

COMMERCIAL LEASE

THIS COMMERCIAL LEASE is made as of _____, 20__ by and between **THE CITY OF TACOMA**, a first class municipal corporation of the State of Washington ("**Landlord**"), and the **METROPOLITAN PARK DISTRICT OF TACOMA**, a municipal corporation ("**Tenant**").

For and in consideration of the mutual promises, covenants and conditions hereinafter set forth, the parties agree as follows:

RECITALS

- A. The purpose of this Lease is to set forth the parties' agreement to construct, maintain and operate greenhouses and related facilities on property located at the Tacoma Landfill, for Tenant's grounds maintenance and horticultural operations.
- B. Landlord owns and operates the Tacoma Landfill, and has undertaken extensive environmental cleanup and remediation actions at the site. Landlord is under continuing obligations for environmental cleanup, monitoring, and maintenance at the site under the terms of a Consent Decree with the United States Environmental Protection Agency ("EPA"), and also is subject to regulation by the Washington State Department of Ecology ("Ecology") and the Tacoma-Pierce County Health Department, with respect to environmental matters and activities that may affect the performance of the landfill's environmental control systems.
- C. There is a portion of the Tacoma Landfill that has been closed and that appears suitable for redevelopment use for constructing greenhouses and related facilities that benefits both parties and the public. The Tacoma Landfill Land Use Plan (*Osborn Pacific Group, Inc.; May, 1995*) designates this portion of the northwest section of the landfill for "facilities" use. The parties agree that it is in the best interest of both organizations and their respective constituents to cooperatively develop and operate these facilities.
- D. There are many benefits to both parties and to the public by locating the greenhouses in the closed section of the Tacoma Landfill, including, but not limited to:
 - 1. Promoting the existing cooperation between Landlord and Tenant;
 - 2. Creating a low impact use for an underused parcel of publicly owned property;
 - 3. Allowing Tenant's grounds maintenance and horticultural operations to take advantage of existing utilities at the Tacoma Landfill, including security;
 - 4. Enhancing the appearance of the landfill grounds;
 - 5. Eliminating the cost of selecting a new site and acquiring the land needed for the new greenhouse facilities;
 - 6. Providing a centralized location for Tenant's grounds maintenance and horticultural operations;
 - 7. Promoting economic development in the Oakland Madrona neighborhood by bringing more workers into the area; and

8. Allowing the parties to apply for any applicable grants, including grants pursuant to the Brownfield Grant Program administered by the United States Environmental Protection Agency, to help pay for the construction of the greenhouses and related facilities.
- E. The parties acknowledge that several approvals are necessary for the construction of the greenhouses and related facilities in this portion of the Tacoma Landfill, including but not limited to, approval by EPA, Ecology and the Tacoma-Pierce County Health Department, and approval by the Landlord's Building and Land Use Division, and the parties specifically make this Lease contingent upon obtaining such approvals.

SECTION 1 – BASIC TERMS

1. Lease Data; Exhibits. The following definitions apply, except as otherwise specifically modified herein:

1.1 Leased Premises. A portion of the real property generally described as West 1 – Stage 2 closure area, contained within Pierce County Tax Parcel Number 022012-3045, located at the City of Tacoma landfill, 3510 South Mullen Street and legally described on the attached Exhibit A (the “Property”), and the access to the Leased Premises both of which are depicted on the approved site plan attached as Exhibit B. The agreed rentable area of the Leased Premises consists of 130,000 square feet.

1.2 Commencement Date: January 15, 2016. See Section 3.1.

1.3 Primary Term / Extension Term / Termination. The Primary Term of this Lease shall be 20 years, with an option to extend for three (3) additional 10 year Extension Terms. See Section 3.1 and 3.2. Tenant may terminate this Lease at any time and for any reason upon ninety (90) days prior written notice to Landlord, at which time the Tenant will return the site to the conditions set forth in Section 15 within 120 days of the end date of the Lease.

1.4 Base Rent. Tenant shall pay monthly Base Rent in the amount of Three Hundred Seventy-Three and 33/100 Dollars (\$373.33) in accordance with Section 4.1. The monthly Base Rent will be adjusted annually as set forth in Section 4.1.

1.5 Notice Addresses.

Landlord: The City of Tacoma
 Department of Public Works
 747 Market Street, Room 737
 Tacoma, Washington 98402
 Attn: Real Property Services

With a Copy to: The City of Tacoma
 Legal Department
 747 Market Street, Room 1120
 Tacoma, Washington 98402
 Attn: City Attorney

Tenant: Metropolitan Park District of Tacoma
 4702 South 19th Street
 Tacoma, WA 98405
 Attn: Parks and Natural Resources Department

1.7 Use. Tenant shall use the Leased Premises for greenhouse operations only, which consist of three Greenhouses, one head house, one shade house, one soil storage facility and an administrative office with associated parking and associated utility infrastructure as necessary for said purpose. All presently proposed improvements are depicted on Exhibits C and D. See Section 8.3.

1.8 Hours of Operation. Tenant will have personnel at the Leased Premises primarily between the hours of 6 AM to 6 PM, but on occasion Tenant's personnel may need access to the Leased Premises outside of those hours. Landlord will provide an access or gate key to Tenant for after-hours entry.

SECTION 2 - PREMISES

Landlord leases to Tenant and Tenant leases from Landlord, those certain premises and rentable area referred to in Section 1.1 (the "**Leased Premises**"). To the extent it is not inconsistent with the use authorized by this Lease, Landlord reserves all rights over the Leased Premises, including the right to install, maintain, use, repair and replace pipes, ducts, conduits and wires leading through the Leased Premises, as required under the Consent Decree, or the normal operational requirements.

SECTION 3 - TERM

3.1 Lease Term. This Lease shall be in effect for the Primary Term identified in Section 1.3, commencing on the earlier of (a) the commencement date listed in Section 1.2 (although, if Landlord is unable to deliver possession of the Leased Premises to Tenant for any reason on or before such date, and if Tenant did not contribute to the delay, such date shall automatically change to the date on which Landlord does deliver possession of the Leased Premises to the Tenant in such condition), or (b) the date the Tenant gives notice of its intent to proceed with work to construct improvements within and upon the Leased Premises (the "**Commencement Date**"). If the Commencement Date is other than the first day of a calendar month, the Primary Term shall be automatically extended by the number of days remaining in the month in which the Commencement Date occurs. If Landlord permits Tenant to enter into the Leased Premises early to install tenant improvements, all provisions of this Lease, other than the requirement to pay Base Rent and Additional Rent, shall apply during the period commencing upon the date that Tenant or its contractors or agents are first present on the Leased Premises. Any references in this Lease to "Lease term" or "term" without specifically identifying the Primary Term or an Extension Term (as defined in Section 3.2 below) shall be interpreted to be inclusive of the Primary Term and any Extension Term(s) entered into in accordance with the terms and conditions contained in this Lease.

3.2 Extension Term Option. Tenant shall have the option to extend the Term of this Lease for three (3) periods of ten (10) years (the "Extension Term"), on the same terms and conditions as contained in this Lease, except that the Base Rent for such Extension Term(s) shall be the amount in the immediately preceding year plus the adjustment as set forth in Section 4.1 below. To exercise the extension option, Tenant shall give Landlord written notice ("Tenant's Extension Notice") at least ninety (90) days, but no sooner than one-hundred and eighty 180 days, prior to the Termination Date ("Tenant's Extension Deadline"). Tenant's Extension Notice shall be effective to extend the Term of this Lease without further documentation. In addition, and notwithstanding any provision of this Lease or any case law to the contrary, Tenant specifically acknowledges and agrees that any grace period for exercise of the option to extend shall not exceed thirty (30) days. Notwithstanding the foregoing Extension Terms, Landlord shall have the right to terminate this Lease during any Extension Term (but not during the Primary Term) upon not less than two (2) years advance written notice, if a government agency requires Landlord to perform environmental work within the Leased Premises and Tenant's continued occupation and use of the Leased Premises will, as determined in the sole discretion of the Landlord, unreasonably interfere with the performance of that work.

3.3 Tenant's Right To Terminate. Tenant may terminate this Lease at any time and for any reason upon ninety (90) days prior written notice to Landlord, at which time the Tenant will return the Leased Premises to the conditions set forth in Section 15 within 120 days of the end date of the Lease.

SECTION 4 - RENT

4.1 Base Rent. Commencing on the Commencement Date, and annually thereafter for the term of the Lease, Tenant shall pay to Landlord in care of the City Finance Director at 747 Market Street, Tacoma, Washington 98402, without notice, set-off or deduction whatsoever, the equivalent of twelve months Base Rent based upon the monthly base rent amounts identified in Section 1.4, and as adjusted as provided herein. Annual Base Rent, as adjusted, shall be payable in advance no later than the 30th day following each annual anniversary date of the Commencement Date. Except in the event of holdover, upon termination or expiration of the Lease, rent for partial months paid in advance shall be prorated and refunded to the Tenant. On the first anniversary of the Commencement Date and on every anniversary of such date thereafter (including the anniversary of the Commencement Date during any Additional Term), the monthly Base Rent will be adjusted by the annual percent change in the preceding June Consumer Price Index for All Urban Consumers-Seattle-Tacoma-Bremerton Metropolitan Area (or any equivalent or successor index however named) – All Items as published by the United States Department of Labor's Bureau of Labor Statistics (the "CPI"), not to exceed three percent (3%) per year. Such adjustment will be accomplished by multiplying the then current monthly Base Rent by a fraction, the numerator of which will be the CPI level as of the month proceeding the date on which the adjustment is to be made and the denominator of which will be the CPI level as of the same month one year earlier. Any adjustment of monthly Base Rent will become effective immediately. In no event will the monthly Base Rent be less than the then current monthly Base Rent.

4.2 Additional Rent. All other sums to be paid or reimbursed by Tenant to Landlord, whether or not so designated, shall be deemed "Additional Rent" for the purposes of this Lease. If Tenant defaults in the performance of any of its obligations hereunder, Landlord may, but shall not be obligated to, perform such obligations, and the cost thereof to Landlord shall also be Additional Rent. Unless otherwise specifically provided herein, Tenant shall pay Landlord all Additional Rent upon demand and in no event later than the date on which the next monthly Base Rent payment hereunder is due and payable.

4.3 Late Charge; Interest. If Tenant fails to pay any amount due under this Lease within ten (10) days of the due date, a late charge equal to five percent (5%) of the unpaid amount shall be assessed and be immediately due and payable. In addition, beginning thirty (30) days after the due date, interest shall accrue on the delinquent amount at a per annum rate which is the lesser of the highest interest rate permitted by applicable law or twelve percent (12%) per annum.

SECTION 5 - CONDUCT OF BUSINESS

5.1 Use of Leased Premises. Tenant shall only use the Leased Premises for the purposes specified in Section 1.7. Tenant shall not use or permit the use of the Leased Premises for any other business or purpose, without the prior written consent of Landlord.

5.2 Appearance of Leased Premises. Tenant shall maintain the Leased Premises in a clean, orderly and neat appearance, permitting no offensive odors or excessive noise to be emitted from the Leased Premises and neither committing waste nor permitting any waste to be committed thereon. All garbage and refuse shall be kept in sealed containers, which are removed at regular intervals. Provided, however, that Tenant shall not be responsible for any offensive odors created or caused by Landlord's landfill operations or the improvements constructed to remediate the landfill.

5.3 Unlawful Use. Tenant shall not use or permit the Leased Premises or any part thereof to be used for any purpose in violation of any municipal, county, state or federal law, ordinance, rule or regulation ("**Applicable Laws**") or in any manner that may create a nuisance. Tenant shall promptly comply, at its sole expense, with, and obtain all licenses and permits required by Applicable Laws and with the requirements of any board of fire underwriters or similar body, relating to or affecting the condition, use or occupancy of the Leased Premises or the business conducted thereon.

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5.4 Hazardous Materials

(a) "**Hazardous Material**" shall mean any matter (whether gaseous, liquid or solid) which is or may be harmful to persons or property, and which may now or hereafter be regulated under any Applicable Laws pertaining to health, industrial hygiene or the environment, including, without limitation, any asbestos and/or asbestos containing materials. "Hazardous Material" shall not include ordinary garden and plant related products (including without limitation, fertilizers, pesticides, fungicides) cleaning and maintenance products which are used with due care and in strict compliance with Applicable Laws and the instructions of the manufacturer of such products in the reasonable and prudent conduct of Tenant's business on the Leased Premises. Tenant shall cause to be kept on-site within the Leased Premises all MSDS product safety sheets applicable to any and all products kept and used on-site in its normal course of greenhouse operations, and could be subject to review of Landlord.

(b) Tenant shall not store, use, sell, release, generate or dispose of any Hazardous Materials in, on or about the Leased Premises without the prior written consent of Landlord. With respect to any Hazardous Materials stored, used, generated or disposed of from the Leased Premises after obtaining the prior written consent of Landlord, Tenant shall (i) promptly, timely and completely comply with all governmental requirements for recording and recordkeeping; (ii) submit to Landlord true and correct copies of all reports, manifests and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authority; (iii) within five (5) business days of Landlord's request, provide evidence satisfactory to Landlord that Tenant has complied with, and is in compliance with all Applicable Laws and (iv) comply with all Applicable Laws regarding the use, sale, transportation, generation, treatment and disposal of Hazardous Materials. The Tenant shall also comply with all Applicable Laws and regulations regarding the use, sale, transportation, generation, treatment and disposal of ordinary garden and plant related products. Prior to the expiration and surrender of the Leased Premises by Tenant, Tenant shall remove any and all Hazardous Materials and ordinary garden and plant related products which Tenant, its employees, agents, contractors and/or sublessees have brought onto the Leased Premises after obtaining the prior written consent of Landlord. Tenant shall be solely responsible for and shall defend (with counsel acceptable to Landlord), indemnify and hold Landlord, its agents affiliates and employees harmless from and against all claims, costs, damages, judgments, penalties, fines, losses, liabilities and expenses, including attorneys' fees and costs, arising out of or in connection with Tenant's breach of its obligations contained in this Section 5.4 which arise during the Lease Term as a result of such breach and any contamination that may result therefrom. Tenant shall be solely responsible for and shall defend (with counsel acceptable to Landlord), indemnify and hold Landlord, its agents, affiliates and employees harmless from and against any and all claims, costs, damages, lawsuits, penalties, liens, losses and/or liabilities, including attorneys' fees and costs, arising out of or in connection with removal, cleanup remediation and restoration work and materials necessary to return the Leased Premises and any other property of whatever nature to their condition existing immediately prior to the presence of Tenant's Hazardous Material or ordinary garden and plant related products on or about the Leased Premises; provided that Landlord's written approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as the actions would not potentially have any material adverse, long-term or short-term effect on the Leased Premises. Notwithstanding anything else set forth herein, Tenant's obligations under this Section 5.4 shall survive the expiration of this Lease.

(c) Landlord shall have the right in its sole discretion to conduct an environmental audit utilizing a contractor of Landlord's choice at the end of the Lease Term, upon the earlier termination of this Lease, upon Tenant's default hereunder or if Landlord reasonably believes that Hazardous Materials or ordinary plant and garden related products are being stored, used, sold, generated, released or disposed of from the Leased Premises in violation of the terms of this Section 5.4. Tenant shall be responsible for the cost of the audit and any remedial, restorative or removal work if such audit discloses the existence, storage, disposal or other presence of Hazardous Materials products occurring during the Lease term and attributable

solely to Tenant, its employees, agents, contractors or sublessees and the cleanup cost is greater than \$10,000.00. Tenant's cleanup responsibility is strictly limited to the Hazardous Materials that Tenant brought on to the Leased Premises and not any of the Hazardous Materials that existed prior to the Commencement Date, nor any subsequent releases or migration. Failure of Landlord to conduct an environmental audit or to detect conditions attributable to Tenant, its employees, agents, contractors or sublessees, whether such audit is conducted or not, shall not operate as a release of Tenant of its liability as stated in this Lease or by operation of law. Tenant's obligations herein shall survive the expiration of this Lease.

5.5 Liens and Encumbrances. Tenant shall keep the Leased Premises free and clear of all liens and encumbrances arising from or out of its use and occupancy of the Leased Premises. If any lien is filed against the Leased Premises or adjacent or underlying property owned by Landlord as a result of the action or inaction of Tenant or its employees, agents or contractors, Tenant shall upon demand provide Landlord with a bond in the amount required by law to remove the lien of record.

5.6 Signs. Without Landlord's written consent, Tenant shall not erect or place, or permit to be erected or placed, or maintain any signs, lettering or other advertising matter of any nature or kind whatsoever within the Leased Premises without first obtaining a permit from the City. All signs installed by Tenant shall be removed by it at its sole expense, and it shall repair all damage resulting from such installation or removal, either by the end of the Lease term or the earlier termination of the Lease.

SECTION 6 - UTILITIES AND OTHER CHARGES

6.1 Utility Charges. Tenant shall be responsible, and pay prior to delinquency, for all charges for utilities or services used or consumed by Tenant, including the charges, if any, for installing meters for them. Meter locations and installation methods shall be subject to Landlord's prior written approval. If Landlord elects to furnish any of the utilities, Tenant shall pay Landlord all charges levied by Landlord in accordance with rates established by law or regulation from time to time for the same. Landlord shall not be liable for an interruption of the supply of any such utilities to the Leased Premises.

6.2 Licenses and Taxes. Tenant shall pay when due all license, excise, business and occupation and other fees and taxes covering the business conducted on the Leased Premises and all personal property taxes levied with respect to all personal property located at the Leased Premises. If any governmental authority levies a tax or license fee on rents payable under this Lease or rents accruing from use of the Leased Premises or a tax or license fee in any form against Landlord or Tenant because of or measured by or based upon income derived from the leasing or rental thereof or a transaction privilege tax, such tax or license fee shall be paid by Tenant, either directly, if required by law, or by reimbursing Landlord for the amount thereof upon demand. If any such amount is paid directly to the taxing authority by Landlord, Tenant shall reimburse Landlord no later than thirty (30) days after the receipt from Landlord of a written request for reimbursement.

6.3 Real Property Taxes. Tenant shall pay Landlord as Additional Rent, (a) all real property taxes, (b) surface water and other governmental charges and assessments (special and general) of every kind and nature levied or assessed against the Leased Premises arising solely as a consequence of this Lease, and (c) any taxes levied or assessed in lieu thereof, in whole or in part.

6.4 Leasehold Excise Tax. Tenant shall pay Landlord as Additional Rent, all leasehold excise tax (if required by RCW 82.29A in lieu of real property taxes). Leasehold excise tax is calculated by the State using a percentage multiplier of either the rent required hereunder or an imputed fair market rental value, and as a result, Tenant shall be responsible for any increases in leasehold excise tax, if applicable, that result from an increase in rent for the Leased Premises over the term hereof, or for increases due to an increase in the statutory rate during the term of this Lease. The parties recognize that Tenant is a municipal corporation and as such is exempt from paying any property tax or leasehold excise tax.

SECTION 7 - DEPOSIT

No Deposit shall be required.

SECTION 8 – CONDITION OF PREMISES; INITIAL IMPROVEMENTS AND ALTERATIONS

8.1 Condition of Leased Premises. Tenant acknowledges that the Leased Premises were formerly used as a landfill and subsequently remediated by Landlord. Landlord represents and warrants to Tenant that it has provided all of the relevant documentation in its possession relating to the condition of the Leased Premises and environmental work performed thereon. Tenant has inspected or will inspect the Leased Premises, and ACCEPTS THE LEASED PREMISES IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS AND IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM THE CITY (collectively, the "Condition of the Leased Premises").

8.2 Environmental Restrictions. The parties acknowledge the Leased Premises is subject to and the parties shall comply with all conditions, restrictions, and limitations now appearing of record including, but not limited to, those restrictions provided on title to the Leased Premises, all environmental and land use conditions contained in documents associated with the Consent Decree, including, but not limited to the Restrictive Covenant recorded on the Tacoma Landfill property, and the City's Institutional Controls Plan for such property, as such may be amended from time to time and which Landlord has provided to Tenant (collectively the "Environmental Restrictions"), as well as zoning ordinances and local, county and state restrictions, conditions, laws, ordinances and rules. Landlord shall review the Tenant's plans to assist the Tenant's determination that the plans are in compliance with any and all Environmental Restrictions and assist in seeking approval from the applicable regulators. The City's review is solely for the purpose of protecting the City's interest in the Leased Premises and no approval given, inspection made, review or supervision performed by the City pursuant to or under authority of this Lease shall constitute or be construed as a representation or warranty express or implied by the City that such item reviewed, approved, inspected, or supervised, complies with applicable Laws or this Lease or meets any particular standard, code or requirement, or is in conformance with approved design documents, and no liability shall attach with respect thereto.

8.3 Initial Improvements by Tenant.

8.3.1 Tenant shall relocate at its sole cost and expense all of the off-gassing piping apparatus currently on the Leased Premises to allow for Tenant to construct its initial improvements in accordance with the plan attached as Exhibit "C", which is hereby approved by Landlord. Tenant is not required to restore this apparatus upon expiration or termination of this Lease.

8.3.2 Tenant then expects to construct greenhouses, an office and related improvements on the Leased Premises generally in accordance with the Site Plan attached as Exhibit "D", which is hereby approved by Landlord subject to Tenant's compliance with applicable permitting requirements. The plans attached as Exhibits "C" and "D" are collectively referred to as the "Initial Improvements".

8.3.3 Prior to commencement of work to construct and install any other improvements on the Lease Premises, or in the event material changes are made to the Initial Improvements, Tenant shall submit its plans and specifications to the Landlord for its review and approval. Approval of the plans and specifications by the Landlord shall be a condition precedent to commencement of any work upon the Leased Premises, which review and approval shall not be unreasonably delayed or denied. Any material changes in the approved plans and specifications shall be subject to prior review and approval by the Landlord. Landlord understands that Tenant would not be entering into this Lease unless all of the Initial Improvements may be constructed. In the event any part of the Initial Improvements cannot be constructed, for any reason, Tenant may terminate this Lease.

8.4 Utility Improvements. Tenant shall have the right to install, maintain and repair utilities at Tenant's expense and to improve the present utilities on the Property, if any; provided that the Landlord retains the right to review and approve the alignment of proposed utility installations in, under or upon the Property. Installation of emergency power generators must be approved in advance, in writing, by Landlord and shall not interfere with Landlord's use of the Property. Tenant shall be responsible for obtaining permission for connection and access to any utilities.

8.5 Future Alterations by Tenant. After the Initial Improvements are completed, Tenant may make additional alterations to the Leased Premises, but only after receipt of Landlord's prior written consent. All such alterations, additions and improvements shall be performed at Tenant's sole cost and expense by a contractor approved in writing by Landlord and in a good and workmanlike manner, in accordance with all Applicable Laws, ordinances, rules and regulations, and in a manner (a) consistent with the plans and specifications submitted to and approved by Landlord in writing and any conditions imposed by Landlord, (b) which includes acceptable insurance/bond coverage for Landlord's benefit and (c) which does not unreasonably affect Landlord's remedial work. Upon completion, Tenant shall furnish "as-built" plans. It is understood any building related improvements made to the Leased Premises will be owned by the Tenant. At the expiration or termination of this Lease, Tenant shall restore the Leased Premises as provided in Section 15 below.

SECTION 9 – SERVICES TO BE FURNISHED BY LANDLORD

9.1 Permit Approval – Environmental Agencies. The Leased Premises herein are subject to the Environmental Restrictions some of which may require modification and/or amendment to include the activities contemplated under this Lease or review and/or approval of the activities. Landlord and Tenant will reasonably collaborate and assist each other to do so. . Landlord will cooperate with Tenant in obtaining any other land use or regulatory approval necessary for Tenant's use of the Leased Premises; provided that, nothing in this Lease shall impose a duty or obligation upon Landlord to approve any permits, licenses, zoning variances or other approvals sought by Tenant. The Tenant shall prepare and provide the plans, specifications and background documents needed for such approvals.

9.2 Monitoring Probes/Security. At its sole cost and expense, Landlord will repair or replace equipment in the monitoring probe structures, vaults or other equipment related to environmental protection that may be damaged by the Landlord during routine operations in the Leased Premises. Landlord provides landfill site security in the form of after-hours security guard and security fencing around the perimeter of the Tacoma Landfill for the benefit of the Landlord. Tenant, and its employees, agents, licensees and invitees shall comply with the safety and security rules and regulations for use and occupancy of the Tacoma Landfill

site that are adopted by the Landlord from time to time. Notwithstanding the foregoing, Landlord shall not be responsible for the safety and security of Tenant's property on or within the Leased Premises.

Landlord maintains the access road to the Leased Premises, including but without limitation street sweeping, deicing and snow removal when needed. Tenant shall notify the Landlord as soon as practical of its becoming aware of any hazardous conditions that may exist in, on or around the access road to the Leased Premises.

SECTION 10 - INSURANCE AND INDEMNITY

10.1 Indemnification.

10.1.1 Tenant shall indemnify, defend and save Landlord, its officers, agents, employees and contractors, harmless from all losses, claims, damages, fines, penalties, liabilities and expenses (including Landlord's personnel and overhead costs and attorneys' fees and other costs incurred in connection with such claims, regardless of whether claims involve litigation or bankruptcy) resulting from any actual or alleged injury to any person or from any actual or alleged loss of or damage to any property or any other damage or loss alleged to be attributable to Tenant's operation or occupation of the Leased Premises or caused by or resulting from any act or omission or breach of Applicable Laws by Tenant or Tenant's licensee, assignee, or concessionaire, or of any officer, agent, employee, guest or invitee of any such person in or about the Leased Premises or Tenant's breach of its obligations hereunder. Tenant agrees that the foregoing indemnity specifically covers actions brought by its own employees. The indemnification provided for in this Section with respect to acts or omissions during the term of this Lease shall survive termination or expiration of this Lease. Tenant shall promptly notify Landlord of casualties or accidents occurring in or about the Leased Premises. Notwithstanding the foregoing, if losses, claims, liabilities, damages, liens, costs and expenses so arising are caused by the concurrent negligence of both Landlord and Tenant, their employees, agents, invitees and licensees, Tenant shall indemnify Landlord only to the extent of Tenant's own negligence or that of its officers, agents, employees, guests or invitees. The foregoing indemnity is specifically and expressly intended to constitute a waiver of Tenant's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the full extent necessary to provide Landlord with a full and complete indemnity from claims made by Tenant and its employees, to the extent of their negligence.

10.1.2 Landlord shall indemnify, defend and save Tenant, its officers, agents, employees and contractors, harmless from all losses, claims, damages, fines, penalties, liabilities and expenses (including Tenant's personnel and overhead costs and attorneys' fees and other costs incurred in connection with such claims, regardless of whether claims involve litigation or bankruptcy) resulting from any actual or alleged injury to any person or from any actual or alleged loss of or damage to any property or any other damage or loss alleged to be attributable to Landlord's operation or occupation of the real property around the Leased Premises or caused by or resulting from any act or omission or breach of Applicable Laws by Landlord or Landlord's licensee, assignee, or concessionaire, or of any officer, agent, employee, guest or invitee of any such person or Landlord's breach of its obligations hereunder. Landlord agrees that the foregoing indemnity specifically covers actions brought by its own employees. The indemnification provided for in this Section with respect to acts or omissions during the term of this Lease shall survive termination or expiration of this Lease. Landlord shall promptly notify Tenant of casualties or accidents occurring in or about the real property adjoining the Leased Premises. Notwithstanding the foregoing, if losses, claims, liabilities, damages, liens, costs and expenses so arising are caused by the concurrent negligence of both Landlord and Tenant, their employees, agents, invitees and licensees, Landlord shall indemnify Tenant only to the extent of Landlord's own negligence or that of its officers, agents, employees, guests or invitees. The foregoing indemnity is specifically and expressly intended to constitute a waiver of Landlord's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the full extent necessary to provide Tenant with a

full and complete indemnity from claims made by Landlord and its employees, to the extent of their negligence.

10.1.3 LANDLORD AND TENANT ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS SECTION 10.1 WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

10.2 Insurance.

10.2.1 Coverage and Limits. At all times throughout the Lease term Tenant shall, at its own expense, maintain comprehensive or commercial general liability insurance with broad form and stop gap (employer's liability) endorsements in minimum limits of \$1,000,000 per occurrence and annual aggregate for property damage or loss and minimum limits of \$1,000,000 per individual and per occurrence for personal injuries and death, to indemnify both Landlord and Tenant against any such claims, demands, losses, damages, liabilities and expenses. Landlord shall have the right to periodically review the appropriateness of such limits in view of inflation, changing industry conditions and court decisions and to reasonably require an increase in such limits upon ninety (90) days prior written notice to Tenant. Landlord and any property manager identified by Landlord shall be named as additional insureds and shall be furnished with a certificate and a copy of such policy or policies of insurance prior to the Commencement Date and thereafter upon Landlord's request therefor which shall bear an endorsement that the same shall not be canceled nor materially reduced in coverage or limits without thirty (30) days prior written notice to Landlord. Throughout the Lease term, Tenant shall also maintain, at its own expense, insurance covering its furniture, fixtures, equipment and inventory and all improvements which it makes to the Leased Premises in an amount equal to the full insurable value thereof, against fire and such other perils as are covered by an all risk policy (or subsequent equivalent) with plate glass endorsement, including and covering all glass on the Leased Premises. All insurance required under this Lease shall (a) be issued by insurance companies authorized to do business in the State of Washington and acceptable to Landlord; (b) be issued as a primary policy, or under the blanket policy, not contributing with and not in excess of coverage which Landlord may carry; (c) in the case of the liability policy, contain a contractual liability coverage endorsement covering Tenant's indemnification duty; and (d) have deductibles approved in writing by Landlord.

10.2.2 Self-Insurance. Tenant is a member of the Washington Cities Insurance Authority (WCIA) Risk Pool as provided by RCW Ch. 48.62.. Tenant certifies that it is, and shall remain, a member of the WCIA self-insurance risk pool (or a member of a comparable self-insurance risk pool or insurance). If Tenant fails to maintain such self-insurance, after five (5) days prior written notice, Landlord may immediately obtain such for Tenant's account as a non-exclusive remedy, and Tenant shall reimburse Landlord for the full expense thereof upon demand. Tenant shall maintain coverage and minimum limits through its self-insurance that are equal to or greater than the coverages and limits provided at Section 10.2.1 above.

SECTION 11 - ASSIGNMENT AND SUBLETTING

11.1 Assignment or Sublease. Tenant shall not sublet the whole or any part of the Leased Premises, nor shall Tenant assign, transfer or encumber this Lease or any interest thereunder whether directly or by operation of law or by any process or proceeding of any court, or otherwise, without the prior written consent of Landlord, which consent will not be unreasonably withheld.

11.2 Assignment by Landlord. If Landlord sells or otherwise transfers the Leased Premises, or if Landlord assigns its interest in this Lease, and such purchaser, transferee or assignee assumes Landlord's obligations hereunder arising thereafter, Landlord shall thereupon be relieved of all liabilities hereunder arising thereafter, but this Lease shall otherwise remain in full force and effect.

SECTION 12 - DESTRUCTION OF PREMISES

Intentionally Omitted

SECTION 13 - DEFAULT OF TENANT

13.1 Defaults. Time is of the essence of this Lease. If Tenant fails to comply with any covenant, term or condition of this Lease or if a trustee or receiver is appointed for Tenant's assets, or if Tenant makes an assignment for the benefit of creditors, or if Tenant vacates or abandons the Leased Premises, and if such failure continues for or is not remedied within three (3) days (or, if no default in the payment of rent is involved, within twenty (20) days) after notice in writing thereof given by Landlord to Tenant specifying the failure, then Landlord may, in its sole discretion, elect to terminate this Lease and all of the rights of Tenant in or to the Leased Premises by giving Tenant 90 days written notice of Landlord's intent to terminate.

If Landlord elects to terminate this Lease, Landlord may recover from Tenant as damages, the following:

- (i) Unpaid rent accruing up to the date the Landlord takes possession of the Leased Premises or terminates the Lease plus three (3) months' rent thereafter; plus
- (ii) Any other amount reasonably necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses incurred by Landlord in (a) retaking possession of the Leased Premises, including reasonable attorneys' fees therefor, (b) maintaining or preserving the Leased Premises after such default (for a period not to exceed three (3) months), and (c) removal of Tenant's improvements to the extent Landlord did not consent to the improvements remaining after the Lease termination.

For purposes of this Section 13.1 (and elsewhere within this Lease where applicable), the terms "rent" and "rental" shall be deemed to be the monthly Base Rent and all Additional Rent and other sums required to be paid by Tenant pursuant to the terms and conditions of this Lease.

In addition to the foregoing, in the event that Tenant defaults under any material term or condition of this Lease two or more times during any one (1) year period, regardless of whether Tenant satisfactorily cures such default within any time set forth herein, such instances of default shall be grounds for Landlord to terminate the lease.

13.2 Remedies Cumulative; Waiver. Landlord's remedies hereunder are cumulative, and not exclusive, and Landlord's exercise of any right or remedy shall not be deemed to waive, or alter, affect or prejudice any other right or remedy which Landlord may have under this Lease or at law or in equity, including the right to cure Tenant's default on Tenant's behalf and recover from Tenant upon demand all costs and expenses incurred by Landlord in connection therewith, including interest thereon at the rate stated in Section 4.3 from the date incurred until paid. Neither the acceptance of rent nor any other acts or omissions of Landlord at any time or times after the happening of any default or breach by Tenant shall operate as a waiver of any past or future violation, breach or failure to keep or perform any covenant, agreement, term or condition hereof or to deprive Landlord of its right to cancel, terminate or forfeit this Lease, or estop Landlord from promptly exercising any other option, right or remedy that it may have under any term or provisions of this Lease, or at law or in equity.

SECTION 14 - ACCESS BY LANDLORD; DEFAULT OF LANDLORD

14.1 Right of Entry. Landlord maintains four (4) gas monitoring probes and/or recovery wells within the Leased Premises that are required for compliance with the Consent Decree with the EPA and DOE. Tenant agrees that its leasehold interest is subject to Landlord's right and obligation to maintain the monitoring probes/recovery wells within the Leased Premises and that Landlord shall have the right at all reasonable times to enter into and upon the Leased Premises for the purpose of maintaining, repairing, replacing, inspecting and monitoring the probes and/or wells. Tenant agrees to conduct its activities on the Leased Premises so as not to unreasonably interfere with, obstruct or endanger the gas monitoring probes and/or recovery wells.

14.2 Default of Landlord. Landlord shall be in default hereunder only if Tenant serves upon Landlord a written notice specifying the alleged default and Landlord does not remedy the failure within five (5) days following receipt thereof or, in the case of a failure which reasonably requires more than five (5) days to cure, if Landlord has not commenced to remedy the same and continuously prosecuted the work necessary to cure within sixty (60) days following receipt of written notice thereof. Tenant shall not exercise any remedies available to it until the grace period provided for in this Section has elapsed, except in the event of an emergency.

SECTION 15 - SURRENDER OF PREMISES

15.1 Surrender of Leased Premises. At the expiration or termination of this Lease, Tenant shall remove all improvements from the Leased Premises at its sole expense and restore it to the same condition as on the Commencement Date and in compliance with all Environmental Restrictions. Landlord and Tenant agree that, except as provided below, in the event that such Environmental Restrictions are more stringent than the Environmental Restrictions in place on the Commencement Date, the cost and expense of the restoration necessary to meet the more stringent Environmental Restrictions (the "Additional Remediation") shall be borne by the Tenant. In the event that a the government agency requires the Additional Remediation due to failure of the existing remedial work or the requirement for Additional Remediation is imposed over a larger part of the landfill, then Landlord shall be responsible for the cost and expense of the Additional remediation. In that event, Landlord reserves the right to require Tenant to leave the buildings on the Leased Premises. Tenant acknowledges that the release of Tenants' obligation to restore the Premise constitutes full and fair consideration for the value of any improvements that will remain on the Premises. Tenant's obligation to perform this covenant shall survive the expiration or termination of this Lease.

15.2 Holding Over. If Tenant holds over after the expiration of the term hereof with Landlord's express prior written consent, such holding over shall be construed as a tenancy from month-to-month on the terms and conditions set forth herein, except for Base Rent which shall be increased by ten percent (10%) from the amount in effect during the last month of the term hereof, which tenancy may be terminated by either party, with or without cause, upon at least thirty (30) days' written notice to the other party, effective as of the last day of a calendar month. If Tenant holds over without Landlord's express prior written consent, such shall constitute a tenancy at will, terminable upon notice from Landlord at one and one half (1.5) times the Base Rent payable during the last month of the term hereof, and Tenant shall be liable for all damages suffered by Landlord as a consequence of such holding over.

SECTION 16 - MISCELLANEOUS

16.1 Notices. Any notices required in accordance with any of the provisions herein shall be delivered personally, sent by overnight courier or mailed by registered or certified mail to the addresses set forth in Section 1.5 or to such other address as a party shall from time to time advise in writing. If mailed, a

notice shall be deemed received three (3) business days after the postmark affixed on the envelope by the United States Post Office.

16.2 Successors or Assigns. All of the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon Landlord, Tenant and their respective heirs, administrators, executors, successors and permitted assigns.

16.3 Partial Invalidity. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each other term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

16.4 Recording. Tenant shall not record this Lease or a memorandum hereof without the prior written consent of Landlord.

16.5 Force Majeure. Landlord shall not be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of terrorism, acts of civil or military authorities, fire, floods, windstorm, earthquake, strikes or other labor disturbances, civil commotion or disorder or war.

16.6 Consent not to be unreasonably withheld. Unless otherwise provided, neither party shall unreasonably withhold its consent, permission, or approval for any act which may be required or desired by the other party under the provisions of this Lease.

16.7 Recycling. Tenant will take reasonable steps to prevent the unnecessary generation of refuse through the choice and use of products and packaging and other materials in its business that minimize solid waste or that are durable, reusable or recyclable. If so required by Landlord, Tenant will provide or obtain recycling containers for use in its business by its employees and customers and will recycle acceptable materials in the recycling containers and will otherwise participate in any recycling program established by Landlord or required by Applicable Laws.

16.8 Quiet Enjoyment. So long as Tenant pays the Rent and performs all of its obligations in this Lease, Tenant's possession of the Leased Premises will not be disturbed by Landlord or anyone claiming by, through or under Landlord.

16.9 Entire Agreement - Applicable Law – Legal Expenses. This Lease and the Exhibits attached hereto, and by this reference incorporated herein, set forth the entire agreement of Landlord and Tenant concerning the Leased Premises, and supersede any other agreements or understanding, oral or written, between Landlord and Tenant. Any subsequent modification or amendment of this Lease shall be binding upon Landlord and Tenant only if in writing and signed by both. This Lease shall be governed by, and construed in accordance with the laws of the state of Washington without recourse to any principle of Conflicts of Laws. Venue in any lawsuit brought under this Lease shall be in the Superior Court of Pierce County, Washington. If either party brings or maintains an action against the other related to this Lease, the prevailing party shall be entitled to its reasonable attorney's fees and costs incurred therein.

16.10 No Joint Venture. It is not intended by this Lease to, and nothing contained in this Lease shall, create any partnership, joint venture, or principal-agent relationship or other arrangement between Landlord and the Tenant. Neither Party is authorized to, nor shall either Party act toward third Persons or the public in any manner which would indicate any such relationship with the other. The Parties intend that the

rights, obligations, and covenants in this Lease and the collateral instruments shall be exclusively enforceable by the Landlord and the Tenant, their successors, and assigns. No term or provision of this Lease is intended to be, or shall be, for the benefit of any person not a party hereto, and no such person shall have any right or cause of action hereunder, except as may be otherwise provided herein.

16.11 Execution by Landlord and Tenant. Landlord shall not be deemed to have made an offer to Tenant by furnishing Tenant with a copy of this Lease with particulars inserted. No contractual or other rights shall exist or be created between Landlord and Tenant until all parties hereto have executed this Lease and fully executed copies have been delivered to Landlord and Tenant.

TENANT

METROPOLITAN PARK DISTRICT OF TACOMA

By: _____
Jack Wilson, Executive Director

Approved as to form:

LANDLORD

THE CITY OF TACOMA

T.C. Broadnax, City Manager

Approved:

Michael P. Slevin III, P.E.
Environmental Services Director

Andy Cherullo
Finance Director

Approved as to form:

Saada Gegoux
Risk Manager

Deputy City Attorney

STATE OF WASHINGTON)
)ss ACKNOWLEDGMENT
County of Pierce)

I certify that I know or have satisfactory evidence that Jack C. Wilson is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the Executive Director of the Metropolitan Park District of Tacoma to be the free and voluntary act of such party for the uses and purposes named in the instrument.

DATED this _____ day of _____, 2015.

NOTARY PUBLIC in and for the
State of Washington.
My appointment expires: ____/____/____

STATE OF WASHINGTON)
)ss ACKNOWLEDGMENT
County of Pierce)

I certify that I know or have satisfactory evidence that T.C. Broadnax is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the City Manager for the City of Tacoma to be the free and voluntary act of such party for the uses and purposes named in this instrument.

DATED this _____ day of _____, 2015.

NOTARY PUBLIC in and for the
State of Washington.
My appointment expires: ____/____/____

EXHIBIT A

Legal Description of the Leased Premises

DRAFT

EXHIBIT B

Depiction of the Leased Premises

DRAFT

EXHIBIT C

Off-Gassing Apparatus Removal and Relocation Plan

DRAFT

EXHIBIT D

Plans and Specifications of Initial Improvements

DRAFT