and Port, depending on the context.

**18.9 Invalidity.** The invalidity, voidness, or illegality of any provision of this Lease does not affect, impair, or invalidate any other provision of this Lease.

**18.10 Applicable Law and Venue.** This Lease is to be interpreted and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or in connection with this Lease is in the Superior Court for Thurston County, Washington.

**18.11 Statutory Reference.** Any reference to a statute means that statute as presently enacted or hereafter amended or superseded.

**18.12 Recordation.** At Port's expense and no later than thirty (30) days after receiving the fully-executed Lease, Port shall record this Lease in the county in which the Property is located. Port shall include the parcel number of the upland property used in conjunction with the Property, if any. Port shall provide State with recording information, including the date of recordation and file number. If Port fails to record this Lease, State may record it and Port shall pay the costs of recording upon State's demand.

**18.13 Modification.** No modification of this Lease is effective unless in writing and signed by both Parties. Oral representations or statements do not bind either Party.

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

**18.15 Exhibits.** All referenced exhibits are incorporated in the Lease unless expressly identified as unincorporated.

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

PORT OF BREMERTON

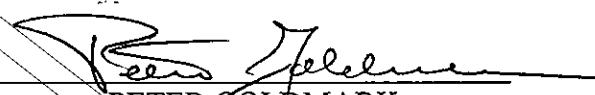
Dated: AUGUST 24, 2011



By: CARY BOZEMAN  
Title: Chief Executive Officer  
Address: 8850 SW State Highway 3  
Port Orchard, WA 98367-7487  
Phone: 360-674-2381 ext. 12

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES

Dated: Sept 14, 2011



By: PETER GOLDMARK  
Title: Commissioner of Public Lands  
Address: 1111 Washington Street SE M/S 47027  
Olympia, WA 98504-7027



Approved as to form this  
29 day of June 2011  
Janis Snoey, Assistant Attorney General

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 ) ss  
County of Kitsap )

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

Dated: 8/24/11

(Seal or stamp)

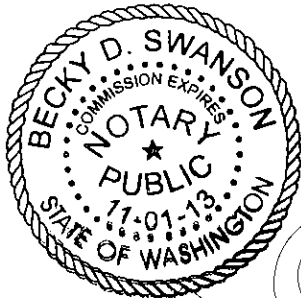
Becky D Swanson  
(Signature)

BECKY D. SWANSON  
(Print Name)

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

Bremerton, WA

My appointment expires 11/1/13



STATE ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 ) ss  
County of Thurston )

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

Dated: 9/14/2011  
(Seal or stamp)

[Signature]  
(Signature)  
Brenda Jean Treadwell  
(Print Name)



Notary Public in and for the State of Washington, residing at  
[Signature]  
My appointment expires 2/25/2012

**EXHIBIT A**

Legal Description of Premises and Encumbrances

Current Survey recorded with Kitsap County  
Auditor's File No. 201101030135  
March 01, 2011

Unofficial Copy

**Lease 22-0A2234**

That portion of the harbor area lying landward of the Mean High Water line, fronting Lots 1 through 10 of Block 13 of Shore and Tidelands of Sidney as shown on that certain map dated 30 May 1892, being a portion of Government Lot 4, Section 26, Township 24 North, Range 1 East W.M. more particularly described as follows:

Commencing at that certain monument as described in Record of Survey recorded under Auditor's File Number 3090257 and filed in Volume 49, page 139 of surveys, records of Kitsap County, Washington being designated as the meander corner common to Section 25 and 26, Township 24 North, Range 1 East W.M., from which the East one quarter of said Section 26 bears S 1°31'09" W 589.21 feet; thence N 1°31'09" E, along the Northerly extension of the East Line of Government Lot 4 of said section, 912.48 feet to its intersection with the Inner Harbor Line fronting the Shore and Tidelands of Sidney; thence Southwesterly and Northwesterly along said Inner Harbor Line on the following courses, S 47°08'51" W 1563.44 feet and N 84°36'09" W 137.34 feet more less to a point on said Inner Harbor Line, 11.00 feet East of at right angle to the intersection of the Northerly extension of East line of Sidney Avenue as delineated on the face of the Plat of the First Addition to Sidney as filed in Volume 1, page 10 of plats and as shown on said map of Shore and Tidelands of Sidney, and the TRUE POINT OF BEGINNING; thence leaving said Inner Harbor Line run N 1°43'24" E, parallel with and 11.00 feet East of at right angle to the said East margin of Sidney Avenue, 35.11 feet more or less to its intersection with the Mean High Water Line of Sinclair Inlet, as based upon U.S.C. and G.S. Tidal Bench Mark Stamped Number 9 SUB 2 RESET; thence Southeasterly and Northeasterly, along said Mean High Water Line on the following courses, S 75°30'46" E 27.34, N 88°11'09" E 67.58 feet, S 83°49'01" E 30.18 feet and S 88°25'05" E 53.26 feet more or less to its intersection with the said Inner Harbor Line; thence along said Inner Harbor Line on the following courses, S 47°08'51" W 56.74 feet and N 84°36'09" W 137.34 feet more or less to the TRUE POINT OF BEGINNING.

Datum= Mean Lower Low Water  
 Originating from U.S.C.&G.S. Tidal Bench Mark -  
 Elevation=71.45  
 Stamped No. 9 SUB 2 RESET  
 Located on the front steps of the Bremerton Post Office at  
 6th and Pacific in Bremerton, Washington

Datum Plane	MLLW	NGVD 29	NAVD 88
Highest Estimated Tide	-14.70 +/- 0.5		
Mean Higher High Water	-11.74	-5.51	-8.99
Mean High Water	-10.87	-4.64	-8.12
Mean (Half) Tide Level	-6.85	-0.62	-4.10
NGVD	-6.23	0.00	-3.48
Mean Low Water	-2.83	-3.40	-0.08
Mean Lower Low Water	-0.00	-6.23	-2.75
Lowest Estimated Tide	-4.50 +/- 0.5		

**Equipment and Procedures**

20" Theodolite, EDM and 200.0' steel tape.  
 Procedure = The control portion of this survey is in compliance with the Federal Geodetic control committee's "Geodetic Accuracy Standard and Specification for using GPS Relative Positioning Techniques", version 5.0 updated August 1, 1989 for Group C, Order 1 Surveys. Corner Ties were made by Field Traverse. Traverse lines were Closed Loop or Closed Between Known Points.



Vertical Datum based upon HARN (GPS 222) Stations Bremerton Air, King Ofaf and Sitar RM1 and NOAA Vertical Control NGVD 1929, Adjustment of 1947 monuments PEAT 1934, P255 and No. 9 SUB 2 RESET

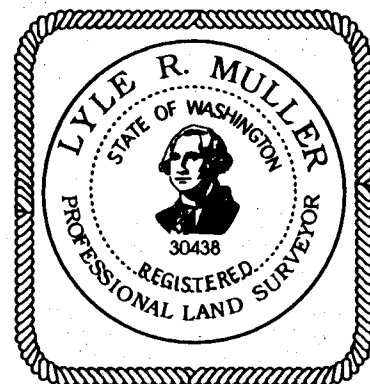
Horizontal Datum NAD 83/91 Geoid 1993 expressed in US Survey feet

**SURVEYOR'S CERTIFICATE**

This map correctly represents a survey made by me or under my direction in conformance with the requirements of the SURVEY RECORDING ACT at the request of Port of Bremerton

*L R Muller*

Ward C. Muller and Associates-Licensed Land Surveyors  
 217 Sidney Avenue  
 Port Orchard, Wa 98366 Phone (360)876-3443  
 Latitude N 47°32'28.08" Longitude W 122°38'09.41"



**Lease 22-0A2235**

**Tract 1**

That portion of the harbor area lying landward of the Mean High Water line, fronting Blocks 11 and Orchard Street in SM Stevens Town Plat of Sidney, filed in Volume 1, page 1 of Plats records of Kitsap County, Washington and Block 11 and Orchard Street lying within the Shore and Tidelands of Sidney as shown on that certain map dated May 30, 1892, being a portion of Government Lot 3, Section 26, Township 24 North, Range 1 East W.M. more particularly described as follows:

Commencing at that certain monument as described in Record of Survey recorded under Auditor's File Number 3090257 and filed in Volume 49, page 139 of surveys, records of Kitsap County, Washington being designated as the meander corner common to Section 25 and 26, Township 24 North, Range 1 East W.M., from which the East one quarter of said Section 26 bears S 1°31'09" W 589.21 feet; thence N 1°31'09" E, along the Northerly extension of the East Line of Government Lot 4 of said section, 912.48 feet to its intersection with the Inner Harbor Line fronting the Shore and Tidelands of Sidney; thence Southwesterly and Northwesterly along said Inner Harbor Line on the following courses, S 47°08'51" W 1563.44 feet and N 84°36'09" W 866.00 feet, to that certain an angle point in the said Inner Harbor Line fronting Block 11 of SM Stevens Town Plat of Sidney as filed in Volume 1, page 1 of plats, and the TRUE POINT OF BEGINNING; thence leaving said Inner Harbor Line run N 31°48'12" W, parallel with the lot line common to Lots 3 and 4, Block 11 of said SM Stevens Town Plat of Sidney, 33.46 feet more or less to its intersection with the Mean High Water Line of Sinclair Inlet, as based upon U.S.C. & G.S. Tidal Bench Mark Stamped Number 9 SUB 2 RESET; thence Northeasterly along said line of Mean High Water on the following courses N 46°53'50" E 31.78 feet, N 50°08'13" E 53.47 feet, N 44°26'05" E 41.65 feet, N 64°41'33" E 22.54 feet and N 55°20'25" E 17.46 feet; thence leaving the said line of Mean High Water run S 44°53'41" E 37.08 feet to the beginning of a non-tangent curve to the Southwest from which the radius point bears S 44°53'41" E 49.64 feet; thence Southwesterly along the arc of said curve 30.67 feet to a point from which the radius point bears S 80°17'22" E; thence N 87°05'20" W 27.92 feet more or less to a point on the Northerly extension of the West line of Orchard Street in said plat; thence S 1°41'48" W, along said Northerly extension, 90.84 feet more or less to a point on the said Inner Harbor Line which bears S 84°36'09" E from the True Point of Beginning; thence thence N 84°36'09" W, along the said Inner Harbor Line 92.63 feet more or less to the TRUE POINT OF BEGINNING.

**Tract 2**

That portion of the harbor area lying landward of the Mean High Water line, fronting Blocks 12 and 13, Sidney Street and a portion of Orchard Street, Fredrick Street and portion of Sidney Street in SM Stevens Town Plat of Sidney, filed in Volume 1, page 1 of Plats, records of Kitsap County, Washington, Block 13 and portion of Sidney Street in First Addition to Sidney-Kitsap County, Washington, recorded in Volume 1, page 10 of Plats, records of Kitsap County, Washington and Block 12, and 13, Sidney Street, Fredrick Street and a portion of Orchard Street, lying within the Shore and Tidelands of Sidney as shown on that certain map dated May 30, 1892, being a portion of Government Lots 3 and 4, Section 26, Township 24 North, Range 1 East W.M. more particularly described as follows:

Commencing at that certain monument as described in Record of Survey recorded under Auditor's File Number 3090257 and filed in Volume 49, page 139 of surveys, records of Kitsap County, Washington being designated as the meander corner common to Section 25 and 26, Township 24 North, Range 1 East W.M., from which the East one quarter of said Section 26 bears S 1°31'09" W 589.21 feet; thence N 1°31'09" E, along the Northerly extension of the East Line of Government Lot 4 of said section, 912.48 feet to its intersection with the Inner Harbor Line fronting the Shore and Tidelands of Sidney; thence Southwesterly and Northwesterly along said Inner Harbor Line on the following courses, S 47°08'51" W 1563.44 feet and N 84°36'09" W 148.36 feet more or less to the intersection of the Easterly margin of Sidney Avenue as shown on said Plat of First Addition to Sidney and the Inner Harbor Line as shown on the Map of Shore and Tidelands of Sidney, Kitsap County, Washington, dated May 30, 1892, said point being the Northerly extension of the West line of Lot 1, Block 13 of said Plat of First Addition to Sidney; thence N 1°43'24" E, along the Northerly extension of the West line of Lot 1, Block 13 of said Plat of First Addition to Sidney, 5.27 feet to the TRUE POINT OF BEGINNING; thence N 65°24'01" W 346.49 feet to the beginning of a curve to the left from which the radius point bears S 24°35'59" W 266.58 feet; thence Northwesterly and Westerly along the arc of said curve 82.34 feet to a point from which the radius point bears S 6°54'09" W; thence N 83°05'51" W 143.99 feet to the beginning of a curve to the left from which the radius point bears S 6°54'09" W 49.64 feet; thence Southwesterly along the arc of said curve 23.76 feet to a point from which the radius point bears S 20°31'16" E; thence N 20°31'16" W, along the radial extension of end of said curve, 31.90 feet more or less to its intersection with the Mean High Water Line of Sinclair Inlet, as based upon U.S.C. & G.S. Tidal Bench Mark Stamped Number 9 SUB 2 RESET; thence Southeasterly along the said Mean High Waterline on the following courses, S 86°18'09" E 134.27 feet, S 78°09'03" E 93.79 feet, S 69°04'17" E 97.50 feet, S 60°15'50" E 69.17 feet, S 70°15'34" E 45.38 feet, S 63°36'47" E 119.18 feet and S 73°35'59" E 48.00 feet more or less to a point on the Northerly extension of the West line of Lot 1, Block 13 of said Plat of First Addition to Sidney, which bears N 1°43'24" E from the True Point of Beginning; thence S 1°43'24" W, along said Northerly extension 32.00 feet more or less to the TRUE POINT OF BEGINNING.

**AUDITOR'S CERTIFICATE**

Filed for record this 01 day of March 2010 at 1:54 PM  
 Section 26 Township 24N Range 1 East W.M. at the request of Lyle R. Muller

*Walter Washington* County Auditor By: *[Signature]*

SURVEY NUMBER SW-NE 26-24-01-1-0006 SE-NE 26-24-01-1-0009  
 AUDITOR'S FILE NUMBER 2010301035 Book 75 Page 52

**Lease 22-0A9891**

**Tract "A"**

That portion of an unnumbered tract of Shore and Tidelands of Sidney as shown on that certain map dated May 30, 1892, lying landward of the toe of the rock rip-rap as it existed on January 15, 2004 and adjacent to and abutting Lots 1 through 5 of Block 1 of the Plat of Bay Street Addition to Port Orchard as recorded under Auditor's File Number 51104 and filed in Volume 3, page 116 of plats, records of Kitsap County, Washington more particularly described as follows:

Commencing at that certain monument as described in Record of Survey recorded under Auditor's File Number 3090257 and filed in Volume 49, page 139 of surveys, records of Kitsap County, Washington being designated as the meander corner common to Section 25 and 26, Township 24 North, Range 1 East W.M., from which the East one quarter of said Section 26 bears S 1°31'09" W 589.21 feet; thence Southwesterly along the Balanced Government Meander Line on the following courses S 87°10' 33" W 346.90 and S 55°24'31" W 494.26 feet more or less to the Northwest corner of Lot 5 of the Plat of Bay Street Addition to Port Orchard as recorded under Auditor's File Number 51104 and filed in Volume 3, page 116 of plats, records of Kitsap County, Washington and the TRUE POINT OF BEGINNING; thence leaving said Balanced Government Meander Line, run N 1°43'24" E, on the Northerly extension of the West line of said Lot 5, a distance of 149.38 feet more or less to the toe of the rock rip-rap as it existed on January 15, 2004; thence Southeasterly along the toe of said rock rip-rap on the following courses, S 75°16'33" E 103.49 and S 64°05'03" E 48.12 feet more or less to a point on the Balanced Government Meander Line which bears N 55°24'31" E from the True Point of Beginning; thence S 55°24'31" W, along said meander line 179.62 feet more or less to the TRUE POINT OF BEGINNING.

**Tract "B"**

That portion of an unnumbered tract of Shore and Tidelands of Sidney as shown on that certain map dated May 30, 1882, lying landward of the toe of the rock rip-rap as it existed on January 15, 2004 and adjacent to and abutting Lots 8 through 10 of Block 1 of the Plat of Bay Street Addition to Port Orchard as recorded under Auditor's File Number 51104 and filed in Volume 3, page 116 of plats, records of Kitsap County, Washington more particularly described as follows:

Commencing at that certain monument as described in Record of Survey recorded under Auditor's File Number 3090257 and filed in Volume 49, page 139 of surveys, records of Kitsap County, Washington being designated as the meander corner common to Section 25 and 26, Township 24 North, Range 1 East W.M., from which the East one quarter of said Section 26 bears S 1°31'09" W 589.21 feet; thence Southwesterly along the Government Balanced Meander Line on the following courses S 87°10' 33" W 346.90 feet and S 55°24'31" W 568.69 feet more or less to the Northeast corner of Lot 8 of the Plat of Bay Street Addition to Port Orchard as recorded under Auditor's File Number 51104 and filed in Volume 3, page 116 of plats, records of Kitsap County, Washington and the TRUE POINT OF BEGINNING; thence continue S 87°10' 33" W, along said Balanced Meander Line 37.21 feet more or less, to the Northwest corner of Lot 8 of said plat; thence N 1°43'24" E, on the Northerly extension of the West line of said Lot 8, a distance of 29.59 feet; thence N 88°16'36" W, at right angle to the West line of said Lot 8, a distance of 59.97 feet more or less to the Easterly margin of Harrison Street as defined by the Plat of the First Addition to Sidney as filed in Volume 1, page 10 of plats, records of Kitsap County, Washington; thence N 1°43'24" E, along the Easterly margin of said Harrison Street and the Northerly extension thereof 222.73 feet more or less to the toe of the rock rip-rap as it existed on January 15, 2004; thence Southeasterly along the toe of said rock rip-rap on the following courses, S 78°57'05" E 32.83 feet and S 71°25'51" E 60.14 feet more or less to a point N 1°43'24" E, from the Northeast corner of said Lot 8, the True Point of Beginning; thence S 1°43'24" W, along the Northerly extension of the East line of said Lot 8, a distance of 207.53 feet more or less to the TRUE POINT OF BEGINNING.

**Exhibit Showing**  
**PORT OF BREMERTON**  
 Port Management Agreement 22-080016  
 Lease Numbers 22-0A2234, 22-0A2235 and Lease Number 22-0A9891  
 as amended 2010

in  
 Harbor Area and Shore and Tidelands of Sidney  
 fronting  
 portion of Blocks 11, 12 and 13  
 and portion  
 Un-Numbered Tract  
 of the  
 Shore and Tidelands of Sidney  
 being in  
 portion of Government Lots 3 and 4  
 Section 26-Township 24 North-Range 1 East W.M.

20103010135

75.52



PMA 22-080016

Parcel 1

That portion of the harbor area fronting Blocks 11, 12, 13, Orchard Street, Fredrick Street and Sidney Street all in the Sidney Tidelands fronting Blocks 11, 12, 13 of the Plat of S.M. Stevens Town Plat of Sidney, as recorded in Volume 1, page 1 of plats and Block 13 in the Shore and Tidelands of Sidney as shown on that certain map dated May 30, 1892, fronting Block 13, Plat of First Addition to Sidney as record in Volume 1, page 10 of plats, records of Kitsap County, Washington and being a portion of Government Lots 3 and 4, Section 26, Township 24 North, Range 1 East W.M., more particular described as follows:

Commencing at that certain monument as described in Record of Survey recorded under Auditor's File Number 3090257 and filed in Volume 49, page 139 of surveys, records of Kitsap County, Washington being designated as the meander corner common to Section 25 and 26, Township 24 North, Range 1 East W.M., from which the East one quarter of said Section 26 bears S 1°31'09" W 589.21 feet; thence N 1°31'09" E, along the Northerly extension of the East Line of Government Lot 4 of said section, 912.48 feet to its intersection with the Inner Harbor Line fronting the Shore and Tidelands of Sidney; thence Southwesterly and Northwesterly along said Inner Harbor Line on the following courses, S 47°08'51" W 1563.44 feet and N 84°36'09" W 148.36 feet more or less to the intersection of the Easterly margin of Sidney Avenue as shown on said Plat of First Addition to Sidney and the Inner Harbor Line as shown on the Map of Shore and Tidelands of Sidney, Kitsap County, Washington, dated May 20, 1892, said point being the Northerly extension of the West line of Lot 1, Block 13 of said Plat of First Addition to Sidney; thence N 1°43'24" E, along the Northerly extension of said West line of Lot 1, Block 13 of said Plat of First Addition to Sidney, 37.27 feet more or less to its intersection with the Mean High Water Line of Sinclair Inlet, as based upon U.S.C. and G.S. Tidal Bench Mark Stamped Number 9 SUB 2 RESET and the TRUE POINT OF BEGINNING of said Parcel 1; thence N 1°43'24" E, along the said Northerly extension, 162.73 feet; thence N 84°36'09" W, parallel with the said Inner Harbor Line 33.07 feet more or less to its intersection with the Northerly extension of the centerline of Sidney Street as shown on said Plat of First Addition to Sidney; thence N 1°43'24" E, along the Northerly extension of said centerline 754.69 feet more or less to the Re-Established Outer Harbor Line, as approved by the Harbor Line Commission per Resolution Number 175, dated September 11, 1973; thence Southwesterly along the said Re-Established Outer Harbor Line on the following courses, S 63°48'53" W 43.64 feet, S 88°07'49" W 645.85 feet and S 46°37'51" W 165.19 feet; thence leaving said Re-Established Outer Harbor Line run S 1°41'48" W, parallel with the centerline of Orchard Street in said Plat of S.M. Stevens Town Plat of Sidney, 521.82 feet more or less to a point which bears N 31°48'12" W, parallel with the Northerly line of Lot 3, Block 11 of said Plat of S.M. Stevens Town Plat of Sidney, from the angle point in the Inner Harbor Line fronting Block 11 of said Plat of S.M. Stevens Town Plat of Sidney; thence S 31°48'12" E 202.78 feet more or less to the said Mean High Water Line of Sinclair Inlet; thence along the said Mean High Water Line on the following course, N 46°53'50" W 31.78 feet, N 50°08'13" E 53.47 feet, N 44°26'05" E 41.65 feet, N 64°41'33" E 22.54 feet, N 55°20'25" E 17.46 feet, N 44°55'41" W, 5.89 feet to the beginning a curve to the right from which the radius point bears N 45°06'29" E 20.00 feet; thence Northwesterly, Northeasterly and Southeasterly along the arc of said curve 71.34 feet to a point from which the radius point bears S 69°28'44" W; thence S 20°31'16" E 11.07 feet, S 86°18'09" E 134.27 feet, S 78°09'03" E 93.79 feet, S 69°04'17" E 97.50 feet, S 60°15'50" E 69.17 feet, S 70°15'34" E 45.38 feet, S 63°36'47" E 119.18 feet and S 73°35'59" E 48.00 feet more or less to the TRUE POINT OF BEGINNING.

Area	Type	Reference	Square Footage
Lease 22-0A2235 "A"	Non-Water Dependent	Lease No. 22-0A2235 (per PMA 22-080016)	3178.4sq. ft. ±
Lease 22-0A2235 "B"	Public Use Area	Lease No. 22-0A2235 (per PMA 22-080016)	3307.3 sq. ft. ±
Lease 22-0A2235 "C"	Non-Water Dependent	Lease No. 22-0A2235 (per PMA 22-080016)	3942.3 sq. ft. ±
Lease 22-0A2235 "D"	Public Use Area	Lease No. 22-0A2235 (per PMA 22-080016)	5560.2 sq. ft. ±
Lease 22-0A2235 "E"	Non-Water Dependent	Lease No. 22-0A2235 (per PMA 22-080016)	10,063.4 sq. ft. ±
Lease 22-0A2234 "A"	Non-Water Dependent	Lease No. 22-0A2234 (per PMA 22-080016)	2069.1 sq. ft. ±
Lease 22-0A2234 "B"	Public Use Area	Lease No. 22-0A2234 (per PMA 22-080016)	1547.0 sq. ft. ±
Lease 22-0A2234 "C"	Non-Water Dependent	Lease No. 22-0A2234 (per PMA 22-080016)	2108.8 sq. ft. ±
Lease 22-0A9891 "A"	Non-Water Dependent	Amended Lease No. 22-0A9891 (Tract "B")	2570.7 sq. ft. ±
Lease 22-0A9891 "B"	Public Use Area	Amended Lease No. 22-0A9891 (Tract "B")	1079.7sq. ft. ±
Lease 22-0A9891 "C"	Non-Water Dependent	Amended Lease No. 22-0A9891 (Tract "B")	16,048.9 sq. ft. ±
Lease 22-0A9891 "D"	Non-Water Dependent	Amended Lease No. 22-0A9891 (Tract "A")	3050.9 sq. ft. ±
Lease 22-0A9891 "E"	Public Use Area	Amended Lease No. 22-0A9891 (Tract "A")	1573.2 sq. ft. ±
Lease 22-0A9891 "F"	Non-Water Dependent	Amended Lease No. 22-0A9891 (Tract "A")	6667.4 sq. ft. ±
PMA 22-080016 Parcel 1			619,622.0 sq. ft. ±
PMA 22-080016 Parcel 2			160,075.4 sq.ft. ±
PMA 22-080016 Parcel 3			10,503.0 sq. ft. ±

PMA 22-080016

Parcel 2

That portion of the harbor area fronting Sidney Street and Block 13, all in the Sidney Tidelands fronting Sidney Street and Block 13 of the Plat of First Addition to Sidney as recorded in Volume 1, page 10 of plats, records of Kitsap County, Washington and being a portion of Government Lot 4, Section 26, township 24 North, Range 1 East W.M. more particularly described as follows:

Commencing at that certain monument as described in Record of Survey recorded under Auditor's File Number 3090257 and filed in Volume 49, page 139 of surveys, records of Kitsap County, Washington being designated as the meander corner common to Section 25 and 26, Township 24 North, Range 1 East W.M., from which the East one quarter of said Section 26 bears S 1°31'09" W 589.21 feet; thence N 1°31'09" E, along the Northerly extension of the East Line of Government Lot 4 of said section, 912.48 feet to its intersection with the Inner Harbor Line fronting the Shore and Tidelands of Sidney; thence Southwesterly and Northwesterly along said Inner Harbor Line on the following courses, S 47°08'51" W 1563.44 feet and N 84°36'09" W 148.36 feet more or less to the intersection of the Easterly margin of Sidney Street as shown on the said Plat of First Addition to Sidney and the Inner Harbor Line as shown on the Map of Shore and Tidelands of Sidney, Kitsap County, Washington, dated May 30, 1892, said point being the Northerly extension of Lot 1, Block 13 of said Plat of First Addition to Sidney; thence N 1°43'24" E, along the Northerly extension of the West line of Lot 1, Block 13 of said Plat of First Addition to Sidney, 200.00 feet and the TRUE POINT OF BEGINNING of said Parcel 2; thence N 84°36'09" W, parallel with the said Inner Harbor Line, 33.07 feet more or less to its intersection with the Northerly extension of the centerline of Sidney Street and shown on said Plat of First Addition to Sidney; thence N 1°43'24" E, along the Northerly extension of the said centerline of Sidney Street, 754.69 feet more or less to the Re-Established Outer Harbor Line, as approved by the Harbor Line Commission per Resolution Number 175, dated September 11, 1973; thence N 63°48'53" E, along said Re-Established Outer Harbor Line, 237.64 feet more or less to point 210.00 feet East of at right angle to the said Northerly extension of the centerline of Sidney Street and shown on said Plat of First Addition to Sidney; thence S 1°43'24" E, parallel with and 210.00 feet East of at right angle to the said centerline of Sidney Street 814.40 feet more or less to a point which bears N 1°43'24" E, parallel with the Northerly extension of the West line of Lot 1, Block 13 of said Plat of First Addition to Sidney, 265.00 feet and S 84°36'09" E, parallel with the said Inner Harbor Line, 177.37 feet from the intersection of the said Inner Harbor Line and the West line of Lot 1, Block 13 of said Plat of First Addition to Sidney extended; thence N 84°36'09" W, parallel with the said Inner Harbor line 177.37 feet more or less to its intersection with the Northerly extension of the West Line of Lot 1, Block 13 of said Plat of First Addition to Sidney; thence S 1°43'24" E; along the said Northerly extension 65.00 feet more or less to the TRUE POINT OF BEGINNING

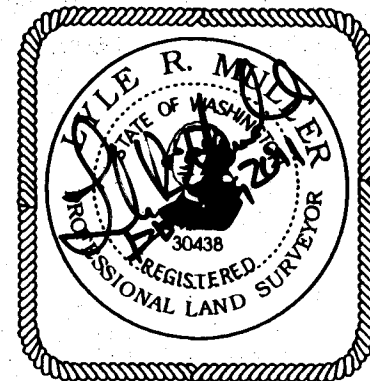
PMA 22-080016

Parcel 3

That portion of the harbor area fronting Block 13 of the Sidney Tidelands fronting Block 13 of the Plat of First Addition to Sidney as recorded in Volume 1, page 10 of plats, records of Kitsap County, Washington and being a portion of Government Lot 4, Section 26, township 24 North, Range 1 East W.M. more particularly described as follows:

Commencing at that certain monument as described in Record of Survey recorded under Auditor's File Number 3090257 and filed in Volume 49, page 139 of surveys, records of Kitsap County, Washington being designated as the meander corner common to Section 25 and 26, Township 24 North, Range 1 East W.M., from which the East one quarter of said Section 26 bears S 1°31'09" W 589.21 feet; thence N 1°31'09" E, along the Northerly extension of the East Line of Government Lot 4 of said section, 912.48 feet to its intersection with the Inner Harbor Line fronting the Shore and Tidelands of Sidney; thence Southwesterly and Northwesterly along said Inner Harbor Line on the following courses, S 47°08'51" W 1411.90 feet more or less to the Northeast corner of Lot 10, Block 13 of the Sidney Tidelands as shown on the Map of Shore and Tidelands of Sidney, Kitsap County, Washington, dated May 30, 1892, said point being the intersection of the Northerly extension of the line common to Lots 10 and 11, Block 13 of said Plat of First Addition to Sidney and the Inner Harbor Line as shown on said Map of Shore and Tidelands of Sidney; thence N 88°16'36" W, at right angle to the said East line of Lot 10 of the Plat of First Addition to Sidney, 175.00 feet more or less to its intersection with the Northerly extension of the Lot line common to Lots 3 and 4 of said Block 13 of the Sidney Tidelands; thence S 1°43'24" W, along Northerly extension of said lot line common to Lots 3 and 4, a distance of 52.05 feet more or to a point which bears Northerly along the said lot line common to said Lots 3 and 4 of Block 13 of the Sidney Tidelands 50.00 feet distance from the Inner Harbor Line; thence N 84°36'09" W, parallel with and 49.49 at right angle to the said Inner Harbor Line, 70.14 feet more or less to a point 11.00 feet East of at right angle to the West line of Lot 1, Block 13 of said Sidney Tidelands; thence S 1°43'24" W, parallel with the West line of said Lot 1, a distance of 14.89 feet more or less to its intersection with the Mean High Water Line of Sinclair Inlet, as based upon U.S.C. and G.S. Tidal Bench Mark Stamped Number 9 SUB 2 RESET; thence Easterly along the said Mean High Water Line on the following courses, S 75°30'46" E 27.34 feet, N 88°11'09" E 67.58 feet, S 83°49'01" E 30.18 feet and S 88°25'05" E 53.26 feet more or less to its intersection with the said Inner Harbor Line; thence N 47°08'51" E, along the said Inner Harbor Line 94.80 feet more or less to the TRUE POINT OF BEGINNING.

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**AUDITOR'S CERTIFICATE**

Filed for record this 01 day of March 2010 at 1:54 pm  
 Section 26 Township 24N Range 1 East W.M. at the request  
 of Lyle R. Muller

Walter Washington By: [Signature]  
 County Auditor

SURVEY NUMBER SW-NE 26-24-01-1-0006 SE-NE 26-24-01-1-0009  
 AUDITOR'S FILE NUMBER 20110301035 Book 75 Page 53

**Exhibit Showing**  
**PORT OF BREMERTON**  
 Port Management Agreement 22-080016  
 Lease Numbers 22-0A2234, 22-0A2235 and Lease Number 22-0A9891  
 as amended 2010

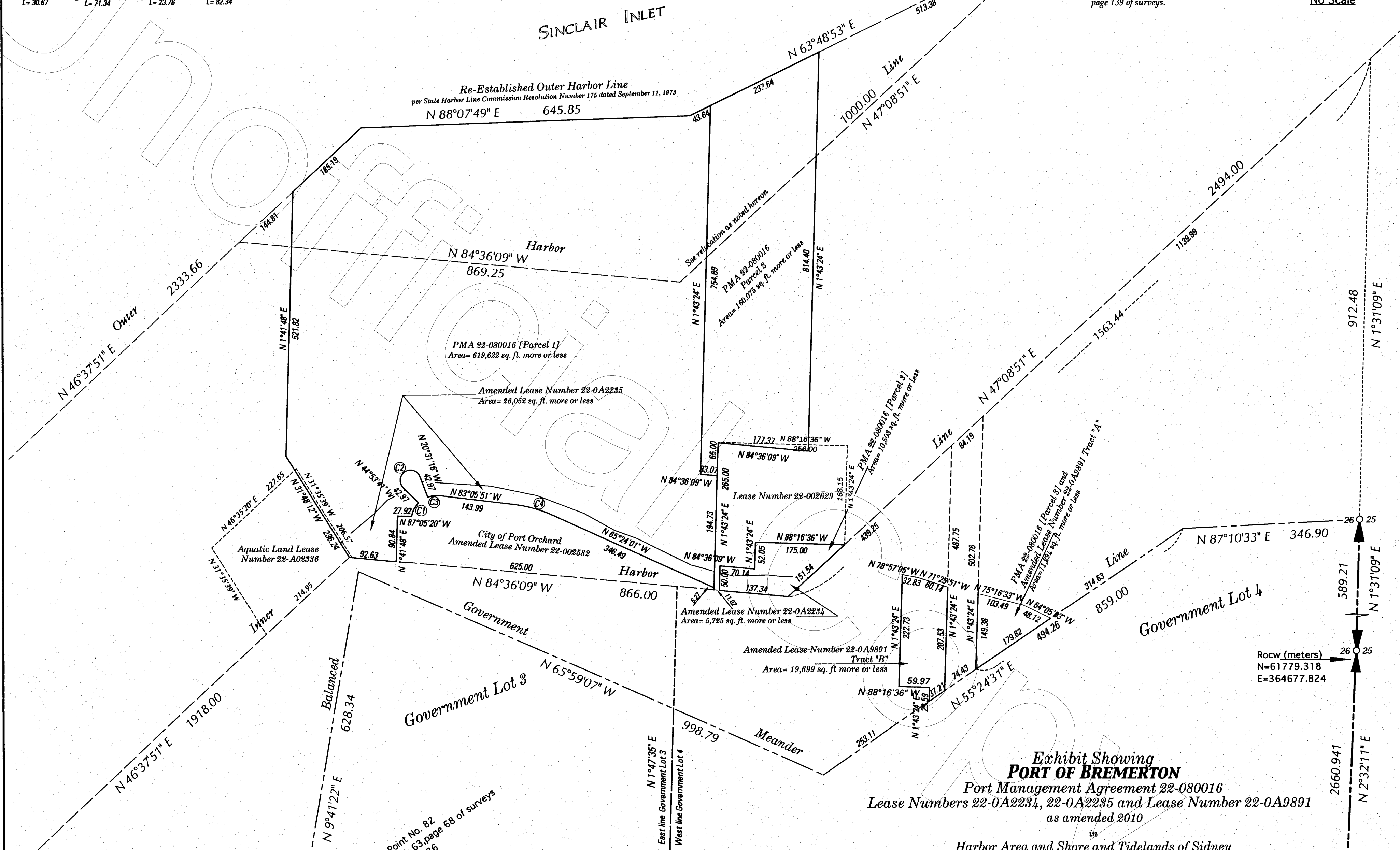
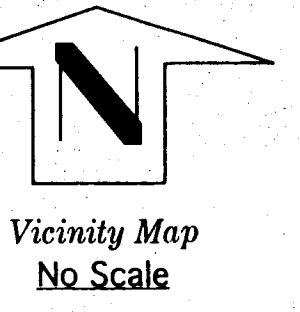
in  
 Harbor Area and Shore and Tidelands of Sidney  
 fronting  
 portion of Blocks 11, 12 and 13  
 and portion  
 Un-Numbered Tract  
 of the  
 Shore and Tidelands of Sidney  
 being in  
 portion of Government Lots 3 and 4  
 Section 26-Township 24 North-Range 1 East W.M.

20110301035 75.53

**Curve Data**

① Δ= 35°23'41"	② Δ= 204°22'25"	③ Δ= 27°25'25"	④ Δ= 17°41'50"
R= 49.64	R= 20.00	R= 49.64	R= 266.58
L= 30.67	L= 71.34	L= 23.76	L= 82.34

Bearings based upon Washington Coordinate System North Zone NAD 83/91 as derived from Global Positioning System (GPS) ties to High Accuracy Reference Network (HARN) Control Stations. Refer to control scheme as shown on survey recorded under Auditor's File Number 3090257 and filed in Book 49, page 139 of surveys.



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DNR Point No. 82  
Per Book 63, page 68 of surveys  
N=61603.736  
E=364052.849

**AUDITOR'S CERTIFICATE**

Filed for record this 01 day of March 2010 at 1:54 PM in  
Section 26 Township 24N Range 1 East W.M. at the request  
of Lyle R. Muller

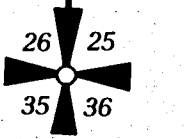
*Lyle R. Muller* By: *Cheryl...*  
County Auditor

SURVEY NUMBER SW-NE 26-24-01-1-0006 SE-NE 26-24-01-1-0009  
AUDITOR'S FILE NUMBER 201103010135 Book 75 Page 51

**Exhibit Showing**  
**PORT OF BREMERTON**  
Port Management Agreement 22-080016  
Lease Numbers 22-0A2234, 22-0A2235 and Lease Number 22-0A9891  
as amended 2010

in  
Harbor Area and Shore and Tidlands of Sidney  
fronting  
portion of Blocks 11, 12 and 13  
and portion  
Un-Numbered Tract  
of the  
Shore and Tidlands of Sidney  
being in  
portion of Government Lots 3 and 4  
Section 26-Township 24 North-Range 1 East W.M.

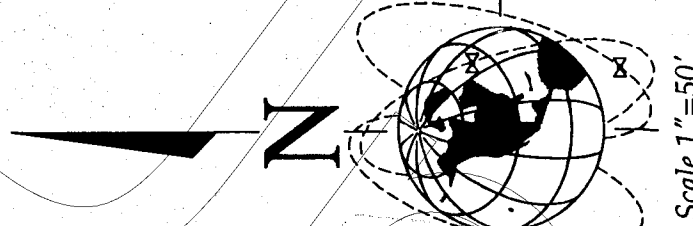
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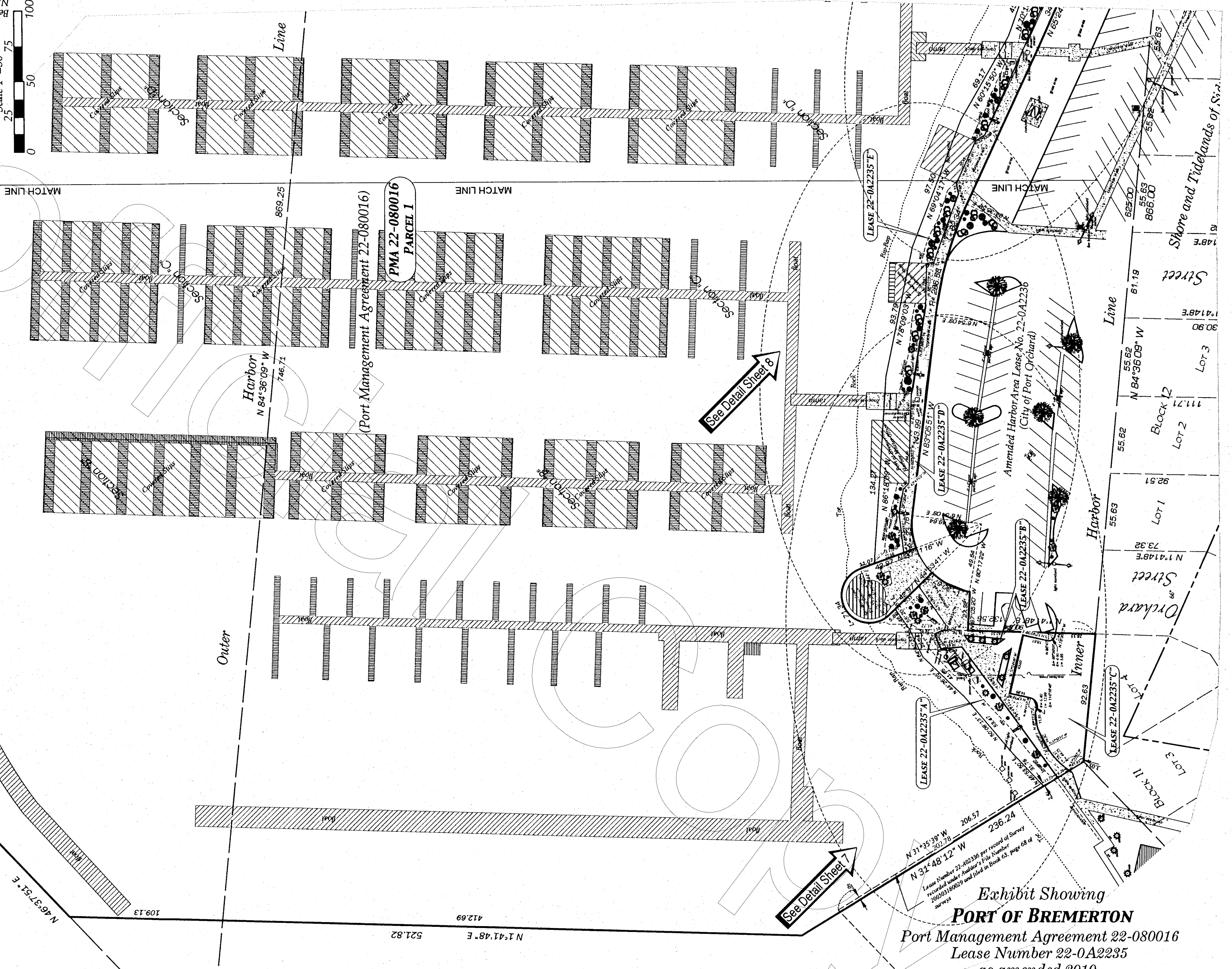
201103010135 75-54



Bearings based upon Washington Coordinate System North Zone  
 NAD83/91 as derived from Global Positioning System (GPS) ties  
 to High Accuracy Reference Network (HARM) Control Stations.  
 Refer to control scheme as shown on survey recorded under Auditor's  
 File Number 3090257 and filed in Book 49, page 139 of surveys.



Re-Established Outer Harbor Line  
 per State Harbor Line Commission Resolution Number 175 dated September 11, 1973  
 N 88°07'49" E  
 645.85



See Detail Sheet 8

See Detail Sheet 7

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 Section 26 Township 24N Range 1 East W.M. at the request  
 of Lyle R. Muller

Walter Washington By: Charlene  
 County Auditor

SURVEY NUMBER SW-NE 26-24-01-1-0006 SE-NE 26-24-01-1-0009  
 AUDITOR'S FILE NUMBER 201103010135 Book 75 Page 55

Exhibit Showing  
**PORT OF BREMERTON**  
 Port Management Agreement 22-080016  
 Lease Number 22-0A2235  
 as amended 2010

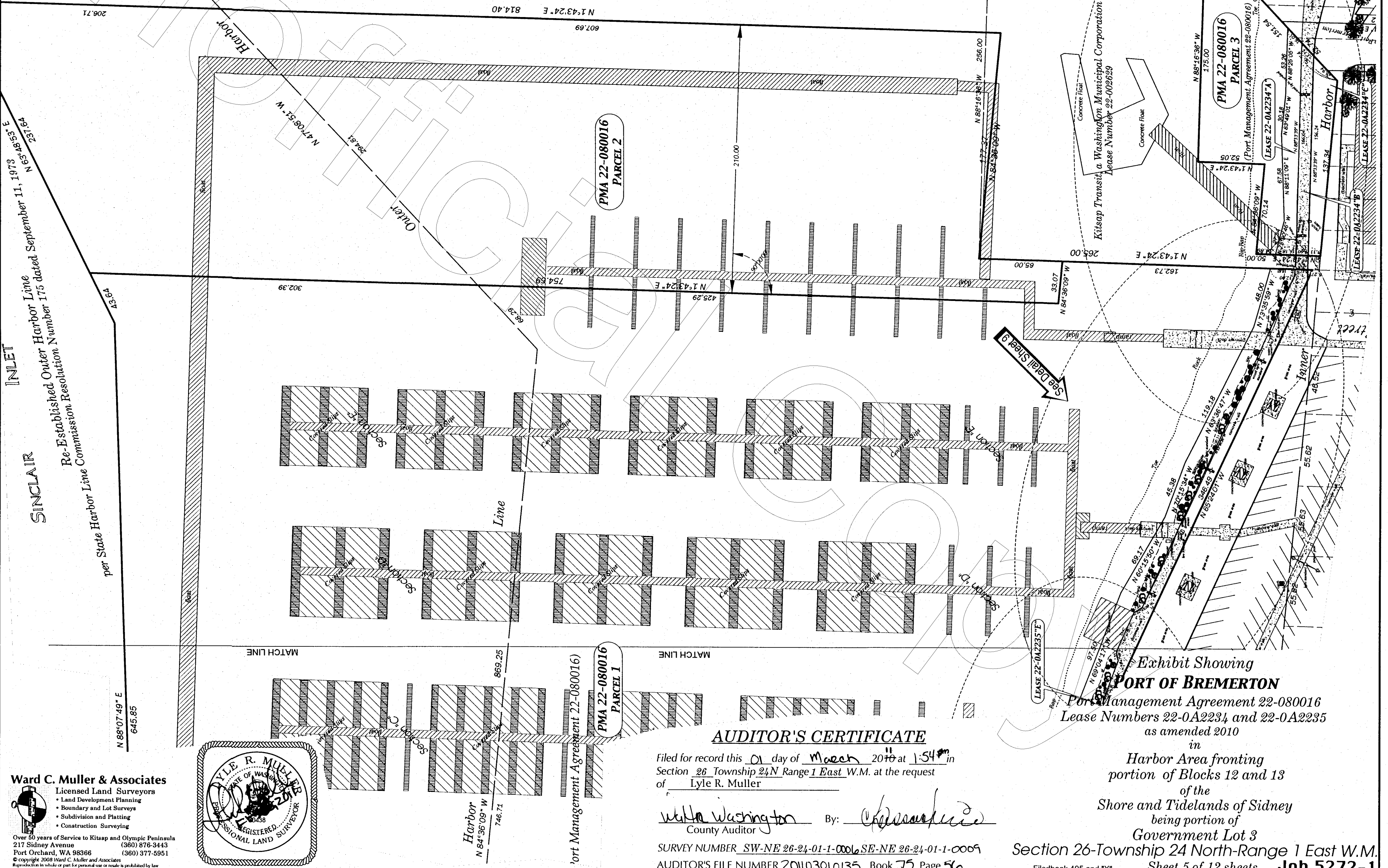
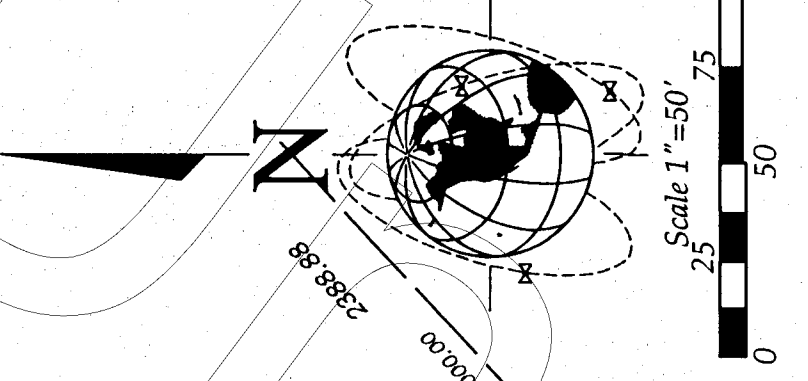
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 Harbor Area fronting  
 portion of Blocks 11 and 12  
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 Shore and Tidelands of Sidney  
 being portion of  
 Government Lot 3  
 Section 26-Township 24 North-Range 1 East W.M.

Fieldbook 405 and "X" Sheet 4 of 12 sheets Job 5272-1

201103010135

75-55

Bearings based upon Washington Coordinate System North Zone  
 NAD 83/91 as derived from Global Positioning System (GPS) ties to  
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 Section 26 Township 24 N Range 1 East W.M. at the request  
 of Lyle R. Muller

Willa Washington By: [Signature]  
 County Auditor

SURVEY NUMBER SW-NE 26-24-01-1-0006 SE-NE 26-24-01-1-0009  
 AUDITOR'S FILE NUMBER 201103010135 Book 75 Page 56

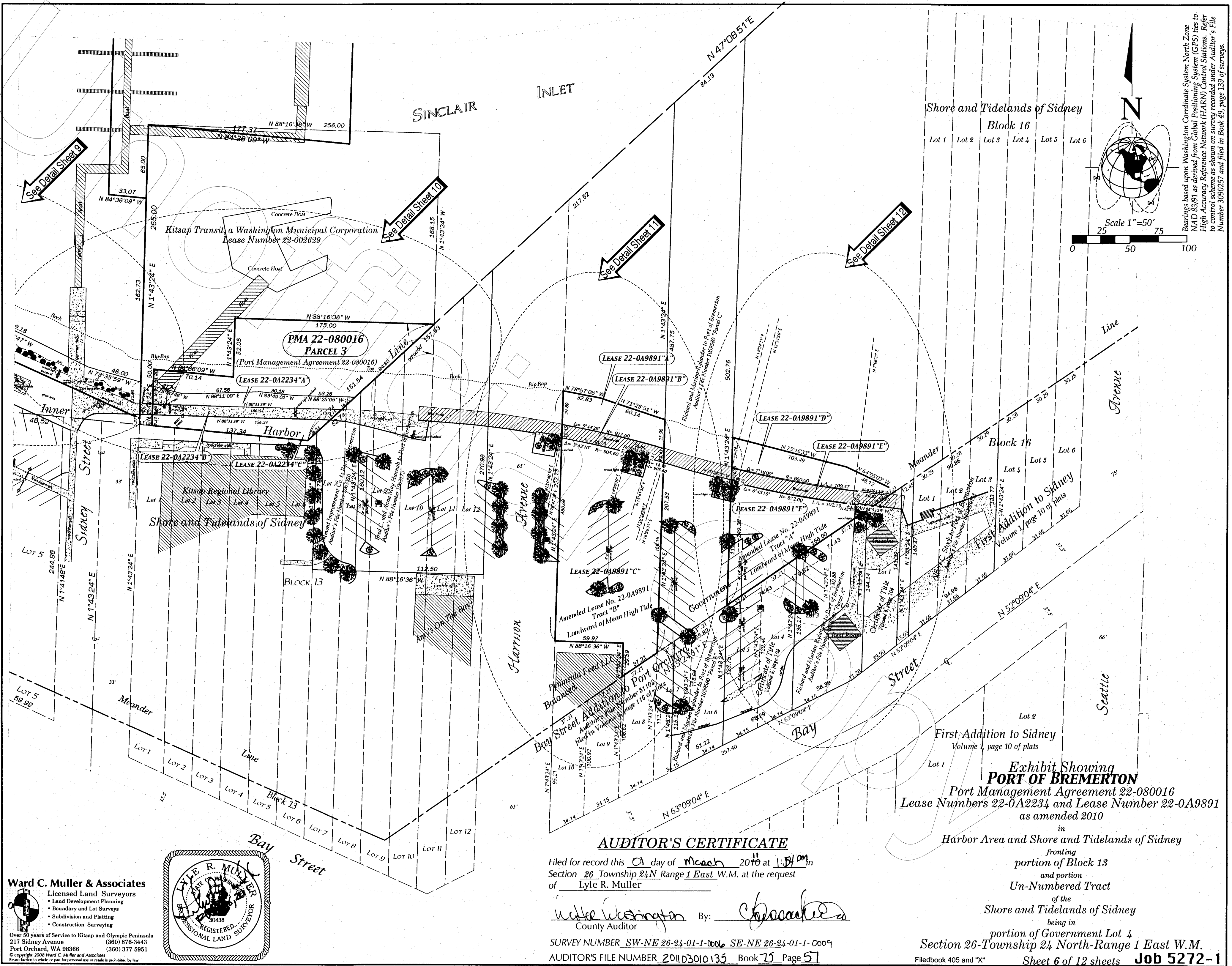
Exhibit Showing  
**PORT OF BREMERTON**  
 Port Management Agreement 22-080016  
 Lease Numbers 22-0A2234 and 22-0A2235  
 as amended 2010

in  
 Harbor Area fronting  
 portion of Blocks 12 and 13  
 of the  
 Shore and Tidelands of Sidney  
 being portion of  
 Government Lot 3  
 Section 26-Township 24 North-Range 1 East W.M.  
 Filedbook 405 and "X" Sheet 5 of 12 sheets **Job 5272-1**

201103010135

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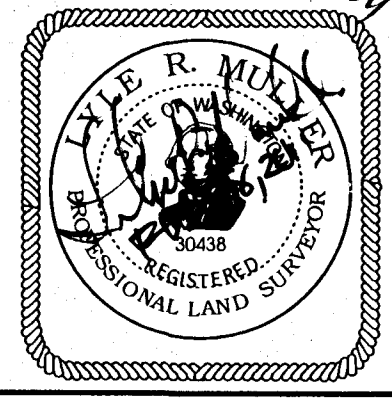




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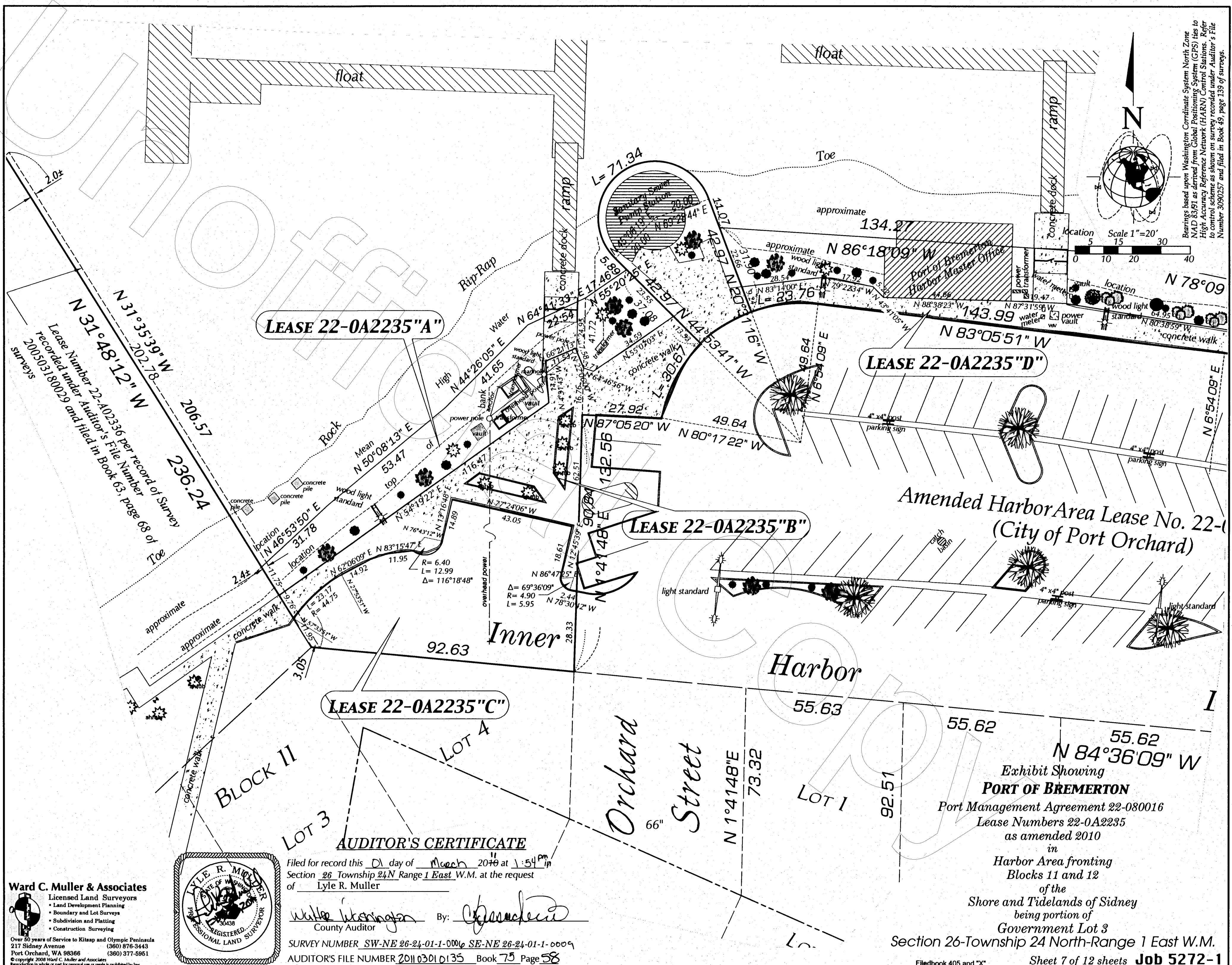
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 Section 26 Township 24N Range 1 East W.M. at the request  
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Walter Westington By: *[Signature]*  
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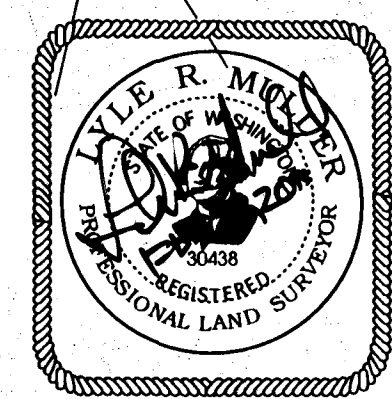
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 AUDITOR'S FILE NUMBER 20103010135 Book 75 Page 57

**Exhibit Showing**  
**PORT OF BREMERTON**  
 Port Management Agreement 22-080016  
 Lease Numbers 22-0A2234 and Lease Number 22-0A9891  
 as amended 2010  
 in  
 Harbor Area and Shore and Tidelands of Sidney  
 fronting  
 portion of Block 13  
 and portion  
 Un-Numbered Tract  
 of the  
 Shore and Tidelands of Sidney  
 being in  
 portion of Government Lot 4  
 Section 26-Township 24 North-Range 1 East W.M.  
 Filedbook 405 and "X" Sheet 6 of 12 sheets **Job 5272-1**

20103010135 75-57



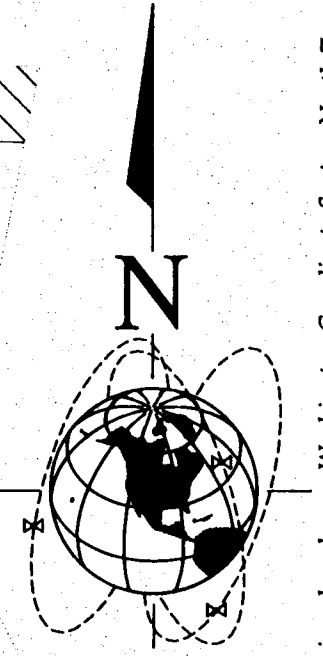
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Walter Worrington By: [Signature]  
 County Auditor  
 SURVEY NUMBER SW-NE 26-24-01-1-0006 SE-NE 26-24-01-1-0009  
 AUDITOR'S FILE NUMBER 2011 0301 0135 Book 75 Page 58

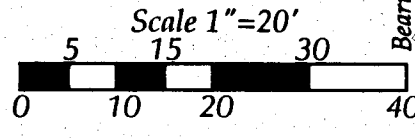
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**PORT OF BREMERTON**  
 Port Management Agreement 22-080016  
 Lease Numbers 22-0A2235  
 as amended 2010  
 in  
 Harbor Area fronting  
 Blocks 11 and 12  
 of the  
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 Filedbook 405 and "X" Sheet 7 of 12 sheets **Job 5272-1**

Bearings based upon Washington Correlative System North Zone  
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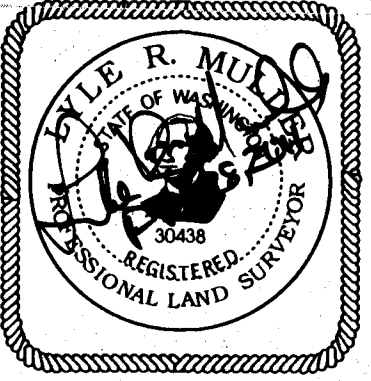
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**Harbor**

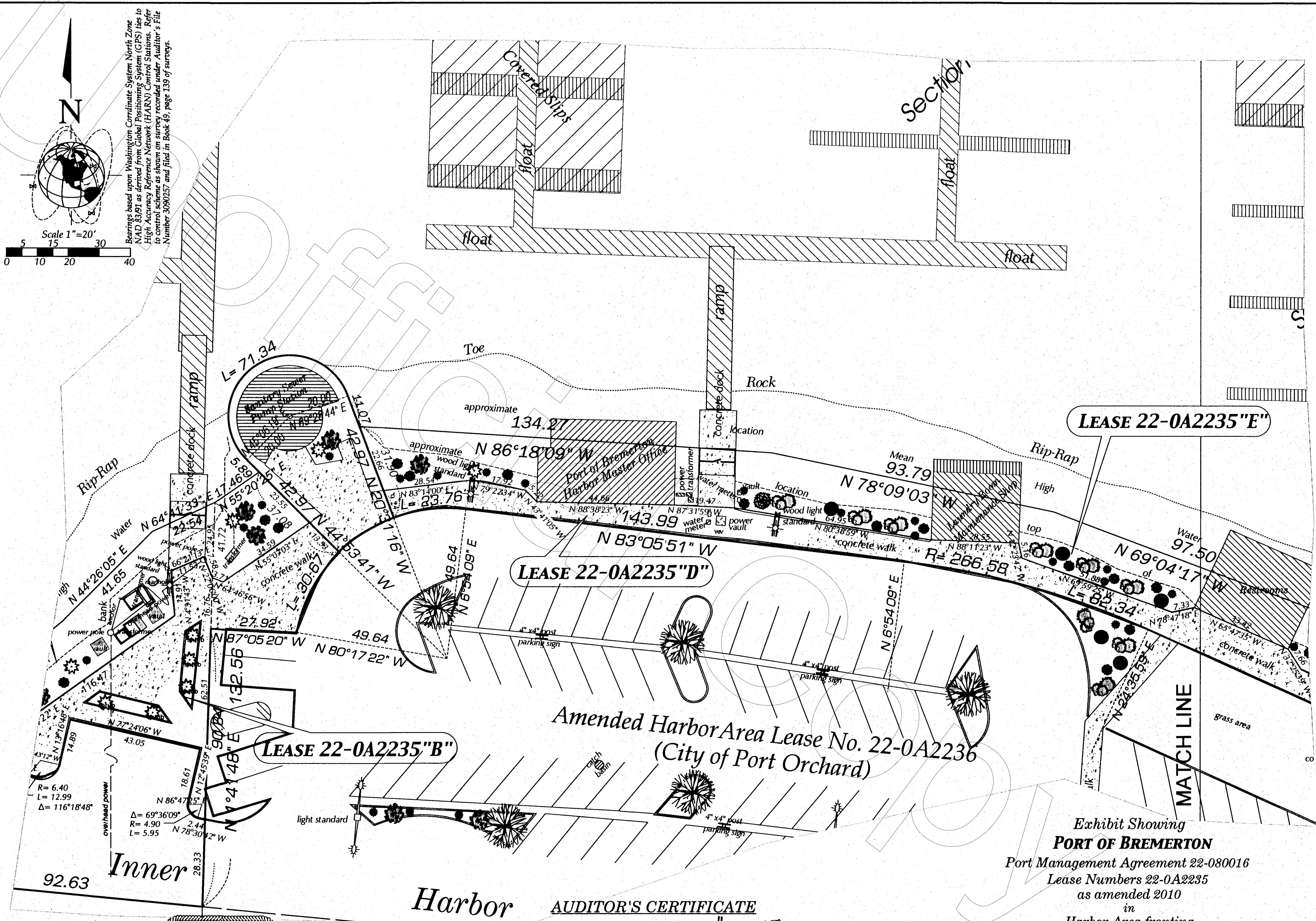
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 Section 26 Township 24 Range 01E W.M. at the request  
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Walter Washington County Auditor By: *[Signature]*

SURVEY NUMBER SW-NE 26-24-01-1-0006 SE-NE 26-24-01-1-0009  
 AUDITOR'S FILE NUMBER 201103010135 Book 75 Page 59

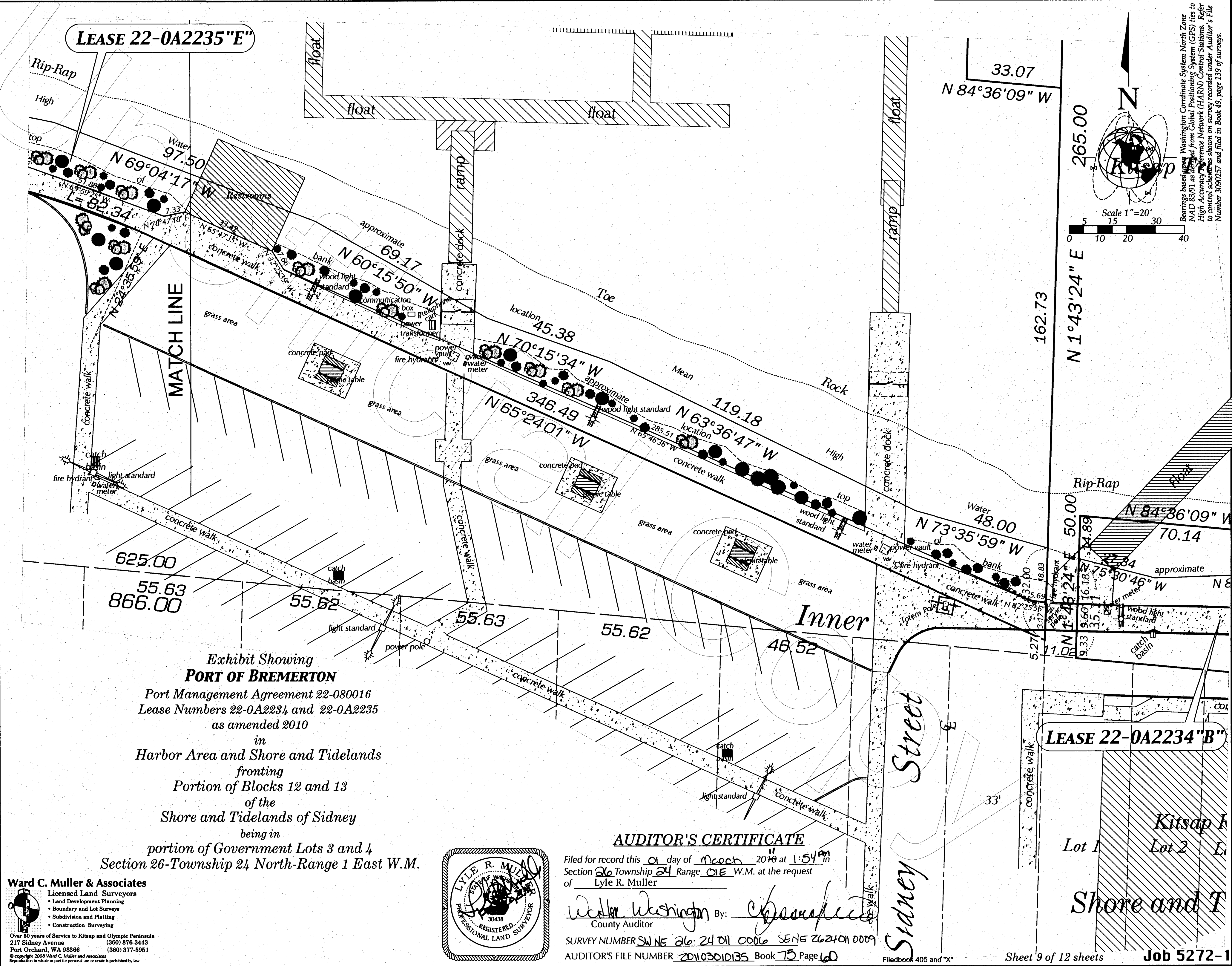
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 Filed Book 405 and "X" Sheet 8 of 12 sheets **Job 5272-1**



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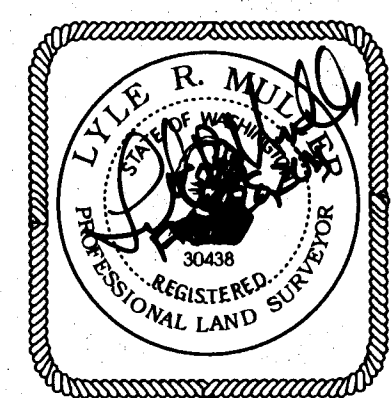
75-59

LEASE 22-0A2235"E"



**Exhibit Showing**  
**PORT OF BREMERTON**  
 Port Management Agreement 22-080016  
 Lease Numbers 22-0A2234 and 22-0A2235  
 as amended 2010  
 in  
 Harbor Area and Shore and Tidelands  
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 Portion of Blocks 12 and 13  
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 Section 26-Township 24 North-Range 1 East W.M.

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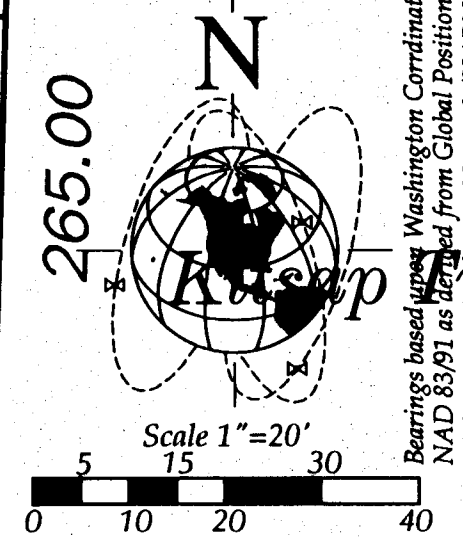
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 By: Walter Washington  
 County Auditor  
 SURVEY NUMBER SW NE 26-24 011 0006 SENE 262401 0009  
 AUDITOR'S FILE NUMBER 201103010135 Book 75 Page 60

LEASE 22-0A2234"B"

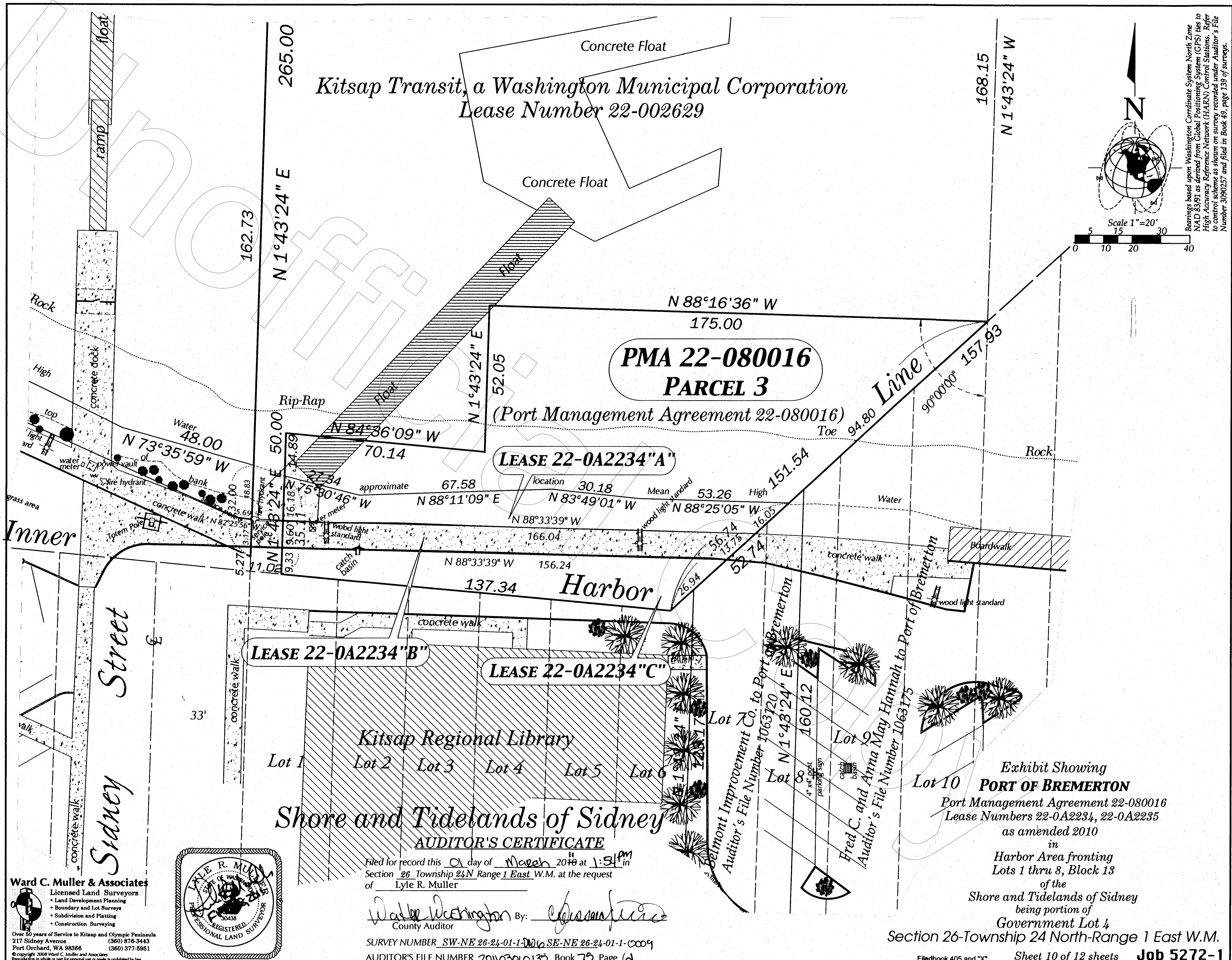
Lot 1  
 Lot 2  
 Kitsap  
 Shore and T

201103010135 75-60

Bearings based upon Washington Coordinate System North Zone  
 NAD 83/91 as derived from Global Positioning System (GPS) ties to  
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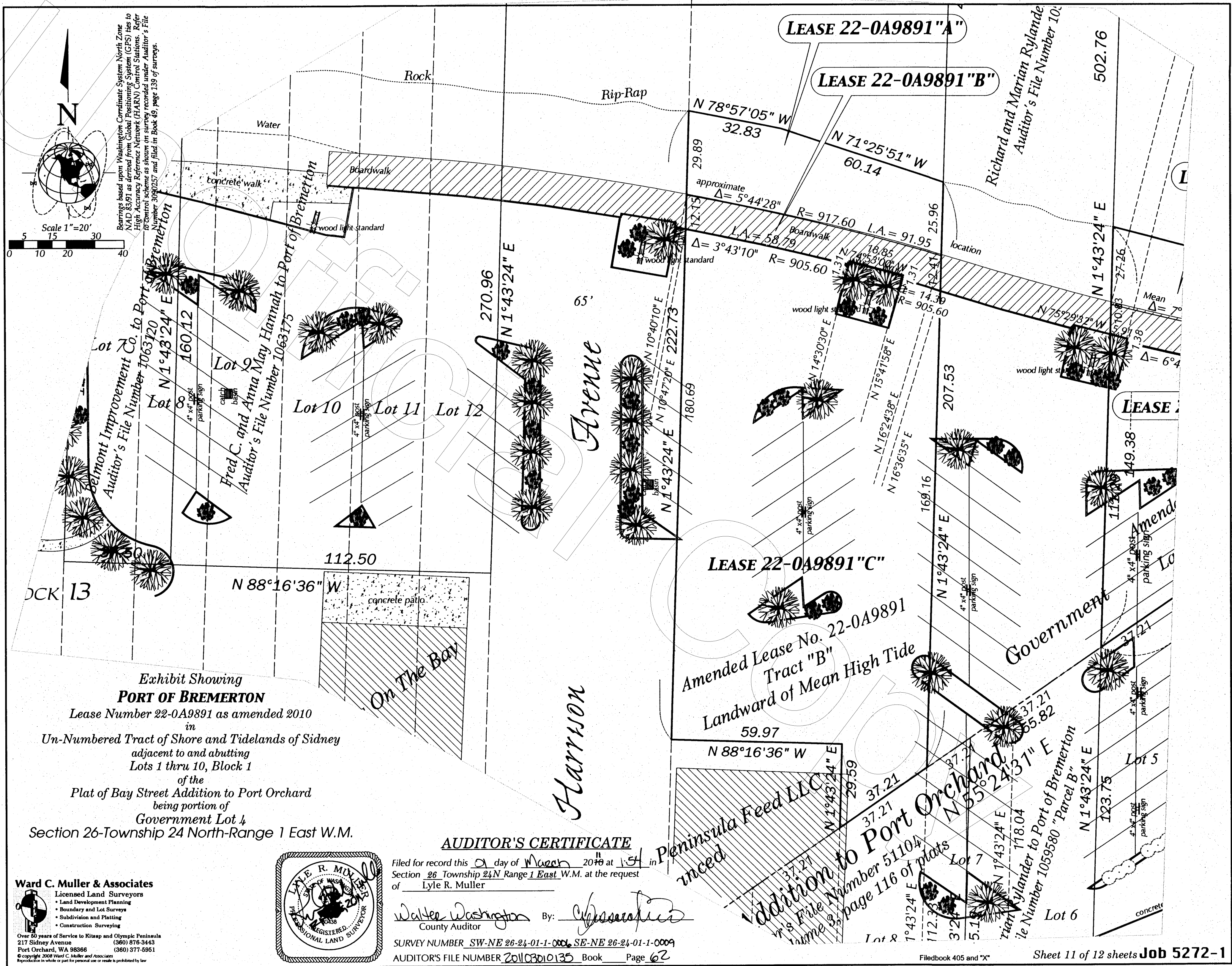
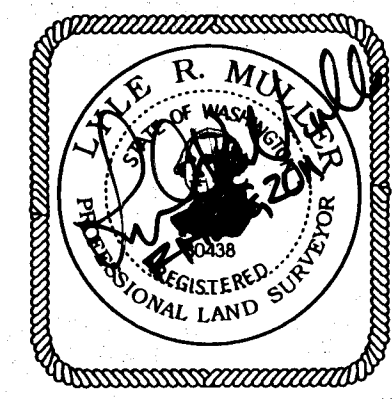


Exhibit Showing  
**PORT OF BREMERTON**  
 Lease Number 22-0A9891 as amended 2010  
 in  
 Un-Numbered Tract of Shore and Tidelands of Sidney  
 adjacent to and abutting  
 Lots 1 thru 10, Block 1  
 of the  
 Plat of Bay Street Addition to Port Orchard  
 being portion of  
 Government Lot 4  
 Section 26-Township 24 North-Range 1 East W.M.

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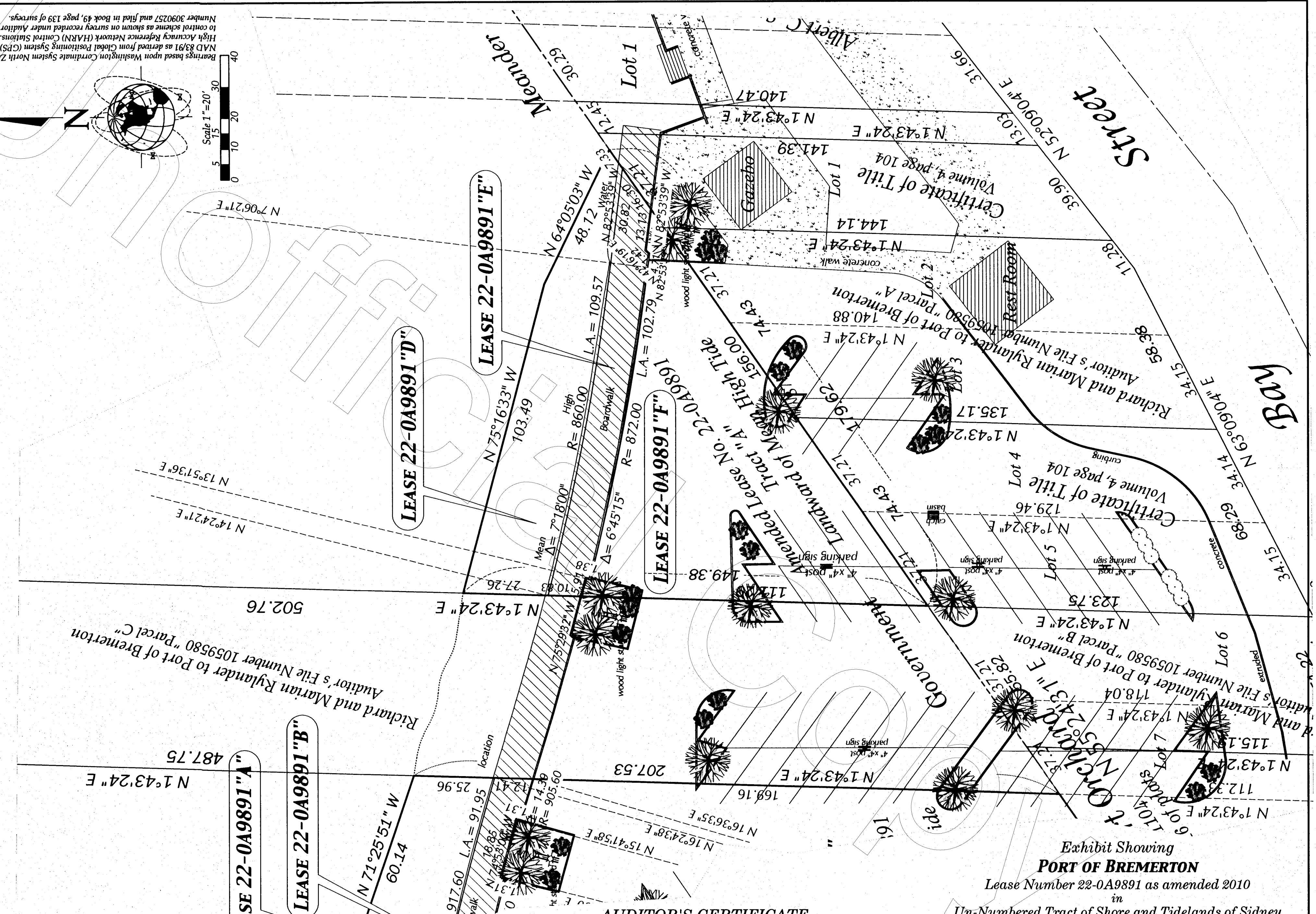
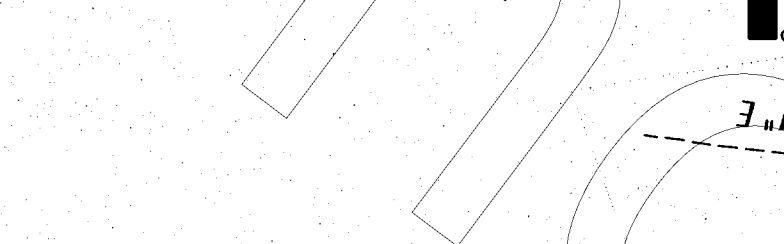
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 of Lyle R. Muller  
 Walter Washington County Auditor  
 SURVEY NUMBER SW-NE 26-24-01-1-0006 SE-NE 26-24-01-1-0009  
 AUDITOR'S FILE NUMBER 201103010135 Book 62

Amended Lease No. 22-0A9891  
 Tract "B"  
 Landward of Mean High Tide

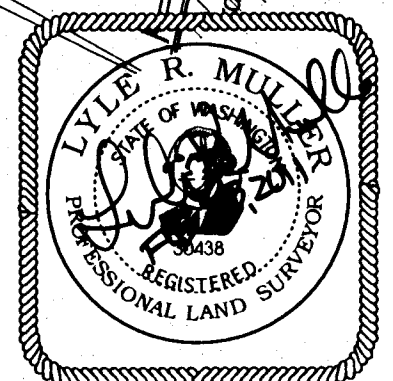
Peninsula Feed LLC  
 Addition to Port Orchard  
 File Number 51104  
 page 116 of plats  
 Lyle R. Muller  
 Auditor's File Number 1059580 "Parcel B"  
 to Port of Bremerton



Bearings based upon Washington Coordinate System North Zone  
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 AUDITOR'S FILE NUMBER 20103010135 Book 70 Page 63

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20103010135 75-63

**EXHIBIT B****PLAN OF OPERATION AND MAINTENANCE****1. DESCRIPTION OF THE PERMITTED USE**

- A. Existing Facilities.** The Lease area consists of historically filled tidelands currently used as parking area, public access, utilities, and marina support structures. The Lease area includes a rock bulkhead, the public access boardwalk, and small portions of two buildings. There are water-dependent uses waterward of the bulkhead. For rent calculation purposes, the bulkhead is nonwater-dependent landward of the high water mark. Only the footprint of the public access boardwalk is eligible for no fee use.
- B. Proposed Facilities.** No changes to this basic infrastructure are proposed under this Lease.

**2. ADDITIONAL OBLIGATIONS**

- A. Upland Operations (historically filled tideland).** The current operations and maintenance of the parking area, vegetated buffers, and boardwalk structure are to be conducted using best professional judgment. The Port will conduct reasonable maintenance to avoid excessive oil staining on surfaces and to control garbage or wind-blown debris. Specific attention is to be paid to water quality resulting from refinishing surfaces. No contaminants are to enter the receiving waters as a result of operations or maintenance. Stormwater runoff is to be conveyed via a permitted municipal stormwater system. Specific Best Management Practices (BMPs) can be found in the most recent version of the Washington State Department of Ecology *Stormwater Management Manual for Western Washington*.
- B. Major Repair and Reconstruction.**
- (1) Bulkhead. Any major repairs to the rock bulkhead requiring a shoreline permit and/or involving more than ten (10) cubic yards of material must be approved by the State in writing prior to construction. Emergency repairs may be conducted with verbal approval of the State. Any reconfiguration of the bulkhead will be reviewed by the State in regard to biological and environmental impacts and must be approved in writing.
  - (2) Boardwalk. Any major repairs to the boardwalk structure must be approved in writing by the State. The State may require materials and design modifications to avoid or reduce impacts to water quality or to reduce shading impacts. Treated wood may not be used in areas in direct contact with marine waters.

**PORT OF BREMERTON**  
**AGENDA SUMMARY**

Agenda Item No: Action Item #2  
Subject: Memorandum of Agreement (MOA) with City of Port Orchard (COPO) for Marina Waterfront Parking  
Exhibits: COPO MOA for Parking  
Prepared By: James Weaver, Director of Marine Facilities  
Meeting Date: July 11, 2023

**Summary:**

This Memorandum of Agreement before the Commission is with the City of Port Orchard to provide a modification to the Port Orchard Marina waterfront parking that would be needed. The City has designed the Marina Pump Station project to replace the existing sewerage pump station (the "Project"), and the Project will temporarily and permanently impact the Port's waterfront parking area adjacent to the marina office.

In 1996, the City and Port executed a Memorandum of Understanding to set forth parking assignments and responsibilities for the parking area (the "1996 MOU"). This MOU focused on the Port's property, including Kitsap County Parcel Nos. 4053-013-007-0103, 4028-001-001-0007, and 4028-001-011-0005, commonly known as Lots 3 and 4, which are used for water dependent uses and waterfront parking, as well as the City's rights of way and associated public parking.

Due to the configuration of the waterfront, and community events and business operations impacting parking in the area, in 2011, the City and the Port entered into a new Memorandum of Agreement (the "2011 MOA") to supersede the 1996 MOU, setting forth terms to govern the City and Port's use, management, and revenue collection for the parking areas. Because the City's Marina Pump Station project to serve the residents of Port Orchard will impact the parking areas covered by the 2011 MOA, the City provided notice to the Port of the proposal in January 2023. In response, in February 2023, the Port provided notice to the City of its intent to withdraw from the 2011 MOA effective June 1, 2023.

The City and Port negotiated the terms of a Memorandum of Agreement to set forth the terms and conditions by which the Port will withdraw effective July 1, 2023, and to establish the future use, management, and operation of the waterfront parking areas.

**Fiscal Impact:**

Parking revenue from any paid parking spaces are now to be designated to the Port of Bremerton. Parking enforcement is to be contracted by the Port Orchard Police Department for the parking areas and costs identified at \$1,000 per month.

Strategic Purpose:

This action conforms with the Port's strategic plan in Goal 6. Develop and fund a 20-year asset replacement/major maintenance schedule.

Recommendation:

Recommendation is to approve the Memorandum of Agreement for waterfront parking with the City of Port Orchard

Motion for Consideration:

**Approve the Memorandum of Agreement for waterfront parking with the City of Port Orchard and authorize the CEO to execute the agreement.**

POSTPONED

**PORT OF BREMERTON**  
**AGENDA SUMMARY**

Agenda Item No: Action Item #3  
Subject: Hangar 7 Stormwater Repair Final Acceptance  
Exhibits: None  
Prepared By: Arne Bakker, COO  
Meeting Date: July 11, 2023

Summary:

On December 14, 2021, the Commission approved the Hangar 7 Stormwater project which was to re-route the stormwater drainage system and install a new underground drainage pipe at Hangar 7 to keep the hangar from flooding. Throughout this project there were a total of 5 change orders, each of which had to do with excess excavation of peat, labor, soils removal, glacial till erosion and increased backfill, paving and required compaction testing by the City of Bremerton.

Fiscal Impact:

Contract Henderson Partners:	\$ 94,297.48	
Change Order 1-5:	<u>195,239.56</u>	
Total Contract Value:		<u>\$289,537.04</u>

Funding:

Century West Engineering:	\$20,888.00	
Parametrix:	20,887.00	
Port of Bremerton's restricted stormwater reserves:	<u>247,762.04</u>	
Total Value		<u>\$289,537.04</u>

Strategic Purpose:

This action conforms with the Port's strategic plan in Goal 2: Operate all Port facilities efficiently and cost effectively with a high degree of customer service and Goal 6: Develop and fund a 20-year major maintenance schedule.

Recommendation Staff recommends accepting as final the contract with Henderson Partners for the Hangar 7 Stormwater repair in the amount of \$289,537.04.

Motion for Consideration:

**Move to accept as final the contract with Henderson Partners, LLC for the Hangar 7 Stormwater Repair in the amount of \$289,537.04.**

# PORT OF BREMERTON AGENDA SUMMARY

Agenda Item No: Action Item #4  
Subject: Final Acceptance Hangar 7 Stormwater Repair  
Exhibits: MPF Change Order History  
Prepared By: Arne Bakker, COO  
Meeting Date: July 11, 2023

### Summary:

In February 2019, Port staff began the design and engineering for the replacement of the Airport Diner with a new Multi-Purpose Facility. The original design was to replace the existing diner with a new restaurant which was subsequently rejected by the FAA as the building was non-aeronautical use. The accepted re-design included a restaurant, pilot's lounge, office space and hangar. In June 2021, the bid was awarded to Henderson Partners in the amount of \$4,726,382.47 and construction commenced in July. Due to COVID constraints, supply chain issues, construction cost issues, and unforeseen design changes, Port staff encountered many delays and cost increases. Throughout construction there a total of 23 change orders on this project. On March 17, 2023, Amelia's Hangar was issued a Temporary Certificate of Occupancy and opened their doors. On April 1, 2023, Old Thyme Aviation occupied the office space and the hangar for scenic bi-plane rides and flight instruction. Port staff has completed the final walkthrough and has accepted the work done by Henderson Partners.

### Fiscal Impact:

2023 Capital Budget:	\$4,882,838.00
Henderson Partners Bid:	4,726,382.47
Change Orders 1-23:	369,619.60
Total cost of construction:	\$5,096,002.07
Over Budget:	<b>\$213,164.07</b>
Restricted Stormwater Reserves	\$11,176.00
Capital Reserves:	\$201,988.07

### Strategic Purpose:

This action conforms with the Port's strategic plan in Goal 1: Be a significant leader in promoting the local economy and job growth both on and off Port Assets

### Recommendation:

Staff recommends accepting as final the contract with Henderson Partners for the Multi-Purpose facility in the amount of \$5,096,002.07.

### Motion for Consideration:

**Move to accept as final the contract with Henderson Partners, LLC, for the Multi-Purpose Facility in the amount of \$5,096,002.07.**

# MPF Change Order History

Change Order Authority (10%)

\$ 433,471.00

Item	Amount	Start Balance	End Balance	REASON
CO # 1 Relocate Water Line	\$ 3,678.75	\$ 433,471.00	\$ 429,792.25	Inadequate locate of existing utilites by NL Olson; waterline inside footings
CO # 2 Trench Drain	\$ 21,941.70	\$ 429,792.25	\$ 407,850.55	Plan set did not adequately provide detail for trench drain - should be \$21,941.70
CO # 3 Pony Wall	\$ 28,120.37	\$ 407,850.55	\$ 379,730.18	Improved design in order to properly terminate exterior sheeting/prevent future leaks
CO #4 NUCOR Building Parts	\$ 19,051.47	\$ 379,730.18	\$ 360,678.71	Airport side tower removed from bid. Materials and labor to close up opening
CO #5 Parapit Wall by Others	\$ 21,271.50	\$ 360,678.71	\$ 339,407.21	Post bid NUCOR decision to not include decorative wall in bid. Contractor picked up
CO #6 Roof "Overbuild"	\$ 53,029.27	\$ 339,407.21	\$ 286,377.94	NUCOR assumed design "others" ; lack of clarity in plans/communications with NUCOR?
CO #7 Energy Recovery Ventilator	\$ 5,612.88	\$ 286,377.94	\$ 280,765.06	Incomplete design of ERV system by SaZan. Subcontractor had to complete system
CO #8 Fire FDC	\$ 6,004.03	\$ 280,765.06	\$ 274,761.03	Re-design of fire line per Mike Six move FDC 65 feet from bldg + increase pipe size to 6"
CO #9 Dining Room Half Walls	\$ 21,031.92	\$ 274,761.03	\$ 253,729.11	Port executed option for half walls
CO #10 Interior Insulation	\$ 6,350.85	\$ 253,729.11	\$ 247,378.26	Insulation not specified in restrooms/pilots lounge. Design should have required in restrooms
CO #11 Electrical Trench	\$ 22,515.95	\$ 247,378.26	\$ 224,862.31	Existing power feed to bldg not at permit depth (NL Olson locates?) Add circuts for elec acft sta
CO #12 Additional Sprinkler Heads	\$ 10,037.18	\$ 224,862.31	\$ 214,825.13	Mike Six directed additional 27 upright sprinklers in void space
CO #13 Extraction Curbs (Captive Air)	\$ 7,974.96	\$ 214,825.13	\$ 206,850.17	Curbs ordered for flat roof, not sloped - submittal approved by Blue
CO #14 Counter Tops	\$ 25,031.92	\$ 206,850.17	\$ 181,818.25	Counter tops for bar back, beverage & bar, pay station not called out in plans
CO #15 Captive Air Ducting Tie In	\$ 53,463.17	\$ 181,818.25	\$ 128,355.08	Captive Air System not completely designed by SaZan - Tie in ducting design, installation
CO # 16 Electrical Wiring Hangar Door	\$ 7,427.79	\$ 128,355.08	\$ 120,927.29	No Detail provided in drawings E3/0 or 4.0
CO # 17 Electrical Wiring Grinder Pump	\$ 5,123.35	\$ 120,927.29	\$ 115,803.94	No Detail provided in drawings E3/0 or 4.0
CO # 18 Walk-in flooring	\$ 8,199.52	\$ 115,803.94	\$ 107,604.42	as required by DOH
CO # 19 HVAC Corrections	\$ 29,371.81	\$ 107,604.42	\$ 78,232.61	Correction of HVAC system for air flow - engineering miss
CO # 20 HVAC Fire Shut down	\$ 5,521.59	\$ 78,232.61	\$ 72,711.02	HVAC shutdown not acceptable to Fire Final
CO # 21 - metered faucets	\$ 1,814.59	\$ 72,711.02	\$ 70,896.43	Restroom faucets not to code Cityof Bremerton
CO # 22 register filters	\$ 2,752.16	\$ 70,896.43	\$ 68,144.27	Replacemet of registers and filter for restaurant
CO # 23 Water heaters & Hook-up	\$ 4,292.87	\$ 68,144.27	\$ 63,851.40	Added electrical boosters and power for water heaters in Pilots lounge
Total To date	\$ 369,619.60			



**PORT OF BREMERTON**  
**AGENDA SUMMARY**

Agenda Item No: Action Item #5  
Subject: Seabeck Community Center  
Exhibits: Letter from Dr. Paul Reimer, Seabeck Community Center  
Prepared By: Jim Rothlin, CEO  
Meeting Date: July 11, 2023

**Summary:**

On July 12, 2022, Dr. Paul Reimer from the Seabeck Community Center (SCC) made a presentation regarding the SCC plans to add a pickleball facility to Seabeck’s Community Center. The Port Commission agreed unanimously to award \$50,000 in support of this project, as they believed in the importance to the community center and the value of strengthening the amenities to the community.

The project has been completed and has been a great success, which they wish to continue to build on. This year, the SCC has a goal of providing additional area to its existing Community Center in its efforts to increase the footprint to expand the family friendly location.

In a presentation made at the Port’s June 27<sup>th</sup> commission meeting and in a letter to the Port dated June 29, Dr. Reimer has requested support from the Port of \$15,000 that would allow SCC to add a picnic area located adjacent to the courts providing needed space for families and pickleball participants to fellowship. SCC plans on using volunteer help for labor and equipment, when possible, along with local contractors to complete this project before its annual community event in September.

**Fiscal Impact:**

Per Dr. Reimer’s letter, all materials used will be based on the most cost-effective approach over time to provide many years of use with the least amount of care. The funding will focus on completing the site development south of the pickleball courts and purchase materials needed to complete a picnic area.

Final site grading for proper slope and drainage:	\$ 1,750
Soil and amendments for grass & natural landscape planting area:	\$ 1,750
Landscaping (grass and native plantings):	\$ 3,000
Underlayment (weed barrier) for designated picnic area:	\$ 500
Border delineating picnic area (contain rubber mulch or rock):	\$ 1,500
Rubber mulch or rock (Area 36 ft x 36 ft x 3 in) under picnic tables:	\$ 1,500
Commercial Picnic Tables 4 to 5 (8ft long and/or 46” round tables):	\$ <u>5,000</u>
Total Picnic area project:	\$ <u>15,000</u>



Strategic Purpose:

This action conforms with the Port's strategic plan in strategic Goal #1:

Be a significant leader in promoting the local economy and job growth both on and off Port assets.

Recommendation:

Staff recommends the funding to provide \$15,000 towards the Seabeck Community Center picnic area project.

Motion for Consideration:

**Move to approve funding of \$15,000 to support the Seabeck Community Center picnic area project.**