

**PRELIMINARY AGENDA FOR SPECIAL MEETING**

**December 5, 2023**

**I. EXECUTIVE SESSION**

**11:00 AM**

One Matter related to Property Disposition.  
**RCW 42.30.110(1)(c)(g)**

**II. OPEN SESSION**

**12:00 PM**

Pledge of Allegiance

**PUBLIC COMMENT**

Speakers are asked to keep their comments to less than 3 minutes. Please feel free to submit comments in writing to the Chief Executive Officer.

**CONSENT ITEMS**

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

**A.** Approval of Minutes of the Regular Meeting on November 15, 2023.

**B.** Approval of Checks

**NEW BUSINESS/DISCUSSION ITEMS**

**C.** Port of Kennewick Presentation- CEO of Port of Kennewick Tim Artzen

**D.** Update Port's Mission Statement – CEO David Ripp

**E.** 2024 Election of Officers- CEO David Ripp

**F.** 2024 Election of Representatives- CEO David Ripp

**G.** Kemira Lease Amendment- Director of Business & Real Estate Derek Jaeger

**H.** Columbia Resources Lease Amendment- Derek Jaeger

**I.** 2024 Commission Calendar- CEO David Ripp

**PUBLIC COMMENT**

Speakers are asked to keep their comments to less than 3 minutes. Please feel free to submit comments in writing to the Chief Executive Officer.

**ACTION ITEMS**

**J.** 2024 Election of Officers

**K.** 2024 Election of Representatives

**L.** Kemira Lease Amendment

**M.** Columbia Resources Lease Amendment

**N. 2024 Commission Calendar**

**STAFF REPORTS & COMMENTS**

**COMMISSIONER REPORTS & DISCUSSION**

**ADJOURN**

**Regular business and meetings that may be attended by members of the Commission:**

<b><u>Date</u></b>	<b><u>Meeting</u></b>
<b>*December 6-8, 2023</b>	<b>Washington Public Ports Association Annual Meeting- Vancouver</b>
<b>*December 14, 2023</b>	<b>Camas-Washougal Chamber Holiday Luncheon 11:30 am-2 pm</b>

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

**Join the meeting on the Conference Call Line: (253) 215-8782**

**Meeting ID: 829 0393 6339, Password: 154722 or via this video link:**

**<https://us06web.zoom.us/j/82903936339?pwd=U01pdWY1V0tES3dMZWFkNjJNbUNVZz09>**

## **MINUTES OF THE REGULAR COMMISSION MEETING**

### **PORT OF CAMAS-WASHOUGAL**

**November 15, 2023**

By: Mackenzey Johnson, Administrative Assistant

A Regular Meeting of the Commissioners of the Port of Camas-Washougal was held in person and virtually at the Port Office at 24 South 'A' Street, Washougal, WA on Wednesday, November 15, 2023, at 12 p.m.

PRESENT: Commissioner Cassi Marshall, Commissioner Larry Keister, Commissioner John Spencer, Chief Executive Officer David Ripp, Director of Finance Krista Cagle, Director of Business Development & Real Estate Derek Jaeger, Director of Facilities Eric Plantenberg, Administrative Assistant Mackenzey Johnson, and members of the press and public. The public has access in person and through a designated Zoom conference call line or video link.

At 12:00 p.m. following the Pledge of Allegiance, Commissioner Spencer called to open the Regular Session public meeting to order. This meeting is video recorded, and the chat function has been disabled.

#### **PUBLIC COMMENT #1:**

##### **Ernie Suggs of Washougal City Council-**

Suggs stated that the Mayor of Washougal David Stuebe wanted to say hello but is in a meeting with the City of Camas currently. Suggs expressed his thanks to the Port and exclaimed that some great projects are coming up.

##### **CEO David Ripp on behalf of Rick Pfeifer of Dolphin Yacht Club**

Ripp read a letter from Dolphin Yacht Club member, Rick Pfeifer. He wrote that he and his wife, Elaine, are new members of DYU next door. He stated that he believed the Yacht Club adds value to the community as a whole and to the Port's Marina. Pfeifer explained that he hopes their new lease continues the partnership with the Port and instead of seeing them as a liability, we can begin to see the Dolphin Yacht Club as an asset.

#### **CONSENT ITEMS**

##### **Minutes & Checks**

Minutes from the Regular Meeting on November 1, 2023, and electronic payments and the issuance of general fund checks 9187-9219 and voided checks 9154-9186, and printed checks 50148 in the total amount of \$208,156.49 were presented for approval. After a brief discussion, a motion was made by Commissioner Keister and seconded by Commissioner Marshall the minutes and electronic payments and checks were carried unanimously.

#### **NEW BUSINESS / DISCUSSION ITEMS:**

##### **Resolution 9-23 Tax Levy- Director of Finance Krista Cagle:**

Director of Finance Krista Cagle stated the tax levy resolution is a part of the 2024 budget process. Cagle explained the dollar amount of the increase over the previous year is \$29,339.14 which is the allowed increase of 1% over the previous tax levy. Approval will be requested during action items.

**5-Year Capital Improvement Budget-Director of Finance Krista Cagle:**

Director of Finance Krista Cagle stated sharing the 5-year Capital Improvement Budget is another way to share the budgeting process with the public and commission. Cagle explained that there has been one minor change since her last presentation, which is an additional vehicle purchase. The vehicle will cost \$35,000 and it will be for Director of Facilities Eric Plantenberg. Approval will be requested during action items.

**Breakwater Access-Accept as Complete- Chief Executive Officer David Ripp:**

Chief Executive Officer David Ripp explained that the Breakwater Access Project has been ongoing and is now completed. Approval will be requested during action items.

**PUBLIC COMMENT #2:**

No comment.

**PUBLIC HEARING to Approve the 2024 Budget and Comprehensive Scheme of Harbor Improvements:**

Director of Finance Krista Cagle presented a one-page review of the Port's operating revenues and expenditures. Cagle stated in 2024 she expects to see an operating net income of \$233,000. This one-page review can be found on the Port's website under finances. Cagle also noted that the Comprehensive Scheme of Harbor Improvements is not changing and needs to be approved by commission.

**Public Comment #3 for Public Hearing:**

No comment.

Commissioner Keister requested formal approval of the 2024 Budget and Comprehensive Scheme of Harbor Improvements as presented during the Public Hearing. Upon motion by Commissioner Keister seconded by Commissioner Marshall and carried unanimously, the approval of the 2024 Budget and Comprehensive Scheme of Harbor Improvements is effective November 15, 2023.

**ACTION ITEMS:**

**Resolution 9-23 Tax Levy:**

Commissioner Marshall requested formal approval of Resolution 9-23 Tax Levy as presented during discussion items. Upon motion by Commissioner Marshall seconded by Commissioner Keister and carried unanimously, the approval of Resolution 9-23 Tax Levy effective November 15, 2023.

**5-Year Capital Improvement Budget:**

Commissioner Keister formal approval of the 5-Year Capital Improvement Budget as presented during discussion items. Upon motion by Commissioner Keister seconded by Commissioner Marshall and carried unanimously, the approval of the 5-Year Capital Improvement Budget effective November 15, 2023.

**Breakwater Access-Accept as Complete:**

Commissioner Marshall requested formal approval of Break Water Access-Accept as Complete as presented during discussion items. Upon motion by Commissioner Marshall seconded by Commissioner Keister and carried unanimously, the approval of Breakwater Access is accepted as Completed effective November 15, 2023.



## **STAFF REPORTS & COMMENTS**

### **Chief Executive Officer-**

Chief Executive Officer David Ripp stated the WPPA Annual Meeting is in 2 weeks at the Hilton in Downtown Vancouver. He explained the Legislative Outlook meeting is on the same day at the same location and that he will try to attend both meetings.

Ripp explained that the Commission is now looking to add a line about sustainability into the Port's mission statement and they will continue to brainstorm how to do so. Ripp also stated that the Port will be changing the December 6<sup>th</sup> meeting to December 5<sup>th</sup> due to the WPPA Annual Meeting. Ripp also mentioned that the 2024 Planning Meeting is going to be from January 25-26<sup>th</sup> from 8:30 to 12:30 pm.

### **Upcoming Events:**

November 16<sup>th</sup>- Camas-Washougal Chamber Luncheon

December 6-8<sup>th</sup>- WPPA Annual Meeting at the Hilton

December 5<sup>th</sup>- Port of Kennewick Presentation at noon. An Executive Session beforehand at 11 am to discuss property disposition.

### **Director of Finance-**

Director of Finance Krista Cagle stated the Port is starting the process of upgrading key fobs for the Marina. They are now available to pick up in the administrative office. Cagle also explained that there will be a phone app that you can use as a key substitute.

### **Director of Business & Real Estate-**

Director of Business & Real Estate Derek Jaeger stated the IP Forum event went well. Jaeger explained that it was great to network with the Port's tenants and there were valuable conversations. Jaeger also explained that he had shown the vacant space in Building 20 four different times in the past month and a half.

### **Director of Facilities-**

Director of Facilities Eric Plantenberg stated the IP forum went well and the Port tenants seemed happy. Plantenberg also stated next week the winterization of the marina starts.

## **COMMISSIONER REPORTS & DISCUSSION**

### **Commissioner Keister**

Commissioner Keister stated he attended the Washougal Town Center Revitalization Zoom meeting. Keister stated the City of Washougal is doing a great job. Keister explained the goal of this meeting was to gain input from the community on what they'd like to see Downtown Washougal. Keister also stated he was meeting with someone from UPC to give a presentation about the Port and Hyas Point.

### **Commissioner Marshall**

Commissioner Marshall stated it was great to see the Washougal Business Alliance being promoted. Marshall stated the Port supports both Washougal's Downtown Community as well as the Downtown Camas Association.

### **Commissioner Spencer**

Commissioner Spencer stated his congratulations to the most recent election winners. Spencer also stated the IP Forum Event went well and he was looking forward to the next.

The regular meeting adjourned at 12:44 p.m.

PORT OF CAMAS-WASHOUGAL COMMISSION

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Commissioners

**ASSIGNMENT AND ASSUMPTION OF LEASE  
AND LESSOR'S CONSENT TO ASSIGNMENT**  
Building 3, Port of Camas-Washougal Industrial Park

**THIS AGREEMENT**, is made and entered into as of the 5<sup>th</sup> day of December, 2023 and effective as of December 8, 2023 (the "**Effective Date**"), by and among **KEMIRA CHEMICALS, INC.** (f/k/a Vinings Industries West, Incorporated, successor by merger to Vinings West, Incorporated), a Georgia corporation ("**Assignor**"), **KEMIRA WATER SOLUTIONS, INC.**, a Delaware corporation ("**Assignee**"), and **PORT OF CAMAS-WASHOUGAL**, a municipal corporation organized and existing under the laws of the State of Washington ("**Lessor**").

WITNESSETH:

**WHEREAS**, Lessor, as lessor, and Assignor, as lessee, entered into that certain Lease, dated February 15, 1989, as amended by that certain First Amendment to Lease, dated November 23, 1998, First Addendum to Lease, dated February 23, 2016, and CPI Lease Amendment, dated November 2, 2018 (as amended, the "**Lease**"), covering approximately 6.25 acres of land, together with Building 3 and the other buildings and improvements located thereon, located in the Port District in the Town of Washougal, Clark County, Washington (the "**Premises**"), all as more particularly described in the Lease;

**WHEREAS**, Assignor and Assignee are affiliates and Assignor desires to assign the Lease to Assignee, and Assignee desires to accept such assignment and assume all of Assignor's obligations under the Lease, all on the terms and conditions set forth in this Agreement; and

**WHEREAS**, the Lease provides that Lessor will consent to an assignment of the Lease to any affiliate of the Lessee.

**NOW, THEREFORE**, in consideration of the mutual acts, obligations and covenants of the parties, one to the other, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the parties, one to the other, it is mutually understood and agreed as follows:

1. **Defined Terms.** All capitalized terms used but not otherwise defined in this Agreement shall have the meanings ascribed thereto in the Lease.

2. **Assignment of the Lease.** Effective as of the Effective Date, Assignor hereby assigns, sets over and transfers to Assignee, its successors and assigns, the Lease and all of Assignor's right, title and interest in, to and under the Lease and in and to the Premises and the improvements, fixtures, and equipment now located on the Premises, together with all of Assignor's duties, responsibilities and obligations of as lessee arising out of or accruing under the Lease.

3. **Acceptance of Assignment and Assumption of the Lease.** Effective as of the Effective Date, Assignee hereby accepts the within assignment of the Lease and all of Assignor's right, title and interest in, to and under the Lease and in and to the Premises and the improvements, fixtures, and equipment now located on the Premises, and Assignee hereby assumes and agrees to

perform and comply with all of Assignor's duties, responsibilities and obligations as lessee arising out of or accruing under the Lease before, on or after the Effective Date, including without limitation, all duties, responsibilities and obligations of Lessee relating to hazardous substances, as defined in the Lease.

#### **4. Lessor's Consent to Assignment and Release of Assignor.**

(a) Lessor hereby consents to the within assignment of the Lease; provided, however, that such consent shall not be construed as a consent by Lessor to, or as permitting, any other or further assignment, licensing or subletting by Lessee except in accordance with the Lease.

(b) Lessor, for itself, its successors and assigns, does hereby absolutely and unconditionally release Assignor, its shareholders, principals, agents, directors, officers and employees, and each of their respective heirs, executors, administrators, successors and assigns, from all liabilities and claims of every kind and nature whatsoever arising out of or accruing under the Lease before, on or after the Effective Date; provided, however, that the foregoing shall not release Assignee from any of its duties, responsibilities and obligations as lessee under the Lease. From and after the Effective Date, all references contained in the Lease to "Lessee" shall be deemed to mean and refer to Assignee and its successors and permitted assigns.

(c) Lessor hereby certifies to Lessee that (i) all rent and additional rent payable by Lessee to Lessor as of the date of this Agreement has been fully paid, (ii) to the best of Lessor's knowledge, Lessee is not in monetary or material non-monetary default under the Lease as of the date of this Agreement, and (ii) Lessor has no actual knowledge of any event which, with notice or the passage of time or both would constitute such a default by Lessee.

**5. Subordination.** The Lease and Lessee's rights hereunder are and shall be subordinate and inferior to any ground or underlying lease, deed of trust, or mortgage encumbering all or any portion of the Premises, any advances made on the security thereof and any renewals, modifications, consolidations, replacements, or extensions thereof, whenever made or recorded. Notwithstanding anything to the contrary contained in the Lease, if Lessor enters into any ground or underlying lease, deed of trust, or mortgage encumbering all or any portion of the Premises, Lessor shall provide Lessee with an executed subordination, non-disturbance, and attornment agreement with Lessor's lender or ground or underlying lessor in form reasonably acceptable to Lessee. Lessor represents to Assignee that, as of the date hereof, the Premises are not encumbered by or subject to any ground or underlying lease, deed of trust or mortgage.

**6. Memorandum of Lease.** Promptly following the execution and delivery of this Agreement, Lessor and Assignee shall execute and deliver a memorandum of lease, to be recorded in the Clark County Auditor's Office evidencing the Lease and cause such amendment to be recorded promptly after execution. Assignee shall pay the reasonable cost of preparing and the cost of recording such memorandum.

**7. OFAC.** Each of Assignor and Assignee represents and warrants to Lessor, but only with respect to itself and its affiliates and representatives, neither it nor any of its affiliates or representatives (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury ("OFAC")

pursuant to Executive Order number 13224, 66 Federal Register 49079 (September 25, 2001) (the “**Order**”); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of the OFAC or any other applicable requirements contained in any enabling legislation or other executive orders in respect of the Order (the Order and such other rules, regulations, legislation or orders are collectively called the “**Orders**”); (iii) is engaged in activities prohibited in the Orders; or (iv) has been convicted, pleaded nolo contendere, indicted, arraigned or detained on charges involving money laundering or predicate crimes to money laundering.

8. **Notices to Lessee under the Lease.** From and after the Effective Date, all notices and invoices to be given by Lessor to Lessee under the Lease or otherwise shall be given to Lessee at:

Kemira Water Solutions, Inc.  
1000 Parkwood Circle, Ste. 500  
Atlanta, Georgia 30339  
Attention: Vice President, Manufacturing, P&P, Americas

With copies to:

Kemira Water Solutions, Inc.  
1000 Parkwood Circle, Ste. 500  
Atlanta, Georgia 30339  
Attention: General Counsel, Americas

9. **Brokers.** Assignor, Assignee and Lessor each represents and warrants to the others that it has dealt with no broker or finder in connection with this Agreement. Assignor, Assignee and Lessor each hereby agree to indemnify and hold the other parties harmless from and against any and all claims, liabilities, suits, costs and expenses including reasonable attorneys’ fees and disbursements arising out of any inaccuracy or alleged inaccuracy of its representation above.

10. **Authority.** Lessor, Assignor and Assignee each hereby represents and warrants to the other that it has full right, power and authority to enter into this Agreement and that the person executing this Agreement on behalf of Lessor, Assignor and Assignee, respectively, is duly authorized to do so.

11. **Binding Effect.** Lessor, Assignor and Assignee each acknowledge that this Agreement shall not be binding on either party until Lessor, Assignor and Assignee each have executed this Agreement and a counterpart thereof has been delivered to Assignee.

12. **No Waiver.** This Agreement may not be amended, modified, changed or terminated, nor any of its provisions waived, except by an agreement in writing signed by the party against whom enforcement of any such amendment, modification, change, termination or waiver is sought.

13. **Governing Law.** This Agreement shall be governed by and in accordance with the laws of the State of Washington and venue shall be Clark County, Washington.

14. **Unenforceability.** If any of the provisions of this Agreement, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby, and every provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15. **Effectiveness.** This Agreement may be executed electronically and in one or more counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement. Counterparts may be delivered via facsimile, electronic mail or other transmission method, and any counterpart so delivered will be deemed to have been duly and validly delivered and shall be valid and effective for all purposes.

16. **Headings.** The headings of this Agreement are intended to be for convenience of reference only and shall not define the extent or intent or otherwise affect the meaning of any portion hereof.

17. **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of the parties hereto, their respective legal representatives, successors and permitted assigns.

**IN WITNESS WHEREOF**, Assignor, Assignee and Lessor have duly executed this Agreement as of the date first set forth above.

**KEMIRA CHEMICALS, INC.,** a Georgia corporation, as Assignor

By: \_\_\_\_\_  
Brett Giles, Vice President, Manufacturing,  
P&P, Americas

**KEMIRA WATER SOLUTIONS, INC.,** a Delaware corporation, as Assignee

By: \_\_\_\_\_  
Paul Kimberling, Vice President, Finance &  
Accounting, Americas

**PORT OF CAMAS-WASHOUGAL,** a municipal corporation organized and existing under the laws of the State of Washington, as Lessor

By: \_\_\_\_\_  
David Ripp, Chief Executive Officer

**ASSIGNMENT AND ASSUMPTION OF LEASE  
AND LESSOR'S CONSENT TO ASSIGNMENT**  
Building 6, Port of Camas-Washougal Industrial Park

**THIS AGREEMENT**, is made and entered into as of the 5th day of December, 2023 and effective as of December 8, 2023 (the "**Effective Date**"), by and among **KEMIRA CHEMICALS, INC.** (f/k/a Vinings Industries, Inc.), a Georgia corporation ("**Assignor**"), **KEMIRA WATER SOLUTIONS, INC.**, a Delaware corporation ("**Assignee**"), and **PORT OF CAMAS-WASHOUGAL**, a municipal corporation organized and existing under the laws of the State of Washington ("**Lessor**").

**WITNESSETH:**

**WHEREAS**, Lessor, as lessor, and Assignor, as lessee, entered into that certain Lease, dated June 23, 1998, as amended by that certain CPI Lease Amendment, dated November 2, 2018 (as amended, the "**Lease**"), covering approximately 4.93 acres of land, together with Building 6 and the other buildings and improvements located thereon, located in the Port District in the Town of Washougal, Clark County, Washington (the "**Premises**"), all as more particularly described in the Lease;

**WHEREAS**, Assignor and Assignee are affiliates and Assignor desires to assign the Lease to Assignee, and Assignee desires to accept such assignment and assume all of Assignor's obligations under the Lease, all on the terms and conditions set forth in this Agreement; and

**WHEREAS**, the Lease provides that Lessor will consent to an assignment of the Lease to any affiliate of the Lessee.

**NOW, THEREFORE**, in consideration of the mutual acts, obligations and covenants of the parties, one to the other, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the parties, one to the other, it is mutually understood and agreed as follows:

1. **Defined Terms.** All capitalized terms used but not otherwise defined in this Agreement shall have the meanings ascribed thereto in the Lease.

2. **Assignment of the Lease.** Effective as of the Effective Date, Assignor hereby assigns, sets over and transfers to Assignee, its successors and assigns, the Lease and all of Assignor's right, title and interest in, to and under the Lease and in and to the Premises and the improvements, fixtures, and equipment now located on the Premises, together with all of Assignor's duties, responsibilities and obligations as lessee arising out of or accruing under the Lease.

3. **Acceptance of Assignment and Assumption of the Lease.** Effective as of the Effective Date, Assignee hereby accepts the within assignment of the Lease and all of Assignor's right, title and interest in, to and under the Lease and in and to the Premises and the improvements, fixtures, and equipment now located on the Premises, and Assignee hereby assumes and agrees to perform and comply with all of Assignor's duties, responsibilities and obligations as lessee arising out of or accruing under the Lease before, on or after the Effective Date, including without



limitation, all duties, responsibilities and obligations of Lessee relating to Hazardous Substances and Environmental Laws.

**4. Lessor's Consent to Assignment and Release of Assignor.**

(a) Lessor hereby consents to the within assignment of the Lease; provided, however, that such consent shall not be construed as a consent by Lessor to, or as permitting, any other or further assignment, licensing or subletting by Lessee except in accordance with the Lease.

(b) Lessor, for itself, its successors and assigns, does hereby absolutely and unconditionally release Assignor, its shareholders, principals, agents, directors, officers and employees, and each of their respective heirs, executors, administrators, successors and assigns, from all liabilities and claims of every kind and nature whatsoever arising out of or accruing under the Lease before, on or after the Effective Date; provided, however, that the foregoing shall not release Assignee from any of its duties, responsibilities and obligations as lessee under the Lease. From and after the Effective Date, all references contained in the Lease to "Lessee" shall be deemed to mean and refer to Assignee and its successors and permitted assigns.

(c) Lessor hereby certifies to Lessee that (i) all rent and additional rent payable by Lessee to Lessor as of the date of this Agreement has been fully paid, (ii) to the best of Lessor's knowledge, Lessee is not in monetary or material non-monetary default under the Lease as of the date of this Agreement, and (ii) Lessor has no actual knowledge of any event which, with notice or the passage of time or both would constitute such a default by Lessee.

**5. Subordination.** The Lease and Lessee's rights hereunder are and shall be subordinate and inferior to any ground or underlying lease, deed of trust, or mortgage encumbering all or any portion of the Premises, any advances made on the security thereof and any renewals, modifications, consolidations, replacements, or extensions thereof, whenever made or recorded. Notwithstanding anything to the contrary contained in the Lease, if Lessor enters into any ground or underlying lease, deed of trust, or mortgage encumbering all or any portion of the Premises, Lessor shall provide Lessee with an executed subordination, non-disturbance, and attornment agreement with Lessor's lender or ground or underlying lessor in form reasonably acceptable to Lessee. Lessor represents to Assignee that, as of the date hereof, the Premises are not encumbered by or subject to any ground or underlying lease, deed of trust or mortgage.

**6. Memorandum of Lease.** Promptly following the execution and delivery of this Agreement, Lessor and Assignee shall execute and deliver an amendment to that certain Memorandum of Lease, dated August 24, 1998, between Lessor and Vinings Industries, Inc. and recorded in the Clark County Auditor's Office on September 1, 1998 as Instrument No. 3001105 evidencing the assignment and assumption of the Lease and cause such amendment to be recorded promptly after execution. Assignee shall pay the reasonable cost of preparing and the cost of recording such memorandum.

**7. OFAC.** Each of Assignor and Assignee represents and warrants to Lessor, but only with respect to itself and its affiliates and representatives, neither it nor any of its affiliates or representatives (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury ("OFAC")



pursuant to Executive Order number 13224, 66 Federal Register 49079 (September 25, 2001) (the “**Order**”); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of the OFAC or any other applicable requirements contained in any enabling legislation or other executive orders in respect of the Order (the Order and such other rules, regulations, legislation or orders are collectively called the “**Orders**”); (iii) is engaged in activities prohibited in the Orders; or (iv) has been convicted, pleaded nolo contendere, indicted, arraigned or detained on charges involving money laundering or predicate crimes to money laundering.

8. **Notices to Lessee under the Lease.** From and after the Effective Date, all notices and invoices to be given by Lessor to Lessee under the Lease or otherwise shall be given to Lessee at:

Kemira Water Solutions, Inc.  
1000 Parkwood Circle, Ste. 500  
Atlanta, Georgia 30339  
Attention: Vice President, Manufacturing, P&P, Americas

With copies to:

Kemira Water Solutions, Inc.  
1000 Parkwood Circle, Ste. 500  
Atlanta, Georgia 30339  
Attention: General Counsel, Americas

9. **Brokers.** Assignor, Assignee and Lessor each represents and warrants to the others that it has dealt with no broker or finder in connection with this Agreement. Assignor, Assignee and Lessor each hereby agree to indemnify and hold the other parties harmless from and against any and all claims, liabilities, suits, costs and expenses including reasonable attorneys’ fees and disbursements arising out of any inaccuracy or alleged inaccuracy of its representation above.

10. **Authority.** Lessor, Assignor and Assignee each hereby represents and warrants to the other that it has full right, power and authority to enter into this Agreement and that the person executing this Agreement on behalf of Lessor, Assignor and Assignee, respectively, is duly authorized to do so.

11. **Binding Effect.** Lessor, Assignor and Assignee each acknowledge that this Agreement shall not be binding on either party until Lessor, Assignor and Assignee each have executed this Agreement and a counterpart thereof has been delivered to Assignee.

12. **No Waiver.** This Agreement may not be amended, modified, changed or terminated, nor any of its provisions waived, except by an agreement in writing signed by the party against whom enforcement of any such amendment, modification, change, termination or waiver is sought.

13. **Governing Law.** This Agreement shall be governed by and in accordance with the laws of the State of Washington and venue shall be Clark County, Washington.

14. **Unenforceability.** If any of the provisions of this Agreement, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby, and every provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15. **Effectiveness.** This Agreement may be executed electronically and in one or more counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement. Counterparts may be delivered via facsimile, electronic mail or other transmission method, and any counterpart so delivered will be deemed to have been duly and validly delivered and shall be valid and effective for all purposes.

16. **Headings.** The headings of this Agreement are intended to be for convenience of reference only and shall not define the extent or intent or otherwise affect the meaning of any portion hereof.

17. **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of the parties hereto, their respective legal representatives, successors and permitted assigns.

**IN WITNESS WHEREOF**, Assignor, Assignee and Lessor have duly executed this Agreement as of the date first set forth above.

**KEMIRA CHEMICALS, INC.,** a Georgia corporation, as Assignor

By: \_\_\_\_\_  
Brett Giles, Vice President, Manufacturing,  
P&P, Americas

**KEMIRA WATER SOLUTIONS, INC.,** a Delaware corporation, as Assignee

By: \_\_\_\_\_  
Paul Kimberling, Vice President, Finance &  
Accounting, Americas

**PORT OF CAMAS-WASHOUGAL,** a Washington state public port district organized and existing under the laws of the State of Washington, as Lessor

By: \_\_\_\_\_  
David Ripp, Chief Executive Officer

## FIRST AMENDMENT TO LEASE

This First Amendment to Lease ("Amendment") is made and entered into this day by and between the PORT OF CAMAS-WASHOUGAL, a municipal corporation organized and existing under the laws of the State of Washington, hereinafter called "Lessor", and COLUMBIA RESOURCE CO., L.P., a Washington limited partnership authorized to engage in business and engaging in business in the State of Washington, hereinafter called "Lessee".

### WITNESSETH

WHEREAS, Lessor and Lessee are parties to that certain Lease dated March 20, 2006, hereinafter collectively referred to as the "Lease"; and

WHEREAS, Section 4.B. of the Lease provides for an adjustment of Monthly Base Rent on the tenth (10) anniversary of the Commencement Date of the Lease based on the appraised fair market value of the Premises, an appraisal and calculation of adjusted Monthly Base Rent have been completed, and Lessor and Lessee desire to adjust Monthly Base Rent in accordance with the Lease, confirm the continuation of annual CPI Adjustments, and adjust the tonnage base for Additional Rental Charges;

WHEREFORE, the Lease is hereby amended as follows:

1. Section 4 of the Lease, regarding RENT, is hereby amended pursuant to Section 4.B. of the Lease to provide that effective on April 1, 2018 (the tenth (10) anniversary of the Commencement Date) the Monthly Base Rent shall be \$6,392.00, plus applicable leasehold excise tax. Such adjusted Monthly Base Rent shall be further adjusted on each subsequent anniversary of the Commencement Date during the remainder of the Initial Term by CPI in the manner set forth in Section 4.C. of the Lease.

2. Section 4.D. of the Lease, regarding RENT – Additional Rental Charges, is hereby amended to adjust the tonnage base for Additional Rental from 20,000 tons per calendar year to 26,000 tons per calendar year effective April 1, 2018, and to provide that this amount will be reviewed every five (5) years and adjusted by mutual agreement of the parties based on population growth in the Camas-Washougal service area.

3. Except as expressly modified by the terms of this Addendum, the Lease as previously amended shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the 20<sup>th</sup> day of February, 2018.

PORT OF CAMAS-WASHOUGAL

By: Dave Ripp

Title: Executive Director  
"Lessor"

COLUMBIA RESOURCE CO., L.P.

By: [Signature]

Title: District Manager  
"Lessee"

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF CLARK )

On this 20<sup>th</sup> day of February, 2018, before me personally appeared DAVID RIPP, to be known to be the Executive Director of the Port of Camas-Washougal that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said Port of Camas-Washougal, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

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



Yvette A. Blum  
Notary Public in and for the State of  
Washington, residing at Clark  
My commission expires: 05/02/2020

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF CLARK )

On this 20<sup>th</sup> day of February, 2018, before me personally appeared Derek Ranta to be known to be the District Manager of Columbia Resource Co., L.P., the entity that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

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



D. Michele McDonough  
Notary Public in and for the State of  
Washington, residing at Clark  
My commission expires: May 12, 2020

Subject to option  
Approved 2008

# **LEASE**

**By and Between**

**PORT OF CAMAS-WASHOUGAL**

**and**

**COLUMBIA RESOURCE CO., L.P.**

**Dated March 20, 2006**

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## LEASE

THIS LEASE is made and entered into as of the 20<sup>th</sup> day of March, 2006, by and between the **PORT OF CAMAS-WASHOUGAL**, a municipal corporation organized and existing under the laws of the State of Washington, hereinafter called "Lessor", and **COLUMBIA RESOURCE CO., L.P.**, a limited partnership authorized to engage in business and engaging in business in the State of Washington, hereinafter called "Lessee". Lessor and Lessee are parties to an Option to Lease Agreement dated December \_\_\_, 2005 (the "Lease Option") whereby Lessee shall use the option period set forth in the Lease Option to obtain all permits, licenses, approvals and compliance with Washington State Environmental Policy Act requirements ("Land Use Entitlements") for construction of a Transfer Station (which, as used throughout this Lease shall have the meaning as defined in RCW 70.95) at the Premises (Described below).

### WITNESSETH:

#### SECTION 1. PREMISES LEASED.

For and in consideration of the payment unto it by Lessee of the rentals hereinafter specified, and performance by Lessee of the covenants and obligations hereinafter provided to be kept and performed by Lessee, Lessor does hereby Lease, demise and let unto Lessee real property (collectively, the "Premises") situated within the said Port District in the Town of Washougal, Clark County, Washington, which is more particularly described in **Exhibit "A"** attached hereto and by this reference incorporated as a part hereof.

#### SECTION 2. TERM.

The term of this Lease shall be for an initial period of twenty (20) years, commencing on the first day of the month following Lessee's written notice to Lessor that Lessee intends to exercise the Lease Option (the "Commencement Date") and expiring on the last day of the month immediately preceding the ten year anniversary of the Commencement Date (the "Initial Lease Term"), with Lessee having three (3) options to extend the Lease term, each for an additional ten (10) year period (each, an "Extension Term"), unless sooner terminated as provided by the Lease. In the event Lessee has not exercised the Lease Option on or before December 15, 2007, then this Lease shall be considered null and void and of no further force or effect, except that, as provided in Section 17 below, the Commencement Date and the date by which the Lease Option must be exercised may be extended by Lessee if Lessor is required to conduct an environmental remediation of the Premises. Upon the completion of the Initial Lease Term and any subsequent Extension Term, the Lease terms shall be automatically extended for any additional ten (10) year period, up to a maximum of three (3) such Extension Terms, unless Lessee provides Lessor written notice at least six (6) months

prior to the expiration of the applicable Initial Lease Term or Extension Term that Lessee will not extend the Lease beyond the expiration of the current term.

### **SECTION 3. POSSESSION.**

Lessee shall have the right to possession of the Premises pursuant to this Lease commencing on the Commencement Date. Notwithstanding the foregoing, Lessee shall also have the right of access to the Premises, subject to all the terms of this Lease except the payment of rent, prior to the Commencement Date as may be necessary to secure any Land Use Entitlements (as defined in the Lease Option), and further subject to the following additional conditions:

**A.** Lessee shall cause no liens to be recorded against the title to the Premises by Lessee or any of Lessee's agents, contractors or invitees.

**B.** Except to the extent caused by Lessor's negligence, Lessee agrees to indemnify and hold Lessor harmless from any and all losses or damages which Lessor may incur due to Lessees or Lessee's agents, contractors or invitees presence on the Premises.

### **SECTION 4. RENT.**

Lessee shall pay to Lessor, without any setoff or deduction, in addition to taxes, assessments and other charges required to be paid hereunder by Lessee, rent for the Premises as follows:

**A. Initial Lease Term Base Rent.** For the period commencing on the Commencement Date and ending on the last day of the month immediately preceding the fifth (5th) anniversary of the Commencement Date, Lessee shall pay to Lessor, in advance, the sum of \$5,625.00 per month (the "Monthly Base Rent"). The "Annual Base Rent" shall be the Monthly Base Rent multiplied by twelve (12).

**B. Extension Term Base Rent.** The Monthly Base Rent to be paid by Lessee shall be adjusted on the tenth (10th) anniversary of the Commencement Date and for each Extension Term (each, an "Adjustment Date"). The adjustment to the Monthly Base Rent to be paid by Lessee shall be determined by first establishing the current fair market value of the Premises, as follows:

(1) The parties shall agree to the appointment of an appraiser, who shall be an MAI, twelve (12) months prior to the applicable Adjustment Date. The parties shall share equally in the cost of the appraiser so chosen, and the appraiser shall appraise the fair market value of the Premises, exclusive of any improvements thereon constructed by Lessee. The appraiser shall submit a written report to Lessor and Lessee which shall state the fair market value of the Premises.



(2) If the parties cannot agree on a single appraiser as provided above, then each party shall, at its sole expense, select an MAI appraiser. Each appraiser shall appraise the Premises, exclusive of any improvements thereon constructed by Lessee, and submit a written determination of fair market value, which shall be submitted to the other party no later than ten (10) months prior to the applicable Adjustment Date. The fair market value shall be the average of the two (2) appraisals, unless the discrepancy between the fair market value stated in the two (2) appraisals exceeds five percent (5%).

(3) If the discrepancy between the fair market value stated in the two (2) appraisals exceeds five percent (5%), then the two (2) appraisers shall select a third MAI appraiser no later than nine (9) months prior to the applicable Adjustment Date. The cost of the third appraiser shall be shared equally by the parties. The third appraiser shall appraise the fair market value of the Premises, exclusive of any improvements thereon constructed by Lessee no later than seven (7) months prior to the applicable Adjustment Date. After all three (3) appraisals have been completed, the fair market value shall be determined by:

- (i) the agreement of a majority of the three (3) appraisers, reflected in a writing signed by said majority and submitted to the parties; or
- (ii) if a majority are unable to agree upon a fair market value, then by calculating the average of the three (3) appraisals and submitting said calculation to the parties.

Upon the determination of the fair market value of the Premises as herein described, the Monthly Base Rent to be paid as of the applicable Adjustment Date shall be determined by calculating an annual return to Lessor in the amount of ten (10) percent per annum based upon the current fair market value of the Premises as established by this section.

**C. CPI Adjustment To Monthly Base Rent.** In addition to the adjustment to the Monthly Base Rent set forth above for each Extension Term, the Monthly Base Rent shall be subject to adjustment on the respective fifth (5th), sixth (6th), seventh (7th), eighth (8th) and ninth (9th) anniversary of the commencement of the Initial Lease Term and on the fifth (5th), sixth (6th), seventh (7th), eighth (8th) and ninth (9th) anniversary of the commencement of each Extension Term (each a "CPI Adjustment Date"), until the Monthly Base Rent is adjusted pursuant to paragraph B above, as follows:

(1) The Consumer Price Index for All Urban Consumers for Portland-Vancouver, All Items (1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics ("Index") which is published nearest, but preceding, the Commencement Date (the "Beginning Index") shall be compared with the Index which is published nearest, but preceding, each CPI Adjustment Date (the "Adjustment Index").

(2) The Monthly Base Rent payable for the following year (until the next CPI Adjustment Date) shall be set by multiplying the Monthly Base Rent provided for in Section 4.A. of this Lease by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index.

(3) If the United States Department of Labor, Bureau of Labor Statistics at any time during the term of this Lease ceases to publish the Consumer Price Index for All Urban Consumers for All Items for Portland-Vancouver, designated as "Portland-Vancouver " in the publication "Consumer Price Indexes Pacific Cities and U. S. City Average" for January, 1996 (the "CPI Publication"), then the Consumer Price Index for All Urban Consumers for All Items for cities with a population of 1,250,000 or more in the Western United States, designated as "West-A" in the CPI Publication, shall be used. If the United States Department of Labor, Bureau of Labor Statistics at any time during the term of this Lease ceases to publish the Consumer Price Index for All Urban Consumers for All Items for both Portland-Vancouver and cities with a population of 1,250,000 or more in the Western United States, then the Consumer Price Index for All Urban Consumers for All Items, U.S. City Average, designated as "U. S. City Average" in the CPI Publication, shall be used.

(4) If any such Index is not published at least as frequently as semi-annually, then such Index shall be deemed not to be published and, accordingly, unavailable. If the period as to which any Adjustment Index is computed is changed from that used to compute the Beginning Index, then the Adjustment Index shall be computed by averaging or interpolating from such Index and, thereby, computing what such Index would have been for a period comparable to the Beginning Index.

(5) If the Index is changed so that the base year differs from that used as of the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of this Lease, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

**D. Additional Rental Charges.** In addition to the Monthly Base Rent described above, Lessee shall pay to Lessor additional monthly charges, as follows:

(1) Within thirty (30) days after the end of each calendar year, Lessee will provide detailed reports of the tonnage delivered to the Transfer Station for the previous calendar year. If, in any calendar year, total delivered tonnage exceeds 20,000 tons, Lessee shall pay the Lessor an additional charge determined by converting the number of tons collected in excess of 20,000 to a percentage of 20,000 and multiply the Annual Base Rent (as it may have been adjusted) by that percentage, which shall then be divided by one (1) plus one-half (1/2) of the current Leasehold Excise Tax rate applicable (pursuant to RCW 82.29A) to this Lease. For example, if total tons delivered for a year are 22,000, the excess over 20,000 would be converted to the percentage 10%. The Annual Base Rent (in year One) of \$67,500.00 would be multiplied by 10%,

and then divided by 1.0642 (the current Leasehold Excise Tax Rate is 12.84%), and the amount of the additional charge would be \$6,342.79. Any amounts due under this clause in the first year or any partial year will be prorated.

(2) Except for loads covered under paragraph 4.D.(3) below, all incoming loads of Solid Waste (as defined in RCW 70.95) to the Transfer Station must be weighed. Scale logs and monthly summaries and any other documentation as may be reasonably required by the Lessor shall be attached as support for calculation of the total payment to Lessor. Lessor reserves the right to require 24-hour video surveillance of the scales.

(3) Lessee reserves the right to accept small public loads of Solid Waste and track such loads by volume instead of weight. For the purposes of determining the total payments required under paragraph 4.D.(1), all loads tracked by volume shall be deemed to have a scale weight of 150 pounds per cubic yard.

(4) Lessee shall deliver any additional charge required under this Section 4.D., together with supporting calculations, to Lessor no later than March 1 of each year.

**E. Leasehold Excise Tax.** In addition to the rental and charges specified above, Lessee shall pay to Lessor with each monthly rental payment the Washington State Leasehold Excise Tax on the Premises (if any), which tax is currently 12.84% of the monthly rental payment. Rental, the additional charges described herein, and Leasehold tax payments are payable in advance on the 1<sup>st</sup> day of each month during the term of this Lease and any Extension Term.

**F. Late Charge.** Lessee agrees to pay a late charge, in an amount equal to 5% of the monthly rental payment then due, with any rental or Leasehold tax payment which is not received in full by Lessor within ten (10) days of the due date.

## **SECTION 5. TAXES AND UTILITIES.**

Lessee shall pay all taxes and other public charges of every kind and nature and all assessments, charges for heat, light, water, sewer, garbage disposal, and other public utilities which shall, during the term of this Lease, be charged or imposed upon the Premises or upon the land or any buildings, improvements or other structures situated thereon. Lessee shall pay the Leasehold tax, as provided in RCW 82.29.A, and all taxes, assessments, and other expenses arising from ownership or operation of the Premises, or Lessee's business, or required to make the property conform to government regulations, or imposed upon Lessor due to the existence of this Lease.

Lessee shall pay and discharge promptly, as the same becomes due and before delinquency, the taxes, assessments and other charges as described herein. Lessee shall pay, upon demand, the taxes, assessments and other charges on behalf of Lessor, or if this is not permitted by law, Lessee shall reimburse Lessor for the amount

of any such tax, assessment and other charge paid by Lessor, provided that Lessee shall have the right to contest any such tax or assessment at its own expense as provided in Section 14 below.

## **SECTION 6. USE OF PREMISES.**

Lessee covenants and agrees as follows:

**A.** To use the Premises solely for the operation of a waste transfer station and material recovery and other uses related or incidental thereto. Lessee shall not use the Premises for other purposes without Lessor's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

**B.** Not to use or occupy the Premises, or permit the Premises to be used or occupied, for other than legal purposes, or in a manner which shall violate any certificate of occupancy in force relating to any building or improvement hereafter erected thereon;

**C.** To conform to and abide by all lawful rules, laws and regulations in connection with the use of said Premises and the operation of Lessee's business thereon, and not to permit said Premises to be used in violation of any lawful rule, law, regulation or other authority; and

**D.** To keep the Premises in good condition in conformance with the typical operations contemplated for the Premises.

**E.** To timely provide for the pick up and disposal of blowing litter and debris in and around the Premises that occur as a result of the Lessee's use of the Premises as a Transfer Station or from Lessee's use of any road within the Industrial Park.

## **SECTION 7. LANDSCAPING AND FENCING.**

Lessee shall present a drawing to Lessor for approval (which shall not be unreasonably withheld, conditioned or delayed), depicting a landscaping and fencing plan for the Premises. These plans shall reasonably attempt to obscure the Premises from view from both Grant Street to the north, real properties to the east and west, and walkers/hikers using the earthen levee to the south. In addition, plantings shall be made by Lessee to reasonably abate noise from the Premises. Lessee shall further incorporate earthen berms into the site plan for the purposes herein described and, in addition, install fencing to prevent non-permitted use of the Premises. In the event Lessor does not approve of Lessee's site plan, the parties agree to submit their dispute first to mediation and/or arbitration prior to any other legal proceedings.

## **SECTION 8. NO REPRESENTATION.**

Lessor represents and warrants that it has no knowledge of any spill of hazardous materials or the presence of any hazardous materials on the Premises as of the date of execution of this Lease. Lessee has leased the Premises after an examination of the land and subsurface conditions and without any representation on the part of Lessor except as set forth in this paragraph. Lessee assumes the sole responsibility for the condition, operation, maintenance and management of the Premises, with the exception noted in Section 17 of this Lease.

## **SECTION 9. IMPROVEMENTS.**

**A.** Lessee shall have the right and privilege, at its own cost and expense, to construct on any part or on all of the Premises, at any time and from time to time such buildings and improvements as Lessee shall from time to time determine, provided that the same shall be in compliance with all then applicable building codes and ordinances, Lessor's current enacted standards of industrial development, and RCW 53.08.040.

**B.** Lessor shall not be responsible for any obligation or liability incurred by Lessee with respect to the development of the Premises. Lessor does not require Lessee to construct any buildings or improvements on the Premises and any construction of buildings or improvements on the Premises shall not be performed by Lessee as an agent for Lessor. However, if Lessee does construct any such buildings or improvements, Lessee shall notify Lessor in writing in advance of the date upon which Lessee shall commence construction on the Premises and Lessor shall have the right to post notices of non-responsibility with respect to liens arising out of such construction. If Lessee should fail to so notify Lessor, Lessee shall reimburse Lessor for all loss whatsoever, suffered by Lessor because of Lessee's failure to notify Lessor as required in this Section 9.B.

**C.** Lessee may, at its option and at its own cost and expense, at any time and from time to time, make such alterations, changes, replacements, improvements, and additions in and to the Premises, and the buildings and improvements constructed thereon, as it may deem desirable, including the Lessee's removal of any of its property on the Premises.

**D.** Until the expiration or sooner termination of the Initial Lease Term and all Extension Terms, title to any buildings or improvements situated and constructed by Lessee on the Premises and any building, equipment and other items installed thereon by Lessee and any alteration, change, or addition thereto as well as title to fixtures and articles of personal property attached to or used in connection with the demised Premises, shall remain solely in Lessee.

**E.** Lessee shall quit and surrender the Premises and all buildings and improvements thereon in good condition and repair, normal wear and tear and casualty excepted, on the last day or sooner termination of this Lease, provided that Lessee shall

have a period of up to twelve (12) months from the termination of the Lease for the removal of any portable buildings, trade fixtures, personal property, or equipment added to, or on, the Premises by Lessee at Lessee's cost so long as Lessee pays for any damage to the Premises caused by such removal. During this 12-month period, Lessee shall remain obligated for fifty percent (50%) of the Monthly Base Rent should it utilize this provision for removal of portable buildings, trade fixtures, personal property, or equipment which obligation shall cease at the completion of the removal of property from the site and notification to Lessor. After such period, any fixtures and all other items mentioned in Section 9-D herein which remain on the Premises at such termination shall become the property of Lessor. Lessee agrees to remove, at its cost and expense, any building, improvement, fixture or other item mentioned in Section 9-D, at the expiration of this Lease and at the request of Lessor, provided said request is made in writing one hundred twenty (120) days prior to the date of termination of this Lease. In the alternative, upon presentation to Lessee of a written removal request from Lessor, Lessee may, at its own cost and expense, leave any or all of such items on the Premises after making such alterations, changes and improvements, if necessary, to render said building, improvement, fixture or other item mentioned in Section 9-D in compliance with all then applicable building codes and ordinances, Lessor's current enacted standards of industrial development, and RCW 53.08.040. Lessee shall have such reasonable time as is necessary to complete such alterations, changes and improvements.

#### **SECTION 10. ROADWAY ACCESS.**

Lessor covenants that the Premises fronts onto a public road providing access to Lessee and any of Lessee's agents, employees, licensees, customers and invitees and the general public. Lessee shall have a right of way in common with others over and across private roads and streets giving access to the Premises, which right of way shall terminate at such time as such private roads and streets are dedicated to the public.

#### **SECTION 11. REPAIR AND MAINTENANCE.**

At its own cost and expense and at all times during the Lease term, Lessee shall keep and maintain or cause to be kept and maintained, all items connected to or belonging to said Premises, such as sidewalks, pipes, sewer connection (but only to the point of connection or tap-in point at the property line of the Premises), etc., at any time constructed, in repair and good condition (ordinary wear and tear and casualty excepted). Lessor shall not be required to furnish any services or facilities or to make any improvements, repairs, or alterations in or to the Premises during this Lease term, except as may be otherwise specifically agreed to herein or by separate agreement.

#### **SECTION 12. DAMAGE/DEMOLITION.**

Lessee shall keep the Premises in good condition in conformance with the typical operations contemplated for the Premises except as necessary for the demolition or

construction of any buildings or improvements thereon in the manner provided herein. Lessee shall use all reasonable precaution to prevent damage, or injury to the land, buildings, or improvements on the Premises.

### **SECTION 13. LIENS.**

Lessee shall keep the fee estate of the Premises free and clear of all liens, including mechanics', materialmen's or other liens for work or labor done, and liens for services, materials, appliances and power performed, contributed, furnished or used or to be used in or about the Premises for or in connection with any operations of Lessee or any alteration, improvement, repair, or addition which Lessee may make, permit, or cause to be made or any work or construction by, for, or permitted by Lessee on or about the Premises.

Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of Lessor, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer, or materialman, for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to, or repair of the Premises or any part thereof.

In the event that any lien, charge, or order for the payment of money is filed against Lessor or any portion of the Premises as a result of Lessee's operations, Lessee shall, at its own cost and expense, cause the same to be discharged of record or bonded or otherwise secured to Lessor's reasonable satisfaction within ninety (90) days after written notice from Lessor to Lessee of the filing thereof; and Lessee shall indemnify and save harmless Lessor against and from all costs, liabilities, suits, penalties, claims, and demands, including reasonable counsel fees, resulting therefrom.

Appropriate language shall be inserted in any sublease to insure that at all times Lessor's interest shall not be encumbered by any activities of sublessees on the Premises.

### **SECTION 14. CONTESTING LIENS AND TAXES.**

Lessee may contest any lien of the nature set forth in Section 13 hereof or any tax, assessment, or other charge which Lessee shall pay under Section 5 hereof, provided that Lessee notifies Lessor, in writing, of its intention to do so within ninety (90) days of Lessee's notice of the filing of such lien or within sixty (60) days of Lessee's receipt of notice of the filing of a lien or the assessment of such tax, assessment, or other charge; and provided further that Lessee posts a bond or other security in a manner reasonably satisfactory to Lessor, prior to the contest, in an amount equal to the amount of the contested lien or tax, assessment, or other charge.

Within sixty (60) days of the determination of the validity thereof by a final, non-appealable court order, Lessee shall satisfy and discharge such lien or pay and discharge such tax, assessment, or other charge and all penalties, interest, and costs in

connection therewith. Satisfaction and discharge of any such lien shall not be delayed until execution is had on any judgment rendered thereon, nor shall the payment and discharge of any such tax, assessment, or other charge be delayed until sale is made of the whole or any part of the Premises on account thereof. Any such delay beyond sixty (60) days shall be a default of Lessee hereunder.

In the event of any such contest, Lessee shall protect and indemnify Lessor against all loss, expense, and damage resulting therefrom.

## **SECTION 15. INSURANCE.**

**A.** Lessee covenants and agrees to procure and keep in force during the Lease term, at Lessee's expense, public liability and property damage insurance to protect and insure Lessor and Lessee against liability incident to the use, condition or maintenance of the Premises or resulting from any accident or occurrence in or about the Premises, including death, at any time resulting therefrom, in amounts not less than a reasonable and prudent Lessor or Lessee would require at the time. At the commencement of the Lease term, Lessee shall provide such general liability insurance with limits not less than \$1,000,000.00 against the claim of any one person; \$3,000,000.00 against the claim of more than one person in a single casualty. Such insurance policy shall include Lessor as an additional insured. Lessee shall furnish Lessor with certificates of insurance evidencing such coverage at the commencement of the Lease term and thereafter not less than ten (10) days prior to the expiration of any such policy. Such insurance shall not be reduced, canceled or substantially amended without thirty (30) days advance written notice to Lessor.

**B.** Lessee shall take out and keep in force at all times during the Lease term standard fire and extended coverage insurance, including coverage against vandalism and malicious mischief and, if available at a reasonable cost and immediately upon availability, earthquake and flood coverage, on all buildings and improvements constructed on the Premises on a full replacement value basis with the amount of insurance sufficient to prevent the operation of the co-insurance provisions in the policy. Such insurance policy shall name Lessor as an additional insured.

The parties agree that "full replacement value" may be re-evaluated by Lessor and Lessee upon Lessor's written request every three (3) years, and that the replacement value of Lessee's improvements shall be established to conform to the Marshall Swift Guidelines (or any comparable index agreed to by both parties) which are in effect at the time of each such evaluation. The parties agree that for the purposes of the initial three (3) year period, the full replacement value of the improvements shall be equal to the capitalized improvement cost of Lessee's improvements on the Premises.

Lessee shall furnish Lessor with a certificate of insurance to evidence that the insurance is in effect and in an amount sufficient to satisfy this paragraph. Such



insurance shall not be reduced, canceled or substantially amended without thirty (30) days advance written notice to Lessor.

#### **SECTION 16. INDEMNITY.**

Lessee shall indemnify and save harmless Lessor from and against any and all liability, claims, damage, penalties, or judgments arising from any loss, injury, death or damage to person or property sustained by any person in or about the Premises resulting from the act or omission of Lessee, Lessee's officers, agents, employees, contractors, and sublessees, or of any occupant, visitor, or user of any part of Lessee's Premises, except to the extent such liability arises as a result of Lessor's breach of this Lease or the intentional misconduct or negligence of Lessor or its agents, or employees. Lessee further covenants and agrees to indemnify and hold Lessor harmless against the claims of all and every person whomsoever arising out of or in any way connected with Lessee's occupation or use of the Premises, except for claims by Lessor's employees or agents for injuries sustained during the course of employment through no fault of Lessee or except to the extent such liability arises as a result of Lessor's breach of this Lease or the intentional misconduct or negligence of Lessor or its agents, or employees. Lessee shall pay all attorney's fees and other expenses incurred by Lessor in defending any and all suits which may be brought against Lessor or in which Lessor may be impleaded with others upon any of the aforementioned matters, except as may result from the acts set forth in the paragraph immediately below.

Except for Lessor's breach of this Lease or the intentional misconduct or negligence of Lessor or its agents or employees, Lessor shall not be responsible for or liable for, and Lessee hereby waives all claims against Lessor for any damage or injury to any person or to any property on or about the Premises subject to this Lease, and for liability, costs and reasonable expenses arising out of any default by Lessee in observing any condition or covenant of this Lease, except to the extent such liability arises as a result of Lessor's breach of this Lease or the intentional misconduct or negligence of Lessor or its agents, or employees.

Lessee covenants and agrees to reimburse Lessor for all costs or expenses of repair or replacement of any of Lessor's property damaged or destroyed as a result of Lessee's use or occupation of the Premises or use of Port property or facilities. Lessee further covenants and agrees to carry liability insurance protecting itself and Lessor from liability arising out of this covenant.

#### **SECTION 17. HAZARDOUS SUBSTANCES - LESSOR'S OBLIGATIONS.**

Lessor agrees to indemnify, defend and save harmless Lessee from and against any and all liability, claims, damage, penalties, or judgment arising from any loss, injury or claim from any and every person whomsoever, including cleanup or excavation costs or penalties imposed by any governmental agency, arising out of or in any way connected with the use, disposal, treatment, generation, storage or sale, any substances designated as, or containing components designated as hazardous, dangerous, toxic or

harmful (collectively referred to as "hazardous substances") upon the Premises which occurred prior to the execution date of this Lease. In addition, Lessor agrees to pay all attorney's fees and other expenses incurred by Lessee in defending any and all suits which may be brought against Lessee or in which Lessee may be impleaded, which relate to any of the matters aforementioned in this paragraph.

Lessee shall cause a Phase II Environmental Assessment to be conducted on the Premises prior to the Commencement Date. Lessor and Lessee agree to each pay for one half (1/2) of all costs and expenses of the Phase II Environmental Assessment. The results of the Phase II Environmental Assessment shall presumptively determine the extent and existence of any hazardous substances on or under the Premises as of the Commencement Date of the Lease. In the event that the Phase II Environmental Assessment reveals that an environmental remediation is necessary in order to assure that the Premises complies with all applicable environmental regulatory controls and laws, Lessee may at its option either: (a) terminate this Lease, in which case Lessor shall refund to Lessee one half (1/2) of all payments made by Lessee to Lessor under the Lease Option, or (b) require that Lessor complete such remediation at its sole cost and expense prior to the Commencement Date, and in such event the Commencement Date and the date by which Lessee must exercise its Lease Option shall be extended by such time as is reasonably necessary to complete the required remediation and Lessor obtains written evidence of compliance is delivered to Lessee.

#### **SECTION 18. HAZARDOUS SUBSTANCES – LESSEE'S OBLIGATIONS AND HANDLING OF MODERATE RISK WASTES**

Lessor acknowledges that a component of Lessee's use of the Premises is the collection, transportation, transfer, and processing of "moderate risk wastes" as defined by WAC 173-350-100 in cooperation with Clark County, and further acknowledges that Lessee cannot reasonably maintain control over whether some of the waste collected, transported, transferred or processed at the Premises may include components designated as hazardous, dangerous, toxic, or harmful under WAC 173-350 et. seq. (collectively referred to as "hazardous substances"). Lessee covenants that it shall not knowingly, without prior notice in writing to Lessor, keep on or about the Premises, for use, disposal, treatment, generation, storage or sale, any hazardous substances. For the purposes of this Lease, the handling, storage, treatment, transportation and/or disposal of moderate risk wastes shall not give rise to Lessee's obligations with respect to "hazardous substances", except to the extent of Lessee's violation of any federal, state, and local laws and regulations concerning moderate risk wastes. With respect to any hazardous substances on or about the Premises, Lessee shall:

**A.** Store upon the Premises only those quantities of hazardous substances which are reasonably necessary for the operation of Lessee's facility, provided that the unintentional or inadvertent storage of hazardous substances shall not in and of itself be a default under this Lease so long as Lessee complies with the remaining provisions of this Section 18;

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

C. Timely submit to Lessor upon Lessor's request, true and correct copies of all reports, manifests and identification numbers at the same time as they are required to be and/or submitted to the appropriate governmental authorities;

D. Within thirty (30) days of Lessor's written request, or such longer period as may be reasonably necessary, submit written reports to Lessor regarding Lessee's use, storage, treatment, transportation, generation, disposal or sale of hazardous substances and provide evidence satisfactory to Lessor of Lessee's compliance with the applicable governmental regulation, to a maximum of three (3) requests per calendar year;

E. Allow Lessor or Lessor's agents or representatives to come on the Premises at all reasonable business hours and upon reasonable advance notice to check Lessee's compliance with all applicable governmental regulations regarding hazardous substances;

F. Comply with minimum levels, standards or other performance standards or requirements which may be set forth or established for hazardous substances (if minimum standards or levels are applicable to hazardous substances present on the Premises, these levels or standards shall be established by an on-site inspection by the appropriate governmental authorities and shall be set forth in an addendum to this Lease); and

G. Comply with all governmental rules, regulations and requirements regarding the proper and lawful use, sale, transportation, generation, treatment and disposal of hazardous substances.

Subject to the establishment of Lessee's default under this Section, any and all reasonable costs incurred by Lessor and associated with Lessor's inspection of Lessee's Premises and Lessor's monitoring of Lessee's compliance with this section, and including Lessor's reasonable attorneys' fees and costs, shall be additional rent and shall be due and payable to Lessor immediately upon demand by Lessor.

Subject to Section 17 above, Lessee shall be fully and completely liable to Lessor for any and all cleanup costs and any and all other charges, fees, penalties (civil and criminal) imposed by any governmental authority with respect to Lessee's use, disposal, transportation, generation and/or sale of hazardous substances, in or about the Premises, or violation of any federal, state, or local law or regulation concerning moderate risk wastes, except to the extent such liability arises as a result of Lessor's breach of this Lease or the intentional misconduct or negligence of Lessor or its agents, or employees.

Subject to Section 17 above, Lessee shall indemnify, defend and save Lessor harmless from any and all of the costs, fees, penalties and charges assessed against or imposed

upon Lessor (as well as Lessor's attorneys' fees and costs) as a result of Lessee's use, disposal, transportation, generation and/or sale of hazardous substances, or violation of any federal, state, or local law or regulation concerning moderate risk wastes, except to the extent such liability arises as a result of Lessor's breach of this Lease or the intentional misconduct or negligence of Lessor or its agents, or employees.

In the event Lessee shall fail to comply with the provisions of this Section concerning the handling, treatment or storage of hazardous substances, or violates any federal, state, or local law or regulation concerning moderate risk wastes, Lessee shall notify Lessor and, within ten (10) days of Lessee having knowledge of such failure or violation, take all necessary steps to commence an investigation and assessment of the extent of such default and shall promptly and diligently pursue to completion all actions necessary to remedy such default.

Lessee shall cover any and all damage associated with any default of this Section, or violation of any federal, state, or local law or regulation concerning moderate risk wastes, including, but not limited to cleanup costs and charges, civil and criminal penalties and fees, loss of business and sales by Lessor and other lessees of the Premises, and any and all damages and claims asserted by third parties and Lessor's attorneys' fees and costs, except to the extent such costs or damages arises as a result of Lessor's breach of this Lease or the intentional misconduct or negligence of Lessor or its agents, or employees.

## **SECTION 19. CASUALTY DESTRUCTION.**

**A.** In the event that any building or improvement on the Premises is damaged or destroyed during the term of this Lease, Lessee shall have the option of either using the insurance proceeds and promptly repairing and restoring the building or improvement in a manner substantially similar to the building or improvement existing immediately prior to such occurrence and as nearly similar to it in character as shall be practicable, or Lessee may also choose to terminate this Lease.

**B.** Lessee shall not be released from any obligation to pay Lessor any rental accrued prior to the date of termination.

**C.** For purposes of Section 19-B, the date of termination shall be that date upon which Lessor receives written notification from Lessee of its intention not to repair and restore the damaged or destroyed building or improvement, unless this Lease is otherwise terminated prior to such date by virtue of Lessor's exercise of its remedies hereunder or the expiration of the Initial Lease Term or Extension Term, as the case may be, without such term being extended as provided in this Lease.

**D.** In the event of termination by Lessee, rent and all other Lessee obligations shall be prorated to the date of such termination and, if such request is received within fourteen (14) days after Lessor has received Lessee's notice to terminate, Lessee shall, at the request of Lessor, and at Lessee's own cost and

expense, comply with the requirements of this Lease for Lessee's surrender of the Premises.

## **SECTION 20. EMINENT DOMAIN.**

Any exercise of the power of eminent domain of the Premises by Lessor shall be deemed a breach of this Lease and shall subject Lessor to damages available to Lessee under Washington law. In the event that the whole or any part of the Premises be taken by virtue of eminent domain by a party other than Lessor, or pursuant to negotiations under the threat of the power of eminent domain, or for any public or quasi-public use, Lessor and Lessee shall share in the compensation and award in accordance with the following provisions:

**A.** If the whole of the Premises shall be taken, then this Lease and the Lease term shall cease; and

(1) Lessor shall first receive a sum equal to the fair market value of the land taken at time of the commencement of the Lease, considered as vacant, unencumbered and unrestricted land as of the date of taking, together with interest thereon from the date of taking to the date of payment at the rate paid on the award, and if such value shall be officially determined and stated in the condemnation proceedings, then the amount thereof shall control for the purposes of this provision.

(2) Lessee and its sublessees, if any, in such case may make any claim permitted under applicable law and shall receive and retain the remainder of the award and interest.

**B.** If only a part of the Premises shall be taken by a party other than Lessor, then:

(1) Lessor shall first receive a sum equal to the fair market value of the land taken at time of the commencement of the Lease, considered as vacant, unencumbered and unrestricted land, as of the date of taking plus the severance damage, if any, to the remaining part of the Premises, considered as vacant, unencumbered and unrestricted land as of the date of taking, with any interest thereon from the date of taking to the date of payment at the rate paid on the award, and if such value shall be officially determined and stated in the condemnation proceedings, then the amount thereof shall control for the purposes of this provision.

(2) Lessee and its sublessees, if any, in such case may make any claim permitted under applicable law and shall receive and retain the remainder of the award and interest.

(3) If the remaining part of the Premises not so taken cannot be adequately restored, repaired or reconstructed so as to enable Lessee, in Lessee's sole judgment, to operate its business in the same manner and with the same efficiency, or in the event the proceeds received by Lessee from the eminent domain proceeding are

insufficient to permit such restoration, then Lessee shall have the right, to be exercised by written notice to Lessor within sixty (60) days after the date of taking, to terminate this Lease as to such remaining part of the Premises not so taken on a date to be specified in said notice not earlier than the date of such taking, in which case Lessee shall pay and satisfy all rent due and accrued hereunder up to such date of such termination and all other charges and shall perform all of the obligations of Lessee hereunder to such date and thereupon this Lease and the Lease term shall cease.

(4) If the Lease is not terminated as hereinabove provided, then, as to the Premises not taken in such condemnation proceeding, Lessee shall proceed at its own cost and expense, to make an adequate restoration, repair or reconstruction of the part of the building not taken or to rebuild a new building upon the part of the land not taken. If the part of the award so paid to Lessee shall be insufficient fully to pay for such restoration, repair or reconstruction, Lessee shall nevertheless pay the excess cost thereof, and shall fully pay for all such restoration, repair or reconstruction, and complete the same to the satisfaction of Lessor and free from all liens, including but not limited to mechanic's or materialmen's liens and security interests of all kinds, and shall at all times save Lessor free and harmless from any and all such liens.

(5) If the Lease is not terminated as hereinabove provided, an equitable proportion of the monthly rent herein provided shall be abated, effective from the date of taking, according to the nature and extent of the permanent injuries to the Premises and improvements thereon.

(6) In case of a second or any other additional partial taking or takings from time to time, the provisions hereinabove contained shall apply to each partial taking.

## **SECTION 21. ASSIGNMENT/SUBLETTING.**

Except as set forth below, Lessee shall not assign this Lease nor sublet the whole or any part of the Premises without the written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. Lessee shall have the absolute right to sublet, assign or otherwise transfer its interest in the Lease to the City of Washougal or to an affiliate or any parent or operating subsidiary of Lessee or subsidiary of the parent of Lessee, or to a corporation with which Lessee may merge or consolidate, without Lessor's approval, written or otherwise, provided any such assignment or subletting is made in good faith and not for the primary purpose of avoiding the restrictions on assignments or subletting set forth in the Lease. The Lease shall contain no provision restricting or referring in any manner to a change in control or change in shareholders, directors, management or organization of Lessee, or any subsidiary or affiliate of the parent of Lessee, or to the issuance, sale, purchase or disposition of the shares of Lessee, or any subsidiary or affiliate of the parent of Lessee. Lessee shall provide Lessor written notice of any such assignment or sublease within thirty (30) days of the transaction. Except for an assignment or sublease to the City of Washougal, any such assignment or sublease shall not relieve this Lessee from the responsibility of

paying the rentals accruing under this Lease, as provided in Paragraph 4 hereof, or from keeping and performing all other obligations herein imposed upon and assumed by it. It is understood and agreed that any consent by Lessor to any assignment or subletting by Lessee shall not be considered or construed to be a consent to any subsequent assignment or subletting nor as a waiver of the right of Lessor to refuse to consent to any subsequent assignment or subletting.

## **SECTION 22. ATTORNMENT.**

Lessee shall cause each sublease respecting the Premises to contain a provision to the effect that if by reason of Lessee's default in the performance of any of the covenants, provisions or other terms of this, the underlying Lease, or for any other reason, this Lease, including Lessee's interest hereunder, is terminated by summary proceedings or otherwise in accordance with the terms of this Lease, the sublessee shall then attorn to Lessor and shall recognize Lessor as sublessee's Lessor under the sublease. Each such sublease shall further provide that the sublessee shall execute and deliver, at any time after termination of this Lease, including Lessee's interest therein, on the request of Lessor, any instrument reasonably necessary or appropriate to evidence such attornment.

## **SECTION 23. NON-DISTURBANCE.**

If for any reason this Lease and the leasehold estate of Lessee hereunder is terminated by Lessor by summary proceedings or otherwise in accordance with the terms of this Lease, Lessor covenants and agrees that such termination of this Lease shall not result in a termination of any sublease affecting the Premises and that they shall all continue for the duration of their respective terms as a direct Lease between Lessor hereunder and the sublessee thereunder, with the same force and effect as if Lessor hereunder had originally entered into such sublease as Lessor thereunder. Lessor shall, upon request, execute, acknowledge and deliver such agreement evidencing and agreeing to the foregoing as each sublessee shall require.

## **SECTION 24. QUIET ENJOYMENT.**

A. Lessee, upon paying the rent and all other sums and charges to be paid by it as herein provided, and observing and keeping all covenants, warranties, agreements, and provisions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the Lease term, subject to the provisions herein, without hindrance by Lessor.

B. Lessor warrants that it has fee simple title to the Premises and the power and authority to execute this Lease and to carry out and perform all covenants to be performed by it hereunder.

## **SECTION 25. ACCESS.**

Upon reasonable advance notice to Lessee and during reasonable business hours, Lessor or Lessor's agents and designees shall have the right to enter upon the Premises at all reasonable times to examine the Premises and, upon at least forty eight (48) hours notice during the last six (6) months of the term hereof, to exhibit the Premises to prospective purchasers and prospective lessees. Each such entry shall be at Lessor's own risk and Lessor shall defend, indemnify and hold Lessee harmless from any damages or liability incurred by Lessee as a result of Lessor's entry, or the entry by Lessor's agents and designees, on the Premises.

## **SECTION 26. PERMITS.**

Lessor shall, at the request of Lessee, cooperate with and join with Lessee in obtaining use, occupancy, and building permits and in meeting other governmental requirements in connection with Lessee's use of the Premises, provided that all Lessor's expenses and costs shall be paid by Lessee.

## **SECTION 27. CURE BY LESSOR.**

If Lessee shall default in the performance of any non-monetary provision under this Lease, beyond any notice and cure periods, Lessor may, at its option and following written notice that it will commence to take such action, perform the same for the account and at the expense of Lessee. Upon notification to Lessee of the cost thereof to Lessor, Lessee shall promptly reimburse Lessor the amount of that cost, plus interest at the rate of twelve (12%) percent per annum from the date of incurring of such cost to the date of repayment. In the event of such default by Lessee, Lessor may enter upon the Premises for the purpose of causing such provisions to be fulfilled. Such entry shall not be deemed an eviction of Lessee. Lessor's action hereunder shall not be deemed a waiver of Lessee's default. Lessor, at its option, without relinquishing any remedy or right, may separately commence proceedings against Lessee for reimbursement of Lessor and for any other remedies for breach of this Lease.

## **SECTION 28. CURE BY LESSEE.**

If Lessor, after written request for performance by Lessee, shall default in the performance of any provision under this Lease, Lessee, at its option, may perform the same for the account and at the expense of Lessor. Upon notification to Lessor of the cost thereof to Lessee, Lessor shall promptly reimburse Lessee the amount of that cost, plus interest at the rate of twelve (12%) percent per annum from the date of incurring of such cost to the date of repayment.



## **SECTION 29. BANKRUPTCY AND INSOLVENCY.**

If, after the commencement of the Lease term:

A. Lessee then having the title to the Leasehold estate created hereunder shall while having such title be adjudicated a bankrupt or adjudged to be insolvent; or

B. A receiver or trustee shall be appointed for Lessee's property and affairs; or

C. Lessee shall make an assignment for the benefit of creditors or shall file a petition in bankruptcy or insolvency or for reorganization or shall make application for the appointment of a receiver; or

D. Any execution or attachment shall be issued against Lessee or any of Lessee's property, whereby the Premises or any buildings or improvements thereon shall be taken or occupied or attempted to be taken or occupied by someone other than Lessee, except as may herein be permitted, and such adjudication, appointment, assignment, petition, execution, or attachment shall not be set aside, vacated, discharged, or bonded within one hundred twenty (120) days after the issuance of the same, then a default hereunder shall be deemed to have occurred so that the provisions of Section 30 hereof shall become effective and Lessor shall have the rights and remedies provided therein. Notwithstanding anything to the contrary herein contained, upon the occurrence of a default pursuant to this Section 29, if the rent due and payable hereunder shall continue to be paid and the other covenants, provisions and agreements of this Lease on Lessee's part to be kept and performed shall continue to be kept and performed, no event of default shall have been deemed to have occurred and the provisions of Section 30 hereof shall not become effective.

## **SECTION 30. DEFAULT.**

A. In the event any one or more of the following events shall have occurred and shall not have been remedied as hereinafter provided:

(1) The occurrence of any event set forth in Section 29 hereof, without the curing of same as therein provided; or

(2) Lessee's failure to pay any installment of rent when the same shall be due and payable and the continuance of such failure for a period of ten (10) days after receipt by Lessee of notice in writing from Lessor specifying in detail the nature of such failure and that such payment was not received on or before the tenth (10<sup>th</sup>) day of the month; or

(3) Lessee's failure to perform any of the other covenants, provisions, and agreements expressly herein contained on Lessee's part to be kept or performed and the continuance of such failure without the curing of same for a period of thirty (30) days after receipt by Lessee of notice in writing from Lessor specifying in detail the

nature of such failure, or such longer period as may be applicable under Paragraph B of this Section 30, then Lessor may, at its option, give to Lessee written notice of election to terminate the Lease term upon a date specified in such notice, which date shall not be less than thirty (30) business days (Saturdays, Sundays and legal holidays excluded) after the date of receipt by Lessee of such notice from Lessor. Upon the date specified in said notice, the term and estate hereby vested in Lessee shall cease and any and all other right, title, and interest of Lessee hereunder shall likewise cease without further notice or lapse of time, as fully and with like effect as if the entire Lease term had elapsed, but Lessee shall continue to be liable to Lessor as provided herein. Simultaneously with the sending of the notice to Lessee, as hereinabove provided, Lessor shall send a copy of such notice to any sublessee of the Premises or portions thereof that Lessor may select, in writing from time to time, and any additional persons or parties having an interest in the Premises that Lessor may select, in writing, from time to time. The curing of any default within the above time limits by any of the aforesaid parties or combination thereof, shall constitute a curing of any default hereunder with like effect as if Lessee had cured the same hereunder.

**B.** In the event that Lessor gives notice of a default of such a nature that it cannot be cured within a thirty (30) day period, such default shall not be deemed to continue, so long as Lessee, after receiving such notice, proceeds to cure the default within the thirty (30) day period and continues to take all steps necessary to complete the same within a period of time which, under all prevailing circumstances, shall be reasonable. No default shall be deemed to continue if and so long as Lessee shall be proceeding to cure the same in good faith.

**C.** In the event that any default of Lessee shall be cured in any manner hereinabove provided, such default shall be deemed never to have occurred and Lessee's right hereunder shall continue unaffected by such default.

**D.** Upon any termination of the Lease term pursuant to Paragraph A of this Section 30, or at any time thereafter, Lessor may, in addition to and without prejudice to any other rights and remedies Lessor shall have at law or in equity, re-enter the Premises and recover possession thereof and dispossess any or all occupants of the Premises (other than sublessees who may remain on the Premises pursuant to Section 22 of this Lease) in the manner prescribed by statute relating to summary proceedings, or similar statutes; but Lessee in such case shall remain liable to Lessor as provided herein.

**E.** In case of any such default, re-entry, termination and/or disposition by summary proceedings:

(1) The rent shall become due thereupon and be paid up to the time of such re-entry, termination and/or disposition;

(2) Lessor may re-let the Premises or any part thereof, either in the name of Lessor or otherwise, for a term which may, at Lessor's option, be less than or

exceed the period which would otherwise have constituted the balance of then applicable term of this Lease and may grant concessions or free rent; and

(3) Lessee or the representatives of Lessee shall also pay Lessor as liquidated damages for the failure of Lessee to observe and perform Lessee's covenants herein contained any deficiency between the rent hereby covenanted to be paid and the net amount, if any, of the rents collected on account of the Lease of the Premises for each month of the period which would otherwise have constituted the balance of the then applicable Lease term. Lessor, at its option, may elect to recover in one action said deficiency attributable to the balance of the Lease term and said deficiency shall be the difference between the total rent for the balance of the Lease term, using the CPI for the succeeding reporting month, and the fair market rental value of the Premises with the buildings and improvements thereon for the balance of the Lease term, discounted at the prime rate offered by the Bank of America located in the Vancouver, Washington or Portland, Oregon area to the time of judgment. In computing liquidated damages, there shall be added to the said deficiency such reasonable expenses and counsel fees as Lessor may incur in connection with the default and re-letting. Any suit brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of Lessor to collect the deficiency for any subsequent month by a similar proceeding.

Lessor agrees to mitigate in good faith all damages and to re-let the Premises in the event of any default specified herein.

#### **SECTION 31. WAIVERS.**

Failure of Lessor to complain of any act or omission on the part of Lessee, no matter how long the same may continue, or the receipt of rent by Lessor with knowledge of any breach or default of this Lease by Lessee, shall not be deemed to be a waiver by Lessor of any of its rights herein, except to the extent of the rent paid. No waiver by Lessor at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of any subsequent breach of the same or any other provision. Failure of Lessor to insist upon strict performance or to exercise any option herein conferred in any one or more instances in the event of default shall not be construed to be a waiver or relinquishment of any such or any other right herein extended to Lessor.

#### **SECTION 32. GOVERNMENTAL REGULATIONS.**

During the Lease term, Lessee shall, at its own cost and expense (except as otherwise specifically set forth herein), promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations of the federal, state, county, town, and city governments and of all other governmental authorities affecting the Premises or appurtenances thereto, any part thereof, or the use to be made thereof, whether the same are in force at the commencement of the Lease term or may in the future be passed, enacted, or directed (herein "Laws"), and Lessee shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims, and

demands, including reasonable counsel fees, that may in any manner arise out of or be imposed because of the failure of Lessee to comply with the covenants of this Section 32. Lessee shall not be obligated for any capital improvements to the Premises required by such Laws except if the same are required for Lessee's specific use thereof. Lessee shall have the right to contest any such Laws, so long as such contest is in good faith and does not prejudice Lessor.

### **SECTION 33. NOTICE OF LITIGATION AND COUNSEL FEES.**

**A.** Within ten (10) days of Lessee having knowledge of any litigation or other proceeding that shall be commenced against Lessee or against the Premises to secure or recover possession thereof or that may affect the interests of Lessor in the Premises, Lessee shall give written notice thereof to Lessor.

**B.** In the event any party shall bring suit to compel performance of or to recover for any breach of any covenant, agreement or condition of this Lease, the prevailing party in said action shall be entitled to recover from the other party costs and reasonable attorney's fees.

**C.** Notwithstanding anything to the contrary hereinabove contained, in the event that Lessor is made a party to litigation against Lessee, relating to the Premises, or against the Premises commenced by a third party, wherein Lessor is not at fault, Lessee shall pay, upon demand, all of Lessor's counsel fees and costs.

### **SECTION 34. NOTICES.**

Every notice, consent or other communication authorized or required by this Lease shall be deemed to be sufficient if in writing, and sent postage prepaid by registered or certified mail, return receipt requested, directed to the other party at the address listed below, or at such other address as the other party may designate by notice given from time to time in accordance with this section. In the event a party notifies the other in writing of a change of address in accordance with this section, said address shall substitute for the address listed below for all subsequent notices. Notices shall not be deemed effective unless personally served or delivered by mail in the manner provided by this section:

**Lessor:** 24 South "A" Street  
Washougal, WA 98671

**Lessee:** Eric Merrill  
Region Vice President  
Waste Connections, Inc.  
Pacific NW Region Office  
501 SE Columbus Shores Blvd., Suite 350  
Vancouver, WA 98661

And to:

Mr. Robert Evans  
Executive Vice President, General Counsel  
Waste Connections, Inc.  
35 Ironpoint Circle, Suite 200  
Folsom, CA 95630-8589

### **SECTION 35. ESTOPPEL CERTIFICATES.**

Lessor shall from time to time, within fifteen (15) business days after written request from Lessee, execute, acknowledge and deliver a statement certifying: (i) that this Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification and certifying that this Lease as so modified, is in full force and effect (or specifying the ground for claiming that this Lease is not in force and effect), (ii) the dates to which the rent has been paid, and the amount of any security deposit, (iii) that Lessee is in possession of the Premises, and paying rent on a current basis with no offsets, defenses or claims, or specifying the same if any are claimed, (iv) that there are not, to Lessor's knowledge, any uncured defaults on the part of Lessor or Lessee which are pertinent to the request, or specifying the same if any are claimed, and (v) certifying such other matters as Lessee may reasonably request, or as may be requested by Lessee's current or prospective Lenders, insurance carriers, auditors, and prospective purchasers or transferees. Any such statement may be relied upon by any such parties.

### **SECTION 36. FORCE MAJEURE.**

Neither Lessor nor Lessee shall 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 civil or military authorities, fires, floods, windstorms, earthquakes, strikes or labor disturbances, civil commotion, delays in transportation, governmental delays or war.

### **SECTION 37. RIGHTS CUMULATIVE.**

The rights, powers, obligations, duties and remedies of Lessor, as provided herein, shall be deemed to be cumulative, and no one of them shall be exclusive of any other, or of any other right, power, or remedy allowed by law.

### **SECTION 38. TIME OF THE ESSENCE.**

Time and punctual and exact performance and observation by Lessor and Lessee of the provisions herein are of the essence of this Lease.

#### **SECTION 39. SEVERABILITY.**

In the event that any provision of this Lease shall be declared invalid by any court of competent jurisdiction, such provisions shall be severed from this Lease, and such declaration shall not affect the remainder of this Lease. This Lease shall remain in full force and effect for the balance of its Lease term.

#### **SECTION 40. INTERPRETATION.**

Whenever the singular number is used herein, the same shall include the plural, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only. Upon any sale or assignment of the interest of either Lessor or Lessee herein, their respective successors in interest shall, during the term of this ownership of their respective estates herein, be deemed to be Lessor or Lessee, as the case may be.

#### **SECTION 41. SUCCESSORS.**

All of the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon Lessor, Lessee, and their respective heirs, personal representatives, successors and assigns, and upon any person coming into ownership or possession of any interest in the Premises by operation of law, or otherwise, and shall be construed as covenants running with the land.

#### **SECTION 42. ENTIRE AGREEMENT.**

This Lease constitutes and shall be construed as the entire agreement of the parties. No oral statement shall have any force or effect. This agreement shall not be modified or canceled except by writing subscribed by Lessor and Lessee.

#### **SECTION 43. MEMORANDUM.**

Upon execution of this Lease, Lessor shall also execute a memorandum of this Lease and provide Lessee with the same for recording purposes.

#### **SECTION 44. FIRST RIGHT TO PURCHASE.**


During the term or any extended term of this Lease, Lessor hereby grants to Lessee a right of first refusal to purchase the leased Premises on the terms and conditions set forth in this paragraph. In the event Lessor receives a written offer to purchase the leased Premises from a third party which Lessor is prepared to accept, prior to accepting such offer (or upon acceptance subject to the rights granted Lessee hereunder) Lessor shall first offer Lessee the opportunity to purchase the leased Premises on the same terms and conditions of the third party offer. Lessee shall have sixty (60) days from Lessor's written notice to Lessee sent in conformance with the notice provisions in Section 34 above (which notice shall include a copy of the third

party offer) to exercise the refusal right granted to Lessee hereunder by agreeing to purchase the leased Premises on the same terms as the third party offer. Lessor's notice to Lessee shall enclose a Purchase Agreement which incorporates the terms of the third party offer for Lessee's execution. Lessee shall exercise Lessee's rights hereunder by executing the Purchase Agreement without change and delivering the same to Lessor within said sixty (60) day period. If Lessee declines to exercise its refusal right or does not timely respond to Lessor as provided herein, Lessor shall be free to sell the leased Premises to the third party, provided, if the third party does not subsequently purchase the leased Premises on the terms presented to Lessee, any material modification of the terms of the third party offer shall be considered a new offer to purchase which must first be presented to Lessee in accordance with this paragraph.

IN WITNESS WHEREOF, the parties have executed this Lease in duplicate as of the 20 day of March, 2006.

**COLUMBIA RESOURCE CO., L.P.**  
By Management Environmental  
National, Inc.  
Its General Partner


By:

  
Eric Merrill  
Its Region Vice President

"LESSEE"

**PORT OF CAMAS-WASHOUGAL**

By:

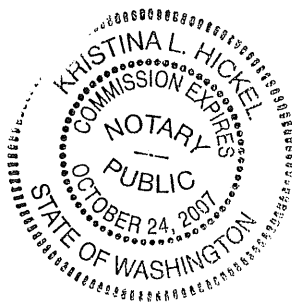
  
Sheldon Tyler  
Its Executive Director

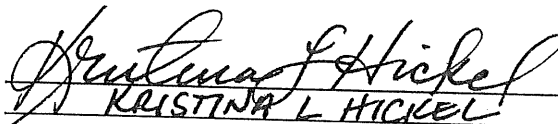
"LESSOR"

STATE OF WASHINGTON )  
COUNTY OF CLARK ) ss.

On this day personally appeared before me Eric Merrill, to me known to be the Region Vice President of **Management Environmental National, Inc.**, the corporation that executed the foregoing instrument as general partner of **COLUMBIA RESOURCE CO., L.P.**, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the same instrument.

GIVEN under my hand and official seal this 14<sup>TH</sup> day of March, 2006.



  
KRISTINA L. HICKEL  
(print notary's name)

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

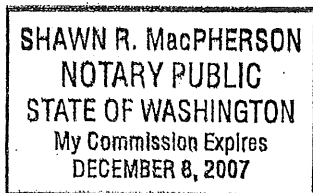
My commission expires: OCTOBER 24, 2007



STATE OF WASHINGTON )  
COUNTY OF CLARK ) ss.

On this day personally appeared before me Sheldon Tyler, to me known to be the Executive Director of **PORT OF CAMAS-WASHOUGAL**, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the same instrument.

GIVEN under my hand and official seal this 20<sup>th</sup> day of March, 2006:



Shawn R. MacPherson  
(print notary's name)

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

My commission expires: 12-8-07

4470938 LE

RecFee - \$46.00 Pages: 5 - SHAWN MACPHERSON  
Clark County, WA 07/01/2008 10:50

Return address:

Shawn R. MacPherson  
430 NE Everett Street  
Camas, WA 98607

### MEMORANDUM OF LEASE

Lessor: Port of Camas-Washougal  
Lessee: Columbia Resources Co., L.P.  
Legal descrip. (abbrev.): Portion Tax Parcel No. 071281-149, 071281-150,  
071281-145; Sec. 16/21, T1N, R4E, W.M  
Tax Parcel ID No.: 071281-149, 071281-150, 071281-145  
Prior reference no.: 4179036

THIS MEMORANDUM OF LEASE made this day by the PORT OF CAMAS-WASHOUGAL, a municipal corporation of the State of Washington, hereinafter called "Lessor", and COLUMBIA RESOURCES CO., L.P., a limited partnership authorized to engage in business and engaging in business in the State of Washington, hereinafter called "Lessee".

### WITNESSETH:

WHEREAS, subject to the exercise by Lessee of an Option to Lease, in hand received by Lessor, Lessor has leased to Lessee certain real estate (the "premises") in Clark County, Washington, for a term of years as hereinafter specified; and

WHEREAS, said unrecorded written Lease is dated March 20, 2006 and, given the exercise of the Option by Lessee, shall allow possession of the premises as of April 1, 2008; and

WHEREAS, the parties hereto enter into this Memorandum of Lease to facilitate recording in the Office of the Auditor of Clark County, Washington, and to give notice to the public of the existence of said unrecorded Lease;

NOW, THEREFORE, Lessor hereby leases the premises to Lessee, and Lessee hereby hires the premises from Lessor, and Lessor and Lessee do further declare as follows:

1. PARTIES: Lessor in said unrecorded Lease is the Port of Camas-Washougal, a municipal corporation of the State of Washington, and the Lessee therein is Columbia Resources Co. L.P, a limited partnership authorized to engage in and engaging in business in the State of Washington.

2. PREMISES LEASED: The premises are described with particularity in Exhibit "A" attached hereto and made a part hereof by reference.

3. TERM: The term of said Lease is for a period of twenty (20) years commencing April 1, 2008, with three options to extend for a period of ten (10) years each, subject to prior termination as provided in said Lease.

4. LIMITS OF MEMORANDUM: This Memorandum is not a complete summary of the Lease. Provisions in this Memorandum shall not be used in interpreting the Lease provisions. In the event of any conflict between this Memorandum of Lease and the unrecorded Lease, the unrecorded Lease shall control.

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IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease in duplicate on this 28<sup>th</sup> day of MAY, 2008

PORT OF CAMAS-WASHOUGAL

By: *Alan F. Hargrave*  
*Jim Carroll*  
 Commissioners  
 "Lessor"

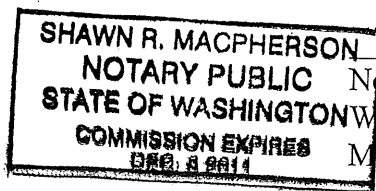
COLUMBIA RESOURCES CO., L.P.

By: *Robert A. Nielson III*  
 Title: ROBERT A. NIELSON III  
REGION VICE PRESIDENT  
 "Lessee"

STATE OF WASHINGTON )  
 ) ss.  
 COUNTY OF CLARK )

On this 17<sup>th</sup> day of MARCH, 2008, before me personally appeared ALAN HARGRAVE, JIM CARROLL and ~~BILL WARD~~, to me known to be the Commissioners of the Port of Camas-Washougal, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

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

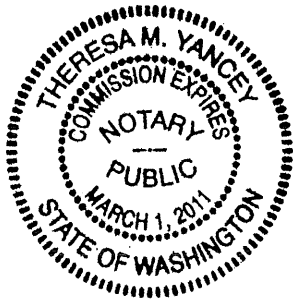


*Shawn R. MacPherson*  
 Notary Public in and for the State of  
 Washington, residing at COMAS  
 My commission expires 12-8-11

STATE OF WASHINGTON )  
COUNTY OF Clark ) ss.

On this 28<sup>th</sup> day of May, 2008 before me personally appeared Robert A. Nielsen III, to me known to be the Region Vice President of the limited partnership that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

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



Theresa M. Yancey  
Notary Public in and for the State of  
Washington, residing at Vancouver, WA  
My commission expires 3-1-2011

# LLS LAWSON

Land Services, Inc.

- Surveying
- Engineering
- Environmental
- Planning

113 South Parkway Avenue

Battle Ground, WA 98604

360-687-0500

Fax 360-687-0522

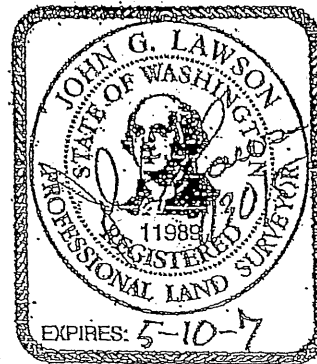
## EXHIBIT "A"

September 30, 2005

New Tax Lot 143-C  
(Transfer Station)

COMMENCING at the Southwest corner of Section 16, Township 1 North, Range 4 East, Willamette Meridian;  
THENCE North  $01^{\circ}34'45''$  East, 4.70 feet;  
THENCE North  $40^{\circ}46'48''$  East, 20.00 feet;  
THENCE South  $49^{\circ}13'12''$  East, 88.98 feet;  
THENCE North  $40^{\circ}46'48''$  East, 385.42 feet;  
THENCE South  $49^{\circ}13'12''$  East, 600.00 feet;  
THENCE North  $40^{\circ}46'48''$  East, 478.21 feet to the South right-of-way of Grant Street;  
THENCE South  $49^{\circ}13'12''$  East, along said right-of-way, 300.00 feet to the POINT OF BEGINNING;  
THENCE continuing along said right-of-way, South  $49^{\circ}13'12''$  East, 405.91 feet;  
THENCE South  $40^{\circ}46'48''$  West, 483.25 feet;  
THENCE North  $49^{\circ}13'10''$  West, 405.91 to a point which bears South  $40^{\circ}46'48''$  West from the POINT OF BEGINNING;  
THENCE North  $40^{\circ}46'48''$  East, 483.24 to the POINT OF BEGINNING.

Containing 4.5 acres, more or less



Recorders Note

Line on document

March 4, 2008

89010.0163

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

David Ripp, Executive Director  
Port of Camas-Washougal  
24 So. "A" Street  
Washougal, WA 98671

David Ripp, Executive Director  
Port of Camas-Washougal  
24 So. C. Street  
Washougal, WA 98671

**Re: Exercise of Option to Lease/CRC**

Dear Mr. Ripp:

This letter serves as Columbia Resource Company, LP's written notice of its exercise of the option to Lease under that certain Option to Lease, dated December 15, 2005, by and between the Port of Camas-Washougal as Lessor and Columbia Resource Company, LP as Lessee, as amended by that certain First Amendment to Option to Lease dated September, 2007, between the parties. The Lease taking effect is the Lease, dated March 20, 2006, by and between the Port of Camas-Washougal as Lessor and Columbia Resource Company, LP as Lessee, as amended by the First Amendment to Lease, dated May, 2006 (the "Lease"). We have enclosed a copy of the legal description for the leased property, to be attached as Exhibit A to the Lease, to confirm the parties' understanding as to the correct legal description. This legal description was provided to the Lessee by letter from Shawn MacPherson on June 9, 2006.

Pursuant to Section 2 of the Lease, the Commencement Date shall be April 1, 2008, with the Initial Lease Term expiring on March 31, 2028, subject to the Lessee's extension options set forth in the Lease.

Pursuant to the Option, the consideration for the extension of the Option and all prior Option payments are to be applied to Lessee's rent that becomes due for the initial month(s) of the lease term. Lessee has made the following Option payments:

July 11, 2005	\$10,000
December 19, 2005	\$10,000
September 5, 2006	\$10,000
February 26, 2007	\$10,000
September 10, 2007	\$10,000

**RECEIVED**

**MAR 07 2008**

**PORTOFCAMAS-WASHOUGAL**

Under Section 4 of the Lease, the Monthly Base Rent at the commencement of the Lease is \$5,625.00, plus 12.84% leasehold excise tax of \$722.25 per month, for a total monthly payment of \$6,347.25.

Williams, Kastner & Gibbs PLLC

Two Union Square

601 Union Street, Suite 4100

Seattle, Washington 98101

main 206.628.6600 fax 206.628.6611

www.williamskastner.com

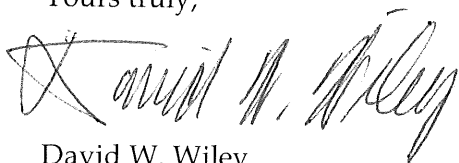
SEATTLE . TACOMA . PORTLAND

Port of Camas-Washougal  
24 So. "A" Street  
March 4, 2008  
Page 2

Accordingly, after crediting Lessee with the \$50,000 Option payments, there should be no rent due for the first seven months of the Lease, and \$5,569.25 is to be credited to month eight (November, 2008) of the Lease. Lessee will make an additional payment of \$778.00 for the remainder of the Monthly Base Rent for November, 2008, and will then begin making regular monthly payments of Monthly Base Rent in December, 2008. Additional Rental Charges may also be due under Section 4.D. of the Lease.

If you have any questions or disagree with any of the above understandings, please do not hesitate to contact me.

Yours truly,

A handwritten signature in black ink, appearing to read "David W. Wiley". The signature is stylized with a large, looped initial "D" and a cursive "Wiley".

David W. Wiley  
Attorney at Law  
(206) 233-2895  
dwiley@williamskastner.com

Enclosure

cc: Shawn R. MacPherson  
Columbia Resource Company



# EXHIBIT "A"



RECEIVED

JUN 12 2006

- Surveying
- Engineering
- Environmental
- Planning

113 South Parkway Avenue

Battle Ground, WA 98604

360-687-0500

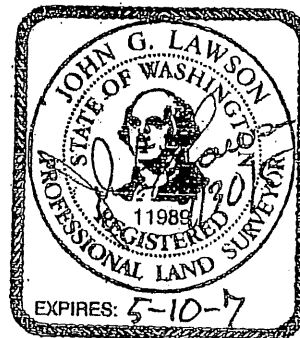
Fax 360-687-0522

September 30, 2005

New Tax Lot 143-C  
(Transfer Station)

COMMENCING at the Southwest corner of Section 16, Township 1 North, Range 4 East, Willamette Meridian;  
THENCE North  $01^{\circ}34'45''$  East, 4.70 feet;  
THENCE North  $40^{\circ}46'48''$  East, 20.00 feet;  
THENCE South  $49^{\circ}13'12''$  East, 88.98 feet;  
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THENCE South  $49^{\circ}13'12''$  East, 600.00 feet;  
THENCE North  $40^{\circ}46'48''$  East, 478.21 feet to the South right-of-way of Grant Street;  
THENCE South  $49^{\circ}13'12''$  East, along said right-of-way, 300.00 feet to the POINT OF BEGINNING;  
THENCE continuing along said right-of-way, South  $49^{\circ}13'12''$  East, 405.91 feet;  
THENCE South  $40^{\circ}46'48''$  West, 483.25 feet;  
THENCE North  $49^{\circ}13'10''$  West, 405.91 to a point which bears South  $40^{\circ}46'48''$  West from the POINT OF BEGINNING;  
THENCE North  $40^{\circ}46'48''$  East, 483.24 to the POINT OF BEGINNING.

Containing 4.5 acres, more or less



## SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT to Lease ("Second Amendment") is made and entered into this day by and between the PORT OF CAMAS-WASHOUGAL, a municipal corporation organized and existing under the laws of the State of Washington, hereinafter called "Lessor," and COLUMBIA RESOURCE CO., L.P., a Washington limited partnership authorized to engage in business and engaging in business in the State of Washington, hereinafter called "Lessee" collectively "Parties".

### WITNESSETH

WHEREAS, Lessor and Lessee are Parties to that certain lease dated March 20, 2006 (hereinafter the "Lease") for the real property situate within the said Port District in the Town of Washougal, Clark County, Washington (hereinafter the "Premises"), which is more particularly described in Exhibit A, attached hereto and by this reference incorporated herein; and

WHEREAS, on February 20, 2018, the Parties entered into the First Amendment to Lease (hereinafter the "First Amendment"), which amended Section 4 of the Lease; and

WHEREAS, the Parties now desire to extend the term of the Lease; allow for lease options; adjust the Base Rent; eliminate the annual overage adjustment and instead require a lump sum payment; change the CPI adjustment to allow for a 3% increase if greater than the prevailing CPI; which will result in amendments to Sections 2 and 4 of the Lease, and effectively supersede the First Amendment upon execution of this Second Amendment; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereby agree as follows:

## TERMS

Section 1. First Amendment to Lease Superseded. Upon execution of this Second Amendment by the duly authorized representatives of the Parties, the First Amendment shall be of no further force and effect.

Section 2. Amendment to Section 2 of Lease. Section 2 of the Lease is hereby amended to read as follows:

### SECTION 2. TERM.

The term of this Lease shall be for an initial period of five (5) ~~twenty (20)~~ years, commencing on the date of execution of this Second Amendment ("the Commencement Date") ~~first day of the month following Lessee's written notice to Lessor that Lessee intends to exercise the Lease Option (the "Commencement Date")~~ and expiring on the last day of the month immediately preceding the five ~~ten~~-year anniversary of the Commencement Date (the "Initial Lease Term") with Lessee having four (4) ~~three (3)~~ options to extend the Lease term, each for an additional five (5) ~~ten (10)~~-year period each (an "Extension Term"), unless sooner terminated as provided by the Lease. At the expiration of the Initial Lease Term or any Extension Term, the Lease shall automatically renew for an Extension Term or additional Extension Term unless the Lessee provides the Lessor with notice of the Lessee's intent not to renew the Lease on or before a date six months prior to termination of the Initial Lease Term or then current Extension Term, as applicable. ~~At the expiration of the term of this Lease, the Lease shall be considered null and void and of no further force and effect, except for those Lease obligations which survive termination as follows: Section 13 Liens, Section 16 Indemnification, and Section 17 and 18 Hazardous Substances. except that, as provided in Section 17 below, the Commencement Date and the date by which the Lease Option must be exercised may be extended by Lessee if Lessor is required to conduct an environmental remediation of the Premises. Upon the completion of the Initial Lease Term and any subsequent Extension Term, the Lease terms shall be automatically extended for any additional ten (10) year period up to a maximum of three (3) such Extension Terms, unless Lessee provides Lessor written notice at least six (6) months prior to the expiration of the applicable initial Lease Term or Extension Term that Lessee will not extend the Lease beyond the expiration of the current term.~~

Section 3. Amendment to Section 4 of Lease. Section 4 of the Lease is hereby amended to read as follows:

#### SECTION 4. RENT.

Lessee shall pay to Lessor, without any setoff or deduction, in addition to taxes, assessments and other charges required to be paid hereunder by Lessee, rent for the Premises as follows:

##### A. Initial Lease Term Base Rent.

For the period commencing on Jan 1, 2024 through March 31, 2024, the Commencement Date and ending on the last day of the month immediately preceding the fifth (5<sup>th</sup>) anniversary of the Commencement Date, Lessee shall pay to Lessor, in advance, the sum of \$7,790.67 ~~\$5,625.00~~ per month (the "Monthly Base Rent"). On April 1, 2024, a new Monthly Base Rent shall be established in the amount of \$11,650.87. The "Annual Base Rent" shall be the Monthly Base Rent multiplied by twelve (12). The Monthly Base Rent shall be subject to the CPI adjustment described in Section 4.C herein.

**B. One-Time Payment.** The Parties agree to eliminate the Additional Rental Charges based on the annual overage as set forth in Section 4.D of the Lease. Instead, Lessee shall pay \$46,322.43 to Lessor on April 1, 2024.

**C. B. Extension Term Base Rent.** The Monthly Base Rent to be paid by Lessee shall be adjusted on the fifth (5<sup>th</sup>) ~~tenth (10<sup>th</sup>)~~ anniversary of the Commencement Date and for each Extension Term (~~each~~, an "Adjustment Date"). The adjustment to the Monthly Base Rent to be paid by Lessee shall be determined by first by Parties seeking to reach agreement on said Monthly Base Rent. If no such agreement is reached by the date twelve (12) months prior to the applicable Adjustment Date, the Parties shall establishing the current fair market value of the Premises, as follows:

(1) The Parties ~~parties~~ shall agree to the appointment of an appraiser, who shall be an MAI, twelve (12) months prior to the applicable Adjustment Date. The Parties ~~parties~~ shall share equally in the cost of the appraiser so chosen, and the appraiser shall appraise the fair market value of the Premises, exclusive of any improvements thereon constructed by Lessee. The appraiser shall submit a written report to Lessor and Lessee which shall state the fair market value of the Premises.

(2) If the Parties ~~parties~~ cannot agree on a single appraiser as provided above, then each party shall, at its sole expense, select an MAI appraiser. Each appraiser shall appraise the Premises, exclusive of any improvements thereon constructed by Lessee, and submit a written determination of fair market value which shall be submitted to the other party no later than ten (10) months prior to the applicable Adjustment Date. The fair market value shall be the average of the two (2) appraisals, unless the discrepancy between the fair market value stated in the two (2) appraisals exceeds five percent (5%).

(3) If the discrepancy between the fair market value stated in the two (2) appraisals exceeds five percent (5%), then the two (2) appraisers shall select a third MAI appraiser no later than nine (9) months prior to the applicable Adjustment Date. The cost of the third appraiser shall be shared equally by the Parties parties. The third appraiser shall appraise the fair market value of the Premises, exclusive of any improvements thereon constructed by Lessee no later than seven (7) months prior to the applicable Adjustment Date. After all three (3) appraisals have been completed, the fair market value shall be determined by:

- (i) The agreement of a majority of the three (3) appraisers reflected in a writing signed by said majority and submitted to the Parties parties; or
- (ii) If a majority are unable to agree upon a fair market value, then by calculating the average of the three (3) appraisals and submitting said calculation to the Parties parties.

Upon the determination of the fair market value of the Premises as herein described, the Monthly Base Rent to be paid as of the applicable Adjustment Date shall be determined by calculating an annual return to Lessor in the amount of ten (10) percent per annum based upon the current fair market value of the Premises as established by this Section.

**D.C. CPI Adjustment to Monthly Base Rent.** Beginning on April 1, 2024, in addition to the adjustment to the Monthly Base Rent set forth above for each Extension Term, the Monthly Base Rent for this Lease shall be subject to an annual adjustment on the ~~respective fifth (5<sup>th</sup>), sixth (6<sup>th</sup>), seventh (7<sup>th</sup>), eighth (8<sup>th</sup>) and ninth (9<sup>th</sup>)~~ one-year anniversary of the commencement of the Initial Lease term and on the ~~fifth (5<sup>th</sup>), sixth (6<sup>th</sup>), seventh (7<sup>th</sup>), eighth (8<sup>th</sup>) and ninth (9<sup>th</sup>)~~ one-year anniversary of the commencement of each Extension Term (each a "CPI Adjustment Date") until the Monthly Base Rent is adjusted pursuant to paragraph C B above. This adjustment may be based on the annual CPI, or three percent (3%) of the Monthly Base Rent, whichever is greater. Determination of the CPI shall be as follows:

(1) The Consumer Price Index for All Urban Consumers for Portland-Vancouver. All items (1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics ("Index") which is published nearest, but preceding, the Commencement Date (the "Beginning Index") shall be compared with the Index which is published nearest, but preceding, each CPI Adjustment Date (the "Adjustment Index").

(2) the Monthly Base Rent payable for the following year (until the next CPI Adjustment Date) shall be set by multiplying the Monthly Base Rent provided for in Section 4A of this Lease by a fraction, the numerator of which is the Adjustment Index and the denominator which is the Beginning Index.

(3) If the United States Department of Labor, Bureau of Labor Statistics at any time during the term of this Lease ceases to publish the Consumer Price Index for All Urban Consumers for All Items for Portland-Vancouver, designated as "Portland-Vancouver" in the publication "Consumer Price Indexes Pacific Cities and U.S. City Average" for January, 1996 (the "CPI" Publication"), then the Consumer Price Index for All Urban Consumers for all Items for cities with a population of 1,250,000 or more in the Western United States, designated as "West-A" in the CPI Publication, shall be used. If the United States Department of Labor, Bureau of Labor Statistics at any time during the term of this Lease ceases to publish the Consumer Price Index for all Urban Consumers for All Items for both Portland-Vancouver and cities with a population of 1,250,000 or more in the Western United States, then the Consumer Price Index for All Urban Consumers for All Items, U.S. City Average, designated as "U.S. City Average" in the CPI Publication shall be used.

(4) If any such index is not published at least as frequently as semi-annually, then such Index shall be deemed not to be published and, accordingly, unavailable. If the period as to which any Adjustment Index is computed is changed from that used to compute the Beginning Index, then the Adjustment Index shall be computed by averaging or interpolating from such Index and thereby, computing what such Index would have been for a period comparable to the Beginning Index.

(5) If the Index is changed so that the base year differs from that used as the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of this Lease, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

~~D. Additional Rental Charges. In addition to the Monthly Base Rent described above, Lessee shall pay to Lessor additional monthly charges as follows:~~

~~(1) Within thirty (30) days after the end of each calendar year, Lessee will provide detailed reports of the tonnage delivered to the Transfer Station for the previous calendar year. If, in any calendar year, total delivered tonnage exceeds 20,000 tons, Lessee shall pay the Lessor an additional charge determined by converting the number of tons collected in excess of 20,000 to a percentage of 20,000 and multiplying the Annual Base Rent (as it may have been adjusted) by that percentage, which shall then be divided by one (1) plus one-half (1/2) of the current Leasehold Excise Tax rate applicable (pursuant to RCW 82.29A) to this Lease. For example, if total tons delivered for a year are 22,000, the excess over 20,000 would be converted to the percentage 10%. The Annual Base Rent (in year One) of \$67,500.00 would be multiplied by 10% and then divided by 1.0642~~

(the current Leasehold Excise Tax Rate is 12.84%), and the amount of the additional charge would be \$6,342.79. Any amounts due under this clause in the first year or any partial year would be prorated.

(2) Except for loads covered under paragraph 4.D.(3) below, all incoming loads of Solid Waste (as defined in RCW 70.95) to the Transfer Station must be weighed. Scale logs and monthly summaries and any other documentation as may be reasonably required by the Lessor shall be attached as support for calculation of the total payment to Lessor. Lessor reserves the right to require 24-hour video surveillance of the scales.

(3) Lessee reserves the right to accept small public loads of Solid Waste and track such loads by volume instead of weight. For the purposes of determining the total payments required under paragraph 4.D.(1), all loads tracked by volume shall be deemed to have a scale weight of 150 pounds per cubic yard.

(4) Lessee shall deliver any additional charge required under this Section 4.D., together with the supporting calculations, to Lessor no later than March 1 of each year.

**E. Leasehold Excise Tax.** In addition to the rental and charges specified above, Lessee shall pay to Lessor with each monthly rental payment the Washington State Leasehold Excise Tax on the Premises (if any), which tax is currently 12.84% of the monthly rental payment. Rental, the additional charges described herein, and Leasehold tax payments are payable in advance on the 1<sup>st</sup> day of each month during the term of this Lease and any Extension Term.

**F. Late Charge.** Lessee agrees to pay a late charge, in an amount equal to 5% of the monthly rental payment then due, with any rental or Leasehold tax payment which is not received in full by Lessor within ten (10) days of the due date.

Section 4. Remaining Provisions of Lease to Remain the Same. Except as expressly modified by the terms of this Second Addendum, the Lease as amended shall remain in full force and effect.


IN WITNESS WHEREOF, the Parties have executed this Addendum as of the \_\_\_\_ day of \_\_\_\_\_, 2023.

[SIGNATURES ON NEXT PAGE]

PORT OF CAMAS-WASHOUGAL

By \_\_\_\_\_  
Its \_\_\_\_\_

COLUMBIA RESOURCE CO. L.P.

By   
Its Derek Ranta  
District Manager

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF CLARK )

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me personally appeared \_\_\_\_\_, to me known to be the Chief Executive Officer of the Port of Camus-Washougal, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said Port of Camus-Washougal, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute this instrument.

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

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_.  
My commission expires: \_\_\_\_\_.

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF CLARK )

On this 1<sup>st</sup> day of December, 2023, before me personally appeared Derek Ranta, to me known to be the District Manager of Columbia Resource Co. L.P., the entity that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

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

Notary Public  
State of Washington  
D Michele McDonough  
Commission Number 137889  
Commission Expires 05-12-24

D. Michele McDonough  
NOTARY PUBLIC in and for the State of  
Washington, residing at Clark County.  
My commission expires: 5.12.24.



# 2024 Commission Meeting Calendar

*First and Third Wednesday \*exception January 4th, May 14th and June 18th*

Per Resolution 5-10

<b>JANUARY</b>	4th	*Thursday	Open Session	12:00 p.m.
	17th	Wednesday	Open Session	12:00 p.m.
<b>FEBRUARY</b>	7th	Wednesday	Open Session	12:00 p.m.
	21st	Wednesday	Open Session	12:00 p.m.
<b>MARCH</b>	6th	Wednesday	Open Session	12:00 p.m.
	20th	Wednesday	Open Session	12:00 p.m.
<b>APRIL</b>	3rd	Wednesday	Open Session	12:00 p.m.
	17th	Wednesday	Open Session	12:00 p.m.
<b>MAY</b>	1st	Wednesday	Open Session	12:00 p.m.
	14th	*Tuesday	Open Session	12:00 p.m.
<b>JUNE</b>	5th	Wednesday	Open Session	12:00 p.m.
	18th	*Tuesday	Open Session	12:00 p.m.
<b>JULY</b>	3rd	Wednesday	Open Session	12:00 p.m.
	17th	Wednesday	Open Session	12:00 p.m.
<b>AUGUST</b>	7th	Wednesday	Open Session	12:00 p.m.
	21st	Wednesday	Open Session	12:00 p.m.
<b>SEPTEMBER</b>	4th	Wednesday	Open Session	12:00 p.m.
	18th	Wednesday	Open Session	12:00 p.m.
<b>OCTOBER</b>	2nd	Wednesday	Open Session	12:00 p.m.
	16th	Wednesday	Open Session	12:00 p.m.
<b>NOVEMBER</b>	6th	Wednesday	Open Session	12:00 p.m.
	20th	Wednesday	Open Session	12:00 p.m.
<b>DECEMBER</b>	4th	Wednesday	Open Session	12:00 p.m.
	18th	Wednesday	Open Session	12:00 p.m.

