

### **Exhibit D – Terminal 18 Environmental Protocols**

In connection with this easement granted by the Port of Seattle (referred to herein as “Grantor”) to the City of Seattle (“Grantee”), Grantee may at times need to access its facilities within the Easement Area(s) for the Purposes as defined in the Easement Agreement. In connection with such activities, Grantee and Grantor shall comply with the following Environmental Protocols, which are intended to address the roles and responsibilities for the additional requirements applicable to Grantor’s Property based on the Consent Decree (defined below) and its status as a Superfund site. The general intent of this agreement is that when such activities occur, Grantee will follow its standard practices as much as practicable and will pay for the costs associated with those standard practices, and Grantor will perform any additional work or pay for/reimburse extraordinary costs incurred by Grantee due to the contamination on Grantor’s Property, obligations under the Consent Decree, or the Property’s Superfund site status.

#### **Background and General Requirements**

- A. The U.S. Environmental Protection Agency (EPA) issued a Record of Decision (“ROD”) for the Harbor Island Soil and Groundwater Operable Unit (“S&G OU”) in September 1993 that, as modified in an Amended ROD issued in January 1996 and Explanations of Significant Difference (“ESDs”) issued in July 1994 and September 2001, required excavation and removal of certain soils, capping of other soils with a specified low-permeability cover, placement of institutional controls to limit potential human exposure to remaining contaminated soils and groundwater, and groundwater monitoring to verify the effectiveness of the remedial action.
- B. In 1996, Grantor entered into a Consent Decree with the United States with respect to the S&G OU, which was recorded against properties within the Harbor Island S&G OU under King County Recording Number 9608211528, together with a Notice of Access (“Consent Decree”). The Consent Decree required that certain restrictive covenants be recorded on the parcels subject to this easement.
- C. Grantee agrees to comply with the terms of the relevant covenants (listed by parcel number and recording number in Attachment 1 to this Exhibit D), including:

The property shall be used for only industrial and manufacturing purposes.

Grantee shall not handle or excavate capped contaminated material unless consistent with the November 16, 2016 Soil and Groundwater Management Guidance, Port of Seattle Terminals 18 and 102, Terminal 18 Park, the Former Barber Property, and the Crowley Marine Lease Property (“Soil and Groundwater Guidance”) and any amendments thereto, or approved by the U.S. Environmental Protection Agency (“EPA”) in advance in writing.

- a. Consistent with Section A.1.f of the Easement and this section, and except in cases of emergency, Grantee will coordinate work for the Purposes with the Grantor and Grantor will determine and include in its comments to Grantee whether Grantor will request any required approval from EPA or whether the work for the Purposes

is consistent with the Soil and Groundwater Guidance such that prior EPA approval is not required.

Grantee shall not conduct any activity that would interfere with or disturb the integrity of the cap, other than for the Purposes under the Easement Agreement consistent with these protocols.

Grantee shall not use groundwater for any purpose unless consistent with the Soil and Groundwater Guidance or approved by EPA in advance in writing.

- a. Consistent with Section A.1.f of the Easement and this section, and except in cases of emergency, Grantee will coordinate work for the Purposes with the Grantor and Grantor will determine and include in its comments to Grantee whether Grantor will request any required approval from EPA or whether the work for the Purposes is consistent with the Soil and Groundwater Guidance such that prior EPA approval is not required.

Grantee shall not disturb or interfere with any groundwater monitoring wells.

Consistent with Section B.2.b of the Easement and this section, Grantee shall permit authorized representatives of EPA, Ecology, and Grantor the right to enter the Easement Area at reasonable times to (1) evaluate compliance with the restrictive covenants and/or the CERCLA action, (2) take samples, or (3) inspect any other remedial actions conducted at the property.

- D. Grantor is responsible for providing Grantee with any amendments to the Soil and Groundwater Guidance in a timely manner.
- E. The parties acknowledge and agree that these Environmental Protocols are consistent with the Soil and Groundwater Guidance in material respects and the variances between these Protocols and the Guidance, as may be amended from time to time, are acceptable and intended to reflect the general intent of this agreement that Grantee will pay for the costs it would normally incur following its standard practices, and Grantor will perform additional work or pay for/reimburse extraordinary costs incurred by Grantee resulting from the contamination on Grantor's Property, obligations under the Consent Decree or the Property's Superfund site status.

## **Soil**

- A. In the event Grantee must excavate or handle soil during its work for the Purposes within the Easement Area:
  1. Grantee will excavate and, if necessary, stockpile the soil where Grantor directs, based on Grantor's or its tenants' operational needs. To the extent Grantor directs Grantee to stockpile soil outside of an Easement Area, Grantor will provide permission to use the identified area and access to it for the time necessary for Grantee to complete its responsibilities under this section.

- a. Grantee will implement control measures to contain stockpiled material and prevent dispersion beyond the stockpile area and/or to storm drain inlets in accordance with standard best management practices (“stockpile controls”).
- b. Grantee will ensure storm drain inlets in the project area will be protected (e.g., equipped with socks or temporarily blocked).

Grantee will manage soil in accordance with these Protocols and consistent with the Soil and Groundwater Guidance. Grantee may reuse soil from the project area as backfill within the Easement Area as long as it does not exceed the cap/non-cap area criteria, as defined in the Consent Decree or applicable laws, and as long as it is suitable from an engineering perspective as determined by SPU.

Grantee will determine if the soil may be contaminated based on appearance or smell.

- a. If Grantee determines the soil **is likely to be** contaminated, Grantee will not use the soil as backfill.
- b. If Grantee determines the soil **is not likely to be** contaminated and is suitable from an engineering perspective, Grantee will continue to manage the stockpile controls and may replace the soil in the excavated trench.
- c. If Grantee determines the soil **is not likely to be** contaminated, but is not suitable for backfill from an engineering perspective, Grantee will not use the soil as backfill.
- d. In either case above under subsections 3.a and 3.c where Grantee determines that it will not use the soil as backfill, or has soil remaining after using the soil for backfill, Grantee will notify Grantor in writing as soon as practicable. Grantee will continue to manage the stockpile controls in accordance with these Protocols and consistent with the Soil and Groundwater Guidance for ten (10) business days from the date of Grantee’s notice to Grantor. Grantor will assume responsibility for stockpile controls, and any other handling or disposal after that date. To the extent Grantee can reasonably determine that it will not use the soil as backfill in advance of excavation, Grantee will endeavor to notify Grantor as part of its coordination responsibilities under Section A.1.e to allow for the possibility for Grantor to arrange for hauling in lieu of stockpiling, as determined by Grantor.

Grantor will handle and dispose of all soil that is not being reused in the excavation. Grantee will reimburse Grantor for the cost of loading, transportation, and disposal of the soil from Grantee’s project, up to the then current rate Grantee normally pays for loading, transportation, and disposal of soil that may contain debris or contaminants below dangerous waste concentrations, within 30 days of receiving the invoice. Grantee will not reimburse additional costs above that rate. Any additional costs that are due to the contaminated nature of the soil shall remain Grantor’s responsibility.

Grantee will immediately notify Grantor of any incident, which, through the course of the Grantee's project, results in new soil contamination. At its cost, Grantee will abate any new soil contamination to the extent it is caused by Grantee.

Grantor will indemnify, defend and hold Grantee harmless from costs and claims to the extent that they arise out of Grantee's determination of whether the soil may be contaminated based on appearance or smell or from the existence of hazardous substances in the soil at concentrations that exceed cleanup goals specified in the Consent Decree, except to the extent the costs or claims arise from Grantee's negligence in determining whether the soil may be contaminated as required by these Protocols or the Grantee having introduced new contaminants into the soil during the project.

## **Groundwater**

A. In the event Grantee must disturb or handle groundwater during its planned work, and to the extent practicable for any emergency work, for the Purposes within the Easement Area:

1. Grantee will make reasonable efforts to avoid removing groundwater and to keep surface water out of the excavated area, provided, however, that Grantee is not required to do so if doing so would increase Grantee's costs, unless Grantor is willing to reimburse Grantee for the cost increases.

Grantee will temporarily store all groundwater removed from an excavation area in a cost efficient manner (e.g., Baker Tanks or a less costly alternative). Grantor will reimburse Grantee for the cost of the storage. Grantor will perform and pay for any sampling and analysis of the stored groundwater that Grantor deems appropriate, and Grantee shall provide access for such sampling upon request. Grantee does not normally store or sample groundwater prior to disposal when groundwater is removed during Grantee's maintenance or repair projects. If Grantee's normal practice changes in the future and the new practice includes storage and/or sampling of groundwater removed during maintenance or repair of Grantee's facilities, Grantor will not be required to reimburse Grantee for any costs associated with such storage or sampling.

If Grantor determines that any contamination in groundwater is above applicable state and federal regulatory standards, Grantor will manage the groundwater, as Grantor deems appropriate in its discretion, including any of the options in 3.a-c below. If Grantor determines that any contamination in groundwater is in conformance with applicable state and federal regulatory standards, Grantee will determine whether it is feasible to infiltrate groundwater that was removed and stored back into the excavated area without adverse effects on Grantee's infrastructure and without increased costs. If it is feasible and does not increase costs, Grantee will do so at no charge to Grantor. If it is feasible, but will increase costs, Grantor will either reimburse Grantee for the increased costs associated with infiltrating the groundwater or manage the groundwater in another fashion, as Grantor deems appropriate in its discretion, including any of the following:

- a. If Grantor has sampled and analyzed the removed and stored groundwater, Grantor will provide the full data package for the sampling results to Grantee. Grantee will review the data and determine whether the groundwater is acceptable for discharge into Grantee's stormwater drainage system. If Grantee determines the groundwater is acceptable, then Grantor may elect to discharge the water into Grantee-owned stormwater infrastructure, at the location and in the manner approved by Grantee, at no charge to the Grantor.
- b. If Grantor elects to discharge the groundwater to King County Wastewater Treatment facilities, Grantee will reimburse Grantor for any fee charged by King County, unless King County imposes a surcharge due to the contaminated nature of the water, in which case the Grantor will bear the cost of the surcharge.
- c. Grantor also may elect to manage the disposal of the groundwater through other means at its own cost.

Grantor will indemnify, defend and hold Grantee harmless from costs and claims to the extent that they arise from the existence of hazardous substances in the groundwater at concentrations that exceed cleanup goals specified in the Consent Decree, except to the extent the costs or claims arise from the Grantee having introduced new contaminants into the groundwater during the project, having been negligent or having failed to follow industry best management practices to limit the quantity of groundwater exposed to contaminants.

### **Water from Water Mains**

- A. Grantee will notify Grantor as soon as practicable whenever there is any uncontrolled discharge of water from water supply mains undergoing maintenance or repair, including emergency work on broken water mains, such that the supply water could become contaminated with hazardous substances. Grantee and Grantor staff will endeavor to promptly confer and coordinate to contain and manage potentially contaminated water.
- B. Grantee will follow industry best management practices to contain water from water mains undergoing maintenance or repair, including emergency work on broken water mains (i.e., standards published by the American Water Works Association, or a subsequent, similar organization if superseded). Except in emergencies, Grantee will coordinate with Grantor and will manage the potentially contaminated excess water following the protocols described in Section III above for storing, sampling, and managing contaminated groundwater. If Grantor does not elect to sample and analyze the water for contamination, and in emergencies, Grantee may assume the water is contaminated. Grantee is not required to take actions that would threaten the quality of drinking water.
- C. So long as Grantee has not been negligent or failed to make reasonable efforts to contain, store, and limit the amount of water discharged from a water supply main, and Grantee coordinates with Grantor on handling the water as provided in this agreement, Grantor will reimburse Grantee for any increased costs arising from Grantee having to handle the water differently than it would if soil and groundwater at the site were not contaminated.

- D. In addition to reimbursing Grantee for extra costs as described above, Grantor will indemnify, defend and hold Grantee harmless from costs and claims to the extent that they arise from the existence of hazardous substances in the water at concentrations that exceed cleanup goals specified in the Consent Decree, except to the extent such costs or claims arise from Grantee's negligence or failure to follow industry best management practices.

### **Pavement Restoration on Grantor's Property**

- A. Grantee will install a temporary pavement patch after finishing its work for the Purposes and will provide Grantor with a soil compaction report demonstrating that the patch meets current city standard plans and specifications.
- B. Grantor will perform the final pavement restoration work and will be responsible for any future repairs.
- C. Grantee will inspect the site for its Purposes before and after the pavement is restored, at no charge to Grantor.
- D. When the pavement restoration work is in a former City street, Grantee will reimburse Grantor for the cost of the pavement restoration work at the usual rate set by ordinance (SMC 15.26.020 and future amendments thereto).
- E. In other areas of Grantor's property that are not former streets, Grantee will reimburse Grantor for the cost to restore pavement to its prior condition. In the event that the area to be restored is larger than it would otherwise be due to the contaminated nature of the site or the requirements of the Consent Decree, Grantee is not required to reimburse Grantor for such additional costs.

### **Health and Safety**

Grantee will provide a Health and Safety Plan, personal protective equipment for its workers, monitoring and decontamination equipment to use during excavation, and training consistent with the Hazardous Waste Operations and Emergency Response (HAZWOPER) standard, 29 CFR 1910.120. Grantor will reimburse Grantee for costs that exceed those of Grantee's normal practice in uncontaminated areas. Grantee will minimize costs to the extent feasible by using existing equipment and previously HAZWOPER-trained personnel.

### **1999 Environment and Safety Agreement Coordination**

To the extent Grantor's reimbursement obligation under the April 1, 1999 Environment and Safety Agreement (Appendix 3 to the April 1, 1999 Agreement between Seattle Public Utilities – Water, Sewer, and Drainage and the Port of Seattle for the Harbor Island Redevelopment) applies to Grantee work outside of the Easement Areas, the parties agree that they will endeavor to follow these Protocols.

**Miscellaneous**

No term or condition shall be deemed waived except by written consent of the party against whom the waiver is claimed. The party's written consent to waive a particular term or condition for a particular circumstance shall not be deemed to thereafter waive any other term or condition or circumstance.

**Attachment 1 to Exhibit D  
Parcels with Environmental Restrictive Covenants for Harbor Island Soil & Groundwater  
Operable Unit**

<b>Capped</b>	
<b>P/N</b>	<b>KCR</b>
766670-1330	20170526001048
766670-1940	20170526001049
766670-2058	20170526001047
766670-2059	20170526001005
766670-2060	20170526001046
766670-2071	20170526001045
766670-2080	20170526001006
766670-2085	20170526001043
766670-2110	20170526001007
766670-2140	20170526001044
766670-2270	20170526001028
766670-2280	20170526001004
766670-2285	20170526001027
766670-2294	20170526001026
766670-2295	20170526001042
766670-2300	20170526001003
766670-2310	20170526001040
766670-2315	20170526001039
766670-2335	20170526001002
766670-2340	20170526001038
766670-2345	20170526001001
766670-2365	20170526001036
766670-2370	20170526001000
766670-2375	20170526001035
766670-2380	20170526000999
766670-2385	20170526001034
766670-2430	20170526001033
766670-2435	20170526000998
766670-2455	20170526001032
766670-2465	20170526000996
766670-2475	20170526000997
766670-2485	20170526000994
766670-2490	20170526000995
766670-2495	20170526000993
766670-2500	20170526001029
766670-2510	20170526001030

<b>Capped</b>	
<b>P/N</b>	<b>KCR</b>
766670-2515	20170526001025
766670-2520	20170526001024
766670-2525	20170526001023
766670-2550	20170526001021
766670-2560	20170526001022
766670-2565	20170526001037
766670-2570	20170526001010
766670-2575	20170526000991
766670-2585	20170526001009
766670-2590	20170526001057
766670-2600	20170526001008
767180-0030	20170526001056
767180-0059	20170526001050
767180-0060	20170526001052

<b>Uncapped</b>	
<b>P/N</b>	<b>KCR</b>
766670-2181	20170526000992
766670-3070	20170526001051
766670-3090	20170526001055

<b>Partially Capped</b>	
<b>P/N</b>	<b>KCR</b>
766670-1356	20170526001031
766670-1880	20170526001053
767180-0136	20170526001054



Att A Ex D – T-18 Environmental Protocols  
V1