
CNG USE AGREEMENT

BETWEEN

THE PORT OF PORTLAND

AND

CITY OF PORTLAND

Acting by and through its Bureau of Environmental Services

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EXHIBITS

Exhibit A	Port Facility
Exhibit B	City Facility
Exhibit C	City Rules

CNG USE AGREEMENT

This CNG USE AGREEMENT ("Agreement"), effective _____, 2019 ("Effective Date") is between **THE PORT OF PORTLAND**, a port district of the State of Oregon ("Port"), and the **CITY OF PORTLAND, BUREAU OF ENVIRONMENTAL SERVICES**, a municipal corporation of the State of Oregon ("City").

RECITALS

A. The Port is the owner of Portland International Airport in Portland, Oregon ("Airport"), including certain Compressed Natural Gas ("CNG"), facilities located at the Airport.

B. The City is the owner of certain CNG facilities located at the Columbia Boulevard Wastewater Treatment Plant, 5001 N Columbia Blvd., Portland, Oregon 97203.

C. The Port and City each operate CNG facilities for use in fueling their respective CNG-operated vehicles. The Port and City desire to enter into a reciprocal agreement whereby either party may use the other party's CNG facilities as an emergency back-up for the fueling of such party's CNG-operated vehicles in the event that such party's CNG facilities are inoperable.

NOW, THEREFORE, the Port and City intending to be legally bound by the terms and conditions of this Agreement, and in consideration of the mutual covenants and the benefits accruing respectively to the Port and City, the Port and City agree as follows.

1. TERM

This Agreement shall commence and be binding upon the Port and City as of the Effective Date and shall continue until expiration on _____, 2024, and shall thereafter automatically renew on each anniversary of the expiration date for an additional year until such time as either party terminates this Agreement by thirty (30) calendar days written notice to the other party.

2. CNG FACILITIES

2.1 Description of Port CNG Facility

The Port's CNG facilities are located as shown on **Exhibit A** attached hereto ("Port Facility"). Except as provided in this Section or elsewhere in this Agreement, City shall not use the Port Facility without the Port's prior written consent, which the Port may withhold or condition in its sole discretion, for any use other than that described in Section 3.

2.2 Description of City CNG Facility

The City CNG facilities are located as shown on **Exhibit B** attached hereto ("City Facility"). Except as provided in this Section or elsewhere in this Agreement, the Port shall not use the City Facility without City's prior written consent, which City may withhold or condition in its sole discretion, for any use other than that described in Section 3.

3. PERMITTED USE

The Port shall have the nonexclusive right to utilize City's Facility for the fueling of the Port's CNG-operated vehicles in the event the Port's Facility is inoperable for any reason; and City shall have the nonexclusive right to utilize the Port's Facility for the fueling of City's CNG-operated

vehicles in the event City's Facility is inoperable for any reason ("Permitted Use"). The Port and City shall each engage in the Permitted Use only in accordance with the provisions of this Agreement. The Port reserves the right to allow others to conduct the same or similar operations or similar services at the Airport. City reserves the right to allow others to conduct the same or similar operations or similar services at the City Facility.

3.1.1 General Limits on Use

3.1.1.1 City shall not use or permit anyone else to use the Port Facility, nor shall City permit anything to be done on the Port Facility which: (a) adversely affects or is likely to adversely affect the Port Facility; (b) creates any condition that may be a safety hazard or violates Federal Aviation Administration ("FAA") regulations; (c) creates or tends to create a hazard or a nuisance; or (d) adversely interferes in any way with Airport operations.

3.1.1.2 The Port shall not use or permit anyone else to use the City Facility, nor shall the Port permit anything to be done on the City Facility which: (a) adversely affects or is likely to adversely affect the City Facility; (b) creates any condition that may be a safety hazard; (c) creates or tends to create a hazard or a nuisance; or (d) adversely interferes in any way with City's operations.

3.1.2 Notice of Use

In the event either the City Facility or the Port Facility (collectively "Facilities") become inoperable, the party with the inoperable facility shall provide at least one (1) hours advance notice to the other party of such party's intent to use the other party's facility prior to utilizing that party's facility, unless emergency circumstances require shorter advance notice. The notice required under this section may be provided, by telephone, and by email and shall be directed to the following:

PORT

Name: Steven Koester

Phone: 503-460-4683

Address: 7200 NE Airport Way
Portland, OR 97218

Email: Steven.Koester@portofportland.com

CITY

David Olsav

Monday-Friday 7:30am-4:00pm:
503-823-2400
All other times:
503-823-2500

5001 N. Columbia Blvd.
Portland, OR 97203

Email: David.Olsav@portlandoregon.gov

3.2 Security and Access Protocol

3.2.1 Port Facility

The City understands and agrees that the Port's Facility is located within a secure area on the Airport and access thereto is restricted by law. In the event City uses the Port's Facility, any City employee accessing the Port's Facility must under escort by an individual designated by the Port at all times and shall follow the direction of such individual regarding the use and operation of the Port's Facility. In addition to the Notice of Use required under Section 3.1.1, operators of City vehicles must request escort to gain access to the Port's Facility after arriving on-site by calling the Port's Maintenance Operations Center (503-460-4683) during ordinary business hours (Monday through Friday 7am – 5pm), or the Port Communication Center (503-460-4747) if outside of business hours.

3.2.2 City Facility

The Port understands and agrees that the City's Facility is located within secure areas and access thereto is restricted. In addition to the Notice of Use required under Section 3.1.1, the event the Port uses the City's Facility, the following protocol will be followed: (a) Port employee will call BES Operations and advise of the need for the Port to use the City Facility, which can be reached at 503-823-2400 - Monday -Friday 7:30am-4:00pm, and at:503-823-2500, at all other times; (b) BES Operations will advise Port if CNG station is not operating and unavailable for use; (c) when a Port vehicle arrives at main entrance of the City Facility, the operator must stop at gate, push the intercom button and inform City staff they are with the Port of Portland and here to fuel a Port CNG vehicle; (d) once admitted, the Port vehicle may proceed to CNG fuel station and the operator will fuel vehicle(s) via City Fleet issued FOB. A spare FOB can be obtained from the BES Operations Center. Port employees shall follow the directions of City staff and comply with City Rules (defined below) while using the City Facility.

3.3 Compliance with Laws

City and City's officers, employees, invitees and agents shall comply with: (a) all applicable federal, state, and local laws, rules, regulations, and ordinances, including laws governing City's relationship with its employees, including but not limited to laws, rules, regulations and policies concerning workers' compensation, and minimum and prevailing wage requirements; (b) laws, rules and regulations and policies relative to occupational safety and health; (c) all Environmental Laws (as defined in Section 5.1.3); and (d) ordinances and rules adopted by the Port. The Port and Port's officers, employees, invitees and agents shall comply with: (a) all applicable federal, state, and local laws, rules, regulations, and ordinances, including laws governing its relationship with its employees, including but not limited to laws, rules, regulations and policies concerning workers' compensation, and minimum and prevailing wage requirements; (b) laws, rules and regulations and policies relative to occupational safety and health; (c) all Environmental Laws; and (d) rules or practices adopted by City.

3.3.1 Airport Rules

City and City's officers, employees, invitees, agents and contractors shall comply with the rules, regulations, and policies adopted by the Port, including without limitation, the *Portland International Airport Rules*, as any of the same may be amended from time to time, with respect to the use of, entry on, or access to the Port Facility or contiguous property owned by the

Port ("Airport Rules"). Copies of current Airport Rules may be found at the following website: http://www.portofportland.com/PDFPOP/PDX_Rules.pdf. The Port shall not discriminate against City in the enforcement of the Airport Rules.

3.3.2 City Rules

The Port and the Port's officers, employees, invitees, agents and contractors shall comply with the rules, regulations, and policies adopted by City, as any of the same may be amended from time to time, with respect to the use of, entry on, or access to the City Facility, or contiguous property owned by City ("City Rules"). A copy of the current City Rules are attached hereto as **Exhibit C**. City shall not discriminate against the Port in the enforcement of the City Rules.

3.4 No Smoking

No smoking shall be allowed on either the Port or City Facility.

4. PAYMENTS

4.1 Fuel Charges

Each party shall pay the other party's fuel costs for the actual amount of fuel used ("Fuel Charges") at the then-current Market Price (defined below), or such other price as may be mutually agreed upon by the parties. The fuel shall be separately metered. After use, the party whose facility was used shall invoice the other within thirty (30) calendar days of use. Payment shall be due within thirty (30) calendar days of the date on the invoice. For purposes of this Agreement, "Market Price" shall mean the then current average CNG price in the state of Oregon as listed on the CNG now website: <http://www.cngnow.com/average-cng-prices/pages/default.aspx>, or such other third-party pricing list mutually agreed upon by the parties.

4.2 Late Payments or Late Monthly Statements

4.2.1 Delinquent Fuel Charges Payment

If City or the Port is delinquent in paying any amount owed to the other under this Agreement, a Delinquency Charge (as defined in Section 4.2.2), shall be assessed on the delinquent amount. The Delinquency Charge shall accrue from the date the amount is due until it is paid in full.

4.2.2 Delinquency Charge

Any amount owing shall bear a delinquency charge of eighteen percent (18%) per annum ("Delinquency Charge") or the maximum rate of interest allowed by law, whichever is less, from the date such Fuel Charges are due until they are paid in full. Imposition of a Delinquency Charge shall not constitute a waiver of any other remedies available to the Port or City due to the other party's failure to timely pay the Fuel Charges.

4.3 Remedies Non-Exclusive

The remedies provided by Section 7.2 are in addition to all other rights and remedies that the Port or City may have for a breach or violation of this Agreement. Nothing in Section 7.2 shall be deemed to be a waiver by either party of any breach or violation, nor shall it be deemed to estop the either party from terminating this Agreement or from asserting any other of its other rights or

remedies under this Agreement, or at law or in equity. Nothing contained herein shall be construed to require a party to accept delinquent payment.

5. ENVIRONMENTAL OBLIGATIONS

The Port and City shall conduct all activities in the Facilities in accordance with Environmental Law (as defined in Section 5.1.3), with the environmental provisions of this Agreement, and in a manner that does not result in a Hazardous Substance Release (as defined in Section 5.1.5) to the Facilities.

5.1 Definitions

For the purposes of this Agreement, the following definitions shall apply.

5.1.1 Best Management Practices

"Best Management Practices" shall mean: (a) environmental or operational standards or guidelines that establish common and accepted practices; and (b) standards or guidelines as stated by pertinent trade associations, professional associations and/or regulatory agencies.

5.1.2 Environmental Costs

"Environmental Costs" shall be interpreted in the broadest sense to include, but not be limited to, costs and damages arising from or relating to: (a) any actual or claimed violation of or noncompliance with any Environmental Law (as defined in Section 5.1.3); (b) claims for damages, response costs, fines, fees or other relief relating to matters addressed in any Environmental Law; (c) injunctive relief relating to matters addressed in any Environmental Law; (d) Hazardous Substance Releases (as defined in Section 5.1.5); and (e) violations of any environmental provisions of this Agreement. Costs and damages as used in this Section shall include, but not be limited to: (i) costs of evaluation, testing, analysis, cleanup, remediation, removal, disposal, monitoring and maintenance; (ii) costs of reporting to or negotiating with any government agency; (iii) fees of attorneys, engineers, consultants and experts, whether or not taxable as costs, incurred at, before or after trial, appeal or administrative proceedings; and (iv) diminution of value, loss or restriction on use of property.

5.1.3 Environmental Law

"Environmental Law" shall be interpreted in the broadest sense to include, but not be limited to, any and all federal, State of Oregon, regional and local laws, regulations, rules, permit terms, codes, ordinances and legally enforceable guidance documents, now or hereafter in effect, as the same may be amended from time to time, and applicable decisional law, which govern materials, substances, regulated wastes, emissions, pollutants, animals or plants, noise, or products and relate to the protection of health, safety, the environment, or natural resources including land, sediments, water, storm water and ground water.

5.1.4 Hazardous Substance

"Hazardous Substance" shall be interpreted in the broadest sense to include, but not be limited to, any and all substances, contaminants, pollutants, materials, or products defined or designated as hazardous, toxic, radioactive, dangerous or regulated wastes or materials, or any

other similar term in or under any applicable Environmental Law. Hazardous Substance shall also include, but not be limited to, fuels, petroleum and petroleum derived products.

5.1.5 Hazardous Substance Release

"Hazardous Substance Release" shall be interpreted in the broadest sense to include, but not be limited to, threatened or actual spilling, discharge, deposit, injection, dumping, emitting, releasing, leaking, placing, migrating, leaching and seeping of any Hazardous Substance into the air or into or on any land or waters.

5.2 General Environmental Obligations

The parties shall manage and conduct all of its activities on or relating to the Facilities: (a) in compliance with applicable Environmental Law and the environmental provisions of this Agreement; (b) in a manner designed to protect the environment; (c) in cooperation with the other party's in its efforts to comply with Environmental Law; and (d) in adherence with Best Management Practices applicable to use of the Facilities. The Port and City shall manage and, as appropriate, secure the Facilities and occupation or use thereof so as to prevent any violation of Environmental Law by any party on or relating to the Facility.

5.3 Liability

5.3.1 Hazardous Substance Releases

Each party shall be responsible for all response to, remediation, and restoration of any Hazardous Substance Release and associated Environmental Costs on or from the other party's Facility, on other properties, in the air or in adjacent or nearby surface waters and ground water which results from or occurs in connection with that party's occupancy or use of the City Facility or Port Facility under this Agreement, and which either occurs during the term of this Agreement or occurs or continues after the term of this Agreement, unless caused by the party whose facility the Hazardous Substance Release occurs upon.

5.3.2 Liability for Environmental Costs

The party responsible for the Hazardous Substance Release shall be responsible for all Environmental Costs arising under this Agreement.

5.3.3 Limitation of Liability

Notwithstanding anything to the contrary provided in this Agreement, neither party shall have responsibility for Hazardous Substance or Hazardous Substance Releases, or Environmental Costs arising from Hazardous Substance or Hazardous Substance Releases that: (a) existed on the Facility of the other party prior to the date of that party's use of the Facility under this Agreement or any prior agreement (except if caused by that party's commissioners, partners, officers, employees, agents, contractors, or invitees); (b) are caused by the other party or the commissioners, partners, officers, employees, agents, contractors, or invitees of the other party; or (c) which the party can demonstrate was caused by a third party which is not a commissioner, partner, officer, employee, agent, contractor, or invitee of that party and which was not exacerbated by the actions of the other party.

5.4 Environmental Remediation

5.4.1 Immediate Response

In the event of a violation of Environmental Law, a violation of an environmental provision of this Agreement, a Hazardous Substance Release, or the threat of or reasonable suspicion of the same for which a party is responsible under this Agreement, that party shall immediately undertake and diligently pursue all actions necessary and appropriate to investigate, contain, stop, remove, and perform interim remediation regarding the Hazardous Substance Release and accomplish source control.

5.4.2 Remediation by the Port

The Port shall promptly undertake all actions necessary or appropriate to ensure that any Hazardous Substance Release caused by the Port is remediated and that any violation of Environmental Laws or the environmental provisions of this Agreement are corrected. The Port shall remediate, at the Port's sole expense, all Hazardous Substances for which the Port is responsible under this Agreement or under any Environmental Laws, and shall restore the City Facility or other affected property or water to its condition prior to the Hazardous Substance Release for which the Port is responsible. The obligations of the Port under this Section shall be subject to the limitations on the Port's liability set out in Section 5.3.3.

5.4.3 Remediation by City

City shall promptly undertake all actions necessary or appropriate to ensure that any Hazardous Substance Release caused by City is remediated and that any violation of Environmental Law or the environmental provisions of this Agreement are corrected. City shall remediate, at City's sole expense, all Hazardous Substances for which City is responsible under this Agreement or under any Environmental Law, and shall restore the Facilities or other affected property or water to its condition prior to the Hazardous Substance Release for which City is responsible. The obligations of City under this Section shall be subject to the limitations on City's liability set out in Section 5.3.3.

5.4.4 Report to the Port

Within thirty (30) calendar days following completion of any investigatory, containment, remediation and/or removal action required by this Agreement, City shall provide the Port with a report outlining in detail what has been done and the results thereof.

5.4.5 Report to City

Within thirty (30) calendar days following completion of any investigatory, containment, remediation and/or removal action required by this Agreement, the Port shall provide the City with a report outlining in detail what has been done and the results thereof.

5.5 Notice to the Port

City shall promptly notify the Port upon becoming aware of: (a) a violation or alleged violation of Environmental Law or any environmental provision of this Agreement related to City's use of the Facilities; and (b) any Hazardous Substance Release resulting from City's use on, under or adjacent to the Facilities or threat of or reasonable suspicion of any of the same. If notice must be given on the weekend or after 5:00 p.m. on any Business Day (as defined in Section 8.6), City

shall notify the Port by calling the Port's emergency telephone number. That number currently is (503) 460 4000.

5.6 Notice to City

The Port shall promptly notify City upon becoming aware of: (a) a violation or alleged violation of Environmental Law or any environmental provision of this Agreement related to the Port's use of the Facilities; and (b) any Hazardous Substance Release resulting from the Port's use on, under or adjacent to the Facilities or threat of or reasonable suspicion of any of the same. If notice must be given on the weekend or after 5:00 p.m. on any Business Day (as defined in Section 8.6), the Port shall notify City by calling 503-823-2500

5.7 Port's Right to Perform on Behalf of City

Except in the event of an emergency or an agency order requiring immediate action, the Port shall have the right, upon giving City seven (7) calendar days written notice, to perform City's obligations arising under this Agreement and charge City the resulting Environmental Costs. The Port may not commence performance on behalf of City under this Section if, within the seven (7) calendar day notice period, City promptly begins and diligently pursues to completion the performance of the obligations set forth in the Port's notice.

5.8 City's Right to Perform on Behalf of the Port

Except in the event of an emergency or an agency order requiring immediate action, City shall have the right, upon giving the Port seven (7) calendar days written notice, to perform the Port's obligations arising under this Agreement and charge the Port the resulting Environmental Costs. City may not commence performance on behalf of the Port under this Section if, within the seven (7) calendar day notice period, the Port promptly begins and diligently pursues to completion the performance of the obligations set forth in the City's notice.

6. INDEMNITY AND INSURANCE REQUIREMENTS

6.1 General Indemnity; Reimbursement of Damages

6.1.1 City Indemnity Obligations

Subject to the limitations set forth in the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 *et seq.*, City agrees to defend (using legal counsel acceptable to the Port), indemnify and hold harmless the Port and each of the Port's commissioners, officers, employees and agents (collectively including the Port, "Port Indemnified Parties") from and against and reimburse each Port Indemnified Party for any and all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert and escrow fees), fines Environmental Costs and/or penalties (collectively, "City's Costs") which may be imposed upon, claimed against or incurred or suffered by such Port Indemnified Party and which, in whole or in part, directly or indirectly, arise from or are in any way connected with any of the following, except to the extent resulting from such Port Indemnified Party's negligence or willful misconduct: (a) any act, omission or negligence of City; (b) any use, occupation, management or control of the Port Facility by the City; (c) except as provided in Section 5.3.3, any condition created in, on, or about the Port Facility by the City, including any accident, injury or damage occurring on or about the Port Facility to the extent arising out of such City-created condition on or after the Effective Date; and (d) any breach, violation or nonperformance of any of City's obligations under this

Agreement. For the purposes of Section 6.1.1(a) through (d), City shall be deemed to include City and City's partners, officers, directors, agents, employees, contractors, and invitees.

6.1.2 Port Indemnity Obligations

Subject to the limitations set forth in the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 *et seq.*, the Port agrees to defend (using legal counsel acceptable to the Port), indemnify and hold harmless City and each of the City's commissioners, officers, employees and agents (collectively including the City "City Indemnified Parties") from and against and reimburse each City Indemnified Party for any and all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert and escrow fees), fines Environmental Costs and/or penalties (collectively, "Port's Costs") which may be imposed upon, claimed against or incurred or suffered by such City Indemnified Party and which, in whole or in part, directly or indirectly, arise from or are in any way connected with any of the following, except to the extent resulting from such City Indemnified Party's negligence or willful misconduct: (a) any act, omission or negligence of the Port; (b) any use, occupation, management or control of the City Facility by the Port; (c) except as provided in Section 5.3.3, any condition created in, on, or about the City Facility by the Port, including any accident, injury or damage occurring on or about the City Facility to the extent arising out of such Port-created condition on or after the Effective Date; and (d) any breach, violation or nonperformance of any of the Port's obligations under this Agreement. For the purposes of Section 6.1.2(a) through (d), the Port shall be deemed to include the Port and the Port's partners, officers, directors, agents, employees, contractors, and invitees.

6.2 City's Insurance Requirements

The Port recognizes that the City is subject to the Oregon Tort Claims Act. The City's self-insured program and any policies covering the Permitted Use are subject to Oregon law. The Port accepts the City's program. The City shall treat the Port as an additional insured under its self-insurance program or endorse any applicable policy to provide such status. All of the City's self-insurance and insurance shall be primary, but only with respect to the Permitted Use at the Port's facility.

6.3 Port's Insurance Requirements

City recognizes that the Port is subject to the Oregon Tort Claims Act. The Port's self-insured program and any policies covering the Permitted Use are subject to Oregon law. City accepts the Port's program. The Port shall treat City as an additional insured under its self-insurance program or endorse any applicable policy to provide such status. All of the Port's self-insurance and insurance shall be primary, but only with respect to the Permitted Use at City's facility.

6.4 Survival of Indemnities

The indemnity agreements set forth in Section 6 shall survive the expiration or earlier termination of this Agreement and be fully enforceable thereafter.

7. DEFAULT

7.1 Event of Default

The occurrence of any of the following shall constitute an "Event of Default" (also referred to as a "Default").

7.1.1 Default in Payment

An Event of Default shall occur if either party fails to pay an amount due within ten (10) calendar days of when due.

7.1.2 Default in Other Covenants

An Event of Default shall occur if either party fails to comply with any term, covenant or condition of this Agreement (other than the payment of money) within thirty (30) calendar days after written notice by the other party describing the nature of the Default. If the Default is of such a nature that it cannot be completely remedied within the thirty (30) calendar day period, this provision shall be complied with if defaulting party begins correction of the Default within the thirty (30) calendar day period and thereafter proceeds in good faith and with reasonable diligence to effect the cure as soon as practical, so long as done to the satisfaction of the other party. Furthermore, if any Event of Default threatens to cause serious harm to a party or other tenants or persons, then that party shall not be required to serve any notice before proceeding to request immediate injunctive relief.

7.1.3 Insolvency

To the extent permitted by the United States Bankruptcy Code, insolvency of a party shall be deemed to include: (a) an assignment for the benefit of creditors; (b) the filing of a voluntary petition in bankruptcy; (c) an adjudication that a party is bankrupt or the appointment of a receiver of the properties of the party and the receiver is not discharged within thirty (30) calendar days; (d) the filing of an involuntary petition of bankruptcy and failure to secure a dismissal of the petition within thirty (30) calendar days after filing; and (e) attachment of or levying of execution on the leasehold interest and failure to secure discharge of the attachment or release of the levy of execution within ten (10) calendar days. All of the above (a) through (e) shall constitute an Event of Default. In these instances, no notice that an Event of Default has occurred shall be required.

7.1.4 Material Misrepresentation

An Event of Default for which no notice or opportunity to cure need be given may be declared if it is discovered that a party made a material misrepresentation to the other which induced that party to enter into this Agreement.

7.2 Remedies on Default

Immediately following an uncured Event of Default or an Event of Default for which there is no cure period, the non defaulting party may terminate this Agreement and the defaulting party's right to possession of the Facility and may exercise any or all of the following remedies, in addition to any other rights and remedies provided in this Agreement or otherwise at law or equity.

7.2.1 Right to Sue More than Once

A party may sue periodically to recover damages during the period corresponding to the remainder of the term of this Agreement, and no action for damages shall bar a later action for damages subsequently accruing.

7.2.2 Inducement Recapture

If this Agreement is terminated due to an Event of Default, a party shall be entitled to recover any type of Agreement credit or the cost of any improvements made by that party to the Facility for the benefit of the other.

7.3 Remedies Cumulative and Nonexclusive

Each right and remedy in this Agreement will be cumulative and will be in addition to every other right or remedy in this Agreement or existing at law or in equity including, without limitation, suits for injunctive relief and specific performance. The exercise, or beginning of the exercise, by a party of any such rights or remedies will not preclude the simultaneous or later exercise by the Port or City of any other such rights or remedies. All such rights and remedies are nonexclusive.

7.4 Agreement Continuation

Even if City or the Port has breached this Agreement, this Agreement shall continue and both parties may enforce all of its rights and remedies under this Agreement, including the right to recover amounts due as they become due under this Agreement. Any notice to terminate may be given before or within the cure period for Default and may be included in a notice of failure of compliance. No such termination shall prejudice a party's right to claims for damages for such breach or any other rights and remedies of that party.

7.5 Curing City's Default

If City fails to perform any of City's obligations under this Agreement, the Port, without waiving rights with respect to such failure, may (but shall not be obligated to) perform the same for the account of and at the expense of City, without notice in a case of emergency, and in any other cases, only if such failure continues after the expiration of thirty (30) calendar days from the date the Port gives City notice of the failure. The Port shall not be liable to City for any claim for damages resulting from such action by the Port. City agrees to reimburse the Port upon demand any reasonable amounts the Port may spend in complying with the terms of this Agreement on behalf of City. The Port shall have the same rights and remedies in the event of the nonpayment of amounts due to be reimbursed under this Section as in the case of Default by City in the payment of any Fuel Charges.

7.6 Curing Port's Default

If the Port fails to perform any of the Port's obligations under this Agreement, City, without waiving rights with respect to such failure, may (but shall not be obligated to) perform the same for the account of and at the expense of the Port, without notice in a case of emergency, and in any other cases, only if such failure continues after the expiration of thirty (30) calendar days from the date City gives the Port notice of the failure. City shall not be liable to the Port for any claim for damages resulting from such action by City. The Port agrees to reimburse City upon demand any reasonable amounts the Port may spend in complying with the terms of this Agreement on behalf

of the Port. City shall have the same rights and remedies in the event of the nonpayment of amounts due to be reimbursed under this Section as in the case of Default by the Port in the payment of any Fuel Charges.

8. GENERAL PROVISIONS

8.1 Agreement Subject to Agreements with United States

This Agreement shall be subject to the provisions of any existing or future agreements between the Port and the United States relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

8.2 Agreement Subject to Aviation Priority

City's right to use the Port Facility for the purposes as set forth in this Agreement shall be secondary and subordinate to the operation of the Airport. City acknowledges that because of the close location of the Port Facility to the Airport, noise, vibration, fumes, debris and other interference with the use of the Port Facility will be caused by Airport operations. City hereby waives any and all rights or remedies against the Port arising out of any noise, vibration, fumes, debris and other interference that is caused by the operation of the Airport. The Port specifically reserves for itself, and for the public, a right of flight for the passage of aircraft in the airspace above the surface of the Port Facility together with the right to cause in said airspace such noise, vibration, fumes, debris and other interferences as may be inherent in the present and future operation of aircraft. If continued flight operations so require, height restrictions on buildings and other improvements may be imposed on the Port Facility.

8.3 Agreement Subject to Bonds and Ordinances

This Agreement shall be subject and subordinate to the bonds and ordinances which create liens and encumbrances affecting the Facilities. City agrees that the Port may hereafter adopt bond ordinances which impose liens or encumbrances on the Port Facility and the Port's interest in the Port Facility, and City shall, upon request of the Port, execute and deliver agreements of subordination consistent herewith. The Port agrees that the City may hereafter adopt bond ordinances which impose liens or encumbrances on the City Facility and the City's interest in the City Facility, and the Port shall, upon request of the City, execute and deliver agreements of subordination consistent herewith. Furthermore, in order to comply with the requirements of existing Port bond ordinances, City hereby makes an irrevocable commitment not to claim depreciation, cost recovery, or an investment credit with respect to the Port Facility, space or to any improvements constructed by the Port using Port funds or Port bond funds or constructed by City or someone else, but paid for using Port funds or Port bond proceeds.

8.4 Airport Security

City recognizes its obligations to comply with federal airport security regulations applicable to the Airport. The Port shall notify City of any such federal airport security regulations which are or may become applicable to City's use or occupancy of the Port Facility. As of the Effective Date, there are no applicable federal airport security regulations that apply to the use or occupancy of the Port Facility.

8.5 Attorney Fees

If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the United States Bankruptcy Code), is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law. If the Port or City are required to seek legal assistance to enforce any term of this Agreement, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review. Whenever this Agreement requires either party to defend the other, it is agreed that such defense shall be by legal counsel reasonably acceptable to the party to whom such defense is owed.

8.6 Calculation of Time

"Legal Holiday" shall mean any holiday observed by the federal government. "Business Day" shall mean Monday through Friday and shall exclude Saturday, Sunday and Legal Holidays. Unless referred to as Business Days, all periods of time referred to herein shall include Saturdays, Sundays and Legal Holidays. However, if the last day of any period falls on a Saturday, Sunday or Legal Holiday, then the period shall be extended to include the next day which is not a Saturday, Sunday or Legal Holiday.

8.7 Capacity to Execute

The Port and City each warrant and represent to one another that this Agreement constitutes a legal, valid and binding obligation of that party. The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the party for whom they purport to be acting.

8.8 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

8.9 Covenants, Conditions and Restrictions

This Agreement is subject to the effects of any covenants, conditions, restrictions, easements, mortgages, deeds of trust, ground leases, rights of way, the U.S. Department of Transportation's FAA or the U.S. Department of Homeland Security, Transportation and Security Administration regulations or policies, or their respective successors in interest, restrictions or regulations, and any other matters of record pertaining to the Airport.

8.10 Defined Terms

Capitalized terms shall have the meaning given them in the text herein.

8.11 Entire Agreement

This Agreement represents the entire agreement between the Port and City with respect to its subject matter. It is understood and agreed by City and the Port that neither the Port or City nor the Port's or City's agents or employees have made any representations or promises with respect

to this Agreement or the making of or entry into this Agreement, except as expressly set forth in this Agreement. No claim for liability shall be asserted based on any claimed breach of any representations or promises not expressly set forth in this Agreement. All oral agreements, if any, are void and expressly waived by the Port or City. This Agreement has been thoroughly negotiated between the parties; therefore, in the event of ambiguity, there shall be no presumption that such ambiguity should be construed against the drafter.

8.12 Exhibits Incorporated by Reference

Any and all exhibits attached hereto are incorporated by reference in this Agreement for all purposes.

8.13 Governing Law, Venue

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Oregon. Any dispute, claim, or proceeding arising out of or relating to this Agreement shall only be brought in a state or federal court of competent jurisdiction located in Portland, Oregon, which court's jurisdiction shall be exclusive.

8.14 Headings, Table of Contents and Table of Definitions

The section headings, table of contents and table of definitions contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

8.15 Interpretation of Agreement; Status of Parties

This Agreement is the result of arms length negotiations between the Port and City and shall not be construed against either party. Nothing contained in this Agreement shall be deemed or construed as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the parties hereto.

8.16 Mediation

Except for claims in equity (such as claims for injunctive relief) which may be brought by either party without mediation, all disputes arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal proceedings. The parties shall endeavor in good faith to resolve any disputes initially by mediation. A request for mediation shall be sent in writing to the other party, and shall specify the nature of the requesting party's claims and include the name of the requesting party's proposed mediator. If the party receiving the request does not both object to the proposed mediator and identify an alternative mediator by written notice to the requesting party within five (5) business days following receipt of the request for mediation, the party receiving the request shall be conclusively deemed to have agreed to the proposed mediator identified therein. The parties shall share the mediator's fee and any filing fees, equally. The mediation shall be held in Portland, Oregon at a location mutually acceptable to the parties. If the parties cannot agree on a mediator or the mediation hearing has not occurred within thirty (30) calendar days of the request for mediation, then the condition precedent to arbitration or the institution of legal proceedings shall be deemed satisfied with respect to both the claims set forth in the mediation request and any reasonably related counterclaims.

8.17 Modification

This Agreement may not be modified or amended except by a written instrument duly executed by the authorized signatories for the parties hereto.

8.18 No Exclusive Rights

Nothing in this Agreement shall be deemed to grant either party any exclusive right or privilege or the exclusive right of conduct of any activity on the other party's Facility.

8.19 No Implied Warranty

In no event shall any consent, approval, acquiescence, or authorization by either party be deemed a warranty, representation, or covenant by that party that the matter approved, consented to, acquiesced in or authorized is appropriate, suitable, practical, safe or in compliance with any applicable law or this Agreement.

8.20 No Intended Third-Party Beneficiaries

Nothing in this Agreement gives or shall be construed to create a benefit to any party who is not a signatory party to this Agreement.

8.21 No Limit on City's or Port's Powers

Nothing in this Agreement shall limit, in any way, the power and right of the City or the Port to exercise its respective governmental rights and powers, including its powers of eminent domain.

8.22 Notices

All notices required under this Agreement, other than those described in Section 3, shall be deemed to be properly served if sent by certified mail, return receipt requested, or delivered by a nationally recognized delivery carrier to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent as follows:

to the Port at:

The Port of Portland
PO Box 3529
Portland, OR 97208
Attention: Concessions Manager

with a copy to:

The Port of Portland
PO Box 3529
Portland, OR 97208
Attention: Legal Department

to City at:

The City of Portland
Environmental Services
5001 N Columbia Boulevard
Portland OR 97203
Attention: Procurement & Acquisition Supervisor

The date of service of such notice by mail is agreed to be three (3) calendar days after the date such notice is deposited in a post office of the United States Postal Service, postage prepaid, return receipt requested, certified mail or, if delivered by hand, then the actual date of hand delivery. Notice may also be given by facsimile or e-mail. The burden of proof concerning receipt of the facsimile or e-mail will be on the sender who may satisfy the burden by presenting a receipt of the transmission showing the date the transmission successfully occurred, the facsimile number or e-mail address(es) that the transmission was sent to, the name of the party to whom the facsimile or e-mail was sent, and a description of the document sent.

8.23 No Waiver

Waiver by the either party of strict performance of any provision of this Agreement shall not be deemed a waiver of or prejudice 'that party's right to require strict performance of the same provision in the future or of any other provision of this Agreement.

8.24 Provisions Applicable to Others

All provisions of this Agreement governing a party's use of the other party's Facility and that party's activities and conduct on, about or from the Facility shall apply to that party's officers, agents, employees and invitees.

8.25 Recitals

The Recitals above are true and are incorporated into and are a part of this Agreement.

8.26 Severability

If any provision contained herein is held to be invalid or unenforceable, the remaining provisions, or the application of such provisions to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision contained herein shall be valid and enforceable to the fullest extent permitted by law.

8.27 Successors; Parties

The rights, liabilities and remedies provided for in this Agreement shall extend to the heirs, legal representatives and, so far as the terms of this Agreement permit, successors and assigns of the parties hereto. The words Port and City and their accompanying verbs or pronouns, wherever used in this Agreement, shall apply equally to all persons, firms, or corporations which may be or become such parties hereto.

8.28 Survival

Any covenant or condition including, but not limited to, indemnification provisions, set forth in this Agreement, the full performance of which is not specifically required prior to the expiration or earlier termination of this Agreement, and any covenant or condition which by their terms are to survive the termination of this Agreement, shall survive the expiration or earlier termination of this Agreement and shall remain fully enforceable thereafter.

8.29 Time of the Essence

Time is of the essence in the performance of and adherence to each and every covenant and condition contained herein.

IN WITNESS HEREOF, the parties have subscribed their names hereto effective as of the year and date first written above.

CITY OF PORTLAND, BUREAU OF ENVIRONMENTAL SERVICES.

THE PORT OF PORTLAND

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

Date: _____

Date: _____

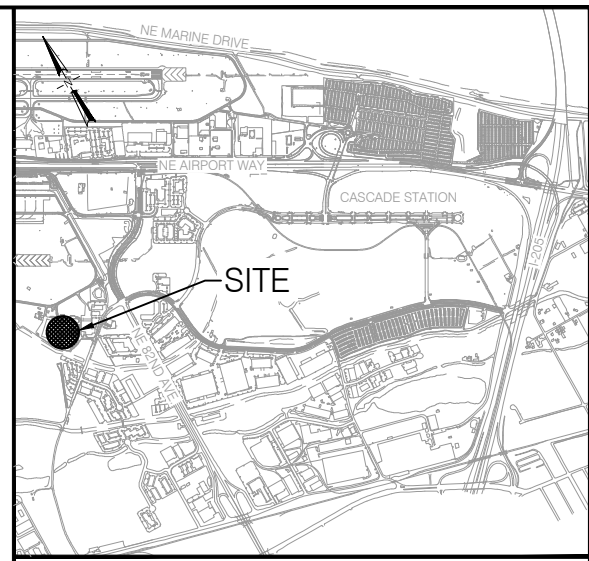
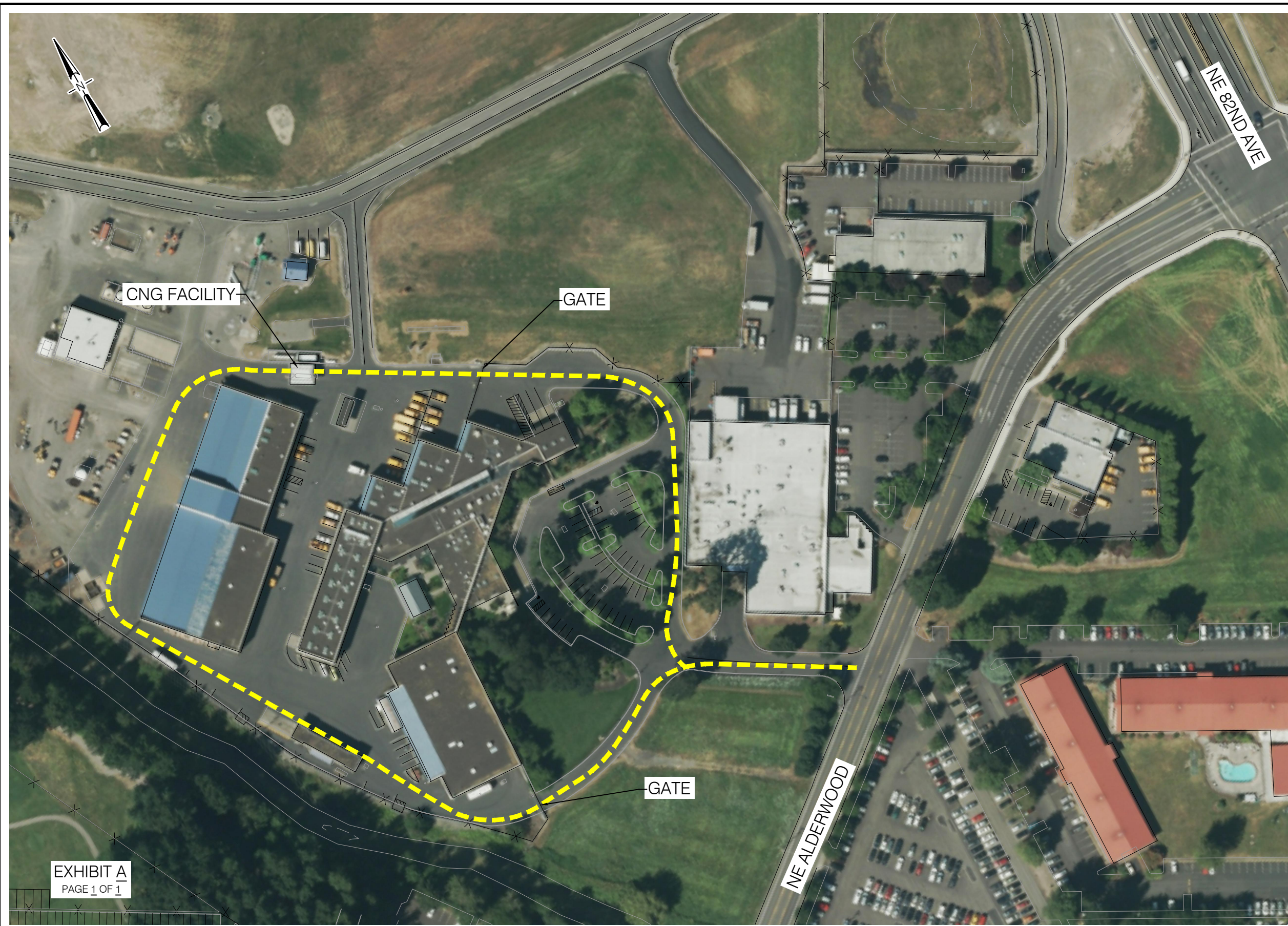
APPROVED FOR LEGAL SUFFICIENCY FOR THE CITY OF PORTLAND:

APPROVED FOR LEGAL SUFFICIENCY FOR THE PORT OF PORTLAND:

By: _____
City Attorney's Office

By: _____
Counsel for The Port of Portland

0 1/4" 1/2" 1" GRAPHIC SCALE: PORTLAND ONLY



VICINITY MAP
SCALE: N.T.S.

EXHIBIT A
PAGE 1 OF 1

CAN YOU SEE THE AIRPLANES? THE ADJACENT SAMPLES SHOW THREE DIFFERENT LEVELS OF SHADING. SETTINGS FOR VIEWING AND PRINTING DRAWING CONTENT ARE OPTIMIZED WHEN ALL THREE PLANES ARE VISIBLE. THIS GUIDANCE IS PROVIDED FOR REFERENCE ONLY.

NO.	DATE	BY	REVISIONS	CKD	APPVD	NO.	DATE	BY	REVISIONS	CKD	APPVD

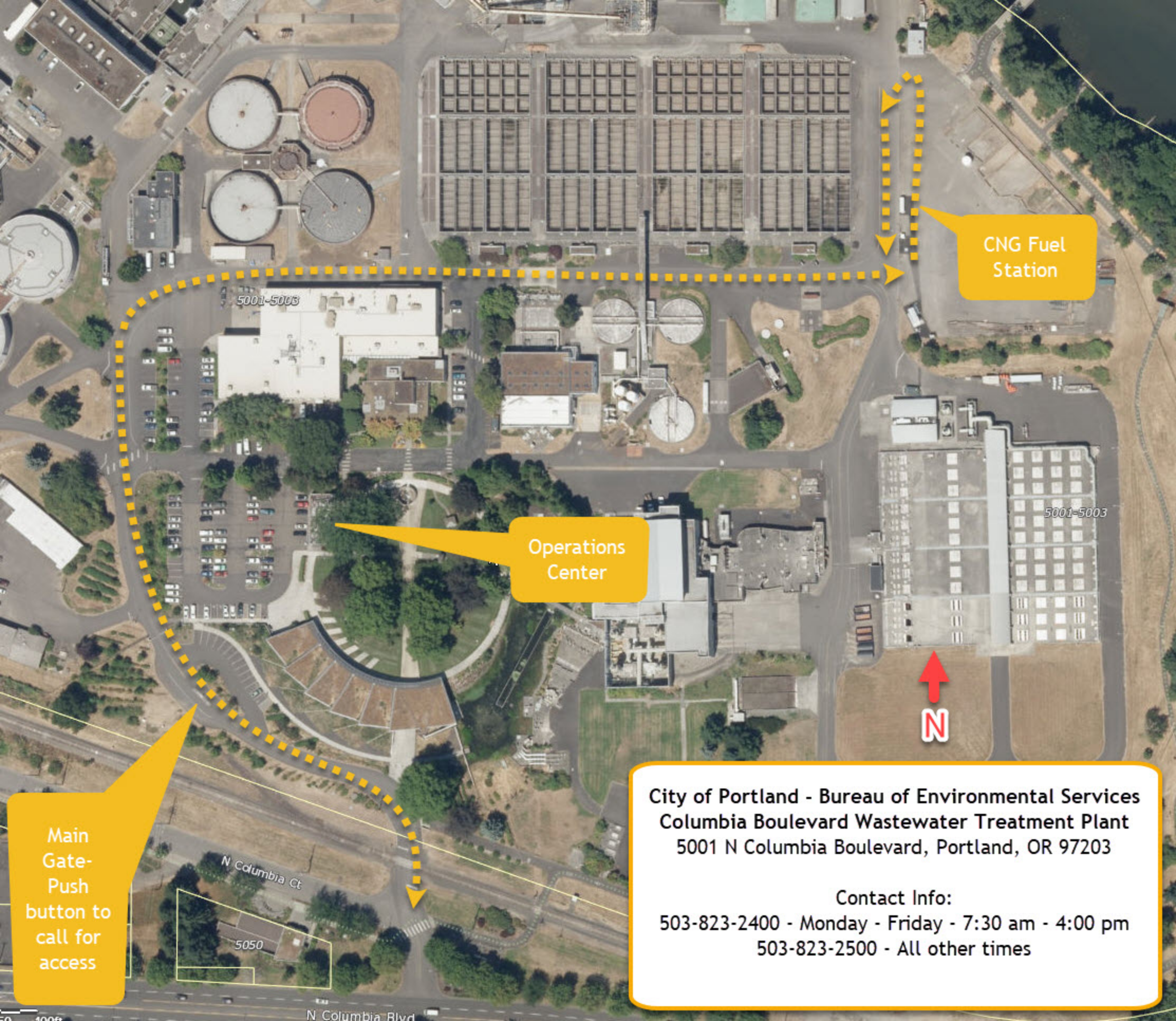


PORT OF PORTLAND
PORTLAND, OREGON

2012ZGEN 1338
DESIGN NUMBER PROJECT NUMBER

DESIGNED BY _____
DRAWN BY L. VOGT
CHECKED BY S. KOESTER
DATE NOV 2012
SCALE SCALE 1" = 60'-0"

PORTLAND INTERNATIONAL AIRPORT			
PORT OF PORTLAND & CITY OF PORTLAND CNG USE AGREEMENT			
SUBMITTED BY	LEE VOGT LEASE PLAT ADMINISTRATOR	TYPE	DRAWING NO.
EP	PDX 2012-P5	1/1	(C-1)



CNG Fuel Station

Operations Center

Main Gate-Push button to call for access

City of Portland - Bureau of Environmental Services
Columbia Boulevard Wastewater Treatment Plant
5001 N Columbia Boulevard, Portland, OR 97203

Contact Info:
503-823-2400 - Monday - Friday - 7:30 am - 4:00 pm
503-823-2500 - All other times

Exhibit C

BUREAU OF ENVIRONMENTAL SERVICES COLUMBIA BLVD WASTEWATER TREATMENT PLANT PORT OF PORTLAND ONSITE RULES

Port of Portland vehicles and employees entering the Columbia Boulevard Wastewater Treatment Plant (CBWTP) to acquire CNG fuel for their vehicles shall comply with the following rules.

- **On-site Contact** – The primary On-site Contact is the Stores Acquisition and Inventory Supervisor who oversees on-site fueling operations. Contact number is 503-823-2430. Questions should be directed to the On-site Contact.
- **Access/Egress** – Vehicles are permitted access/egress to/from the CBWTP after they have contacted BES informing them of the need to utilize the CNG fuel station. Upon arrival to the CBWTP the Port of Portland employee must provide their organization's name, person name and purpose for entering the facility. A train crossing resides across the main access/egress roadway where safe driving practices are expected.
- **On-site Speed Limit** – Except where otherwise posted lower, the maximum speed limit is 10 mph. There are many small vehicles, carts, bicycles and pedestrians traveling around the facility at all hours.
- **Facility Use** - Port of Portland employees may not enter plant areas other than the CNG fueling station and must follow the designated traffic route when on-site. No plant facilities, including lunch rooms, vending machines, showers, lavatories, etc. should be used except during an emergency (accident or injury) without specific authorization by the On-site Contact or designee.
- **Smoking** – Smoking is not allowed on site.
- **Equipment Use** – Port of Portland employees are not to operate, energize, or de-energize any city owned equipment or machinery other than the CNG fuel station.
- **Emergency** - In the event of an emergency requiring police, fire or medical assistance, call 911 (9-911 from a City phone), and then call the Customer Service Desk at 503-823-2400 or outside normal business hours (4:00 pm - 7:30 am) the 24/7 Operations Center at 503-823-2500 to report the incident.