

**FIRST AMENDMENT
TO
DOCK USAGE AGREEMENT**

This FIRST AMENDMENT TO DOCK USAGE AGREEMENT (“**First Amendment**”) is dated this ____ day of June, 2019, by and between the PORT OF KALAMA, a Washington municipal corporation and port district (“**Port**”), and NORTHWEST INNOVATION WORKS, KALAMA, LLC, a Washington limited liability company (“**Dock User**”). This First Amendment places in writing and sets forth the intentions of the parties hereto, as agreed upon as being in effect as of July 1, 2019.

RECITALS

A. On April 9, 2014, Port and Dock User entered into a Dock Usage Agreement (as amended, the "**Dock Usage Agreement**"), with respect to that certain Dock located in the Port of Kalama, County of Cowlitz, State of Washington, as more particularly described in the Agreement.

B. Contemporaneous with execution of the Dock Usage Agreement, Port, as lessor, and Dock User, as lessee, entered into that certain Lease Agreement (as now or hereafter amended, the "**Agreement**"), whereby the Port agreed, upon the satisfaction of the conditions set forth in the Agreement, to lease to Dock User certain premises within the Port of Kalama for the construction and operation of a facility for the production of methanol from natural gas, together with the related improvements (as more fully described in the Agreement, the "**Facility**").

C. Dock User has represented that no quantity of methanol produced at the Facility shall be sold for use as fuel products, and Port continues to rely on such representations in conjunction with the environmental permitting of the Facility.

D. Port seeks certain assurances from the Dock User concerning the end use of methanol produced at the Facility and clarification of the parties' obligations, to which Dock User agrees to amend the Dock Usage Agreement as provided herein.

AMENDMENT

NOW, THEREFORE, in consideration of the mutual covenants herein and for other valuable consideration, the receipt and sufficiency of which are acknowledged by each of the parties, the parties hereby agree as follows:

1. Dock User Covenant. Dock User covenants to Port that no quantity of methanol produced at the Facility shall be sold for use as fuel products. Dock User acknowledges Port's reliance on the foregoing covenant pursuant to Port's environmental review and Permit applications.
2. Port's Inspection and Audit Rights. Upon reasonable advance notice, Port and its agents may inspect, examine, and audit the records and data of Dock User, its carriers for all Vessels upon which the methanol produced at the Facility is loaded

("Carriers"), and buyers or end-users of the methanol at the shipping destination ("Buyers"), which audits shall be at Dock User's sole cost and expense. In support of the foregoing right, Dock User shall maintain, and shall cause its Carriers and Buyers to maintain: (a) Carrier bills of lading and cargo manifests, (b) records substantiating Carrier's invoices, (c) sales contracts and bills of sale to Buyers, and (d) such other operational records and agreements pertaining to the storage, shipment, sales, and use of methanol from the Facility that Dock User, Carriers and Buyers keep in the ordinary course of its business. Dock Users' shipping and sales contracts with Carriers and Buyers shall contain a provision that provides the Port's rights to inspect and audit the specified records under this Dock Usage Agreement. Dock User shall make such records available to Port and its auditors for examination and copying upon request. Dock User shall cooperate, and shall require its Carriers and Buyers to cooperate, with the Port's audits and inspections. Dock User shall retain such records for the longer of two (2) years after the Term ends or as required by applicable Laws. Dock User shall reimburse Port within thirty (30) days of receipt of an invoice for Port's costs and expenses related to the inspections, audits and compliance measures as provided herein.

3. Notice; Dock User Annual Certifications. Dock User shall notify Port of any breach of its covenant under Section 1 above along with any undertaken or anticipated corrective actions to cure said breach within five (5) business days of discovering such breach. Further, Dock User shall provide Port annually on each July 1 during the Term with a written certification (the "**Annual Certification**") summarizing the following: (i) the quantity of methanol shipped, together with the identity of the Carrier, the name of the Vessel and the destination port for each shipment; (ii) the name of each Buyer and quantity purchased by such Buyer; (iii) any breach of or departures from Dock User's covenant under Section 1 of this First Amendment; and (iv) corrective measures undertaken to cure such breach (if any). The Annual Certification shall include an attestation that all quantities of methanol produced at the Facility during the period certified have been sold for use exclusively for non-fuel purposes and shall be certified as being accurate and complete by a Northwest Innovation Works, Kalama, LLC, officer authorized by Dock User and knowledgeable on the subject matter contained in such certification.
4. Remedies. The following shall be incorporated into Section 17 of the Dock Usage Agreement:

Notwithstanding any contrary provision in the Dock Usage Agreement or Related Agreements, in the event Dock User breaches, without cure, its covenant in Section 1 above of this First Amendment for any shipment of methanol, Port will implement and Dock User shall be subject to the following escalating remedies as liquidated damages:

- (a) First Breach: Upon a first breach of Dock User's covenant within any ten- (10-) year period during the Term, Port shall collect from Dock User, in addition to the Wharfage Rate, a surcharge equal to One Hundred Percent

(100%) of the Wharfage Rate provided in Section 4.1.1 of the Dock Usage Agreement in effect at the time of such breach.

- (b) Second Breach: Upon a second breach of Dock User's covenant within any ten- (10-) year period during the Term, Port shall collect from Dock User, in addition to the Wharfage Rate, a surcharge equal to Two Hundred Percent (200%) of the Wharfage Rate provided in Section 4.1.1 of the Dock Usage Agreement in effect at the time of such breach.
- (c) Third Breach: Upon a third breach of Dock User's covenant within any ten- (10-) year period during the Term, Port shall impose the following remedies: (i) collect from Dock User, in addition to the Wharfage Rate, a surcharge equal to Three Hundred Percent (300%) of the Wharfage Rate provided in Section 4.1.1 of the Dock Usage Agreement in effect at the time of such breach; and (ii) without terminating the Dock Usage Agreement, revoke Dock User's license to use or access the Dock for a period of not less than one (1) year from the date Port becomes aware of such breach, and Dock User's Carriers and Vessels shall be denied any right to berth at the Dock. Dock User shall nevertheless remain fully liable for the Minimum Wharfage Amount as provided in Section 4.2 of the Dock Usage Agreement. Port may reinstate Dock User's license, and Dock User may resume use of the Dock, only upon implementation of corrective measures to Port's sole satisfaction ensuring that a breach does not recur.

All surcharges collected by Port under this Section 4 shall be remitted to an account established for the purpose of greenhouse gas emission mitigation as explained in the Facility's Draft and Final Supplemental Environmental Impact Statement as mitigation of Dock User's breach of the covenant.

As used in this First Amendment, the term "breach" refers to any quantity of a shipment of methanol produced at the Facility that has been sold, conveyed or otherwise transferred for use as a fuel product in violation of Dock User's covenant under Section 1 above without cure. Port's finding of a breach shall be presumptively determinative. Dock User agrees to and assumes the burden of showing, by a preponderance of the evidence, that such presumption is erroneous,

Port and Dock User expressly agree that the foregoing remedies are reasonable approximations of Port's actual damages in the event of a Dock User breach, without cure, of its covenant in Section 1 of this First Amendment and are not penalties, that Dock User has induced Port to enter into the Dock Usage Agreement expressly through Dock User's covenants and promises.

- 5. Ratification. Except as specifically amended in this First Amendment, each and every other term and condition of the Dock Usage Agreement is hereby ratified and shall remain in full force and effect.

6. Amendment Controls. To the extent any provisions of the Dock Usage Agreement are contrary or inconsistent with the terms of this First Amendment, this First Amendment shall control. Capitalized terms not otherwise defined in this First Amendment shall have the same meanings as set forth in the Dock Usage Agreement and Related Agreements.

{ Signatures and Acknowledgments on Following Pages }

