

Lease No.: TR-04-14226

I.C. No.: 4-21-10352

Parcel No.: 4-08087

Fed. Aid No.: None

Project: SR 5, Mellen Street to Blakeslee Junction

TRAIL LEASE

THIS IS A TRAIL LEASE made and entered into by and between the WASHINGTON STATE, DEPARTMENT OF TRANSPORTATION (hereinafter WSDOT), and LEWIS COUNTY, a political subdivision of the state of Washington (hereinafter TENANT);

WHEREAS, the land and premises to be leased are not presently needed exclusively for highway purposes; and

WHEREAS, the TENANT desires to construct, operate, and maintain a trail segment under this Lease as part of the TENANT's local comprehensive trail plan as an interim use until the land and premises to be leased are needed for a highway purpose; and

WHEREAS, WSDOT is granted authority to lease property under RCW 47.12.120, and, WSDOT deems it to be in the best public interest to enter into this Lease,

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performances contained herein, IT IS MUTUALLY AGREED AS FOLLOWS:

1. **PREMISES.** WSDOT leases to TENANT, and TENANT hereby leases from WSDOT, the premises (Premises) located in **Gov't Lot 2, Section 18, Township 14 North, Range 2 West, W.M.** and known to be a portion of the highway right of way of **SR 5, Mellen St. to Blakeslee Junction**, sheet 5 of 19 sheets, approved April 29, 2010, revised November 22, 2013 and as shown hachured on **Exhibit A**, attached hereto and by this reference incorporated herein.

2. **USE OF PREMISES.**

A. No use other than reconstruction, operation, and maintenance of a public pedestrian, bicycle, and other non-motorized vehicle trail under the control of TENANT is permitted without the prior written approval of WSDOT. TENANT expressly agrees that it will not charge others to use the Premises. No motorized vehicles will be allowed on the Premises except for TENANT's maintenance vehicles and emergency vehicles responding to an emergency on the Premises. In using the Premises, TENANT shall comply with all statutes, policies, and regulations, including, but not limited to the Scenic Vistas Act, RCW 47.42 et seq. and WAC 468-66 et seq., heretofore adopted or hereafter promulgated by WSDOT or the state legislature relative to the location, operation, and maintenance of improvements located on the Premises. No access

to the Premises will be constructed or allowed to be constructed by or for TENANT without WSDOT's prior written approval. Direct access to ramps or traveled lanes of state highways is not permitted. All grading and construction plans and any changes thereof are subject to approval by WSDOT.

B. TENANT will not allow third parties to use the trail as access to private property or improvements located on private property. Furthermore, in using the Premises, it is expressly agreed that TENANT shall:

(1) comply with all applicable federal, state, and local laws, ordinances, and regulations, including environmental requirements that are in force or which may hereafter be in force; and

(2) secure all necessary permits and licenses for the uses of the Premises authorized in this Lease. TENANT hereby agrees to indemnify, defend and hold harmless WSDOT from all claims or suits resulting from TENANT's failure to comply with such requirements.

C. No signs, other than directional signs or such signage as further described herein, are permitted. WSDOT owned fences in place at the time of execution of this Lease or relocated to separate the Premises from the traveled roadway will be maintained by WSDOT. Nothing is to be attached to WSDOT's fence without prior written approval. If any fence is damaged as a result of the activities authorized by this Lease, TENANT will promptly repair such damage at its cost to WSDOT's satisfaction.

D. Within thirty (30) calendar days of occupancy, TENANT at its sole expense shall erect and maintain a permanent sign at all entrances to the Trail located on WSDOT right of way, stating as follows:

"This trail is located on highway right of way under a cooperative agreement between Lewis County and the Washington State Department of Transportation."

3. TERM. The term of this Lease is Twenty (20) years, COMMENCING ON THE DATE OF EXECUTION OF THIS LEASE BY WSDOT (Commencement Date).

4. RENEWAL. Upon expiration of the initial term, this Lease may be renewed by TENANT for Two (2) additional Ten (10) year periods, (Renewal Period), at the discretion of WSDOT; provided that, (A) TENANT is not in default and has not been in default during the term of this Lease; (B) the property is not needed for a priority transportation purpose, as determined by WSDOT; (C) TENANT's continued use under this Lease does not impair the safety or operation of WSDOT's highway or facility, as solely determined by WSDOT; and (D) the terms and conditions of this Lease conform to then-existing state policies or practices, laws, regulations, and contracts, or provided, TENANT is willing to amend this Lease to bring it into compliance with such policies, practices, laws, regulations, and contracts. The Renewal Period shall be on the same

terms and conditions as set forth herein, except as modified by any changes in policies, practices, laws, regulations, annexations, or contracts and as reflected in a written amendment signed by both parties. TENANT shall give written notice of its intent to renew this Lease for the Renewal Period(s) not less than ninety (90) calendar days, but not more than six (6) months, prior to the expiration of the Lease, or any extension thereof.

5. TERMINATION BY WSDOT.

A. WSDOT may terminate this Lease, without penalty or further liability as follows:

- (1) immediately, upon the unauthorized assignment of this Lease by TENANT;
- (2) upon not less than thirty (30) calendar days' prior written notice, for failure of TENANT to provide acceptable As-Built drawings to WSDOT within ninety (90) calendar days of the date of completion of any trail reconstruction, and fails to cure such failure within that thirty (30) day period; acceptability of the As-Built drawings shall be determined solely by WSDOT;
- (3) upon not less than thirty (30) calendar days' prior written notice, if TENANT defaults on any provision in this Lease and is notified by WSDOT of the default two (2) times within a six (6) month period. The third default shall be deemed "non-curable";
- (4) upon not less than thirty (30) calendar days' prior written notice to TENANT, if TENANT defaults, and fails to cure such default within that thirty (30) day period, or such longer period, as may be reasonably determined by WSDOT, if TENANT is diligently working to cure the default. Waiver or acceptance of any default of the terms of this Lease by WSDOT shall not operate as a release of TENANT's responsibilities for any prior or subsequent default;
- (5) immediately, if TENANT's insurance coverage as required herein lapses for any reason. In such event, WSDOT may, at its option, barricade access to the Premises;
- (6) immediately, upon issuance of any court order, legislative action, or governmental agency action having jurisdiction to take such action, which would significantly impair or effectively prohibit TENANT's use of the Premises;
- (7) immediately, upon written notice, if a receiver is appointed to take possession of TENANT's assets, TENANT makes a general assignment for the benefit of creditors, or TENANT becomes insolvent or takes or suffers action under the Bankruptcy Act;
- (8) upon not less than sixty (60) calendar days' prior written notice, if WSDOT reasonably determines that it is in furtherance of an overriding public interest for WSDOT to terminate this Lease;

(9) upon not less than thirty (30) calendar days' prior written notice if the Premises has been abandoned, in WSDOT's sole judgment, for a continuous period of ninety (90) days;

(10) immediately, if a transportation emergency exists as solely determined by WSDOT;

B. WSDOT may terminate the Lease in part upon not less than sixty (60) calendar days' prior written notice, if WSDOT determines that a portion of the Premises may be used for additional purposes such as, but not limited to, telecommunications purposes, which in WSDOT's sole reasonable determination are reasonably consistent with TENANT's authorized use of the Premises.

C. It is hereby acknowledged and agreed that the highway use of the Premises is paramount to any other use, including TENANT's use for a pedestrian, bicycle, and other non-motorized vehicle trail.

D. TENANT agrees to pay all costs to barricade or to provide other interim safety measures, as directed by WSDOT, if closure of the trail becomes necessary to facilitate repair, reconstruction, maintenance, or modifications of the highway right of way.

6. TERMINATION BY TENANT. TENANT may terminate this Lease without penalty or further liability as follows:

A. upon not less than sixty (60) calendar days' prior written notice for any reason; provided that, TENANT removes all traces of the trail prior to the date of termination;

B. upon not less than thirty (30) calendar days' prior written notice, if WSDOT defaults and fails to cure such default within that thirty (30) day period, or such longer period, as may be reasonably determined by TENANT, if WSDOT is diligently working to cure the default; or

C. immediately, upon written notice, if in TENANT's judgment the Premises is destroyed or damaged so as to substantially and adversely affect TENANT's authorized use of the Premises.

7. CONSIDERATION. In lieu of paying economic rent for the Premises, TENANT agrees to provide other specific consideration which is deemed to be a highway benefit. The consideration is: The separation of motor vehicle traffic from pedestrians or cyclists which will materially increase motor vehicle safety and increase highway efficiency; and as part of the TENANT's project for the extension and connection of NW Louisiana Ave. to Airport Road, the WSDOT's I-5/Mellen Street to Blakeslee Junction Project, and per the GCB 1137 and GCB 1157, the trail is part of a mitigation requirement to improve safety and reduce congestion on I-5 by providing an

alternate route for local traffic. TENANT's maintenance, at its sole expense, of the section of trail as designated in **Exhibit A** which maintenance and construction would otherwise be the responsibility of WSDOT.

8. MAINTENANCE RESPONSIBILITIES.

A. TENANT shall perform or cause to be performed at its sole expense all maintenance of the Premises that shall include, but not be limited to, keeping the Premises in good condition, both as to safety and appearance, to the reasonable satisfaction of WSDOT. TENANT shall be responsible for weed control, and reconstruction and repair of any or all components of the trail facility. In addition (if applicable), TENANT is responsible for the regular inspection and repair of structures as required by the Code of Federal Regulations 23 CFR 650, subpart C, National Bridge Inspection standards (NBIS), EXCEPT any and all work that would require SR 5 closure.

B. TENANT warrants that any landscaping planted and maintained on the Premises will not damage, threaten to damage, or otherwise adversely affect any part or component of the state's highway facility or operation, or adversely affect traffic safety.

C. TENANT agrees that it is additionally responsible for all maintenance activities on the Premises listed below, including but not limited to, specific maintenance and operational items, at its sole cost and expense, without further liability to WSDOT:

- (1) Security and law enforcement for the Premises;
- (2) Graffiti removal upon all real and personal property which includes all fixtures and attachments, and the required signs under Section 2E, herein, including graffiti removal from all highway retaining walls or structures previously inaccessible to the public. Graffiti removal shall be done immediately upon notification and/or inspection, but performed no less than monthly. TENANT shall in no way interfere with any highway operations or traffic flow on SR 5;
- (3) Litter control on an "as needed" basis, or upon notification and/or inspection, but no less than monthly;
- (4) Surface sweeping of the trail path on an "as needed" basis, or upon notification and/or inspection, but performed no less than monthly; and
- (5) Removal and disposal of unauthorized signs, banners, ribbons, etc. from the Premises immediately upon discovery, or upon notification and/or inspection.

D. TENANT agrees to pay all costs to barricade, or to provide other interim safety measures, if closure of any part of the Leased Premises is deemed necessary by WSDOT.

E. If TENANT fails to maintain the Premises as provided in this Lease, WSDOT may, but is not obligated to, perform such maintenance after providing the TENANT with Thirty (30) calendar days written notice of maintenance default(s) which TENANT fails to correct within Thirty (30) calendar days of said notice, and the TENANT agrees to reimburse WSDOT for such maintenance costs within Thirty (30) calendar days of WSDOT's detailed invoice (the "Due Date"). All sums due by TENANT to WSDOT and not paid by the Due Date shall bear interest at the rate of twelve percent (12%) per annum, or the highest rate of interest allowable by law, whichever is greater; provided that, if the highest rate allowable by law is less than twelve percent (12%), interest charged hereunder shall not exceed that amount. Interest shall be calculated from the Due Date to the date of payment.

9. ENVIRONMENTAL REQUIREMENTS.

A. TENANT represents, warrants and agrees that it will conduct its activities on Premises and lands adjacent thereto in compliance with all applicable Environmental Laws. As used in this Lease, "Environmental Laws" means all federal, state and local environmental laws, rules, regulations, ordinances, judicial or administrative decrees, orders, decisions, authorizations or permits, including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., the Clean Air Act, 42 U.S.C. § 7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11001, et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., the Oil Pollution Control Act, 33 U.S.C. § 2701, et seq., and Washington or any other comparable local, state or federal statute or ordinance pertaining to the environment or natural resources and all regulations pertaining thereto, including all amendments and/or revisions to said laws and regulations.

B. Toxic or hazardous substances are not allowed on the Premises without the express written permission of WSDOT and under the terms and conditions specified by WSDOT. In the event such permission is granted, the disposal of such materials must be done in a legal manner by TENANT. For the purposes of this Lease, "Hazardous Substances" shall include all those substances identified as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., and the Washington Model Toxics Control Act, RCW 70.105D et seq., and shall include gasoline and other petroleum products. "Existing Hazardous Substances" shall mean those Hazardous Substances existing on the Premises as of the Commencement Date of this Lease that are not WSDOT Hazardous Substances. "WSDOT Hazardous Substances" shall mean those Hazardous Substances (a) that have been released on the Premises by WSDOT, its employees, contractors, or agents, either before or after the Commencement Date; (b) released or have the potential to be released as a result of WSDOT's activities or operations on the Premises either before or after the Commencement Date; or (c) have been released or have the potential to be released as a result of WSDOT's use, disposal,

transportation, generation and/or sale of Hazardous Substances on the Premises, regardless of when they may have been released on the Premises.

C. TENANT agrees to cooperate in any environmental investigations conducted by WSDOT's staff or independent third parties where there is evidence of a release or potential release of Hazardous Substances on the Premises, or where WSDOT is directed to conduct such audit by an agency or agencies having jurisdiction. TENANT will reimburse WSDOT for the cost of such investigations, to the extent the need for said investigation is determined to be caused by TENANT's operations. TENANT will provide WSDOT with notice of any inspections of the Premises, notices of violations, and orders to clean up Hazardous Substances. TENANT will permit WSDOT to participate in all settlement or abatement discussions. In the event TENANT fails to take remedial measures as duly directed by a state, federal, or local regulatory agency within ninety (90) calendar days of such notice, WSDOT may elect to perform such work, and TENANT covenants and agrees to reimburse WSDOT for all direct and indirect costs associated with WSDOT's work where said release of Hazardous Substances is determined to have resulted from TENANT's use of the Premises.

WSDOT's right to implement any required actions pursuant to this subparagraph shall not accrue unless and until:

- (1) TENANT's failure to implement remedial measures violates the terms of the direction received from the state, federal, or local regulatory agency;
- (2) WSDOT has provided TENANT with written notice of TENANT's failure to implement the subject remedial measures; and
- (3) TENANT has failed to cure the breach within ten (10) business days of receipt of such written notice, unless the parties agree to an extended cure period.

D. TENANT agrees the use of the Premises shall be such that no hazardous or objectionable smoke, fumes, vapor, odors, or discharge of any kind shall rise above the grade of the property.

E. For the purposes of this Lease, "Costs" shall include but not be limited to, all response costs, disposal fees, investigatory costs, monitoring costs, civil or criminal penalties, and attorneys' fees and other litigation costs incurred in complying with Environmental Laws.

F. To the extent allowed by law, TENANT agrees to defend, indemnify and hold harmless WSDOT from and against any and all claims, causes of action, demands and liability that are caused by or result from TENANT's activities on the Premises, including but not limited to any Costs, liabilities, damages, expenses, assessments, penalties, fines, losses, judgments and attorneys' fees associated with the removal or remediation of any Hazardous Substances that have been released or have the potential to be released on the Premises, including those that may have migrated from the Premises through water or soil to other properties, including without limitation, the adjacent WSDOT property, if a result of TENANT's activities on the Premises.

G. To the extent allowed by law, TENANT further agrees to defend, indemnify and hold harmless WSDOT from any and all liability arising from the offsite disposal, handling,

treatment, storage, or transportation of any Hazardous Substances removed from said property, which Hazardous Substances were released on to the Premises as a result of TENANT's activities. This obligation shall not apply with respect to the presence of Hazardous Substances on said property that did not result from TENANT's use of the Premises.

H. To the extent allowed by law, WSDOT agrees to defend, indemnify, and hold harmless TENANT from and against any and all claims, causes of action, demands, and liability that are caused by or result from the removal or remediation of any WSDOT Hazardous Substances that have been released or have the potential to be released on the Premises, including, but not limited to, any Costs, liabilities, damages, expenses, assessments, penalties, fines, losses, judgments, and attorneys' fees associated with the presence of WSDOT Hazardous Substances on the Premises. WSDOT further agrees to take all remedial measures at the Premises as duly directed by a state, federal, or local regulatory agency, or as required under applicable Environmental Laws, where such obligations result from WSDOT Hazardous Substances. In completing any work required on the Premises in satisfaction of its duties under this Subsection, WSDOT shall not unreasonably interfere with TENANT's use of the Premises. TENANT agrees to cooperate with WSDOT in providing access to the Premises for any such work. WSDOT's obligations under this paragraph shall not apply as to claims, causes of action, demands, and/or liabilities caused, in whole or in part, by TENANT's activities on the Premises.

I. Any Costs associated with the investigation, removal, or remediation of Existing Hazardous Substances on the Premises by TENANT, including any increased construction costs, shall be the responsibility of TENANT and not the responsibility of WSDOT. Nothing in this Agreement shall limit the ability of TENANT or WSDOT to pursue cost recovery from third parties responsible for release of Hazardous Substances on the Premises.

J. To the extent allowed by law, WSDOT shall reimburse TENANT for the cost of any environmental investigations, disposal, or cleanup activities conducted by TENANT to the extent the need for said investigation resulted from WSDOT Hazardous Substances. WSDOT will provide TENANT with notices of any inspections of the Premises, notices of violations, and orders to clean-up contamination that WSDOT receives from an agency or agencies with jurisdiction. WSDOT will permit TENANT to participate in all settlement or abatement discussions. In the event that WSDOT fails to take remedial measures as duly directed by a state, federal, or local regulatory agency within ninety (90) calendar days of such notice, TENANT may elect to perform such work, and WSDOT covenants and agrees to reimburse TENANT for the reasonable direct and indirect costs associated with TENANT's work. This reimbursement obligation shall not apply, however, to the extent the contamination is determined to have resulted from TENANT's use of the Premises.

TENANT's right to implement any required actions pursuant to this subparagraph shall not accrue unless and until:

- (1) WSDOT's failure to implement remedial measures violates the terms of the direction received from the state, federal, or local regulatory agency;
- (2) TENANT has provided WSDOT with written notice of WSDOT's failure to implement the subject remedial measures; and
- (3) WSDOT has failed to cure its breach within ten (10) business days of receipt of such written notice, unless the parties agree in writing to an extended cure period.

K. WSDOT will obtain TENANT'S consent in instances when a third party seeks to use the Premises, except as otherwise provided in Sections 10 and 16 of this Lease, and WSDOT shall require the third party to indemnify TENANT for any Costs associated with the third party's release of Hazardous Substances from the Premises or use of Hazardous Substances on the Premises. If WSDOT allows a third party to use the Premises, the responsibility for any Costs for Existing Hazardous Substances or WSDOT Hazardous Substances that are not released by TENANT will be determined by applicable law.

L. In the event of any third party actions related to Existing Hazardous Substances including private party actions or actions brought by public agencies, each Party shall bear its own costs of defense and neither shall be entitled to indemnification or defense by the other Party under this section.

M. The provisions of this section shall survive the expiration or termination of this Lease.

10. WSDOT'S RESERVATION OF RIGHT TO MAINTAIN/GRANT UTILITY FRANCHISES/PERMITS AND TO LEASE FOR COMPATIBLE PURPOSES.

A. WSDOT reserves the right for utility franchise and permit holders to enter upon the Premises to maintain facilities and, for itself, to grant utility franchises and/or permits within the Premises. Such installation will be accomplished in such a manner as to minimize any disruption to TENANT. The franchise/permit holder will be required to restore paving and grading damaged by the installation. WSDOT also reserves the right to withdraw portions of the Premises for uses such as, but not limited to, telecommunications transmission sites, which WSDOT determines to be reasonably compatible with TENANT's authorized use of Premises.

B. TENANT shall not disturb markers installed by a franchise/permit holder and will contact and provide notice to any franchise/permit holder and all owners of underground facilities prior to any excavation. TENANT shall contact WSDOT and call the Underground Utility Locating Service, or its successor organization, as part of its efforts to ascertain any and all owners of underground utility facilities and to locate the utility. TENANT shall not damage legally installed underground utilities. TENANT shall comply with all applicable provisions of chapter 19.122 RCW relating to underground facilities.

11. TAXES/ASSESSMENTS/UTILITIES. TENANT agrees to pay all assessments that benefit the Premises and/or which may hereafter become a lien on the interest of TENANT in accordance with RCW 79.44.010. TENANT agrees to pay all taxes that may hereafter be levied or imposed upon the interest of TENANT or by reason of this Lease. TENANT is responsible for and agrees to pay the cost for all utilities, including, but not limited to, surcharges, fuel adjustments, rate adjustments and taxes that serve the Premises.

12. LIMITATIONS. TENANT expressly acknowledges and agrees that WSDOT's rights under this Lease to review, comment on, disapprove, and/or accept designs, plans specifications, work plans, construction, equipment, installation: (a) exist solely for the benefit and protection of

WSDOT; (b) do not create or impose upon WSDOT any standard or duty of care toward TENANT, all of which are hereby disclaimed; (c) may not be relied upon by TENANT in determining whether TENANT has satisfied any and all applicable standards and requirements; and (d) may not be asserted, nor may WSDOT's exercise or failure to exercise any such rights be asserted, against WSDOT by TENANT as a defense, legal, or equitable, to TENANT's obligation to fulfill such standards and requirements and regardless of any acceptance of work by WSDOT.

13. "AS BUILT" PLANS. Within thirty (30) days of the date that any future trail reconstruction is completed, TENANT shall provide WSDOT with a complete set of dimensioned "As-Built" scale drawings showing at least the information following: (a) trail centerline; (b) ties to beginning and end of trail; (c) underground utilities; and (d) such other information as WSDOT may request. Acceptability of the As-Built drawings shall be determined solely by WSDOT. In the event TENANT fails to provide such plans within the prescribed time period, TENANT hereby agrees that WSDOT shall have the right, at its option, to contract with a consultant in order to secure such plans and TENANT agrees to reimburse WSDOT for all costs incurred in obtaining said plans within thirty (30) calendar days of the date of WSDOT's invoice.

14. LIENS.

A. TENANT shall at all times indemnify and hold harmless WSDOT from all claims for labor or materials in connection with construction, repair, alteration, maintenance, or installation of structures, improvements, equipment, or facilities on or within the Premises, and from the cost of defending against such claims, including attorney fees.

B. In the event a lien is filed upon the Premises, TENANT shall: (a) record a valid Release of Lien; (b) deposit sufficient cash with WSDOT to cover the amount of the claim on the lien in question and authorize payment to the extent of said deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to lienholder claim; or (c) procure and record a bond which releases the Premises from the claim of the lien and from any action brought to foreclose the lien.

C. Should TENANT fail to accomplish Section B.(a), (b), or (c) above within fifteen (15) calendar days after the filing of such a lien, the Lease shall be in default per **Section 5.A.(4)**.

15. ENCUMBRANCES. It is expressly understood that TENANT shall not encumber the Premises.

16. WSDOT'S RIGHT OF ENTRY/INSPECTION. WSDOT, for itself, its agents, and contractors and for the Federal Highway Administration (FHWA), reserves the right to enter upon the Premises at any time without notice to TENANT for the purpose of inspection, maintenance, construction, or reconstruction of the highway facility or any element thereof, or to perform environmental reviews. WSDOT shall in no way be responsible for any incidental or consequential damages due to such loss of use, if any, by TENANT. WSDOT and FHWA may from time-to-

time go upon the Premises for the purpose of inspecting any excavation, reconstruction, or maintenance work being done by TENANT. Further, this right shall not impose any obligation upon WSDOT to make inspections to ascertain the safety of TENANT's improvements or the condition of the Premises.

17. INSURANCE.

A. TENANT warrants that it is self-insured, and agrees to provide acceptable evidence of its self-insured status to WSDOT. TENANT's insurance policy must provide liability coverage for the Premises, including public liability coverage for bodily injury, property damage, and personal injury of not less than Two Million and no/100 Dollars (\$2,000,000.00) combined single limit per occurrence, with a general aggregate amount of not less than Four Million and no/100 Dollars (\$4,000,000.00) per policy period. Such aggregate limits shall apply for this Premises location, and coverage under said policy shall be triggered on an "occurrence basis," not on a "claims made" basis. TENANT shall increase the policy limits at its sole cost, when and if WSDOT deems it necessary due to TENANT's use of the Premises within ten (10) calendar days of WSDOT's written request to do so.

B. TENANT assumes all obligations for premium payment, and in the event of non-payment is obligated to reimburse WSDOT the cost of maintaining the insurance coverage and any legal fees incurred in enforcing such reimbursement in the event TENANT fails to pay the policy premiums.

C. Coverage, if obtained by TENANT in compliance with the Section, shall not be deemed as having relieved TENANT of any liability in excess of such coverage.

D. In the event TENANT, after commencement of this Lease, elects to terminate its self-insured status and secure commercial liability coverage, TENANT will promptly notify WSDOT, promptly secure insurance coverage as designated herein or as amended by WSDOT and promptly provide a certificate of insurance from an insurer licensed to conduct business in the state of Washington, to the satisfaction of WSDOT. WSDOT shall be named as an additional insured by endorsement of the liability policy required, utilizing ISO Form 2026 (Additional Insured – Designated Person or Organization) or its equivalent without modification. The endorsement shall require the insurer to provide the WSDOT, Real Estate Services Office, P.O. Box 47338 Olympia, WA 98504-7338, with no less than thirty (30) calendar day's written notice before any cancellation of the coverage required herein.

18. HOLD HARMLESS/INDEMNIFICATION.

A. TENANT, its successors, and assigns, will protect, save, and hold harmless WSDOT, its authorized agents, and employees, from all claims, actions, costs, damages, (both to persons and/or property) or expenses of any nature whatsoever by reason of the acts or omissions of TENANT, its assigns, subtenants, agents, contractors, licensees, invitees, employees, or any person

whomsoever, arising out of or in connection with any acts or activities related to this Lease, whether those claims, actions, costs, damages, or expenses result from acts or activities occurring on or off the Premises. TENANT further agrees to defend WSDOT, its agents, or employees, in any litigation, including payment of any costs or attorney's fees, for any claims or actions commenced, arising out of, or in connection with acts or activities related to this Lease, whether those claims, actions, costs, damages, or expenses result from acts or activities occurring on or off the Premises. This obligation shall not include such claims, actions, costs, damages, or expenses which may be caused by the sole negligence of WSDOT or its authorized agents or employees; provided that, if the claims or damages are caused by or result from the concurrent negligence of (1) WSDOT, its agents, or employees; and (2) TENANT, its assigns, subtenants, agents, contractors, licensees, invitees, employees, or involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of TENANT or its assigns, subtenants, agents, contractors, licensees, invitees, and employees.

B. WAIVER: TENANT agrees that its obligations under this Section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents while occupying the Premises for any purpose. For this purpose, TENANT, by MUTUAL NEGOTIATION, hereby waives with respect to WSDOT only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions chapter 51.12 RCW.

C. The indemnification and WAIVER provisions contained in this Section shall survive the termination or expiration of this Lease.

19. NONDISCRIMINATION. TENANT, for itself, its successors, and assigns, as part of the consideration hereof, does hereby agree to comply with all applicable civil rights and antidiscrimination requirements including, but not limited to, chapter 49.60 RCW.

20. ASSIGNMENT. Neither this Lease nor any rights created by it may be assigned, sublet, or transferred in written or oral form.

21. SURRENDER OF PREMISES/REMOVAL OF TENANT'S IMPROVEMENTS/PERSONAL PROPERTY.

A. Upon termination of this Lease, TENANT shall cease its operations on and/or use of the Premises. In the event TENANT fails to vacate the Premises on the date of termination, TENANT shall be liable for any and all costs to WSDOT arising from such failure. As used herein, "vacate" shall include preventing use of the Premises by the public.

B. Upon termination of this Lease, TENANT agrees, if so directed by WSDOT, to restore grades and on limited access highways also to relocate WSDOT's fences, if any, to their configurations prior to TENANT's occupancy. This work is to be done at TENANT's sole expense to the satisfaction of WSDOT.

C. Upon termination of this Lease TENANT agrees, if so requested by WSDOT, to obliterate the trail, remove all improvements and personal property, and/or provide erosion control treatment at its own expense and to WSDOT's satisfaction, returning the right of way to its original condition before the construction of the trail.

D. TENANT shall accomplish the above work by the date of termination. If, after termination of this Lease, TENANT has not removed its improvements and/or personal property and returned the right of way to its original condition, if requested to do so, within the time allowed, WSDOT may, but need not, remove and dispose of said improvements and/or personal property and return the right of way to its original condition at the expense of TENANT, and TENANT shall reimburse WSDOT for any and all expenses incurred by WSDOT in connection with such removal, work or disposal within thirty (30) calendar days of the date of WSDOT's invoice.

22. NO RELATIONSHIP ESTABLISHED. WSDOT shall in no event be construed to be a partner with, associate, or joint venturer of TENANT or any party associated with TENANT. TENANT shall not create any obligation or responsibility on behalf of WSDOT or bind WSDOT in any manner.

23. TRANSPORTATION PURPOSES.

A. TENANT and WSDOT hereby affirm that upon termination or expiration of this Lease for any reason and the subsequent use of the Premises for transportation or other purposes, such use will not be considered the use of any publicly-owned land from a public park, recreation area, or wildlife and waterfowl refuge within the meaning of 23 U.S.C. 138 and 49 U.S.C. 303 (former 49 U.S.C.1653 (f), Section "4f"). If this Lease is terminated for highway construction and WSDOT or authorized local, state, or federal official having jurisdiction of the land or a court of competent jurisdiction determines that replacement of the trail is required under 23 U.S.C. 138 and 49 U.S.C. 303, TENANT agrees that it shall be responsible for and promptly replace the trail as required and pay all such costs in accordance with Section 5.C. of this Lease.

B. TENANT further acknowledges, agrees, and promises not to use Outdoor Recreation Funds as provided for in the Land and Water Conservation Fund Act, 16 U.S.C. 460-1, sections 4-11 (see section 8(f)(3) within state owned right of way; such funds may be used outside of the state owned right of way).

24. CONDITION OF THE PROPERTY. WSDOT and TENANT acknowledge that they have jointly examined the Premises identified in **Exhibit A**, attached hereto, and TENANT accepts said Premises in its present condition as of the Commencement Date of this Lease.

25. BINDING CONTRACT. This Lease shall not become binding upon WSDOT unless and until executed for WSDOT by the Secretary of Transportation, or such Secretary's duly authorized representative.

26. **ATTORNEYS' FEES.** In the event of any controversy, claim, or dispute arising out of this Lease, each party shall be solely responsible for the payment of its own legal expenses, including but not limited to, attorney's fees and costs.

27. **MODIFICATIONS.** This Lease contains all the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by written amendment, signed by all authorized parties thereto.

28. **INTERPRETATION.** This Lease shall be governed by and interpreted in accordance with the laws of the state of Washington. The titles to paragraphs or sections of this Lease are for convenience only and shall have no effect on the construction or interpretation of any part hereof.

29. **SEVERABILITY.** In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Lease shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

30. **VENUE.** TENANT agrees that the venue of any action or suit concerning this Lease shall be in the Thurston County Superior Court and all actions or suits thereon shall be brought therein, unless applicable law requires otherwise.

31. **TOTALITY OF AGREEMENT.** It is understood that no guarantees, representations, promises, or statements expressed or implied have been made by WSDOT except to the extent that the same are expressed in this Lease.

32. **MEMORANDUM OF LEASE.** The parties hereby agree to execute and record a memorandum of lease, if either party so requests.

33. **NOTICES.** Wherever in this Lease written notices are to be given or made, they will be sent by certified or overnight mail addressed to the parties at the addresses listed below, unless a different address has been designated in writing and delivered to the other party.

WSDOT: DEPARTMENT OF TRANSPORTATION (Mailing Address)
Attn.: Property Management Program Manager
P. O. Box 47338
Olympia, WA 98504-7338

DEPARTMENT OF TRANSPORTATION (Physical Address)
Attn.: Property Management Program Manager
7345 Linderson Way SW
Tumwater, WA 98501

TENANT: LEWIS COUNTY
Public Works Director
2025 NE Kresky Ave.
Chehalis, WA 98532

Signatures:

LEWIS COUNTY

Accepted and Approved by:

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION

By: _____
Name: _____
Title: _____

By: _____
Mike Palazzo, Southwest Region Real
Estate Services Manager, Authorized Agent

By: _____
Name: _____
Title: _____

Dated: _____

By: _____
Name: _____
Title: _____

Dated: _____

APPROVED AS TO FORM

By: Mark Schumacher
Assistant Attorney General

Date: 3/4/2020

COUNTY ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
County of Lewis)

On this _____ day of _____, 2020 before me personally appeared _____, _____, _____ each one to me known to be one of the duly elected, qualified and acting County Commissioners of Lewis County, Washington, that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said County, for the uses and purposes therein mentioned, and each on oath stated that they were authorized to execute said instrument by resolution of the Board of County Commissioners of said County, and that the seal affixed is the official seal of said County.

GIVEN under my hand and official seal the day and year last above written.

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

My commission expires _____

WSDOT ACKNOWLEDGMENT

STATE OF WASHINGTON)

) ss.

County of Clark)

On this _____ day of _____, 20____ before me personally appeared Mike Palazzo, to me known to be the duly appointed Real Estate Services Manager, for the state of Washington Department of Transportation, Southwest Region, and that he executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said State of Washington, for the uses and purposes therein set forth, and on oath states that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the _____ day of _____, 20____.

(Signature)

(Print or type name)

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

My commission expires _____