

Development Team for 63-20 Process
Phase 2

South Sound 911 Public Safety
Communications Center



SOUTH SOUND  **911**

The logo for South Sound 911 consists of three curved, blue lines above the text "SOUTH SOUND 911". The words "SOUTH SOUND" are in a dark blue, sans-serif font, and "911" is in a bold, red, sans-serif font.

Request For Proposals (RFP)

November 21, 2014



RFP Information



RFP No. 1429
Development Team for 63-20 Process – Phase 2
Issue Date: November 21, 2014
Closing Date: December 22, 2014

Contact

County Contact: Gary Robinson, Director
Pierce County Budget and Finance
Phone: 253.798.7450
Email: PCBUDGET@co.pierce.wa.us

Project Contact: Andrew E. Neiditz, Executive Director
South Sound 911
Phone: 253.798.2679
Email: Andrew.Neiditz@SouthSound911.org;
Rebecca.Hendricks@SouthSound911.org

Vendor Information

Firm Name: _____
Contact Name: _____
Address: _____
City: _____ State _____ Zip _____
Phone: _____ Fax: _____
E-Mail: _____

Return Proposals by 4:30 pm, December 22, 2014 to:

Pierce County Purchasing
Attn: Mel Henly
615 South 9th Street, Suite 100
Tacoma, WA 98405
Phone: 253-798-7456

SUBMITTAL DUE DATE

To be eligible for consideration, one (1) unbound original Response (marked as such) and five (5) copies of a vendor's response to this Request for Proposals (hereafter called "response" or "proposal") must be received by the Pierce County Purchasing Department, 615 South 9th Street, Suite 100, Tacoma, WA 98405-4673 no later than close of business, 4:30 PM, December 22, 2014. The response must be submitted in a sealed envelope with the vendor's name, Request for Proposals Number and the due date clearly identified on the outside.

GENERAL INFORMATION

Pierce County, via this Request for Proposals, is seeking a qualified development team to help facilitate Pierce County with the development of a new South Sound 911 Public Safety Communications Center. The new facility will be constructed under a tax exempt lease/leaseback financing structure – sometimes referred to as a “63-20 financing and delivery method”.

Contact or communication with Pierce County or South Sound 911 with regard to this RFP is not permitted, except through the County contact and Project contact identified in this RFP. Written questions are due no later than December 12, 2014, and should be addressed Pierce County Purchasing.

EXPECTED TERM OF RESULTING AGREEMENT

The initial contract period shall be from January 2015 to December 2016, unless sooner terminated as provided elsewhere in the Agreement.

CONTACT

County Contact: Gary Robinson, Director
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A. Introduction

Pierce County, via this Request for Proposals (RFP), is seeking a qualified Development Team to help facilitate Pierce County's entry into a tax-exempt lease/leaseback financing structure – sometimes referred to as a “63-20 financing and delivery method”. This RFP is the second of a two-step process in selecting that Development Team for pre-development services for the development of a new South Sound 911 Public Safety Communications Center, with associated parking and site development (the “Project”).

Through the issuance of this RFP, Pierce County is soliciting proposals from the following Development Teams:

1. Benaroya Capital Company, LLC
2. Lorig Associates, LLC
3. The Molasky Group of Companies
4. Trammell Crow Company

The above entities were selected based on their submittals to the Pierce County Request for Qualifications (RFQ No. 1326) titled “Development Team for 63-20 Process”, which was phase one of a competitive two-phase best value procurement process. The RFQ No. 1326 Evaluation Team recommended that all four developers who submitted proposals in Phase One be requested to participate in the RFP process (Phase Two). The entities named above are considered “Finalists” of Phase One.

The Development Team

As stated in the previous RFQ, the Development Team shall consist of a firm, or firms, that have the demonstrated ability to develop a detailed program and schematic design concept followed by partial design-development documents and a guaranteed maximum price, utilizing South Sound 911's existing data as a basis from which to start. The Development Team shall demonstrate and provide sufficient organization, personnel, and management to design and develop the Project in an expeditious and economical manner consistent with the interest of the County and South Sound 911.

Such a Development Team will, with appropriate approval by the County and South Sound 911, enter into a pre-development agreement with the County to proceed with planning and design through the Design Development phase, with the end product consisting of partial design-development plans and specifications and a guaranteed maximum price for the Project. Should the Project proceed into final design and construction, that phase of the Project, if approved by the County and South Sound 911, shall proceed under a Development Agreement between the Developer and the Non-Profit entity. Should the Project not proceed into final design and construction, all design-development plans and specifications and other deliverables produced pursuant to the pre-development agreement shall be provided to and owned by the County.

Disclaimer

The information in this RFP has been prepared with care, but mistakes are always a possibility. Therefore, each potential respondent is responsible to perform its own review and due diligence of the facts and assumptions that are identified in this RFP.

Process to Date

In November 2011, Pierce County voters approved a 1/10th of 1% Local Sales and Use Tax for Emergency Communications to update and implement new technologies in radio system infrastructure and public safety answering point (PSAP) facilities to meet current technology and future demands.

South Sound 911, an interlocal agency, was formed as a result of the passage of the tax increase to consolidate public safety communications services into a single agency for Pierce County and the cities and fire protection districts within Pierce County. Throughout the RFQ process, the agency had five member agencies including Pierce County, West Pierce Fire and Rescue and the cities of Tacoma, Lakewood and Fife. Since that time, the City of Puyallup signed a participation agreement and the interlocal agreement was amended to add Puyallup to the list of member agencies.

In December 2012, the Policy Board approved a contract with iXP to provide consulting services related to the scoping, programming, site selection and operational development of the South Sound 911 facilities. The consultants worked with a PSAP Advisory Group to develop a Facility Planning Study Final Report, which was presented to the agency in October, 2013, and is available on South Sound 911's web page (<http://www.SouthSound911.org/214/Public-Safety-Communications-Center>). Please note that the cost estimate used by iXP was based on traditional government bidding/procurement processes (i.e., design-bid-build, general contractor/construction manager, design-build, etc.). This cost estimate was unacceptably high and a main reason for the County's and South Sound 911's interest in pursuing the 63-20 financing and delivery method for the Project.

Both the Pierce County Council and the South Sound 911 Policy Board ratified the selection of an entity formed by the National Development Council as the non-profit entity to serve as the issuer of 63-20 bonds to finance the Project.

The Site

Pierce County and South Sound 911 are in the process of evaluating two potential sites for the Project. One site has been identified as a preferred site (identified as "Preferred Site" on Attachment B) and the other has been identified as an alternate site (identified as "Alternate Site" on Attachment B). The two potential sites are hereafter referred to as "Site(s)" in this RFP. Each Site includes real property currently owned by private parties. Negotiations on purchase and sale agreements with the property owners are currently underway.

Submittals hereunder should provide consideration to the entire Site(s) as identified on Attachment B. Depending on site layout and configuration, there is likely a surplus of land at the Preferred Site. Pierce County and South Sound 911 are interested in engaging the City of Fircrest in discussions regarding potential development of the unused portion of the Preferred Site. The Project is intended to be developed on the Site(s) in accordance with all applicable laws and regulations.

If Pierce County and South Sound 911 are unable to secure either the Preferred Site or the Alternate Site, the development team may be utilized to identify and secure a project site.

A radio and microwave tower associated with the Project will be required to be located on the site.

The Project/Project Objectives

The County and South Sound 911 are utilizing this competitive RFP process to encourage from each developer Finalist its unique vision and approach to implementation of this Project.

The County and South Sound 911 strongly encourage submittals with innovative approaches. Based on preliminary information, the Project should include but not be limited to the following Project Objectives:

- Development of a public safety campus with two buildings, adequate parking and site development.
- Construction of a Public Safety Answering Point (PSAP) facility (approximately 55,000 sq. ft.) to house police and fire emergency communications as well as a municipal emergency operations center (EOC). The building shall meet the standards for public safety communications center set forth by National Fire Protection Association Standard #1221, National Emergency Number Association (NENA), Federal Emergency Management Agency (FEMA) and Motorola Standards and Guidelines for Communications Sites, and any other applicable regulations and standards associated with essential facilities.
- Construction of an administrative building (approximately 25,000 sq. ft.) to house Administration, Information Services and public counter services. The administrative building will not be required to be built to the same stringent standards as the PSAP facility.
- The PSAP facility, including technology systems, must be designed with a number of redundancy and fallback strategies. The facility may also require the ability to provide backup services to neighboring PSAP(s).

- Incorporation of multi-use concepts for common space, meeting space and public space as part of the Project.
- Achieve efficiencies consistent with LEED Silver, as a minimum level.

This Project will be highly visible. Pierce County and South Sound 911 expect that the Project will be highly functional, efficient, safe and secure; will incorporate quality systems and materials; will be energy efficient with low operating and maintenance costs; and will offer excellent economic value.

The criteria by which Pierce County and South Sound 911 will evaluate each submission hereunder are set forth below in Section “C” – Proposal Submission and Evaluation. The County reserves the rights: to reject any or all Proposals; to waive insubstantial or immaterial informalities in the submissions; to request modifications during negotiations; and to select and continue working with the highest ranking Finalist (“Selected Developer”) that in its judgment best serves the interests of and is most advantageous to the County and South Sound 911.

The Selected Developer will not automatically enter into a contract with the County. Rather, the Selected Developer will be invited to enter into a collaborative pre-development process (memorialized by a pre-development agreement – see attached) which will effectively plan, design, specify, structure, prepare, finance and otherwise result in final legal documentation memorializing the agreement(s) reached between the parties.

B. Required Provisions

The following provisions shall apply to this project:

1. No part of the cost of construction of the buildings shall ever be or become an obligation of the County;
2. The County shall have a prior right to occupy any or all of the building upon payment of rental as agreed upon by the parties, which rental shall not exceed prevailing rates for comparable space;
3. During the time that all or any portion of the building is not required for occupancy by the County and/or South Sound 911, the County may sublease the unneeded portion to suitable tenants selected by the County consistent with applicable requirements of the 63-20 bond financing documents.

In addition to the foregoing, this project does not require that the lease arrangement be made with the lowest responsible bidder; it expressly differs in this respect from the conventional public bid process.

Anticipated 63-20 Deal Structure

Upon closing of the transaction, it is anticipated that the legal structure of the Project will be as follows: Pierce County will long term master lease the Site to the Non-Profit for the purpose of expediting this Project. The Project will be constructed on a site that is yet to be determined. The Non-Profit will enter into a guaranteed maximum price (GMP) development agreement with the Developer for final design and construction and financing of the Project. The Non-Profit will issue tax-exempt bonds in an amount sufficient to pay for design and construction of the Project. The Developer will make draws from the Non-Profit to pay for construction costs during the construction period. Upon completion of the construction, the Non-Profit will “lease-back” all Project improvements to Pierce County. At the sooner of retirement of the 63-20 bonds, or the end of the lease term, the Non-Profit will convey title to the Project to Pierce County without any further consideration.

C. Proposal Submission and Evaluation

The lease arrangement will be made pursuant to a call for bids upon terms most advantageous to the County/South Sound 911. The County/South Sound 911 has determined that a Submittal resulting in “best value” will be most advantageous to the County and South Sound 911.

Best value does not necessarily mean lowest price, and the Evaluation Committee will consider carefully how each Finalist describes and articulates value to the County and South Sound 911 as part of its submission. By way of the Submittals hereunder, each Finalist *is strongly* encouraged to make recommendations that will result in best value for the County and South Sound 911. This proactive approach to delivering best value is expected to continue throughout the design, development and construction of the Project by the Selected Developer identified through this competitive process.

The County anticipates that the collaborative pre-development period shall take between six (6) and eight (8) months with design development documentation having sufficiently evolved that the Selected Developer will commit contractually to its GMP and scheduling obligations under the Development Agreement.

Selection Criteria

There are a potential 150 points as follows:

1. Team Qualifications and Individual Commitments – 10 points

Each Finalist submitted its development team in response to the RFQ providing substantial information on the qualifications of the team. The primary objective in submitting for the RFP is to provide binding commitments to use particular individuals. Please submit and identify:

- Additional team members and subcontractors not previously identified in the RFQ;
- Any changes of team members or individuals identified in the response to the RFQ;
- Team members and/or other professional resources available to assist with evaluating Site(s);
- The final composition of the Development Team, by firm;
- Specific, individual members by firm;
- Each individual team member's role;
- A final organization chart;
- The commitment of each individual team member (% of their time for each month) that will be devoted to the Project during pre-development and construction periods based on the team's proposed development schedule.
- Any accommodations and/or challenges associated with any individual team members located outside of the general Puget Sound area.

2. A Narrative and Graphical Description of a Proposed Development Plan – 25 points

Describe your development plan, including but not limited to scope, design, scheduling, construction, etc. Discuss your vision and program, density, how many square feet for each building and each function, and your anticipated approach to a campus style development.

Discuss parking and traffic issues, the parking plan, ease of use, sharing, mitigation approaches, etc.

Discuss how flexibility could be incorporated in regards to timing, phasing, risk, uses, cost implications, etc.

Describe your approach to identification of issues, including collaboration, negotiation and reconciling conflicts between and within South Sound 911 departments.

Describe and discuss layout and site development as it relates to enhancing customer service in the administration building and controlling access to the PSAP facility.

Discuss your approach to addressing redundancy both within the facility and with a

back-up facility at an alternate site.

Include the following items in addition to the narrative:

- A conceptual design, blocking diagrams and sketches of the Project;
- An overall design concept of how the Project integrates with the neighborhood;
- A demonstration of how ingress, egress and parking will work during construction and thereafter;
- A development schedule;

This conceptual design content model is intended to eliminate a pure “beauty contest” and emphasize conceptual brilliance in the way that the Site and development plan might be handled.

Do not provide concept drawings or architectural renderings. Any drawing shall be limited to blocking and stacking images, bubble diagrams showing adjacencies, etc. and shall be limited to three or four perspectives of a given approach, no larger than 11” x 17” format. Such blocking diagrams should emphasize ways to create value for the County/South Sound 911 through ideas relating to scale, site layout, and other approaches to value.

Each Submission should focus on and thoroughly articulate how elements of the development plan will create value for the County and South Sound 911, now and in the future.

Examples of how value may be created include, but are not limited to:

- Value created as a result of achieving the Project Objectives;
- Value created/demonstrated as a result of how the Project integrates with the neighborhood;
- Value created/demonstrated as a result of the design or a design approach;
- Value created in getting to a Guaranteed Maximum Price;
- Value created/demonstrated as a result of special construction techniques;
- Value created/demonstrated as a result of risk mitigation to the County;

- Value created/demonstrated as a result of providing or integrating other elements that would be worthwhile, innovative, visionary or otherwise desirable.

Where appropriate, identify how value enhancement(s) may have a direct impact on the Project budget.

3. Transition of Operations Plan – 20 points

South Sound 911 provides essential emergency communications services 24/7. Describe your plan to transition operations to the new facility. Examples of issues to address in the plan include, but are not limited to:

- Transition of critical infrastructure including, phone systems, CAD systems, voice logging recorders, network systems and radio consoles
- Transition of essential staff to new facility in regards to operational changes necessitated by the location change and/or changes in equipment
- Transition of non-essential staff to new facility
- Use of back-up facility during transition period

4. The Pre-Development Agreement – 15 points

Attached is the “Form Pre-Development Agreement.” This form agreement contains terms and conditions that will be incorporated into a final executable contract between the Selected Developer and the County. Take particular note of the Selected Developer’s scope of work, responsibilities, and assumption of risk.

The County expects to spend a maximum of \$900,000 for pre-development deliverables and the collaborative effort that will occur under the terms of the Form Pre-Development Agreement, and which is intended to lead to execution of such documents necessary to close this complex development transaction. Please answer the following three questions, including a short commentary outlining your position and the logic behind your position:

- What percentage of design development work will be accomplished under the executed Form Pre-Development Agreement such that your firm will enter into a final Development Agreement, including a GMP and schedule commitment?
- How many months will it require to complete your obligations under the executed Form Pre-Development Agreement such that your firm will enter into a final Development Agreement, including a GMP and schedule commitment?

- What is your proposed Pre-Development Fee, which shall be the sole compensation for Pre-Development Activities and Pre-Development Deliverables rendered by members of the Development Team? Please note that the Pre-Development Fee will be considered a part of the total project cost; and therefore, must be included in the detailed soft costs identified by each Finalist on the RFP Worksheet discussed in Section 6.

A Finalist may affirmatively state its willingness to enter into the Form Pre-Development Agreement under such terms. As an alternative, if a Finalist takes exception to a certain term or terms, then the Finalist must specifically identify the language objected to, must propose alternative language, and must affirmatively state its willingness to enter into the proposed agreement as modified. Points may be deducted for alternative terms that materially affect scope, responsibilities, and/or risk.

5. The Development Agreement – 30 points

Attached is the “Form Development Agreement.” This document contains terms and conditions that will be incorporated in a final, executable development agreement between the Selected Developer and the facilitating non-profit as part of the 63-20 financial closing. Please review thoroughly. Take particular note of the Selected Developer’s scope of work, responsibilities, and assumptions of risk.

A Finalist may affirmatively state its willingness to enter into the Form Development Agreement under such terms. Such an affirmative statement will achieve 30 points. As an alternative, if a Finalist takes exception to a certain term or terms, then the Finalist must specifically identify the language objected to, must propose alternative language, and must affirmatively state its willingness to enter into the proposed agreement as modified. Points will be deducted for alternative terms that materially affect scope, responsibilities, and / or risk.

Submit your affirmative statement. A failure to affirmatively state a willingness to enter into such an agreement may cause the Finalist to be rejected as non-responsive.

Use the unaltered Form Development Agreement as background against which to prepare the RFP Worksheet Estimated Budget(s), immediately below. Please understand that the County expects the Finalists to “price the risk” inherent in the Form Development Agreement in addition to the services that will be assumed upon entering into the Development Agreement. Please note that this project will be subject to prevailing wages per RCW 39.04.260.

6. RFP Worksheet Estimated Budget/Guaranteed Maximum Soft Costs – 50 points

Attached in the proposal package is a copy of a Microsoft Excel spreadsheet identified as

Attachment C. This RFP Worksheet Estimated Budget is to be completed by each Finalist. Use the Line Item Categories identified in the worksheets. The County and South Sound 911 have provided an estimate for the cost of the base project Shell and Core construction work only, as well as a Tenant Improvement allowance. Finalists should provide an opinion as part of their response as to the adequacy of these amounts and base soft costs on their understanding of the base construction costs of the project as they perceive it.

The County and South Sound 911 have provided estimates based on the proposed “Hybrid Campus” model identified in the South Sound 911 Facility Study Final Report. This option includes two separate buildings on one campus with the PSAP facility to be constructed to the more stringent standards associated with essential facilities. For this reason, Finalists shall provide separate Estimated Budget Worksheets for each facility. The estimates provided by Pierce County and South Sound 911 are provided in cells A4, B34, B35, B37, B44, B46 and B65 of the RFP Worksheet – Estimated Budget.

The Microsoft Excel spreadsheet is available electronically at in Attachment C . Tabs in the spreadsheet include an example of a completed worksheet for the PSAP Building, an Estimated Budget Worksheet for the PSAP Building to be completed by the Developer, an Estimated Budget Worksheet for the Administration/Records Building to be completed by the Developer and a combined Estimated Budget Worksheet that will automatically sum the estimates for the two buildings.

Ultimate construction costs to be incorporated in the development of the GMP will result from the collaborative pre-development process between the Selected Developer, the County and South Sound 911. The scope and categorical assumptions made in the RFP Worksheet Estimated Budget are approximations only.

For purposes of this exercise, possible changes in scope within these parameters during the pre-development period will make no difference and will not affect the guaranteed maximum price figures that each Finalist will submit.

The GMP figure submitted pursuant to this RFP is warranted notwithstanding potential scope changes within the parameters identified above and warranted notwithstanding potential construction cost changes.

It is the responsibility of the Finalist to assure itself that each team member can and will deliver its services for the prices identified in the submitted Budget. The total Developer Soft Costs Before Financing is warranted notwithstanding construction cost changes up to plus or minus 15%. The total Developer Soft Costs Before Financing does not change even if the GMP is reduced by 15% or increased 15%; however if the GMP is reduced or increased more than 15% then the Selected Developer should anticipate that The Developer Soft Costs Before Financing will be reduced or increased by the same proportion.

Please submit your completed RFP Estimated Worksheet Budget in both hard copy (printed) and Microsoft Excel digital format (disc). Identify the Finalist on the spreadsheet header and on the disc as (Fill in Finalist's Name) Estimated Worksheet Budget.

7. Interview

The Evaluation Committee will conduct a preliminary review of all submittals and recommend which Finalists to interview. The County and South Sound 911 shall not be obligated to interview each Finalist.

Those Developers and their teams selected to participate in the interview process will be interviewed by the Evaluation Committee. Each Developer's interview responses will be evaluated for completeness and assigned points based upon the criteria outlined throughout this section. In general, the Developer that appears to be capable of bringing the greatest value to the Project will earn the highest number of points. The interviews are to be limited to approximately seven (7) individuals representing each Finalist.

Subsequent on-site visits to members of Development Teams may be conducted by one or more members of the Evaluation Committee as a component of the Interview Process.

8. Financial Guarantees – Pass/Fail

As indicated in the Form Development Agreement, most development and all construction risk will be assumed by the Selected Developer, selected pursuant to this RFP. For example, in the event the GMP of the Project is exceeded (see Section 2(a) Form Development Agreement), or the project budget becomes "out of balance" (see Section 9(g) Form Development Agreement), the Selected Developer will be required to pay money into the Project in order to achieve substantial completion and meet its contractual responsibilities under the development agreement.

Please make available for review at your office financial information that will identify the liquid financial resources readily available to meet those contractual responsibilities. Identify a specific methodology or strategy that the Developer will put into place that will assure the non-profit facilitating entity and the County that requisite financial resources will be and remain in place during development and construction of the Project, e.g., unconditional letter of credit, personal guarantee of principals, payment and performance bond, etc.

D. Proposal Preparation and Submittal Format

This section provides information necessary to understand the selection process. Each Finalist

shall submit one (1) unbound original Proposal (marked as such), five (5) copies and one CD-ROM with either one (1) pdf version of the submittal and/or one (1) Microsoft Word version of the submittal. Copies shall be comb-bound or wire bound. At the County's sole discretion, the Evaluation Committee reserves the right to request additional information.

Each Proposal will be evaluated by an Evaluation committee ("RFP Evaluation Committee"), with interviews to follow and selection made based on cumulative scores. The County reserves the right to reject any and/or all Proposals.

The procurement of these services will be in accordance with Pierce County and other applicable federal, state and local laws, regulations and procedures. All facts and opinions stated within this RFP, and all supporting documents and data are based on information available from a variety of sources. No representation or warranty is made with respect thereto. Additional information may be made available via written addenda throughout the process.

As a public entity Pierce County is subject to the State Public Records Act, Chapter 42.56 RCW.

Proposals shall be submitted as set forth in this RFP. Proposals that fail to be submitted in accordance with the procedures and specified requirements herein may be considered "non-responsive" and will or may be subject to rejection by the County. All costs incurred in the preparation of the submittal and in the submittal process shall be borne by the proposing Applicants. The County shall not reimburse Applicants for such costs.

E. Selection Schedule

A pre-submittal conference will be held at 9:30 a.m. on Tuesday, December 2, 2014, at the Tacoma Mall Plaza 2nd Floor Conference Room located at 2702 S. 42nd St., Tacoma, WA.

Contact or communication with the County or South Sound 911 with regard to this RFP is not permitted, except by way of the following email address: PCBUDGET@co.pierce.wa.us. Written questions are due no later than 4:30 p.m. on Friday, December 12, 2014. They should be addressed to Gary Robinson, Pierce County Director of Budget and Finance. All email correspondence should include reference to RFP No. 1429 in the subject line.

Submittals are due no later than 4:30 p.m., December 22, 2014.

Interviews are scheduled to take place the week of January 12, 2015. Each of the Development Teams selected to participate in the interview process will be notified as to when and where the interviews will take place.

All Development Teams will be notified of the Selected Developer as soon as possible after the interview(s) have taken place.

F. Required Signature Page for Proposal

I, the undersigned, having carefully examined the Request for Qualifications (#1243), propose to furnish services in accordance therewith as set forth in the attached proposal.

I further agree that this proposal will remain in effect for not less than sixty (60) calendar days from the date that proposals are due, and that this proposal may not be withdrawn or modified during that time.

STATE OF _____
COUNTY OF _____

Being first duly sworn, on my oath, I hereby certify that this proposal is genuine and not a sham or collusive proposal, or made in the interests or on behalf of any person not therein named; and I have not directly or indirectly induced or solicited any Contractor or supplier on the above work to put in a sham proposal or any person or corporation to refrain from submitting a proposal; and that I have not in any manner sought by collusion to secure to myself an advantage over any other contractor(s) or person(s).

In order to induce the County to consider this proposal, the proposer irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to Pierce County, and proposer further promises that it will not in the future directly or indirectly induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to Pierce County.

Signature

Subscribed and sworn before me this ____ day
of _____, 20__.

Printed Name

Notary Public in and for the State of
_____ residing at _____.
My commission expires _____.

Firm

Address

UBI No: _____

(Area Code) Phone

THIS PAGE MUST BE SIGNED, NOTARIZED, AND RETURNED WITH THE PROPOSAL.

G. Schedule of Attachments

Attachments are informational to the Finalists in terms of helping them in preparation of their Submittals.

Attachment “A” – Additional Requirements for Submittal

Attachment “B” – Property Description

Attachment “C” – RFP Estimated Budget Worksheet

(Form) Predevelopment Agreement

(Form) Development Agreement

Attachment “A” – Additional Requirements for Submittal

Note: This section is a duplication from the Original RFQ and is required to be included. Be sure to note any and all exceptions/changes to the original submittal.

1. The name and title of the person authorized to execute a contract on behalf of the firm.
2. A statement outlining any exceptions to the County's requirements or clarifications to the requirements.
3. Any additional services or procedures of benefit to the County not specifically required herein, which the Developer offers to provide.
4. The caption, cause number, Court, Counsel, and general summary of any litigation pending or judgment rendered within the past 3 years against the proposer.
5. Note the extent, if any, to which the firm, association or corporation or any person in a controlling capacity associated therewith or any position involving the administration of federal, State or local funds; is currently under suspension, debarment, voluntary exclusion, or determination of eligibility by any agency; has been suspended, debarred, voluntarily excluded or determined ineligible by any agency within the past 3 years; does have a proposed debarment pending; has been indicted, convicted or has a civil judgment rendered against said person, firm, association or corporation by a court of competent jurisdiction in any matter involving fraud or misconduct with the past 3 years.

In addition to any specific requirements requested in this proposal, the following documents must be completed and submitted with the proposal:

- Required Signature Page for Proposal
- Subcontractors Participation Form (Exhibit A)
- Certification of Nonsegregated Facilities and Non-Collusion Affidavit and Debarment Affidavit (Exhibit A)
- Personnel Workforce Data Form (Exhibit A)
- E-Verify Declaration (Exhibit A)

Exhibit “A” – Contract Compliance for Professional, Technical, Supply or Services (Revised 1/06)

It is the policy of Pierce County to foster an environment that encourages economic growth and diversification, business development and retention, increases competition and reduces unemployment. In support of that policy, Pierce County reaffirms its commitment to maximize opportunities in public contracting for all contractors including minority and women owned business enterprises.

Bidders are encouraged to utilize qualified, local businesses in Pierce County and Washington State where cost effectiveness is deemed competitive. In addition, Bidders are encouraged to subcontract with firms certified by the Washington State Office of Minority and Women’s Business Enterprises (MWBE).

A. MWBE DIRECTORY ASSISTANCE

A directory of MWBE firms is published quarterly by the Washington State Office of Minority and Women’s Business Enterprises (OMWBE). Copies of the directory are available from the State OMWBE (360-753-9693) or may be viewed at the Public Works Department, 2702 S 42nd St Suite 201, Tacoma 98409, and the Tacoma Public Library, 1102 Tacoma Avenue South, Tacoma, 98402. Contact the Contract Compliance Office for additional information at (253) 798-7250.

B. EQUAL EMPLOYMENT OPPORTUNITY:

1. Upon execution of this contract, the Developer shall comply with the Equal Employment Opportunity requirements set forth below. The Developer shall not violate any of the terms of Chapter 49.60 of the Revised Code of Washington, Title VII of the Civil Rights Act of 1964, or any other applicable federal, state, or local law or regulation regarding nondiscrimination.
2. No person or firm employed by the Developer shall be subject to retaliation for opposing any practice made unlawful by Title VII of the Civil Rights Act, the Age Discrimination in Employment Act (29 U.S.C. 621 et seq.), the Equal Pay Act (29 U.S.C. 206(d), the Rehabilitation Act (29 U.S.C. 791 et seq.), the Americans with Disabilities Act of 1990, or for participating in any stage of administrative or judicial proceedings under those statutes.
3. The Developer shall take all reasonable steps to ensure that qualified applicants and employees shall have an equal opportunity to compete for advertised or in-house positions for employment. Applicants and employees shall be treated fairly without regard to race, color, religion, sex, age, disability, or national origin. Equitable treatment shall include, but not be limited to employment, upgrading or promotion, rates of pay increases or other forms of compensation, and selection for training or enrollment in

apprenticeship programs.

C. CERTIFICATION OF NONSEGREGATED FACILITIES

The Developer shall submit with its proposal a Certification of Nonsegregated Facilities. All requests to sublet or assign any portion of this contract, at any level, shall be accompanied by evidence of this certification in all subcontract agreements.

D. E-VERIFY DECLARATION

Pierce County requires that all businesses which contract with the County for contracts in excess of \$25,000 and of duration longer than 120 days, and are not specifically exempted by PCC 2.106.022, be enrolled in the Federal E-verify Program. The requirement extends to every subcontractor meeting the same criteria. The Prime Contractor must provide certification of enrollment in the Federal E-verify program to the County. The Prime Contractor will remain enrolled in the program for the duration of the contract. The Prime Contractor is responsible for verification of every applicable subcontractor. The County reserves the right to require a copy of the Memorandum of Understanding between the Prime or any Subcontractor and the Department of Homeland Security upon request at any time during the term of the contract. Failure to provide this document could result in suspension of the project.

A copy of Ordinance 2009-74 is on the Purchasing Department's website located at <http://online.co.pierce.wa.us/cfapps/EDocs/ViewDocument.cfm?did=95668&dnum>

The Federal E-Verify Program is a web based application and can be accessed at www.dhs.gov/everify

E. SUBMITTAL REQUIREMENTS

1. Certificate of non-segregated facilities: Developer shall submit with proposal, each subcontractor shall submit when work is sublet.
2. Professional and Technical Workforce Data Form: Developer is encouraged to submit with proposal, each Subcontractor is encouraged to submit the form when work is sublet.
3. Subcontractors Participation Form: Check the appropriate box indicating the firm who will perform the work of the contract. Submit the completed form with the proposal documents.

E-Verify Declaration: Developer shall submit with proposal.

Certification of Nonsegregated Facilities

The Developer certifies that no segregated facilities are maintained and will not be maintained during the execution of this contract at any of contractor's establishments.

The Developer further certifies that none of the Developer's employees are permitted to perform their services at any location under the Developer's control during the life of this contract where segregated facilities are maintained. The Developer certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained.

The Developer agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work area, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color or national origin, because of habit, local custom, or otherwise.

The Developer agrees that identical certifications from proposed contractors will be obtained prior to the award of any subcontracts. Developer will retain a copy of any subcontractor's certification and will send original to Contract Compliance Division.

Non-Collusion & Debarment Affidavit

State of Washington, County of _____

As an authorized representative of the firm of _____, I do hereby certify that said person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.

I further certify that, except as noted below, the firm, association or corporation or any person in a controlling capacity associated therewith or any position involving the administration of federal funds; is not currently under suspension, debarment, voluntary exclusion, or determination of eligibility by any federal agency; has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years; does not have a proposed debarment pending; and has not been indicted, convicted or had a civil judgment rendered against said person, firm, association or corporation by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

I further acknowledge that by signing the signature page of the proposal, I am deemed to have signed and have agreed to the provisions of this affidavit.

Note: Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted, indicate above to whom it applies, initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions.

"A suspending or debarring official may grant an exception permitting a debarred, suspended, or excluded person to participate in a particular transaction upon a written determination by such official stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549..." (49CFR Part 29 Section 29.215)

The undersigned hereby agrees to pay labor not less than the prevailing rates of wages in accordance with the requirements of the special provisions for this project.

Subcontractors Participation Form for Professional, Technical, Supply or Service PSAs

Check appropriate statement below:

- Our firm will perform all contracted scope of work tasks.**
- Our firm will subcontract a portion of the work tasks.** The following firms were contacted and will be utilized in the performance of the work as indicated below.

List all potential subcontracting firms. Do not mark "N/A" unless the Bidder will perform all work or provide all supplies or services for this contract.

Firm Name/Address/Phone	Work Item(s) Solicited	Proposal Amount	Awarded? (yes/no)

1. List full name, address, and phone number of each firm listed to be utilized.
2. List specific work to be accomplished, supplies to be furnished and the amount proposed for each subcontract.
3. Contact the Pierce County Contract Compliance Officer at (253) 798-7250 if you have questions.

BY:

DATE:

TITLE:

PHONE:

Revised (6/99)

Personnel Workforce Data Form

FIRM NAME _____

ADDRESS _____

CITY, STATE, ZIP _____

PHONE _____

PROJECT _____

PROJECT # _____

CONTRACT WORK HOURS (if applicable) _____

TYPE OF SERVICE PROVIDED _____

CONTRACTORS AGGREGATE WORK FORCE – if you need additional space, photo copy this section and attach it to this form.

OCCUPATION	TOTAL EMPLOYED		TOTAL MINORITY		NATIVE AMERICAN		ASIAN		BLACK		HISPANIC		APPRENTICE TRAINEE	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Management														
Professionals														
Technicians														
Administrative														
Other														
TOTALS														

E-Verify Declaration

Firm Name: _____

Proposal/Bid/Invitation/Solicitation No. _____

The undersigned declares, under **penalty of perjury** under the laws of Washington that:

1. That the above named firm is currently enrolled in and using the E-Verify system implemented on March 1, 2010 as outlined in PCC 2.106.022 and will continue to use the E-Verify system for so long as work is being performed on the above named project.
2. I certify that I am duly authorized to sign this declaration on behalf of the above named bidder/proposer.
3. I acknowledge that Pierce County reserves the right to require a copy of the Memorandum of Understanding between the contractor listed above and the Department of Homeland Security certifying enrollment in the E-Verify program at any time. Failure to provide the required Memorandum of Understanding within 10 days of request could lead to suspension of this contract.

Dated at _____ Washington

this _____ day of _____, 20_____

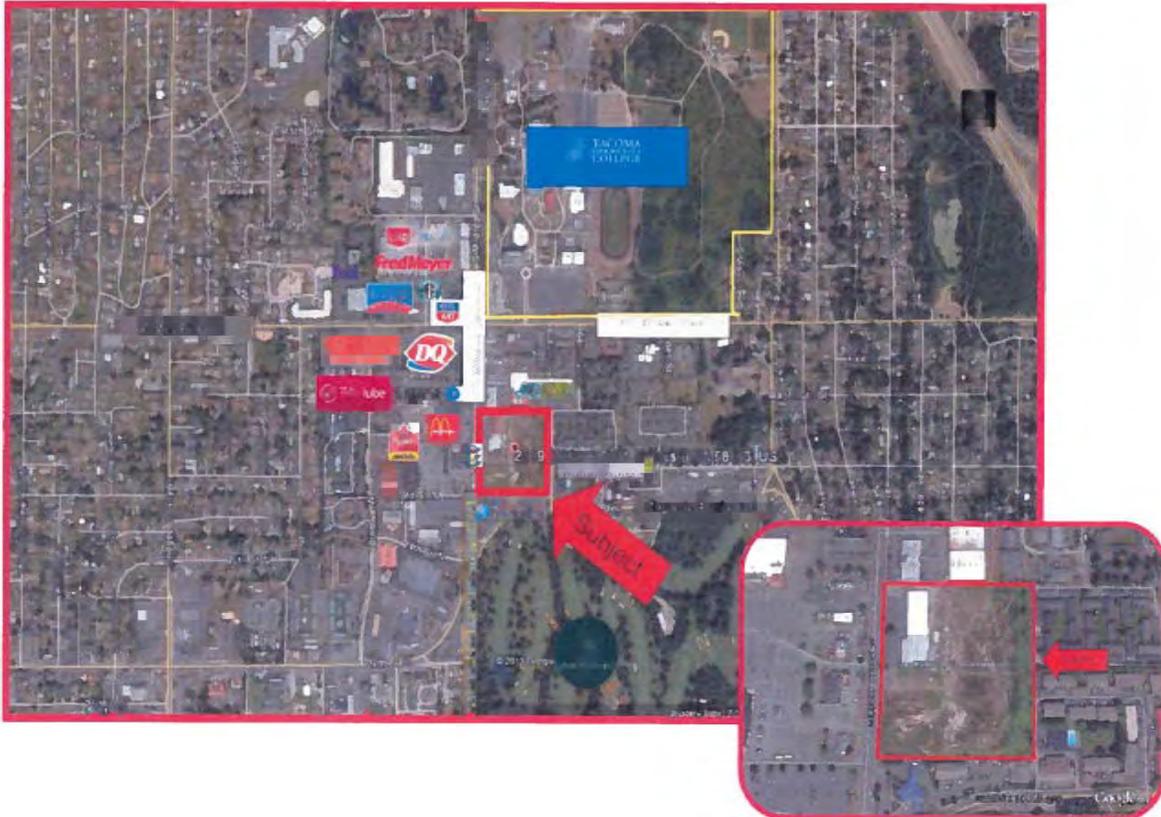
Signature _____

Printed Name _____

Attachment "B" – Property Description

Preferred Site

2119 Mildred St. W., Fircrest
9.49 Acres



LEGAL DESCRIPTION

THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 11,
TOWNSHIP 20 NORTH, RANGE 2 EAST, W.M., IN PIERCE COUNTY, WASHINGTON.

EXCEPT MILDRED STREET.

Attachment B

Alternate Site

6700 S Adams St, Tacoma
6.22 Acres



LEGAL DESCRIPTION

The land referred to is situated in the County of Pierce, City of Tacoma, State of Washington, and is described as follows:

Block 20:

Lots 4 through 12, Block 20, VILLA PARK, according to the plat thereof recorded in Volume 5 of Plats, page 60, records of Pierce County, Washington.

Block 21:

Lots 4 through 12, Block 21, VILLA PARK, according to the plat thereof recorded in Volume 5 of Plats, page 60, records of Pierce County, Washington.

Block 22:

Lots 3 through 12, Block 22, VILLA PARK, according to the plat thereof in Volume 5 of Plats, page 60, records of Pierce County, Washington.

Block 23:

Lots 3 through 21, Block 23, VILLA PARK, according to the plat thereof recorded in Volume 5 of Plats, page 60, records of Pierce County, Washington;

TOGETHER WITH that portion of vacated South Durango street adjoining, pursuant to the City of Tacoma Ordinance No. 21950, recorded under Recording No. 2977750, records of Pierce County, Washington.

Block 24:

Lots 3 through 21, Block 24, VILLA PARK, according to the plat thereof recorded in Volume 5 of Plats, page 60, records of Pierce County, Washington;

EXCEPT the East 20 feet thereof conveyed to the City of Tacoma by Deed recorded under Recording No. 2962783, records of Pierce County, Washington;

TOGETHER WITH that portion of vacated South Durango street adjoining, pursuant to the City of Tacoma Ordinance No. 21950, recorded under Recording No. 2977750, records of Pierce County, Washington.

Block 25:

Lots 3 through 21, Block 25, VILLA PARK, according to the plat thereof recorded in Volume 5 of Plats, page 60, records of Pierce County, Washington;

ALL SITUATE in the County of Pierce, State of Washington.

Attachment "C" – RFP Estimated Budget Worksheet



Attachment C
Estimated Budget Wo

(FORM) PREDEVELOPMENT AGREEMENT

FOR THE PIERCE COUNTY SOUTH SOUND 911 PUBLIC SAFETY COMMUNICATIONS CENTER PROJECT

THIS PREDEVELOPMENT AGREEMENT (“Agreement”) is by and between Pierce County (“County”) and _____, (“Developer”) (hereafter collectively the “parties”). This Agreement will be effective on the latest date on which either of the parties executes.

WITNESSETH:

WHEREAS, the County published a Request for Proposals (“RFP”) with respect to selection of a developer that may develop a new South Sound 911 Public Safety Communications Center project (“Project”) consisting of two buildings: one containing approximately 55,000 rentable square feet constructed to the stringent standards of housing police and fire communications as well as a municipal emergency operations center; and one containing approximately 25,000 rentable square feet for administration purposes. The Project will be constructed on property owned by or under the control of the County (the “Site” or “Property”);

WHEREAS, based upon its response to the RFP, Developer has been selected as the Developer of the Project, subject to execution of a Development Agreement;

WHEREAS, Developer and the County desire to proceed with certain predevelopment activities required for the Project in order to timely proceed with Project development schedule;

WHEREAS, the expenditures for the Predevelopment Activities are a necessary expense for Developer to incur to proceed with the timely development of the Project;

WHEREAS, the County agrees that in order to ensure that this Project proceeds in a timely fashion, the County will reimburse Developer a portion of the RFP guaranteed design and engineering fees for Predevelopment Activities, as set forth in this Agreement;

NOW, THEREFORE, the parties agree as follows:

1. Purpose & Scope of Services to be Performed by the Developer.

The purpose for this Agreement is to facilitate the design and development of a new South Sound 911 Public Safety Communications Center, with the Developer providing sufficient organization, personnel, and management to design and develop the Project in an expeditious and economical manner consistent with the interests of the County; and the County agrees to pay for such services in accordance with the terms of this Agreement.

The Developer and its development team (“Development Team”) shall perform Predevelopment Activities (“Activities”) and provide all Predevelopment Deliverables outlined in **Exhibit A**. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in this Agreement. In performing these Activities, the Developer shall at all times comply with all federal,

state and local statutes, rules and ordinances applicable to the performance of such services. In addition, these Activities and all duties incidental or necessary therefore, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.

The County's review or acceptance of plans, drawings, designs, specifications, reports, and other products of the professional services and Activities rendered hereunder shall not in any way relieve Developer of responsibility for the technical adequacy or accuracy thereof, provided that the requirements identified by the County are correct. Neither the County's review or acceptance of, nor payment for, any of the Activities shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

2. Compensation.

The Developer shall be paid for Predevelopment Activities and Predevelopment Deliverables rendered by members of Developer's Development Team. The Developer will administrate and pass through the County's payments hereunder in order to pay appropriate members of its Development Team. Developer shall not take nor receive compensation for the services it renders under this Agreement. Developer accepts the risk that it may not receive compensation for the services it renders under this Agreement unless and until the Project has proceeded to a formal closing, which will incorporate executed copies of all documents memorializing a build-to-suit, lease-to-own development transaction for a new South Sound 911 Public Safety Communications Center on behalf of the County. All payments made hereunder by the County shall be paid by Developer to Developer's consultants. Developer agrees that it shall take no fees or other consideration for its efforts under this Agreement.

Predevelopment Services will be rendered for a fixed fee of _____ (\$____,000), according to the schedule set forth in **Exhibit B**, including all fees and reimbursable expenses. Subject to the provisions set forth in this Agreement, the County shall pay Developer on a monthly basis for authorized and satisfactorily completed work and services rendered under this Agreement. Such payment shall be full compensation for work performed and services rendered, including costs and expenses, for all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals, but in no case shall such payment exceed the earned value (i.e., percentage of work completed) as reasonably determined by the County. In the event the cost of the Predevelopment Activities exceeds the contract fee, Developer shall pay such costs from its own funds, the County shall not be required to pay any additional fees or costs to perform the Predevelopment Activities and Developer shall have no claim against the County on account thereof.

The County shall pay the Developer for services rendered after receipt of a billing voucher. Payments will be processed within 30 (thirty) days from receipt of billing voucher.

3. Term.

The term of this Agreement shall commence upon execution and expire ____ days after commencement ("Performance Period"). The Performance Period may be extended by a mutual agreement in writing by the parties, up to three times, each time for a thirty (30) day period.

4. Termination.

Termination for Default

If the Developer defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Developer in the U.S. mail, postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. If the contract is terminated for default, the Developer shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Developer. The Developer shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the Developer was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

Termination for Public Convenience

The County may terminate the contract in whole or in part whenever the County determines, in its sole discretion, that such termination is in the interests of the County. Termination of this contract by the County at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the County.

- A. The County reserves the right to terminate or suspend this Agreement at any time, with or without cause by giving seven (7) days notice to Developer in writing. In the event of such termination or suspension, all finished or unfinished documents, data, studies, worksheets, models and reports, or other material prepared by the Developer pursuant to this Agreement shall be submitted to the County.
- B. In the event this Agreement is terminated by the County, the Developer shall be entitled to payment for Developer and Development Team hours worked and reimbursable expenses incurred to the effective date of termination, less all payments previously made. This provision shall not prevent the County from seeking any legal remedies it may have for the violation or nonperformance of any of the provisions of this Agreement and any such charges due the County shall be deducted from the final payment due the Developer. No payment shall be made by the County for any expenses incurred or work done following the effective date of termination unless authorized in advance in writing by the County.
- C. The Developer reserves the right to terminate this Agreement with not less than fifteen (15) days written notice.
- D. If, because of death, unavailability or any other occurrence, it becomes impossible for any lead personnel engaged by Developer in Project work to render services to the Project,

Developer shall not be relieved of its obligations to complete performance under this Agreement without the concurrence and written approval of the County. If the County agrees to termination of this Agreement under this provision, payment shall be made as set forth in Paragraph B of this Section.

- E. If, after termination for failure of Developer to fulfill contractual obligations under Paragraph A, it is determined that Developer has not so failed, the termination shall be deemed to be effected for the convenience of the County. In such event, the equitable adjustment shall be determined as set forth in Paragraph B of this Section.

5. Ownership of Documents.

- A. All documents, data, drawings, specifications, software applications and other products or materials produced by the Developer or its Development Team in connection with the services rendered under this Agreement shall become the property of the County whether the Project for which they are made is executed or not. All such documents, products and materials shall be forwarded to the County at its request and may be used by the County as it sees fit. The County agrees that if the documents, products and materials prepared by the Developer are used for purposes other than those intended by the Agreement, the County does so at its sole risk and agrees to hold the Developer harmless for such use.
- B. All or portions of materials, products and documents produced under this Agreement may be used by the Developer upon confirmation from the County that they are subject to disclosure under the Public Disclosure Act.
- C. All services performed under this Agreement will be conducted solely for the benefit of the County and will not be used for any other purpose without written consent of the County. Any information relating to the services will not be released without the written permission of the County.
- D. The County shall make available to Developer, without cost, copies of plans, drawings, survey notes, studies, soil reports, and other relevant data relating to the Property which are readily available and on file at the County. These documents are available solely as additional information to Developer and do not relieve Developer of its duties and obligations under this Agreement nor constitute any representation or warranty by the County as to conditions or other matters related to the Project, nor obligate the County to perform studies or surveys. It shall be the sole responsibility of Developer to gather and become familiar with all site information including existing improvements.
- E. The Developer shall preserve the confidentiality of all County documents and data accessed for use in Developer's work product.
- F. Developer shall maintain, for at least three years after completion of all work under this Contract, the following:
 - Records of employment, employment advertisements, application forms, and other pertinent data, records and information related to employment, applications for

employment or the administration or delivery of services or any other benefits under this Contract; and

- Records, including written quotes, bids, estimates or proposals submitted to Developer by all businesses seeking to participate on this Contract, and any other information necessary to document the actual use of and payments to subconsultants and suppliers in this Contract, including employment records. The County may visit, at any time, the site of the work and Developer’s office to review the foregoing records. Developer shall provide commercially reasonable assistance requested by the County during such visits. In all other respects, Developer shall make the foregoing records available to the County for inspection and copying on request.

6. Administration

- A. **Developer.** Developer acknowledges that the experience and skill of the following Key Personnel was and continues to be an important factor in the County’s selection of Developer to perform the work: _____ and _____. The Key Personnel shall be assigned to the Project so long as such Key Personnel are employed at Developer.
- B. **County.** The “Project Representative,” is hereby identified as _____, and shall perform day-to-day management of this Contract. The Project Representative will approve all requests for payment, authorize termination or modification of the Predevelopment Activities set forth in Exhibit A, and approve in writing changes to the task budgets set forth in Exhibit B, provided the changes do not increase the total project fee stated in Paragraph 1. The Project Representative shall also be responsible for determining when Developer has satisfactorily performed all work and for ensuring that Developer complies with all provisions of this Agreement.
- C. Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears below (as modified in writing from time to time by such party), and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective on the date of receipt.

Project Representative:
Pierce County
Address:
Address:
Phone Number:

Project Representative:
Name of Firm:
Address:
Address:
Phone Number:

- D. The County hereby authorizes Developer to contract with the persons and firms listed in The Developer’s Team, pg. ___ of the Developer’s Proposal for the new South Sound 911 Public Safety Communications Center Project which is incorporated by this reference. In addition, Developer may engage and utilize additional sub-consultants as may be reasonably approved by the County.

- E. Developer shall submit monthly reports detailing all work completed by sub-consultants during the preceding month and copies of all invoices relating thereto.

7. Independent Contractor Relationship

The Developer is retained by the County only for the purposes and to the extent set forth in this Agreement. The Contractor's services shall be furnished by the Contractor as an independent Contractor and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent Contractor.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any County benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to Pierce County employees. The Contractor represents that he/she/it maintains a separate place of business and serves clients other than the County. The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to make withholding for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

The Developer shall have the power to control and direct the details, manner or means of services. Specifically, but not by means of limitation, the Developer shall have no obligation to work any particular hours or particular schedule and shall retain the right to designate the means of performing the services covered by this Agreement, and the Developer shall be entitled to employ other workers at such compensation and on such other conditions as it may deem proper, provided, however, that any contract so made by the Developer is to be paid by it alone, and that employing such workers, it is acting individually and not as an agent for the County.

8. Hold Harmless

The Developer shall defend, indemnify, and hold the County, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees resulting from the negligent, gross negligent and/or intentional acts, errors or omissions of the Developer, its agents or employees arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the County.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Developer and the County, its officers, officials, employees, and volunteers, the Developer's liability hereunder shall be only to the extent of the Developer's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Developer's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purpose of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Agreement.

9. Insurance

The Developer shall, at the Developer's own expense, maintain, with an insurance carrier licensed or eligible under RCW Chapter 48.15 to do business in the State of Washington, with minimum coverage as outlined below, commercial automobile liability insurance, and either commercial general liability insurance, or, if any services required by the contract must be performed by persons licensed by the State of Washington, professional liability insurance:

Commercial Automobile Liability

Bodily Injury Liability and Property Damage Liability Insurance \$1,000,000 each occurrence OR combined single limit coverage of \$2,000,000, with not greater than a \$1000.00 deductible.

Commercial General Liability

Bodily Injury Liability and Property Damage Liability Insurance \$1,000,000 each occurrence OR combined single limit coverage of \$2,000,000, with not greater than a \$1,000.00 deductible.

Professional Liability Insurance

Shall include errors and omissions insurance providing \$1,000,000.00 coverage with not greater than a \$5,000.00 deductible for all liability which may be incurred during the life of this contract.

Pierce County shall be named as an additional insured on all required policies except professional

liability insurance, and such insurance as is carried by the Developer shall be primary over any insurance carried by Pierce County. The Developer shall provide a certificate of insurance to be approved by the County Risk Manager prior to contract execution, which shall be attached to the contract.

Such insurance policies or related certificates of insurance shall name Pierce County as an additional insured on all general liability, automobile liability, employers' liability, and excess policies. The Developer may comply with these insurance requirements through a program of self insurance that meets or exceeds these minimum limits. The Developer must provide Pierce County with adequate documentation of self insurance prior to performing any work related to this contract and treat the County as an insured under the indemnity agreement. Should the Developer no longer benefit from a program of self-insurance, the Developer agrees to promptly obtain insurance as provided above. A forty-five (45) Calendar Day written notice shall be given to prior to termination of or any material change to the policy(ies) as it relates to this Agreement.

Pierce County shall have no obligation to report occurrences unless a claim is filed with the Pierce County Auditor; nor shall Pierce County have an obligation to pay premiums.

In the event of nonrenewal or cancellation of or material change in the coverage required, thirty (30) days written notice will be furnished Pierce County prior to the date of cancellation, change or nonrenewal, such notice to be sent to the Pierce County Risk Manager, 955 Tacoma Ave South, Suite 303, Tacoma, WA 98402.

10. Delays

Developer is not responsible for delays caused by factors beyond the Developer's reasonable control. When such delays beyond the Developer's reasonable control occur, the County agrees the Developer is not responsible for damages, nor shall the Developer be deemed to be in default of the Agreement.

11. Successors and Assigns

Neither the County nor the Developer shall assign, transfer or encumber any rights, duties or interests accruing from this Agreement without the written consent of the other.

12. Confidentiality

The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the Pierce County Prosecuting Attorney or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

13. Nondiscrimination

In hiring or employment made possible or resulting from this Agreement, there shall be no unlawful discrimination against any employee or applicant for employment because of sex, age, race, color, creed, national origin, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification. This requirement shall apply to but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. No person shall be denied or subjected to discrimination in receipt or the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, age except minimum age and retirement provisions, marital status, or in the presence of any sensory, mental or physical handicap.

14. No Contingency Fees and Conflicts

- A. Developer warrants and covenants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach of violation of this warranty the County shall have the right to annul this Agreement without liability or in its discretion to deduct from the contract fee or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- B. Developer warrants and covenants that no gratuities, in the form of entertainment, gifts or otherwise, have been or will be offered or given by Developer or any of its agents, employees or representatives to any official member or employee of the County in an attempt to secure a contract or favorable treatment in awarding, amending or making any determination related to the performance of this Agreement.
- C. Developer warrants and covenants it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, which conflicts in any manner or degree with the performance of the services required to be performed under this Agreement and that it shall not employ any person or agent having any such interest. In event that Developer or its agents, employees or representatives hereafter acquires such a conflict of interest, Developer shall immediately disclose such interest to the County and take action immediately to eliminate the conflict or to withdraw from the Agreement as the County may require.
- D. If the County has reason to believe that the covenants set forth in Paragraphs A, B or C above have been breached, it shall so notify Developer in writing. Developer shall respond to said notice within ten days of receipt with a detailed written explanation or answer to any facts, allegations or questions contained or referenced in said notice. Developer may request a hearing on the matter by the County Executive which shall be conducted within fifteen days of the receipt of the request unless a later date is concurred to by the County and Developer. The decision of the County Executive shall be a prerequisite to appeal thereof to the Pierce County Superior Court. If, after consideration of Developer's response and any hearing, the County Executive determines that the covenants have been breached, the County Executive

shall have the discretion to exercise those remedies provided by any applicable federal or state laws or regulations or by this Agreement in the event of said breach and/or prohibited conflicts of interest.

15. Governing Law and Venue

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Pierce. This Agreement shall be governed by the law of the State of Washington.

16. Severability

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the County and the Developer, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

17. Liens/Encumbrances

Neither Developer nor any of its subcontractors, agents, employees or consultants shall allow liens, claims, causes of action, judgments or encumbrances to attach to the Property as a result of any of its activities or performance under this agreement. In the event Developer violates any provision of this paragraph, the County may withhold and retain payment to Developer up to the amount of all expenses incurred in settling any lien, claim, cause of action, judgment or other encumbrance including the County's reasonable attorney's fees and costs, or in the event the County has made all payments owed Developer, Developer shall reimburse the County for the same.

18. Dispute Resolution

Except as provided herein, no civil action with respect to any dispute, claim or controversy arising out of or relating to this Agreement may be commenced until the dispute, claim or controversy has been submitted to a mutually agreed upon mediator. The parties agree that they will participate in the mediation in good faith, and that they will share equally in its costs. Each party shall be responsible for the costs of their own legal representation. Either party may seek equitable relief prior to the mediation process, but only to preserve the status quo pending the completion of that process. Jurisdiction and venue for any action arising out of or relating to this Agreement shall be in Pierce County Superior Court.

19. Right to Review

This contract is subject to review by any Federal or State auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Contracting Officer. Such review may occur with or

without notice, and may include, but is not limited to, on site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Developer shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for 3 years after contract termination, and shall make them available for such review, within Pierce County, State of Washington, upon request.

20. Entire Agreement

This agreement contains the entire Agreement between the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this agreement, shall be deemed to exist or bind any of the parties hereto. Either party may request changes in the agreement. Proposed changes which are mutually agreed upon shall be incorporated by written amendment to this agreement.

This agreement is executed by:

PIERCE COUNTY

By: _____

Name: _____

Title: **County Executive**

Date: _____

DEVELOPER

By: _____

Name: _____

Title: _____

Date: _____

Approved as to form:

By: _____

County Attorney

Attachments:

- Exhibit A -- Predevelopment Activities / Predevelopment Deliverables
- Exhibit B -- Task Budget Summary for Predevelopment Services

Exhibit A

Predevelopment Activities/Predevelopment Deliverables

Scope of Developer's work includes requirements identified in the Predevelopment Agreement combined with and/or in addition to the following:

Project Design

- Coordination with consultants to design buildings that meet the agreed upon space requirements.
- Review of design parameters with County and South Sound 911 representatives.
- Coordination of survey and an appropriate amount of civil engineering input for the Project.
- Preparation of design documents through ___% Design Development Phase for execution of a Development Agreement establishing a Guaranteed Maximum Price (GMP) for completion of the new South Sound 911 Public Safety Communications Center.
- Collaboration with the County and South Sound 911 to agree upon a GMP for a specific scope of work and schedule.
- Work product prepared under the authority of this Predevelopment Agreement will be incorporated into a final Project Development Agreement between the parties.
- Establishment of a master schedule for the entire Project through construction completion will all distinct milestones.

Permits and Approvals

- Coordinate, obtain and secure required entitlements and permits with City and other required agencies.
- Coordinate design review.

Administration

- Prepare monthly development budgets and schedules for the Project and maintain updates of each.
- Establish an accounting system to monitor all Project costs and provide cash flow projections for the term of the Project.
- Prepare a monthly report documenting design decisions, permit status, consultant contracts and Predevelopment costs.

- Review and approve payment of all consultant invoices.
- Prepare a monthly summary of project costs and submit to County with a request for payment.
- Oversee disbursement of funds.

Meetings

- Developer will participate in community meetings and/or work groups as needed to discuss the design concepts with all stakeholders.
- Developer will meet a minimum of every two weeks, (weekly to begin with and then adjust as progress necessitates) with the design team, Pierce County and South Sound 911 to review Project status and make key decisions amongst the team. Separate task specific meetings will be held on an as needed basis.

Budget Management

- Developer will prepare an estimated Project Budget at the end of each 30 day period during the term of this Agreement. In addition, Developer will produce a monthly report on the budget status for the team to review.
- Between monthly budgets, Developer will maintain a budget options program and log that will track any design considerations between key design milestones (i.e. between program and schematic, schematic and conceptual, conceptual and design development). This log will be used to evaluate the cost benefits of each design option for consideration by the team as the design progresses. The purpose is to prevent budget surprises along the way as design evolves.
- A final GMP budget will be prepared at the ____% Design Development Phase.

Subcontracting and Quality Control

- Developer will establish a list of bid and/or negotiated packages and the timeline for buyout of each component of work and identify any long lead items. Key decisions needed in design will be coordinated with long lead equipment, materials and systems. (e.g. exterior materials, HVAC equipment, re-routing of exterior utility systems for new construction, elevators, etc.)
- Developer will bring on design-build and other subcontractors early in the design process to assist with budgeting and constructability issues.

Predevelopment Design Development Deliverables

To be defined.

Exhibit B

Task Budget Summary for Predevelopment Services – Through ___% Design Development

Consultant	Budget
Developer	\$
Architect	
Landscape Architect	
Structural and Civil Engineer	
Sustainability and/or LEED Consultant	
Mechanical Engineer	
Storm Water Engineer	
Electrical Engineer	
Technology Consultant	
Lighting Design	
Parking Consultant	
Geotechnical Engineer	
Elevator Consultant	
Survey	
Communication/Public Involvement & Facilitation	
Reimbursables (allowance)	
Permits (allowance)	
Other	
Other	
Other	
Total Budget	

**PIERCE COUNTY SOUTH SOUND 911 PUBLIC SAFETY
COMMUNICATIONS CENTER
DEVELOPMENT AGREEMENT**

Between

**a Washington nonprofit corporation
(Owner)**

And

("Developer")

**Dated as of
the __ day of _____, 2015**

**Pierce County South Sound 911 Public Safety
Communications Center
Development Agreement
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**PIERCE COUNTY SOUTH SOUND 911 PUBLIC SAFETY COMMUNICATIONS CENTER
DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (the "Agreement") dated as of the ___ day of _____, 201_, is by and between _____, a ("Owner"), and _____, (Developer").

RECITALS

- A. Owner is the lessee under that certain Building Ground Lease dated as of _____, 201_ (the Building Ground Lease"), with Pierce County, a political subdivision of the State of Washington (the "County"), as lessor, pursuant to which Owner leases that certain real property located in the City of Tacoma, Pierce County, Washington (the "Building Land") more specifically described on Exhibit A hereto.
- B. Owner wishes to construct on the Building Land a Public Safety Communications Center for South Sound 911 consisting of two buildings and containing approximately _____square feet of rentable area as more fully described in the Preliminary Plans and Outline Specifications, including all HVAC, electrical and other building systems and Tenant Improvements pursuant to the Preliminary Plans and Outline Specifications (the "Buildings"). The design and construction of the Buildings is referred to in this Agreement as the "Project."
- C. Owner, as landlord, and the County, as tenant (in its capacity as tenant under the Lease, ("Tenant") are parties to that certain Project Lease Agreement dated as of _____, 20__ (the "Project Lease") whereby Tenant has agreed to leaseback the Building upon substantial completion thereof, at the rent and subject to all of the terms, covenants, and conditions set forth in the Project Lease, a copy of which is attached hereto as Exhibit C and by this reference incorporated herein. The Project Lease requires that Owner shall cause Developer to design, develop, construct and complete the Project.
- D. Owner hereby engages Developer to develop, oversee and manage the design, permitting and construction phases of the Project in accordance with the terms and conditions of this Agreement for a Fixed Price and Developer agrees to perform development and construction management services in connection with the construction of the Project in accordance with the terms and conditions of this Agreement. Subject to the terms and conditions hereof, Developer agrees to provide the financial warranty that the Project will be completed for the Fixed Price of \$
- E. Owner understands that Developer will perform no construction services. The parties intend for the Owner to contract directly and separately with those contractors performing construction services and with the Architect designing the Base Shell and Core Building and with the Interior Architect designing the Tenant Improvements. If, during the performance of this Agreement, additional construction service contractors are retained, the Owner shall contract with them directly or Developer shall contract with them on behalf of and acting as the Owner's agent.
- F. Owner intends to pay the Fixed Price with the proceeds of tax-exempt obligations which satisfy the requirements of Revenue Ruling 63-20, Revenue Procedure 82-26 and other regulations, interpretations and letter rulings issued by the Internal Revenue Service with respect to such financings.

NOW, THEREFORE, in order to fulfill the foregoing objectives, Owner and Developer desire to enter into this Agreement and proceed in accordance with its terms.

1. Definitions. As used herein, the following terms shall have the following meanings:

"**ADA**" means the Americans with Disabilities Act of 1990, as amended from time to time.

"**Architect**" means the architect for the Project selected by Owner and Developer with Tenant's approval.

"**Architect's Agreement**" means the Agreement between Owner and Architect with respect to the Project.

"**Base Shell and Core Buildings**" means the Buildings to be constructed on the Land, exclusive of the Tenant Improvements. The Base Shell and Core Buildings are more particularly described in the attached Exhibit C.

"**Bond Closing**" refers to the date the Bond proceeds are made available to the Trustee.

"**Bond Insurer**" means an insurance company which issues a municipal bond insurance policy at the request of Owner in connection with the issuance of the Bonds, if any. If no Bond Insurer is selected to insure the Bonds, references to the Bond Insurer hereunder shall be deemed to be deleted.

"**Bonds**" means those tax-exempt obligations to be issued by the Owner which satisfy the requirements of Revenue Ruling 63-20, Revenue Procedure 82-26 and other regulations, interpretations and letter rulings issued by the Internal Revenue Service with respect to such financings, from the proceeds of which Owner intends to pay, among other things, the Fixed Price.

"**Building**" means the South Sound 911 Public Safety Communications Center for the Tenant to be constructed on the Building Land containing approximately ___square feet of rentable area as more fully described in the Preliminary Plans and Outline Specifications, including all HVAC, electrical and other building systems and Tenant Improvements.

"**Building Ground Lease**" means the long-term ground lease entered into, or to be entered into, by _____ as the tenant and the County as landlord for the Building Land described on the attached Exhibit A.

"**Building Land**" means the real property located in the City of _____, Pierce County, Washington, more specifically described on Exhibit A hereto.

"**Commencement of Construction**" means the date Developer executes and delivers to General Contractor the Release for Construction attached to the General Construction Contract.

"**Construction Contracts**" means (i) the General Construction Contract and (ii) all other contracts for construction services entered into between Owner, or Developer on the behalf of and acting as agent for Owner, and any Contractor, including General Contractor, for construction of Tenant Improvements or any other portion of the Project not covered by the General Construction Contract.

"**Construction Documents**" means the Construction Drawings and Detailed Specifications approved by the Owner with input from the Tenant for construction of the Project, including technical drawings, schedules, diagrams, plans and specifications setting forth in detail the requirements for construction of the Project and providing information customarily required for the use of the building trades.

"**Construction Drawings**" means drawings setting forth in detail the requirements for the construction of the Project. As used herein "Construction Drawings" include all graphic and pictorial documents depicting the design, location and dimensions of the elements of the Project (including Tenant Improvements) and include plans, elevations, sections, details, schedules and diagrams for the Project. Construction Drawings may consist of separate Construction Drawings for (i) the Base Shell and Core Building prepared by Architect and (ii) the Tenant Improvements prepared by the Interior Architect.

"Contract Documents" means the Construction Documents, the Construction Contracts and the other documents identified as Contract Documents in the General Construction Contract.

"Contractors" means the General Contractor and any other construction contractors with whom Owner enters into direct contracts upon the written recommendation of Developer or with whom the Developer on behalf of and acting as the Owner's agent contracts for the Project.

"Costs Not To Be Reimbursed" means, except as specifically provided in Section 11 hereof (relating to Developer's Overhead Allowance and Developer's Fee), (i) salaries or other compensation of Developer's personnel or of Contractor's personnel normally situated at the Developer's principal office, Contractor's principal office or branch offices, or for any officer of Developer or Contractor; (ii) expenses of Developer's or Contractor's principal office; (iii) overhead or general expenses; and (iv) Project Costs in excess of the Fixed Price.

"Costs Resulting From Owner-Caused Delay" means any increase in costs of constructing the Project resulting from Owner-Caused Delay. Where additional costs are incurred as a result of a combination of Owner-Caused Delay and (i) failure of Developer to provide, within the time frames allowed hereunder, draw requests, architect's certifications, progress completion certifications, copies of change orders and supporting documentation, shop drawings, schedules, costs, invoices, job progress reports, or other documents or information which Owner is entitled to receive hereunder or which is reasonably requested by Owner in connection with any such decision or response required hereunder, or (ii) delay caused by the existence of reasonable cause to suspect that construction of the Project or Tenant Improvements or any other services provided by Developer hereunder have not been performed in accordance with Construction Documents and other requirements hereunder, Costs Resulting From Owner-Caused Delay shall be only the portion of such costs fairly attributable to Owner-Caused Delay.

"Detailed Specifications" means all written detailed requirements for materials, equipment, construction systems, standards and workmanship for the construction of the Project.

"Developer" means _____ and its successors and permitted assigns hereunder.

"Developer Obligation Date" means the date months after Bond Closing. The Developer Obligation Date shall be extended to the extent of (i) Unavoidable Delays; provided, however, that extensions due to Unavoidable Delays shall not exceed ninety (90) days; (ii) Owner-Caused Delays; and (iii) delays incurred as a result of the presence of any Hazardous Substances in, on or emanating from the Building Land as of the Effective Date of the Project Lease (as defined therein) in excess of the time specifically provided in the approved Project Schedule for remediation of any such Hazardous Substances.

"Developer's Fee" means the fee to be paid to Developer subject to the terms and conditions set forth in Sections 11 and 12 of this Agreement.

"Developer's Overhead Allowance" means the monthly allowance to be paid to Developer subject to the terms and conditions set forth in Section 11 of this Agreement.

"Environmental Laws" means, as amended from time to time, the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq., Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., Federal Hazardous Materials Transportation Control Act, 42 U.S.C. Section 1801 et seq., Federal Clean Air Act, 42 U.S.C. Section 7401 et seq., Federal Water Pollution Control Act, Federal Water Act of 1977, 93 U.S.C. Section 1251 et seq., Federal Insecticide, Fungicide and Rodenticide Act, Federal Pesticide Act of 1978, 7 U.S.C. Section 136 et seq., Federal Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., Federal Safe Drinking Water Act, 42 U.S.C. Section 300f et seq., Washington Water Pollution Control Act, RCW Chapter 90.48, Washington Clean Air Act, RCW Chapter 70.94, Washington Solid Waste Management Recovery and Recycling Act, RCW Chapter 70.95, Washington Hazardous Waste Management Act, RCW Chapter 70.105, Washington Hazardous Waste Fees Act, RCW Chapter 70.95E, Washington Model Toxics Control Act, RCW

Chapter 70.1050, Washington Nuclear Energy and Radiation Act, RCW Chapter 70.98, Washington Radioactive Waste Storage and Transportation Act of 1980, RCW Chapter 70.99, Washington Underground Petroleum Storage Tanks Act, RCW Chapter 70.148.

"Final Acceptance" means the Owner's written approval and concurrence that certain events, more fully defined in Section 12 of this Agreement, have occurred prior to Final Payment being made.

"Final Payment" means payment to Developer, General Contractor and any other Contractors following Final Acceptance of the Project pursuant to Section 13 of this Agreement.

"Financing Costs" means all financing costs approved by bond counsel in connection with the issuance of the Bonds.

"Fixed Price" means \$, the total amount to be paid by Owner for Project Costs, excluding Other Costs, for the completion of the design, development, permitting and construction of the Project, and is the price to be paid by Owner for Project Costs. The Fixed Price includes the amount of the Tenant Improvement Allowance but does not include Other Costs. A detailed description of Project Costs by line item and category is set forth in the Project Budget.

"General Construction Contract" means the agreement between Owner and the General Contractor for construction of the Base Shell and Core Building and Tenant Improvements for the Project.

"General Contractor" means _____, the general contractor for the Project selected by Owner with Tenant's approval.

"Guaranteed Maximum Construction Price" means the maximum cost for construction of the Base Shell and Core Building and Tenant Improvements as guaranteed by the General Contractor pursuant to the terms of the General Construction Contract.

"Hazardous Substances" means any material, waste, substance, industrial waste, toxic waste, chemical contaminant, petroleum, asbestos, polychlorinated biphenyls, radioactive materials or other substances regulated or classified by Environmental Laws as hazardous, toxic or lethal to persons or property.

"Indenture" means the trust indenture pursuant to which Owner will cause the issuance of the Bonds, a copy of which shall be provided to Developer by Owner at Bond Closing.

"Initial Draw" refers to Developer's first application for payment of Project Costs, which shall not occur before Bond Closing.

"Interior Architect" means _____, the interior architect for the Project selected by Owner and Developer with Tenant's approval.

"Interior Design Contract" means the contract for space planning design services in connection with the design of Tenant Improvements entered into by Owner and the Interior Architect.

"Land" means the Building Land.

"Laws" means any constitution, statute, ordinance, regulation, rule, resolution, judicial decision, administrative order or other requirement of any federal, state, county, municipal or other governmental agency or authority having jurisdiction over the parties or the Premises, including without limitation, any regulation or order of a quasi-official entity or body (e.g., board of fire examiners or public utilities) and all rules, laws and regulations issued thereunder, as the same may be amended from time to time.

"Master Use Permit" or "MUP" means the Master Use Permit for the Project issued by the City of _____.

"Other Costs" means the costs totaling \$ listed under the heading "Other Costs" on the Project Budget attached hereto as Exhibit D. Other Costs shall be considered Project Costs but shall not be included in the determination of the Fixed Price.

"Overhead Allowance" means the overhead allowance to be paid to Developer in accordance with the provisions of Section 11 (b) of this Agreement.

"Owner" means _____, a Washington nonprofit corporation, its successors and permitted assigns.

"Owner-Caused Delay" means any period of delay in the overall progress of design, construction, and completion of the Project, including Tenant Improvements, that is caused by Owner-initiated change orders to the General Construction Contracts or by Owner's failure to approve, disapprove, decide, or otherwise respond to Developer with respect to a particular item for which Owner's response is required hereunder or under the General Construction Contract, or failure to deliver plans, information, specifications, or other information within the time frames required under this Agreement or the General Construction Contracts. However, Owner-Caused Delay shall not include: (i) delay for which a substantially contributing cause is Developer's failure to provide, within the time frames allowed hereunder, draw requests, architect's certifications, progress completion certifications, copies of change orders and supporting documentation, shop drawings, schedules, costs, invoices, job progress reports, or other documents or information which Owner is entitled to receive hereunder or which is reasonably requested by Owner in connection with any such decision or response, or (ii) delay caused by the existence of reasonable cause to suspect that construction of the Project or Tenant Improvements or any other services provided by Developer hereunder have not been performed in accordance with Construction Documents and other requirements hereunder, in which case Owner-Caused Delay shall not include the amount of additional time reasonably needed by Owner to determine whether such construction or other services conform to all requirements hereunder, so long as Owner proceeds with all reasonable diligence to make such determination. To facilitate timeliness in Owner's communications with Developer over matters relating to design or construction of the Project and to minimize the possibility of Owner-Caused Delay, Developer shall alert Owner to deadlines for approvals, decisions or other responses that Owner must provide hereunder, including, among other methods, attachment of "deadline cover sheets" on any submissions to Owner that require response by a particular deadline or distribution of weekly calendars that show deadlines imposed on Owner. If Developer at any time believes that an instance of Owner-Caused Delay has occurred that has directly caused or will directly cause an increase in Project Costs or extension of the Developer Obligation Date, Developer shall send a written notification to Owner within five (5) days of the occurrence of such alleged Owner-Caused Delay explaining the alleged event that constituted such Owner-Caused Delay, specifying the period of alleged Owner-Caused Delay, describing how the alleged Owner-Caused Delay adversely impacted the Project Schedule and identifying any incremental increase in Project Costs that are identifiable or reasonably foreseeable as a direct result of such Owner-Caused Delay. Any disputes between Developer and Owner over Project Costs attributable to Owner-Caused Delay shall not be a reason to stop or delay construction of the Project and shall be resolved by the parties as expeditiously as possible, either by mutual agreement of the parties or in accordance with the dispute resolution mechanisms described in Section 24 hereof.

"Permits" means all land use approvals, permits and approvals required for construction of the Project.

"Permitted Use" means the intended use of the Project by Tenant for public safety communications, office purposes, parking, retail space and any other lawful use consistent with the provisions of Section 7 of the Project Lease.

"Preliminary Plans and Outline Specifications" are the initial renditions for the Base Shell and Core Building, schedules of which plans and specifications are attached hereto as Exhibits C and E and incorporated herein by this reference.

"Premises" means the entirety of the Building to be constructed on the Building Land together with leasehold interest in the Building Land pursuant to the Building Ground Lease

"Project" means the total design and construction, including all professional design services, and all labor, materials and equipment used or incorporated in such design and construction of (i) the

Building to be constructed on the Building Land. The Project shall include work which is consistent with and reasonably inferable from the approved Project Requirements as being necessary to produce the intended results and may include the acquisition of certain light, view or other easements or property interests benefiting the Project not included in the Project Requirements to the extent that the cost thereof is paid from the Tenant's Contingency_

"Project Application for Payment" means the procedures by which requests for payment for Project Costs and other costs shall be made in accordance with Section 9 of this Agreement.

"Project Budget" means the budget for development of the Project attached to this Agreement as Exhibit D, as revised from time to time in accordance with this Agreement.

"Project Contingency" means the contingency by that name set forth in the Project Budget. The amounts of the various line items of the Project Budget are estimates only of the Project Costs to be incurred. To the extent the actual Project Costs in any line item of the Project Budget exceed the amount shown for such line item, Developer shall first allocate amounts in other line items, in which the actual known Project Costs will be less than the amount of the Project Budget, to the line item in which the excess Project Cost has been incurred. Following the allocation by Developer as set forth in the preceding sentence with respect to all line items, Developer is entitled to draw upon the Project Contingency for such excess Project Costs.

"Project Costs" means all costs for the completion of the development, design, permitting and construction of the Project, including, without limitation, all permit fees, all costs of the Base Shell and Core Building, HVAC, electrical and other building systems, all costs of Tenant Improvements, all costs of fixtures, furnishing and equipment described in the Construction Documents, all costs of architectural services provided by the Architect under the Architect's Agreement, all costs of services provided by the Interior Architect under the Interior Design Contract with respect to the Tenant Improvements, all other professional design and other services provided by Contractors or other professionals engaged by the Developer or General Contractor, all amounts paid to General Contractor under the General Construction Contract including all labor, material, and equipment used or incorporated in such design and construction, all amounts paid to other Contractors and subcontractors, if any, under any other Construction Contract or subcontract entered into by Owner upon the written approval of Developer or by the Developer on behalf of and acting as the Owner's agent in connection with the Project, including all labor, material, equipment used or incorporated in such design and construction, services provided by engineers, environmental consultants, surveyors and other professionals and consultants retained by Developer in connection with the Project, Other Costs, Developer's Overhead Allowance, Developer's Fee, insurance (other than Bond insurance), bonds (other than the Bonds), applicable state and local retail sales, business and occupation and other taxes (including real property taxes and assessments accruing from Commencement of Construction to Substantial Completion of the Project), plus the Project Contingency; excluding only (a) Tenant's Personal Property and any taxes thereon (which shall be paid by Tenant at its sole cost and expense), (b) Financing Costs, (c) costs for art or similar enhancements that are not included in the Project Requirements and not paid from the Tenant's Contingency; (d) costs of acquiring certain light, view or other easements or property interests benefiting the Project that are not included in the Project Requirements and are not paid from the Tenant's Contingency; (e) costs of removing or remediating any Hazardous Substances in, on or emanating from the Building Land in excess of the amount specifically set forth in the Project Budget for environmental remediation; (f) to the extent not reflected in the Preliminary Plans and Outline Specifications, costs of any offsite improvements required as a condition to or in connection with the development or construction of the Project; (g) Costs Not To Be Reimbursed.

"Project Fund" means the fund of that name established under the Indenture for the purpose, among others, of paying Project Costs.

"Project Lease" means the lease agreement between Owner and the Tenant for occupancy of the

Project in the form attached hereto as Exhibit B.

"Project Requirements" means the Preliminary Plans and Outline Specifications as set forth in Exhibit E and as otherwise specifically agreed to by Owner and Developer.

"Project Schedule" means the schedule for development and construction of the Project as set forth on Exhibit F to this Agreement, as revised from time to time in accordance with this Agreement, provided, however, that in no event shall the Project Schedule provide for Substantial Completion of the Project to occur later than the date _____, () months after Bond Closing without the concurrence of Tenant. The initial Project Schedule is set forth in Exhibit F attached hereto and by this reference incorporated herein.

"Punch List" means a list of items required to be completed prior to Final Acceptance that are minor items which do not affect Owner's ability to lease the Premises to Tenant and do not affect Tenant's ability to use the Premises for the Permitted Use.

"Requirements of Law" means all requirements relating to land and building construction (including those specifically applicable to Tenant's contemplated use of the Premises as a public safety communications center and an office building), including, without limitation, planning, zoning, subdivision, environmental, air quality, flood hazard, fire safety, accessibility, and other governmental approvals, permits, licenses and/or certificates as may be necessary from time to time to comply with all the foregoing and other applicable statutes, rules, orders, regulations, laws, ordinances, and covenants, conditions and restrictions, which now apply to and/or affect the design, construction, existence, intended use, operation and/or occupancy of the Building Land, the Premises or any part thereof.

"Sale of the Bonds" means execution and delivery by Owner and a responsible bond underwriter of an agreement providing for the purchase and sale of the Bonds on terms consistent with the terms of the Lease and with no conditions to the underwriter's obligation to pay for and accept delivery of the Bonds other than those conditions contained in said agreement between Owner and the responsible bond underwriter.

"Substantial Completion" has the meaning set forth in Section 12 of this Agreement.

"Substantially Complete" or **"Substantially Completed"** means that the Project has been constructed in substantial accordance with the Contract Documents and: (a) all elements required for the functioning of the Project shall be operational and in good working order and condition including satisfying applicable ADA building requirements and the Washington State Law Against Discrimination, RCW ch. 49.60, as well as regulations adopted thereunder; (b) the Project shall be weather tight and waterproof; (c) the fire and life safety systems within the Project shall be operational and in good working order and condition; (d) the elevators shall operate and function in good working order and condition, but may still require touch up installation and cleaning; (e) the mechanical and electrical systems, including the HVAC system, shall be individually tested and in good working order able to support the Project and shall also be tested to assure that Project systems operate on an integrated basis, but the HVAC system may still require 'final balancing work; (f) the finish work is substantially completed, including, but not limited to public lobby, elevator, HVAC, plumbing, fire and life safety, sprinkler and electrical systems, doors, partitions, cabinetry, carpet and base, including removal of all construction debris; (g) all site utilities, sidewalks and landscaping are substantially completed and construction barricades and equipment have been removed; (h) the access and security systems for the Project are installed and operational, except in each case for minor Punch List items which do not materially affect use and occupancy of the Project for public safety communications, government offices and parking.

"Tenant" means Pierce County and its successors and permitted assigns as tenant under the Project Lease.

"Tenant Improvement Allowance" means, within the Fixed Price, an allowance of \$ to cover the design and construction costs of the Tenant Improvements. If any portion of this allowance is not

used, it shall remain the property of Owner. Prior to commencement of construction of the Tenant Improvements under the General Construction Contract, Owner and General Contractor intend to agree upon a guaranteed maximum price for construction of the Tenant Improvements, which guaranteed maximum price shall contain a construction contingency line item. Any excess of the Tenant Improvement Allowance over the guaranteed maximum price (the "Excess Tenant Improvement Allowance") shall, upon agreement of the guaranteed maximum price, be automatically transferred to the Tenant's Contingency.

"Tenant Improvements" means any improvements to the interior of the Building beyond the Base Shell and Core Building, including data wiring, all of which are more specifically described in the Construction Documents.

"Tenant's Contingency" means the contingency in the amount of \$ which may be used to cover any changes in the Project resulting from any material improvements or deviation required by Owner from the design or level of quality reflected in the Preliminary Plans and Outline Specifications as set forth in Section 4(i) below or for Tenant Improvements requested by Tenant which exceed the Tenant Improvement Allowance.

"Tenant's Personal Property" means Tenant's furniture, equipment, and movable personal property placed in the Premises; provided, however, that fixtures, furnishing and equipment described in the Construction Documents as being part of the Project are not deemed to be part of Tenant's Personal Property. Tenant shall provide Tenant's Personal Property at Tenant's sole cost and expense.

"Title Policies" shall mean the policy of title insurance issued to Owner upon its leasehold of the Land (herein called the "Title Policy") and the lender's policy of title insurance issued to the Trustee upon the recording of the mortgage or deed of trust in favor of the Trustee (the "Lender's Title Policy").

"Trustee" shall mean a national bank or other financial institution with trust powers selected by Owner to serve as the bond trustee under the Indenture or any duly authorized successor thereto appointed pursuant to the Indenture.

"Unavoidable Delays" means any delay in the performance by Developer or General Contractor of its obligations with respect to construction of the Project caused by strikes (other than those directly caused by Developer's acts, omissions or failure to negotiate in good faith), acts of God, Unusually Severe Weather Conditions, unavoidable casualties, acts of the public enemy, acts of terrorists, governmental embargo restrictions, or similar causes beyond the reasonable control of Developer or General Contractor, which, after the exercise of due diligence to mitigate the effects thereof, delay construction of the Project, other than such delays resulting from (a) Developer's or General Contractor's failure to comply with the terms and provisions of this Agreement or the General Construction Contracts, (b) increased prices, or (c) unavailability of funds, provided the Fixed Price is paid in accordance with Section 10 of this Agreement. Unavoidable Delays will entitle Developer and General Contractor to an extension of the Developer Obligation Date but will in no way entitle Developer to additional compensation. Nothing contained herein shall prevent Developer from allocating the Project Contingency to increased costs of constructing the Project caused by Unavoidable Delays. In the event of any Unusually Severe Weather Conditions, the length of Unavoidable Delay to become effective under this Agreement as a result of such conditions shall be the period of time (not less than one day) by which Developer's progress in constructing the Project has reasonably been delayed as a result of such Unusually Severe Weather Conditions. Developer shall notify Owner in writing as soon as possible but in no event later than 35 days after any Unusually Severe Weather Conditions have occurred, shall provide in such notice a specification as to which of the listed conditions has occurred and the data supporting such determination, and shall provide an explanation of Developer's position as to the length of Unavoidable Delay to be granted as a result of such conditions, explaining how such conditions delayed Developer's construction

progress. Owner shall respond within 10 days thereafter as to whether Owner accepts or disagrees with Developer's position. Any disagreements that cannot be resolved by Developer and Owner shall be resolved in accordance with Section 24 hereof, but work shall continue pending resolution of such dispute.

"Unusually Severe Weather Conditions" means the occurrence of any of the following scenarios of precipitation, low temperature, windstorms, or snow or ice, but only if the building shell has not been sealed from weather and there remains substantial external work or other conditions that are affected by adverse weather and that will adversely affect the Developer's ability to achieve Substantial Completion by the Developer Obligation Date:

- a) Daily rainfall equal to or greater than .80 inch within any 24 hour period.
- b) Daily rainfall equal to or greater than .50 inch during any "rainy season month" (ie., October through June) in which the total monthly rainfall (at the end of such month) is at least 115% but less than 150% of the total average monthly rainfall for such month.
- c) Daily rainfall equal to or greater than .30 inch during any rainy season month in which the total monthly rainfall (at the end of such month) is at least 150°A, but less than 200% of the total average monthly rainfall for such month.
- d) Daily rainfall equal to or greater than .20 inch during any rainy season month in which the total monthly rainfall (at the end of such month) is at least 200% of the total average monthly rainfall for such month.
- e) Daily maximum temperature less than 35 degrees Fahrenheit for two or more consecutive weekday days which impacts critical components of the work.
- f) A combination of temperature and precipitation that results in snowfall in excess of 3 inches on a particular day that does not melt and substantially disappear (but for isolated shaded areas) by 7:00 a.m. on the next work day, or that results in a coating of ice during the bulk of the workday (not merely morning frost) that makes walking, transporting or loading of materials, or operation of equipment or vehicles hazardous or significantly slowed.
- g) Maximum wind gusts exceeding 50 mph at any time during the work day.
- h) Maximum wind gusts exceeding 35 mph during each hour of a continuous four hour period during the work day.
- i) Any other unusually inclement weather condition which causes the construction site to be in a condition such that the General Contractor orders the workers to not work on the construction site.

Weather conditions shall be measured at Sea-Tac International Airport by the Environmental Data and Information Service of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce. However, if Developer wishes to monitor weather at a location on or nearer to the Project site, Developer may make a proposal to install and operate, at its expense through Project Contingency, a weather monitoring station at the Property or in the vicinity of the Property, monitored by an independent consultant, and Owner shall not unreasonably withhold its approval to utilization of the weather data from such closer site so long as the equipment and independent consultant appear to be capable and trustworthy and the results obtained from such monitoring appear to be reasonably reliable.

"Warranty Period" shall mean that period commencing on the date of Substantial Completion of the Project and expiring two (2) years thereafter.

2. Development of the Project.

a) Fixed Price. Owner hereby retains Developer and Developer shall, in accordance with the terms of this Agreement, develop, oversee and manage the design, permitting and construction phases of the Project in accordance with the terms and conditions of this Agreement. Subject to the terms of this Agreement, and provided the Fixed Price is paid in accordance with Section 9 of this Agreement, Developer warrants (i) the delivery of the Project for a Fixed Price of \$ _____, constructed in a good and workmanlike manner and in substantial accordance with the Contract Documents on or before the Developer Obligation Date, free and clear of all liens. Project Costs exceeding the Fixed Price shall be paid by Developer, with Developer depositing any required funds with Trustee pursuant to Section 9(f) below. Upon compliance by Developer with its obligations under this Agreement, Owner shall cause the Trustee to disburse money from the Project Costs Account in the Project Fund (as those terms are defined in the Indenture) to Developer or any other party entitled to receive such disbursement as set forth in Section 9 of this Agreement to pay the Project Costs, until money in an amount equal to the Fixed Price has been disbursed.

b) Tenant Improvement Allowance. The Fixed Price will include the Tenant Improvement Allowance of _____ Dollars (\$ _____) for the design and construction of Tenant Improvements~ Notwithstanding any other provision in this Agreement to the contrary, payment for the construction of Tenant Improvements shall be governed by the terms of this Section 2(b). Exhibit G hereto sets forth the dates for delivery of the space plans by which Owner

- (i) must deliver the plans if Owner wishes to have the Tenant Improvements bid as a part of the Base Shell and Core Building; or
- (ii) must deliver the plans to avoid potentially jeopardizing the Project Schedule. Owner's failure to meet those dates shall constitute an Owner-Caused Delay that may result in Costs Resulting From Owner-Caused Delay for which Developer shall not be held responsible. Owner shall pay any Costs Resulting From Owner-Caused Delay unless Owner elects to allocate Tenant's Contingency to pay such costs. Any Owner-Caused Delay shall also result in an adjustment of the Developer Obligation Date under Section 7(b) below.

Developer shall work with Owner to develop the pricing on Owner's desired Tenant Improvements. If the total cost of designing and constructing the Tenant Improvements is less than the Tenant Improvement Allowance, then all excess funds in the Tenant Improvement Allowance shall be retained by Owner upon Final Acceptance. If the total cost of designing and constructing the Tenant Improvements exceeds the Tenant Improvement Allowance, such excess costs shall be paid solely by Owner.

c) Other Costs. Other Costs shall be considered Project Costs but shall not be included in the determination of the Fixed Price. Any portion of Other Costs not used for the Project shall be added to Tenant's Contingency, and any portion of Tenant's Contingency not used for the Project shall be applied as provided in the Indenture. If the cost of the items of work described under the heading "Other Costs" on the Project Budget attached hereto as Exhibit D exceeds \$ _____, such excess shall be paid by Owner.

d) Diligent Efforts: Relationship of the Parties. Developer accepts the relationship of trust and confidence established with Owner by this Agreement and agrees that in providing the services set forth in this Agreement, Developer shall use its diligent efforts and shall furnish its best skill and judgment and shall cooperate with, coordinate, manage, direct and oversee the General Contractor, Architect, Interior Architect, all other Contractors, all other engineers, design consultants, managers and other persons retained in connection with the design, permitting,

development and construction of the Project so as to cause Substantial Completion of the Project in an expeditious and economic manner consistent with the best interests of Owner, and otherwise in a good and workmanlike manner and in substantial accordance with the Contract Documents on or before the Developer Obligation Date, free and clear of liens (provided the Fixed Price is paid in accordance with Section 9 of this Agreement). Developer shall perform its services in accordance with the terms of this Agreement, including, without limitation, all services to be provided by Developer as described in Section 5 herein. Developer shall not perform any construction services in connection with this Agreement. By the terms of this Agreement, Developer is not obligated to perform services for which Owner has contracted with a third party without Developer's prior written consent, nor obligated to pay for such services for which Owner has contracted with third parties without Developer's prior written consent, and such services shall be paid for directly by Owner and shall not be considered Project Costs unless they are pre-approved by Developer in writing.

e) Mutual Cooperation: Liability of Owner. Developer and Owner shall fully and in good faith cooperate with each other to accomplish each of the activities provided herein. Developer acknowledges and agrees that Owner shall have no liability or responsibility whatsoever with respect to the activities provided to be performed by Developer herein, except to pay the Fixed Price pursuant to the terms and conditions contained herein.

f) Term. The rights and obligations of the Developer and Owner hereunder shall commence on the date of execution of this Agreement and shall continue, subject to early termination pursuant to Section 3(c), until expiration of the Warranty Period, except with respect to those specific obligations of Developer which may survive the Warranty Period.

3. Project Financing.

a) Issuance of Bonds. Owner intends to issue Bonds in a principal amount sufficient to pay the Project Costs, Financing Costs and other costs payable pursuant to the terms of the Indenture pursuant to and in compliance with the requirements of Revenue Ruling 63-20 and Revenue Procedure 82-26 issued by the Internal Revenue Service (collectively, the "Ruling") and other regulations, interpretations and letter rulings issued by the Internal Revenue Service with respect to such financings. Owner intends to have the payment of principal and interest on the Bonds insured by the Bond Insurer selected by Owner upon recommendation by the underwriter retained by Owner to sell the Bonds. The proceeds of the Bonds shall be used to pay Project Costs (in an amount not in excess of the Fixed Price), Financing Costs and other costs.

b) Disbursal of Proceeds. A portion of the proceeds from the sale of the Bonds shall be deposited into the Project Fund held by the Trustee and shall be used to pay Project Costs and other costs in accordance with the terms of the Indenture and this Agreement.

c) Termination of Agreement. In the event the Sale of the Bonds has not occurred on or before _____, 201_, this Agreement shall terminate and neither Owner nor Developer shall have any further rights, duties or obligations hereunder except as provided below, provided that either Owner or Developer may extend the _____,201_ date by up to three (3) periods of thirty (30) days each by delivering written notice to the other of its intention to extend prior to the then-applicable termination date (provided such extension shall be effective only if the Project Lease is similarly extended in accordance with its terms).

4. Project Design. Developer shall cause design services to be performed by qualified architects, engineers and other professionals recommended by Developer, approved by Owner and paid as part of the Project Costs.

a) Selection of Development Team for Project. The following entities are intended to be retained in connection with the Project:

- (i) Architect:
- (ii) General Contractor:
- (iii) Structural Engineers:
- (iv) Land Surveyors:
- (v) Mechanical Design Build Engineers:
- (vi) Geotechnical Engineers:
- (vii) Environmental Consultants:
- (viii) Interior Architect:
- (ix) Electrical Design/Build Engineers:

In order to complete the Project, Developer shall have the right to select other professionals as necessary or desirable for the design, permitting, and development of the Project and shall have the obligation to recommend other Contractors for Owner's approval. All amounts paid to the entities outlined above and any others hereinafter engaged by Developer in connection with the performance of its duties and responsibilities under this Agreement, or as agent for Owner, shall be part of the Fixed Price.

b) Design Contracts. Owner shall enter into the Architect's Agreement with the Architect and the Interior Design Contract with the Interior Architect.

Consistent with the terms and conditions of the respective General Construction Contract, Interior Design Contract and the Architect's Agreement, there shall be no amendment to those or any other design contract or Construction Contract, without the prior written consent of Owner. All rights of Owner and Developer, respectively, under the Architect's Agreement, the Interior Design Contract and the General Construction Contract and any other contract designated by either Trustee or Bond Insurer shall be assigned to Trustee and/or Bond Insurer as appropriate under assignment agreements in form and substance satisfactory to Trustee and Bond Insurer. Developer shall obtain, at no cost to Owner, the consent of Architect, Interior Architect, General Contractor and other design professionals and Contractors as necessary to each such assignment.

c) Project Budget. The Project Budget sets forth a detailed itemization by line item and category of all Project Costs, including Tenant's Contingency, Project Contingency, the Overhead Allowance and Developer's Fee. The Project Budget is attached hereto as Exhibit D.

d) Construction Drawings. Developer shall cause the Architect to prepare the Construction Drawings and Detailed Specifications for the Core Building and cause the Interior Architect to prepare such necessary plans and specifications for the Tenant Improvements, in each case for Developer's review and Owner's approval. The intention of the parties is to cooperate in good faith to provide a completed design which meets all Requirements of Law and is consistent with all Project Requirements and the building quality reflected therein. The Construction Drawings and Detailed Specifications for the Base Shell and Core Building construction and Tenant Improvements shall include, at a minimum, all architectural services set forth under Basic Services in the Architect's Agreement and such other architectural services as may be necessary to provide Construction Documents for the Base Shell and Core Building and Tenant Improvements portions of the Project.

e) ADA Compliance. Each design contract shall include a provision requiring that upon Substantial Completion of that portion of the work covered by that design contract, the work and the portion of the Project so constructed shall comply with the applicable Americans with Disabilities Act requirements referenced herein.

f) Owner's Review. Owner may participate in all design meetings with Developer, Architect, Interior Architect and other design professionals as appropriate in the course of the development of all Construction Documents in order to facilitate the approval of such Construction Documents in accordance with the terms of this Agreement. Owner shall promptly

review the Project Budget and all Construction Drawings and Detailed Specifications submitted in accordance with this Agreement and shall give Developer written notice within ten (10) business days following its receipt of the Project Budget and/or Construction Drawings and Detailed Specifications of its approval or disapproval thereof, specifying in the case of its disapproval, its reason therefore. Owner shall have the right to disapprove such Construction Drawings and Detailed Specifications which (i) do not meet the Project Requirements, (ii) do not comply with Requirements of Law, (iii) do not comply with previous Construction Drawings and Detailed Specifications in all material respects, or (iv) propose changes in work or materials that would result in a material change in appearance or diminution in quality of the Project. If no objections or comments are received within such ten (10) business day period, then the submittals shall be deemed approved.

g) Resubmittals. If objections or comments are submitted in writing within the time frame and in accordance with the requirements set forth in the preceding subsection, Developer shall cause the Architect and/or the Interior Architect to make changes in the Construction Drawings and/or Detailed Specifications consistent with reasonable objections or comments made by the Owner and shall resubmit the same to Owner in accordance with the foregoing schedule for further review. The process of resubmittal and review shall continue until the submittals have been approved by all the parties. The final Construction Drawings and Detailed Specifications setting forth in detail the requirements for the construction of the Project which have been approved by Owner are called the Construction Documents. There shall be no material change in the Construction Documents except as set forth in Section 8 below.

h) Permit and Construction Documents. Developer shall cause the Architect and other design professionals to prepare Construction Documents as required for submittal of the building permit and other permit applications in accordance with Section 6 hereof, and as required for construction of the Project by the Contractors.

i) Tenant's Contingency. The Fixed Price includes a Tenant's Contingency in the amount of \$ _____ which shall be allocated to Project Costs as provided herein. If Owner requires any material improvement or material deviation in the Construction Drawings or the Detailed Specifications from the design or level of quality reflected in the Preliminary Plans and Outline Specifications, any resulting increase in design or construction Project Costs shall be charged against the Tenant's Contingency up to a maximum of \$ _____, after which no further design changes shall be permitted hereunder unless Owner agrees to pay for any resulting increase in Project Costs. To the extent that the Construction Drawings and Detailed Specifications are consistent developments of the Preliminary Plans and Outline Specifications, the Fixed Price shall not be adjusted for any changes in Project Costs required to construct the Project in accordance with such Construction Documents. Additionally, at Owner's option, the Tenant's Contingency may be used for the design and/or construction of Tenant Improvements desired by Owner in excess of Tenant Improvement Allowance.

5. Construction Management Services. Developer shall provide Owner with all construction administration and construction management services necessary or desirable to cause Substantial Completion of the Project on or before the Developer Obligation Date in a good and workmanlike manner and in substantial accordance with the Contract Documents, including, without limitation, the following:

a) Preconstruction Phase.

(i) Developer shall oversee all design work done by Architect, Interior Architect and other design professionals for the design and development of the Project. Developer shall expeditiously review design documents during their development and advise on proposed site use and improvements, selection of materials, building

systems and equipment and methods of Project delivery. Developer shall provide recommendations on relative feasibility of construction methods, availability of materials and labor, and time requirements for procurement, installation, construction and factors related to construction costs including, but not limited to, costs of alternative designs or materials, budgets and possible economics.

(ii) Developer shall prepare and periodically update the Project Schedule for Owner's acceptance. Developer shall obtain the Architect's and Interior Architect's approval for the portions of the preliminary Project Schedule relating to the performance of their services. Developer shall coordinate and integrate the Architect's and Interior Architect's services into the Project Schedule and Developer's and Owner's responsibilities with anticipated construction schedules, highlighting critical and long lead time items.

(iii) Developer shall consult with Owner and Architect regarding the Construction Documents and make recommendations whenever design details adversely affect constructability, cost or schedules.

(iv) Developer shall cause the General Contractor to establish the assignment of responsibilities for temporary Project facilities and equipment, materials and services for common use of the Contractors. Developer shall verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents.

(v) Developer shall cause the General Contractor to determine the division of the Project into individual contracts for various categories of work, including the method to be used for selecting Contractors and awarding Construction Contracts. Developer shall cause the General Contractor to review the Construction Documents as required to provide that (1) the work of the Contractors is coordinated; (2) all requirements for the Project have been assigned to the appropriate Construction Contract; (3) the likelihood of jurisdictional disputes has been minimized; and (4) proper coordination has been provided for phased construction.

(vi) Developer shall prepare a Project Schedule providing for the components of the work and shall consult with the General Contractor in connection with the preparation and updating of the Project Schedule, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products requiring long lead time, and the occupancy requirements of Owner. Developer shall provide the current Project Schedule to the General Contractor for each set of bidding documents.

(vii) Developer shall work with the General Contractor to expedite and coordinate the ordering and delivery of materials requiring long lead times.

(viii) Developer shall select and coordinate the professional services of surveyors, special consultants and testing laboratories required for the Project.

(ix) Developer shall cause the General Contractor to provide an analysis of the types and quantities of labor required for the Project and shall review with the General Contractor the availability of appropriate categories of labor required for critical phases. Developer shall make recommendations for actions designed to minimize adverse effects of labor shortages.

(x) Following Owner's approval of the Construction Documents, the Developer shall update and submit the latest estimate of Project Costs, Project Budget and the Project Schedule for Owner approval.

(xi) Developer shall direct the General Contractor to develop bidders' interest in the Project, establish bidding procedures, issue bidding documents to bidders and conduct pre-bid conferences with prospective bidders. Developer shall cause the

General Contractor to submit the list of prospective bidders for Owner's review. Owner shall have the right to reject any bidder if there exists substantial and reasonable cause for such rejection. Developer shall assist the General Contractor with respect to questions from bidders and the issuance of addenda.

(xii) Developer and General Contractor shall receive bids, prepare bid analyses and award contracts or reject bids.

b) Construction Phase.

(i) Developer shall administer all Construction Contracts for the Project in cooperation with the Architect.

(ii) Developer shall provide administrative, management and related services to coordinate scheduled activities and responsibility of the Contractors with each other and with those of the Developer, Owner and Architect to manage the Project substantially in accordance with the Project Schedule and Contract Documents.

(iii) Developer shall cause the General Contractor to update the Project Schedule incorporating the activities of the Contractors on the Project, including activity sequences and duration, allocation of labor and materials, processing of shop drawings, product data and samples and delivery of products requiring long lead time and procurement. The Project Schedule shall include Owner's occupancy requirement showing portions of the Project having occupancy priority. Developer shall update and reissue the Project Schedule as required to show current conditions. If an update indicates that the previously approved Project Schedule may not be met, Developer shall cause the General Contractor to take corrective action so as to cause the Project to be Substantially Completed on or before the Developer Obligation Date.

(iv) Developer shall cause the General Contractor to schedule and coordinate the sequence of construction so as to cause Substantial Completion of the Project on or before the Developer Obligation Date.

(v) Developer shall dutifully administer and enforce the Architect's Agreement and the Interior Design Contract and Developer shall cause the General Contractor to dutifully administer and enforce all Construction Contracts with subcontractors and, provided that Owner authorizes Developer to do so and assigns to Developer any rights necessary in connection therewith, Developer shall fully enforce, administer and take such actions as are necessary to implement contracts with the Architect, Interior Architect, and General Contractor. Developer shall notify and consult with Owner regarding any material breaches or defaults by any party to a Construction Contract relating to the Project. Developer shall, with respect to such breach or default by such contracting party, follow the instructions or directions of Owner so long as such instructions or directions do not, in the reasonable professional judgment of Developer, restrict, delay, impair or otherwise jeopardize the Substantial Completion of the Project by the Developer Obligation Date.

(vi) Developer shall develop cash flow reports and forecasts for the Project (including variances between actual and budgeted costs) and provide Owner with copies of same.

(vii) In consultation with the Architect, Developer shall oversee the course of construction and shall conduct such inspections of the course of construction and testing of work to insure that the work of each Contractor is being performed in substantial accordance with the requirements of the Contract Documents in a good and workmanlike manner, free of defects and deficiencies in work, and free and clear of all liens. Developer shall reject all work which does not conform to the requirements of the Contract Documents and cause corrective action to be taken.

(viii) Developer shall transmit to Architect requests for interpretations of the meaning and intent of Construction Drawings and Detailed Specifications and assist in the resolution of questions that arise.

(ix) Developer shall expedite the processing and approval of shop drawings, product data, samples and other submittals.

(x) Section 8 of this Agreement shall control with regard to changes in the work.

(xi) Developer shall record the progress of the Project. Developer shall cause the General Contractor to submit written monthly progress reports to Owner and Developer, including information on each Contractor and each Contractor's work, as well as the entire Project, showing percentages of completion. Developer shall maintain or cause the General Contractor to maintain a daily log, containing a record of weather, each Contractor's work on the site, number of workers, identification of equipment, work accomplished, problems encountered and such other information as Owner may require.

(xii) Developer shall maintain at the Project site or at Developer's offices in _____, Washington, for Owner one record copy of all Contract Documents, all drawings, specifications, addenda, change orders and other modifications, in good order and marked currently to record changes and selections made during construction together with approved shop drawings, product data, samples and similar required submittals. Developer shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of the footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. All such records shall be made available to Architect, Interior Architect and Owner upon request and, upon completion of the Project, duplicate originals shall be delivered to Owner.

(xiii) Although Developer shall not be responsible for the purchase of materials, systems and/or equipment, Developer shall assure that the General Contractor is responsible for the delivery and storage, protection and security of such materials, systems and equipment that are part of the Project until such items are incorporated into the Project.

(xiv) Developer shall develop and implement procedures for the review and processing of applications by Contractors for progress and final payments.

(xv) Based on the Developer's observations and evaluations of each Contractor's Application for Payment, the Developer shall review and certify the amounts due the respective Contractors. The Developer shall prepare Project Applications for Payment based on the Contractors' Applications for Payment.

(xvi) Each Project Application for Payment and certification of the Contractor(s)' certificates for payment shall constitute a representation to Owner based on the Developer's overall supervision of the course of construction, inspections conducted at the site, and review of the data comprising the Contractors' Application for Payment that, to the best of Developer's knowledge, information and belief, the work has progressed to the point indicated and the quality of the work is in substantial accordance with the Contract Documents (subject to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by Developer in Developer's Project Application for Payment).

(xvii) Developer shall supervise the final testing and start-up of utilities, operational systems and equipment.

(xviii) When Developer considers each Contractor's work or a designated portion thereof substantially complete, the Developer shall, jointly with the Architect,

prepare for the Contractor a list of incomplete or unsatisfactory items (Punch List) and a schedule for their completion. The Developer shall assist Architect in conducting inspections to determine whether the work or designated portion thereof is substantially complete.

(xix) Developer shall cause the General Contractor to coordinate the correction and completion of the work, including all Punch List items, and shall evaluate the completion of the work of the Contractors and make final recommendations to the Architect when the Project or any designated portion thereof has achieved Final Acceptance. Developer shall assist Architect in conducting final inspections of the work.

(xx) Developer shall take such other and further action as may be necessary or desirable to cause the Project to be Substantially Completed on or before the Developer Obligation Date.

6. Permits.

a) Master Use Permit. A Master Use Permit will be obtained by the Developer.

b) Permits. Developer shall obtain all Permits necessary to construct the Project. For those Permits yet to be acquired as of the date of the execution of this Agreement, Owner shall have ten (10) business days to review any Permit application Developer intends to submit. Owner's failure to object to terms or conditions of a Permit application shall not be construed as approval of the same but shall constitute Owner's authorization for Developer to submit the Permit application. For those Permit applications already submitted by Developer prior to the execution of this Agreement, Owner shall receive a copy upon request. Owner shall join in any application for Permits as required, at the expense of Developer. Developer shall pursue issuance of such Permits with all due diligence.

c) Costs. All costs associated with issuance of the Permits shall be Project Costs.

d) Schedule and Delays. Permits by the City of _____ and commencement of construction of the Project within the time set forth in the Project Schedule set forth as Exhibit F hereto. The Project Schedule shall be updated by Developer and Owner from time to time as reasonably required to reflect the current status of the Project. There shall be no increase in the Fixed Price as a result of any delay in issuance of the Permits or commencement or completion of construction of the Project.

7. Construction.

a) Commencement of Construction. Developer shall cause Substantial Completion of the Project on or before the Developer Obligation Date in a good and workmanlike manner, free from defects in work or materials and in substantial accordance with the Contract Documents, free and clear of all liens, provided the Fixed Price is paid in accordance with Section 9 hereof. As soon as reasonably practical following issuance of the Permits, Developer shall cause Commencement of Construction to occur and to diligently and continuously prosecute such work to Final Acceptance. Developer shall coordinate the sequencing of all construction and shall cause all other Contractors to commence construction of that portion of the work covered under their respective Construction Contracts and diligently and continuously prosecute such work to Final Acceptance. Developer warrants to the Owner that materials and equipment incorporated into the Project shall be new unless otherwise specified.

b) Delays. The Developer Obligation Date shall be extended to the extent of (i) Unavoidable Delays, provided however that extensions due to Unavoidable Delays shall not exceed ninety (90) days; (ii) Owner-Caused Delays and (iii) delays incurred as a result of the presence of any Hazardous Substances in, on or emanating from Land or the Building Land as of

the Effective Date of the Project Lease (as defined therein) in excess of the time specifically provided in the approved Project Schedule for remediation of any such Hazardous Substances. The existence of Unavoidable Delays of up to 90 days shall excuse General Contractor and Developer for resulting delays and changes in the Project Schedule, provided however that there shall not be any adjustment to the Fixed Price for additional costs resulting therefrom. If Substantial Completion of the Project fails to occur by the Developer Obligation Date, as extended pursuant to the first sentence of this Section 7(b), then Developer shall pay to Trustee on the first day of each month an amount equal to the sum of the Monthly Rent payable under the Project Lease, until the earlier of Substantial Completion or termination of the Project Lease pursuant to Section 9.18 thereof; provided, however, that to the extent Owner receives insurance proceeds under the Builders Risk Insurance Policy described in Section 16(a)(v) below to reimburse Owner for loss of income and rents, such sums shall be credited against Developer's obligation to pay Monthly Rent to the Trustee. The Monthly Rent paid by Developer shall be prorated if a partial month elapses before Substantial Completion of the Project occurs. Upon Final Acceptance, if there are funds remaining in the Project Costs Account (as defined in the Indenture) prior to the final distribution of said Account (i.e., the sharing of contingency money), if Substantial Completion of the Project has failed to occur by the Developer Obligation Date, and if Developer has made the payments it is required to make pursuant to this Section 7(b), the Developer and the Owner, with concurrence by the Tenant, shall determine and direct Trustee to pay to the Developer any additional interest earnings that accrued on the undisbursed Bond proceeds as a direct result of such delay in excess of interest that would have accrued absent such delay.

c) Guaranteed Maximum Construction Contract. As part of the Fixed Price, the Base Shell and Core Building (which constitutes a portion of the Project) and the Tenant Improvements, subject to Section 2(b), shall be constructed pursuant to the General Construction Contract, containing the Guaranteed Maximum Construction Price, between Owner and the General Contractor. The General Construction Contracts shall contain a provision for payment and performance bonds issued by a surety reasonably acceptable to Owner pursuant to which Owner and Trustee shall be named as obligees pursuant to a rider or riders reasonably acceptable to Owner and Trustee.

d) Construction Contracts. All Construction Contracts shall include recitations or provisions requiring the following:

(i) Owner intends to lease the Project to Tenant, a public agency, and desires that the Project incorporate and include public art, consistent with the spirit and intent of Pierce County's Public Art Program. Tenant shall have the right to review and approve the process for, and selection of, public art for the Project, which approval shall not be unreasonably withheld; provided, however, that Owner may condition or withhold approval for the installation of any public art in the Project if it would have a material and adverse effect on the construction of the Project or on the Project Schedule. The cost of any such public art shall not be a Project Cost and shall not be included in the Fixed Price.

(ii) All Contractors and subcontractors employed on the Project shall pay the prevailing rate of wages as defined in Chapter 39.12 of the Revised Code of Washington.

(iii) Provisions for initiating, maintaining and providing supervision of safety precautions and programs in connection with the construction of the Project.

e) Protection of Persons and Property.

(i) Developer shall be responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the construction of

the Project.

(ii) Developer shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (1) all persons working on the Project construction site and all other persons who may be affected thereby; (2) the Project and materials and equipment to be incorporated therein; and (3) other property at or adjacent to the site.

(iii) Developer shall or shall cause the General Contractor and all other Contractors to give notices and comply with all applicable laws, ordinances, rules, regulations, and orders of public authorities bearing on the safety of persons and property and their protection from damage, injury or loss.

(iv) Developer shall be liable for all damage or loss (other than damage or loss insured under the property insurance) to the Project except to the extent caused by the negligent actions of Owner, its agents or employees or by Tenant.

f) Insurance During Construction. Insurance shall be provided by Developer, Owner, Architect and Contractors in accordance with the provisions of Section 16 of this Agreement.

g) Use of Project Contingency. The amounts set forth in the various line items of the Project Budget are estimates only of Project Costs to be incurred. To the extent the actual Project Costs in any line item of the Project Budget exceed the amount shown for such line item, Developer shall first allocate amounts in other line items, in which the actual known Project Costs shall have been less than the amount in the Budget, to the line item in which the excess Project Cost(s) has occurred. Following the allocation by Developer as set forth in the preceding sentence with respect to all line items, except Project Contingency, Developer shall be fully entitled to draw upon the Project Contingency line item of the Project Budget and use the Project Contingency in its entirety, if necessary to pay the Project Costs.

h) Warranties. Developer shall cause the General Contractor to secure for the benefit of Owner all warranties and guarantees of the work by Contractors, suppliers and manufacturers of components of the Project. Upon Final Acceptance, Developer shall cause the General Contractor to assign such warranties to Owner. After Final Acceptance of the Project and during the Warranty Period, Developer shall assist Owner to enforce any warranties or guarantees with respect to the Project upon request. The General Construction Contract shall provide a warranty of materials and workmanship for a period of two (2) years with respect to each major component of the work following Substantial Completion of the Project. Without increasing the Fixed Price, Developer and Owner have agreed that Developer shall cause the General Contractor to obtain warranties of longer periods from Contractors and material suppliers for the fixtures, services, or subcontracts set forth in Exhibit I, provided, however, that the Developer shall not be required to assist Owner to enforce any warranties or guarantees that extend beyond the Warranty Period.

i) Correction of Work. During the Warranty Period, Developer shall promptly correct or cause to be corrected work properly rejected by Owner or known by Developer to be defective or failing to conform to the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed, and shall correct or caused to be corrected work found to be defective or non-conforming within the Warranty Period. Such costs (to the extent not borne by insurance) shall be Project Costs. It is intended that at Final Acceptance, there shall remain at least \$ in the Project Costs Account in the Project Fund to cover these items during the Warranty Period; said \$ shall be held by Trustee in trust upon Final Acceptance to be applied toward warranty work in accordance with the General Construction Contract, with any amounts not so expended to be treated as savings in accordance with, and subject to the limitations in, Section 12(g)(ii) below; however if there are no funds left in the Project Costs Account in the Project Fund (including the Project Contingency) to pay for the

corrective action, such costs shall be paid by Developer from its own funds.

j) Stop Work by Owner. If General Contractor fails to correct defective work as required, or persistently fails to carry out work in accordance with the Construction Documents, Owner, by written order, may order Developer and General Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated.

k) Developer Default. If Developer defaults or neglects to carry out the work in accordance with the Contract Documents and fails within seven calendar days after receipt of written notice from Owner to commence and continue correction of such default or neglect with diligence and promptness, Owner may give a second written notice to Developer and, if Developer fails within such second seven calendar day period to commence and continue correction of such default or neglect with diligence and promptness, then Owner may, without prejudice to other remedies Owner may have, act to correct such deficiencies. In such case an appropriate change order shall be issued deducting from the Fixed Price the costs of correcting such deficiencies. If the payments then or thereafter due Developer are not sufficient to cover the amount of the deduction, Developer shall pay the difference to the Owner. Such action by the Owner shall be without prejudice to any other rights or remedies to which Owner may be entitled under this Agreement or applicable law.

8. Changes to the Work.

a) No Changes Without Owner Approval. Following approval of the Construction Documents by Owner there shall be no changes in the work except in accordance with this Section 8. Changes in the work covered by the General Construction Contract and approved by Owner shall be processed in accordance with the General Construction Contract.

b) Developer Approved Changes in the Work. It is anticipated that there will be field orders and change orders which shall result in changes to the scope of work. Developer shall use its reasonable efforts to apprise Owner of proposed changes in the work and its recommendations regarding them prior to any action being taken. It is anticipated that it may not always be possible to receive Owner's prior approval to these changes in a timely manner. Therefore, field orders and change orders may be approved by the Developer, without prior Owner approval, but only if the changes authorized by these field orders and change orders shall not have the effect of extending the Developer Obligation Date or materially altering the work. As soon as practical, but no later than with the next Project Application for Payment, Developer shall provide Owner with all field orders and/or change orders approved by Developer. For the purposes of this Section a material alteration would reduce the intended quality of the Project, result in an increase of Owner's operational costs over time, or result in a substitution of any of the systems in the Project (including but not limited to HVAC, plumbing, electrical, elevators, roofing, fire and life safety, infrastructure components). In the case of either a material alteration or a change that would result in failure to Substantially Complete the Project by the Developer Obligation Date, prior written approval by the Owner of the proposed change must be received.

c) Change Proposals Initiated by Owner. In accordance with the provisions governing Tenant's Contingency, Owner may initiate change proposals which shall be processed in accordance with the General Construction Contract.

9. Payment of Project Costs. Trustee will act as disbursing agent and hold and disburse money on deposit in the Project Fund to pay Project Costs and other costs in accordance with the Indenture and this Agreement. The parties intend that there occur monthly disbursements from the Project Costs Account in the Project Fund to the Architect and Contractors with whom Owner has contracted and to Developer in order that Developer be able to pay other Project Costs. So long as there has not occurred an Event of Default by Developer under this Agreement, such

disbursements of money from the Project Costs Account in the Project Fund shall continue until the Fixed Price has been disbursed. Disbursements received by Developer from the Project Costs Account in the Project Fund shall, except as otherwise expressly provided herein, be used solely to pay the Project Costs. Upon Developer's compliance with its obligations under this Agreement, Owner shall take all such action as is necessary and required to obtain such disbursements of money from the Project Costs Account in the Project Fund by the Trustee.

a) Applications for Payment. Developer shall submit to Owner and Tenant on or before the last business day of each month a Project Application for Payment signed by Developer, which shall also include a pay application submitted by the General Contractor consistent with the terms of the General Construction Contracts. The Project Application for Payment shall request payment of a specified dollar amount, which shall constitute a portion of the Fixed Price, reasonably detailed to reflect the amount of the Project Costs expended in each category of the Project Budget. Such Project Application for Payment shall request the appropriate amount of hard or soft costs based on a percentage of completion basis with respect to such work as of the date of such Project Application for Payment, less retainage being withheld by the General Contractor from any of the Contractors. When retainage that has been previously withheld from a pay application submitted by the General Contractor is to be paid by the General Contractor to a Contractor, it shall be added to the next pay application of the General Contractor submitted to the Developer. Project Costs other than hard and soft construction costs that are incurred or paid on a schedule that is not related to percentage of completion (e.g., property taxes payable twice per year, Developer's Contingency paid only as allocated by Developer to specific costs incurred, Owner's Contingency paid only as allocated by Owner to specific costs incurred, Developer's Fee paid as described in Section 11(c), Developer's Overhead paid as described in Section 11(b), reserves for warranty work paid only after Substantial Completion, the 150% holdback for uncompleted Punch List items, payment of unutilized contingency accounts or construction savings to Owner and/or Developer, etc.) shall be included in the Project Application for Payment only when such items are to be paid in accordance with other provisions of this Agreement, without regard to the percentage completion of the Project. Developer shall also provide a reconciliation between the total of all draw amounts requested (including such draw request) under a Project Application for Payment and the then current Project Budget and include all the information and documentation required to be provided by the General Contractor to the Owner pursuant to the General Construction Contracts, as well as a conditional partial lien release from the General Contractor to become effective upon payment to the General Contractor of the amount of the payment specified in said Contractor's Application for Payment, and Endorsement No. 122 to the Lender's Title Policy and a similar endorsement to the Owner's Title Policy showing no liens or claims of lien; provided, that if a lien has been filed, Developer and/or General Contractor may resolve such lien in accordance with Section 19 below. Developer shall provide copies of all conditional partial lien releases to the title company issuing the Title Policies and shall execute an indemnity agreement with the title company in a form sufficient to enable the title company to issue the foregoing endorsements.

b) Payment Procedures. Architect shall certify General Contractor's application for payment. Owner and Tenant shall have the opportunity to attend all meetings between Developer and Contractors at which applications for payments are to be discussed (e.g. Developer shall be available and shall require the General Contractor to be available for a monthly meeting for review of the current month's application for payment, if requested by Owner). Owner and Tenant shall receive with the Project Application for Payment any documentation submitted to Developer supporting the General Contractor's application for payment. So long as Owner and Tenant shall have received the Project Application for Payment on or before the last business day of a calendar month, Owner shall make any objections regarding such Project Application for

Payment in writing prior to the twelfth (12th) day of the succeeding calendar month or the Owner shall be deemed to have waived its right to object to such Project Application for Payment. Owner shall be obligated to pay those portions of the Project Application for Payment as to which there was no objection in accordance with Section 9(d) hereof on or before the twelfth (12th) day of the succeeding calendar month. If Owner fails to receive the Project Application for Payment on or before the last business day of the month, Owner shall have a period of at least 12 days from its receipt of such Project Application for Payment to review, approve and pay the same. If Owner objects to any portion of a Project Application for Payment, Owner shall provide detailed written comments explaining the nature of the disapproval, whereupon (i) Project Costs which are approved by Owner shall be paid in accordance with Section 9(d), and (ii) Developer and Owner shall meet within two (2) business days to determine mutually acceptable revisions to the Project Application for Payment. Failure of Developer and Owner to determine mutually acceptable revisions to the Project Application for Payment within the two business day period shall entitle either Owner or Developer to commence the dispute resolution process described in Section 24 hereof and then, if necessary, litigation.

c) Review and Inspections. Owner, Tenant and/or Trustee shall have the right, but not the obligation, to have such additional independent consulting architects, engineers or any other appropriate consultants retained and paid by such party (not as a Project Cost), to inspect the construction work as it progresses and to review the Contract Documents. Such inspections shall be coordinated with Developer so as to not interfere with or delay construction of the Project and, if Owner receives any written report from any such consultant that Owner believes would be helpful to Developer in administering and enforcing any of the Contracts or in completing the Project, Owner shall provide Developer with a copy of such written inspection report. If during the course of such construction Owner, Tenant and/or Trustee shall determine that the construction is not proceeding in accordance with the Contract Documents, Owner shall give notice in writing to Developer that includes Owner's best efforts to specify the particular deficiency or omission and Developer shall thereupon take, or cause to be taken, all steps necessary to correct same. The failure to give such notice shall not give rise to any liability for Owner and shall not be considered a waiver of any right of Owner under this Agreement, including, without limitation, the enforcement of the representations and warranties of Developer under this Agreement and the requirements with respect to construction of the Project in accordance with the Contract Documents, but such failure may limit any recovery against Developer if such failure is determined to constitute a breach of a contracting party's duty to take reasonable actions to mitigate its damages caused by another party's breach.

d) Requisition from Project Costs Account. Owner shall execute and deliver the requisition to the Trustee for the amount of the Project Application for Payment, or such undisputed portion thereof under Section 9(b), on or before expiration of the 12-day period specified in Section 9(b) above. Owner shall take all reasonable steps to cause Trustee to disburse the amount shown on such requisition to Developer for disbursement to applicable Contractors and others on the 10th day of each calendar month and no later than the 12th day of the month if the Project Application for Payment was received by the last business day of the previous month.

e) Application for Payment for Tenant or Owner Costs. Upon the prior written request of Owner, Developer shall include in any Project Application for Payment a request that the Trustee disburse to Developer, Owner or Tenant, as appropriate, Bond proceeds held in the Tenant's Contingency Account in the Project Fund or Bond proceeds to be applied to the cost of art or similar Building enhancements that are not Project Costs. Developer shall have no right or responsibility to review or determine the appropriateness of the requests for such costs or the amount thereof.

f) Initial Draw. The Initial Draw shall include a mutually agreed amount to reimburse

Developer and Tenant for Project Costs actually incurred or paid by those parties (including, without limitation, fees and costs incurred prior to this Agreement for the General Contractor, Architect and other design professionals) on and before the date of Bond Closing. Developer and Owner shall agree on the maximum amount of the Initial Draw and shall notify Tenant of that agreed maximum amount by no later than three (3) business days prior to the Sale of the Bonds; in addition, Developer and Owner shall agree on the exact amount of the Initial Draw and shall notify Tenant of that agreed Initial Draw amount by no later than seven (7) business days prior to the Bond Closing.

g) Cost Overruns; Sufficiency of Funds to Complete Construction. Owner shall have no obligation to request any disbursement of money on deposit in the Project Costs Account in the Project Fund unless and until the Project is in balance. The Project shall be deemed to be in balance only when the undisbursed portion of Bond proceeds in the Project Costs Account in the Project Fund together with funds deposited by Developer with Trustee and expected earnings on the Project Costs Account in the Project Fund to the date of their anticipated disbursement after provision for all contingencies shall equal or exceed the amount reasonably estimated by Owner to pay for all work done or to be done but not yet paid for by Developer and all other Project Costs required to cause Final Acceptance of the Project. In the event Owner advises Developer that the Project is not in balance, Developer shall deposit into the Project Costs Account in the Project Fund held by the Trustee the amount necessary to bring the Project into balance, and such funds shall be disbursed in their entirety prior to any further disbursement of Bond proceeds from the Project Costs Account in the Project Fund, provided that if the shortfall in the Project Costs Account is due to Owner's failure to deposit funds as required in connection with any Owner-initiated change orders, Owner shall deposit the necessary funds into the Project Costs Account in the Project Fund held by the Trustee.

10. Other Services by Developer. Services may be performed by the Developer at the written request of Owner which are not included as part of the Project. Such services shall be performed pursuant to a separate written agreement between Owner and Developer.

11. Developer's Fee and Overhead Allowance.

a) Developer's Fee. The Fixed Price includes a fee payable to Developer in the amount of _____ Dollars (\$ _____) (the "Developer's Fee").

b) Overhead Allowance. Developer shall be paid an Overhead Allowance in connection with the work in the amount of _____ Dollars (\$ _____), payable in Installments of _____ (\$ _____) per month from _____ 201_ (the commencement of pre-construction activity for the Project) through occupancy of the Project by Tenant (which amount shall not be changed notwithstanding any change to the Fixed Price). Such amount shall be paid to Developer as follows:

(i) At Bond Closing, an amount equal to \$ _____ multiplied by the number of months elapsed from _____ 201_ to the date of the Bond Closing;

(ii) With each monthly Project Application for Payment prior to Final Acceptance, \$ _____ (not to exceed in the aggregate, including the payment following Bond Closing), the sum of \$ _____; and

(iii) Any unpaid balance shall be paid with the Final Payment.

c) Payment of Developer's Fee.

As part of a Project Application for Payment, Developer shall be entitled to a portion of the Developer's Fee as determined by the following formula: (A) determine the percentage that Developer's Fee is of the sum of Shell and Core Construction Costs and Tenant Improvement

costs (up to the Tenant Improvement Allowance) to be incurred through Substantial Completion of the Project (together, the "Hard Costs"), as shown in the Project Budget; (B) identify seventy-five percent (75%) of that percentage (the "Payment Percentage"); and (C) for each payment made on the Project Application for Payment submitted after each of the milestones described below has been achieved (as reasonably determined by Owner and Developer), Developer shall be entitled to a portion of its fee equal to (i) the sum of the Hard Costs incurred to date, multiplied by the Payment Percentage; less (ii) the Developer's Fee previously paid to Developer hereunder; provided, however, that Developer shall be entitled to such payment only if the Hard Costs incurred as of any of the milestone dates set forth below do not exceed the percentage of the Hard Costs budgeted to be incurred as of such milestone date, as also set forth below. If the Hard Costs incurred as of a date a milestone is achieved exceed the budgeted percentage of Hard Costs, as set forth below, Developer shall not be entitled to draw that portion of its Development Fee until the next milestone is achieved, and then only if the Hard Costs incurred as of such milestone do not exceed the budgeted percentage of Hard Costs to be incurred by such milestone date. Any unpaid portion of the Developer's Fee shall be paid with the Final Payment.

The milestone dates and percentages of Hard Costs budgeted to be incurred by each such milestone date are as follows:

<u>Milestone</u>	<u>Budgeted Percentage of Hard Costs</u>
1. Completion of foundation for the Building	%
2. Completion of structural steel framing of the Building	%
3. Completion of installation of all exterior curtain walls of the Building	%
4. Substantial Completion of the Project	%

12. Completion of the Project.

a) Substantial Completion of the Project. "Substantial Completion" or "Substantial Completion of the Project" means that each of the following events shall have occurred with respect to the Project:

(i) Developer shall have notified Owner in writing that the Project, including the Tenant Improvements, are Substantially Complete in substantial accordance with the Contract Documents, subject only to the completion of normal Punch List items.

(ii) Architect shall have issued its "Certificate of Substantial Completion" (AIA Document G704) stating that the work under the General Construction Contract is sufficiently complete in substantial accordance with the Contract Documents to permit Tenant to occupy or utilize the Project for public safety communications and/or government office purposes;

(iii) The City of _____ has issued a temporary certificate of occupancy such that the Tenant is permitted to and could, pursuant to such issued certificate of occupancy, physically occupy the Project for public safety communications purposes and/or government office purposes, including parking in the Building(s).

(iv) Owner has received evidence from Developer satisfactory to Owner that all real property taxes and assessments on the Project payable by Developer that were due and owing have been paid.

(v) Each Contractor shall have issued its "Certificate of Substantial Completion" together with its "Affidavit of Payment of Debts and Claims," (AIA Forms 706 and 706A) together with partial waivers and releases of lien for work performed prior to

the date of its "Certificate of Substantial Completion" in form satisfactory to Owner, from such material, men, laborers, contractors and subcontractors as Owner, with Tenant's concurrence, may require; and

(vi) Owner, with Tenant's concurrence, shall have accepted the Project as Substantially Complete, subject to completion of the Punch List items agreed upon by Owner, with Tenant's concurrence.

Notwithstanding that Substantial Completion of the Project shall have occurred, Owner shall be entitled to provide Developer with a Punch List, in accordance with the provisions of this Section 12.

b) Notice of Substantial Completion. Developer shall give notice in writing to Owner at least thirty (30) days prior to the date upon which Developer anticipates the Project shall be Substantially Complete. During the fifteen (15) business day period after the delivery of the estimated completion notice, Owner, Developer, Architect, General Contractor and Tenant shall meet on one or more occasions, if necessary, and tour to inspect and review the Project, as applicable, to determine whether it is Substantially Complete. The parties shall prepare the Punch List to be completed prior to Final Acceptance. The completion of the Punch List shall not be required in order for the Project to be Substantially Complete.

c) Completion of Punch List Items. Following Substantial Completion, Developer shall cause all Punch List items to be completed promptly in accordance with the Contract Documents.

d) Final Acceptance. Upon Final Acceptance, Developer shall be entitled to payment of the balance of Developer's Fee as well as all other Project Costs incurred in connection with the work, not to exceed the Fixed Price. Developer shall give notice in writing to Owner at least thirty (30) days prior to the date upon which the Project shall be ready for Final Acceptance. "Final Acceptance" means that each of the following items shall have occurred with respect to the Project:

(i) The City of _____, Washington has issued all Temporary Certificates of Occupancy.

(ii) Each Contractor shall have issued its "Certificate of Substantial Completion" together with its "Affidavit of Payment of Debts and Claims" (AIA Forms 706 and 706A) together with final waivers and releases of lien in form satisfactory to Owner from such material, men, laborers, contractors and subcontractors as Owner may require.

(iii) The parties shall have agreed upon the estimated costs of the Punch List items and 150% of such estimated cost shall be withheld by the Trustee in the Project Costs Account until the Punch List items have been completed to the reasonable satisfaction of Owner. When the Punch List items have been completed, Developer shall notify Owner and, upon Owner's reasonable satisfaction that the Punch List items have been completed, Owner shall deliver its requisition to the Trustee for payment of the funds withheld by the Trustee under this Section 12(d)(iii).

(iv) Developer shall have submitted its final Project Application for Payment together with evidence reasonably satisfactory to Owner that all construction costs have been paid in full, including evidence of full payment for any personal property installed on the Building Land as part of the Project Costs.

(v) The period for filing construction liens has expired or releases or discharges of construction liens in form and substance satisfactory to Owner have been obtained by the Developer from all Contractors in accordance with all Construction Contracts.

(vi) Architect shall have issued its "Certificate of Final Completion" and Owner shall have received the certificate of any other architect or engineer requested by Owner.

(vii) General Contractor shall have issued a certificate that (1) the Project has been finally completed in substantial accordance with the Contract Documents, and (2) no Hazardous Substances as defined in said certificate were incorporated into the structure of the Project.

(viii) Developer shall have delivered to Owner a written report showing the allocation of Project Costs among the categories of the Project Budget and the remaining specified dollar amount of the Tenant's Contingency, Project Contingency and the undisbursed portion of the Developer's Fee.

(ix) Owner shall have received an endorsement to its Title Policy dated as of _____ and issued on the date of Final Acceptance, which shall insure Owner and Trustee (1) against any liens for labor or materials, whether or not of record, which may have arisen in connection with the construction of the Project, and (2) show no additional exceptions to the Title Policy other than those approved by or arising through Owner.

(x) Developer shall have completed and delivered the matters set forth in Section 14.

e) Approval of Final Application for Payment. Upon delivery of Developer's Final Application for Payment and other materials set forth above, Owner shall, acting reasonably and in good faith, review and approve the Final Application for Payment on or before that period expiring fourteen (14) business days after receipt of the Final Application for Payment, receipt of notice from Developer that the Punch List matters are complete, and Owner's receipt of the materials set forth in Section 14 of this Agreement. In the event no comments are received within said 14 business day period, Owner shall have waived its right to comment on the Final Application for Payment or to disapprove the completion of the Punch List. If Owner disapproves the Final Project Application for Payment or completion of the Punch List, or any portion thereof, Owner shall provide detailed written comments explaining the nature of the disapproval; whereupon, Developer and Owner shall meet within two (2) business days to determine mutually acceptable revisions to the Final Application for Payment and the completion of the Punch List. Failure of Developer and Owner to determine mutually acceptable revisions to the Final Application for Payment and the completion of the Punch List within the five (5) business day period, shall entitle either Owner or Developer to commence the disputes resolution process described in Section 24. Failure to reach agreement on the amount of the Developer's Final Application for Payment which is approved for payment shall in no way release Developer from its duties and obligations under this Agreement.

f) Requisition of Final Payment. Owner shall execute and deliver the requisition for Final Payment to the Trustee within one (1) business day following expiration of said 14-business day period, or if Owner disapproves of the final Project Application for Payment, then within one (1) business day after the date of approval of the mutually acceptable revisions to the final Project Application for Payment or the determination of the disputes resolution process, if applicable. Owner shall take all steps to cause the Trustee to disburse the remaining money in the Project Costs Account, except for any money withheld for completion of the Punch List items under Section 12(d)(iii) and the \$ _____ reserved for warranty work as provided for in Section 7(i), up to the Fixed Price in the amount shown on such requisition within one (1) business day of Trustee's receipt of such requisition. In addition, Owner shall in such requisition direct payment of the unexpended Tenant's Contingency and Project Contingency and of the remaining Developer's Fee in accordance with the provisions of Sections 11(c) and 12(h) hereof.

g) Savings: Disbursement of Tenant's Contingency: Project Contingency.

(i) If all or some portion of the \$ _____ Tenant's Contingency is not used for the Project, then the remaining portion of the Tenant's Contingency shall be

applied as provided in the Indenture.

(ii) If all or some portion of the Project Contingency (as such amount may be increased or decreased in accordance with the terms of this Agreement) is not used for Project Costs, then two thirds of the unused Project Contingency shall be applied as provided in the Indenture and one-third of the unused Project Contingency, capped at a maximum of \$, shall be paid to Developer as part of the Final Payment, as an incentive fee.

h) Certificate of Occupancy. Beyond Developer's obligation to obtain temporary certificates of occupancy for all space other than any retail space as a condition of Final Acceptance, Developer shall for a period of one (1) year from Substantial Completion of the Project use its best efforts and due diligence in assisting Owner to obtain from the City of Tacoma a final, unconditional certificate of occupancy of the Project permitting Tenant to occupy and use the Project for its Permitted Use, including parking in accordance with the conditions imposed by the City of _____.

13. Developer Representations; Warranties. Upon Substantial Completion of the Project, Developer shall represent and warrant as follows:

a) The Project has been completed in substantial accordance with the Contract Documents (as revised by Project change orders set forth in Section 8) and is, and at all times during the Warranty Period shall be, free from defects in workmanship and materials in connection with the construction thereof.

b) Developer has no knowledge of any structural defects, latent defects or building systems defects within the Project.

c) The Project has been constructed in accordance with all Requirements of Law, all Permits and all insurance laws, regulations and requirements in effect at the time of construction of the Project.

d) The Project is served by water, storm and sanitary sewage facilities, telephone, electricity, fire protection and other required public utilities adequate to serve the Project at the time of Substantial Completion of the Project.

e) The General Contractor, Architect, Interior Architect and all Contractors, suppliers, material, men and consultants have (subject to Developer's receipt of the payment of the Fixed Price) been paid in full for work related to construction of the Project and there are no liens, encumbrances or other defects affecting title to Land or the Building Land which has been or will be filed against the Building Land and/or the Project with respect thereto, or if any such lien has been filed, Developer and/or General Contractor shall have arranged for a bond to remove such lien in accordance with Section 19 below.

f) Developer is not aware of any physical defect in the Building Land or the Project which would prevent Owner from leasing the Project to Tenant for the Permitted Use.

g) The use and operation of the Project for public safety communications and government offices purposes and parking is permitted pursuant to the MUP.

h) To the best of Developer's knowledge and except as disclosed in writing there are no condemnation, environmental, zoning or other land use regulation proceedings currently instituted which could detrimentally affect the use and operation of the Project for its intended purpose. If during the term of this Agreement any such proceedings have been instituted, Developer shall have used its best efforts and due diligence to resolve them prior to Substantial Completion.

i) Developer has provided Owner with prompt notice of any special assessment proceedings affecting the Building Land.

j) The Project does not encroach onto adjoining land or onto any easements and there

are no encroachments of improvements from adjoining land onto the Building Land. The location of the Project does not violate any applicable setback requirements. The Building Land is not located in a flood zone.

k) Except as disclosed to Owner in writing, there is no litigation pending, or to the best knowledge of Developer, threatened, with respect to the Project for matters undertaken by Developer under this Agreement.

l) To the best of Developer's knowledge and except as disclosed in writing, there are no Hazardous Substances located in, on, under or affecting the Building Land or the Project or any Hazardous Substances incorporated into the structure of the Project.

m) Prior to Substantial Completion, Developer has removed or remediated and properly disposed of all known Hazardous Substances first existing on the Land following the Commencement of Construction of the Project and if applicable, received a no further action letter from the appropriate governmental agency with respect to such Hazardous Substances, provided the foregoing shall not make the Developer responsible for the removal or remediation of any Hazardous Substances that the County is obligated to remove or remediate under the Building Ground Lease.

n) To the best of Developer's knowledge, after due and diligent inquiry, all Permits necessary for the construction, use and occupancy of the Project have been obtained and are in full force and effect.

Each of the foregoing warranties with respect to the Project shall expire and be of no further force or effect, unless Owner shall have made a claim based upon an alleged breach of such warranties by Developer on or before the expiration of the Warranty Period; however such expiration shall not otherwise limit Owner's rights and remedies hereunder. In the event Owner alleges a breach of any of the foregoing warranties, Owner shall give Developer written notice of any such allegation together with a detailed explanation of the alleged breach ("Owner's Warranty Claim"). Developer shall, within thirty (30) days of receipt of Owner's Warranty Claim, proceed to commence to cure the circumstances specified in Owner's Warranty Claim, or provide Owner with written notice of Developer's dispute of Owner's Warranty Claim. If Developer commences a cure or correction of the matter alleged in Owner's Warranty Claim, Developer shall proceed reasonably diligently and promptly to complete such cure or correction, and the Warranty Period for the particular matter shall be extended for the period necessary to complete cure or correction.

Developer shall warrant neither artist-made materials included in the Project nor those recycled construction products which Owner has directed Developer to include in the Project over Developer's prior written objections.

14. Developer Obligations. On or before Final Acceptance of the Project, Developer shall obtain and submit to Owner, the following:

a) As-Built Plans. A complete set of final as-built plans and specifications prepared by General Contractor for the Project. Tenant Improvements will be provided on CAD.

b) Manuals. All technical and service, instruction and procedure manuals relating to the operation and maintenance of all HVAC systems and other mechanical devices and equipment installed in the Project, except insofar as relating to Tenant's Personal Property.

c) Warranties. An assignment and delivery of all warranties, guarantees, maintenance contracts, and machinery and equipment warranties received by Developer from the General Contractor or any subcontractor thereof, or any supplier, material, men or manufacturer relating to the Project; provided, however, that so long as Developer's warranty set forth in Section 13

herein remains in effect, and so long as Developer is not in default of its obligations under this Agreement, Developer reserves the right, notwithstanding the assignment and delivery of such warranties hereunder to Owner, to fully enforce all such warranties in the place and stead of Owner.

d) Permits and Licenses. The originals (if not posted at the Project) of all Permits, licenses and other approvals necessary for the occupation, use and operation of the Project.

e) As-Built Survey. An as-built Survey of the Building Land showing the location of all improvements constructed thereon.

15. Indemnification.

a) Developer's Indemnification. The Developer shall protect, defend, indemnify, and save harmless the Owner, Trustee, Bond Insurer, Tenant, and their respective officers, officials, employees, and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever (hereinafter "claims"), arising out of or in any way resulting from the Developer's officers, employees, agents, and/or subcontractors of all tiers, acts or omissions, performance or failure to perform this Agreement, to the maximum extent permitted by law or as defined by RCW 4.24.115, as now enacted or as hereinafter amended.

Developer's obligations under this Section 15 of this Agreement shall include, but not be limited to:

(i) The duty to promptly accept tender of defense and provide defense to Owner at Developer's own expense.

(ii) The duty to indemnify and defend Owner from any claim, demand, and/or cause of action brought by or on behalf of any of Developer's employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of Developer's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the Owner only, with a full and complete indemnity and defense of claims made by Developer's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

(iii) To the maximum extent permitted by law, Developer shall indemnify and defend Owner from and be liable for all damages and injury which shall be caused to owners of property on or in the vicinity of the construction of the Project or which shall occur to any person or persons or property whatsoever arising out of this Agreement, whether or not such injury or damage is caused by negligence of the Developer or caused by the inherent nature of the construction of the Project.

(iv) In the event the Owner incurs any judgment, award, and/or costs arising therefrom, including attorneys' fees, to enforce the provisions of this Section, all such reasonable fees, expenses, and costs shall be recoverable from the Developer. Notwithstanding the provisions contained in this subsection above, Developer's obligation to indemnify Owner shall not extend to any claim, demand or cause of action arising or in connection with the negligence, intentional acts or breach of this Agreement by Owner, Trustee, Tenant or their respective agents or employees.

b) Owner's Indemnification. If prior to Final Acceptance, Owner exercises its rights to enter or allow Tenant to enter upon the Project and occupy any portion of the Project, Owner shall protect, defend, indemnify, and save harmless Developer, Tenant, Trustee, Bond Insurer and their respective officers, officials, employees, and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever (hereinafter "claims"), arising out of or in any way resulting from Owner's negligence to the maximum extent permitted by law.

Notwithstanding the previous paragraph contained in this subsection above, Owner's obligation to indemnify Developer shall not extend to any claim, demand or cause of action arising or in connection with Developer's negligence, intentional acts or breach of this Agreement.

c) Notice of Claim. Any party making a claim for indemnification pursuant to this Section 15 (an "Indemnified Party") must give the party from whom indemnification is sought (an "Indemnifying Party") written notice of such claim (an "Indemnification Claim Notice") promptly after the Indemnified Party receives any written notice of any action, lawsuit, proceeding, investigation or other claim (a "proceeding") against or involving the Indemnified Party by a government entity or other third party, or otherwise discovers the liability, obligation or facts giving rise to such claim for indemnification; provided that the failure to notify or delay in notifying an Indemnifying Party will not relieve the Indemnifying Party of its obligations pursuant to this Section 15 except to the extent that the Indemnifying Party's ability to defend against such claim is actually prejudiced thereby. Such notice shall contain a description of the claim and the nature and amount of such loss (to the extent that the nature and amount of such loss is known at such time).

16. Insurance Requirements. (May be adjusted)

a) Developer's Insurance: by the date of the execution of this Lease Agreement, Developer shall procure and maintain, at a minimum, for the duration of this Agreement the following insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the performance of work hereunder by the Developer, its agents, representatives, employees and/or subcontractors. The cost of such insurance shall be paid by the Developer or its subcontractor. Coverage shall be at least as broad as:

(i) General Liability: Insurance Services Office form number (CGOO 001) covering Commercial General Liability, with a limit of not less than; \$5,000,000 combined single limit per occurrence, \$5,000,000 aggregate.

(ii) Automobile Liability: Insurance Services Office form number (CA 00 01) covering Business Automobile Coverage, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9, with a limit of not less than; \$1,000,000 combined single limit per occurrence.

(iii) Workers' Compensation: Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, statutory limits.

(iv) Employer's Liability or "Stop Gap": The protection provided by the Workers' Compensation Policy, Part 2 (Employer's Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the General Liability Policy in the amount of at least \$1,000,000. During the period of construction, Developer as construction manager shall also provide:

(v) Builders Risk Insurance: Insurance Services Office form number (CP 0002 Ed. 10-90) Builders All Risk Coverage Form covering all work to be done on the Property for the full 100% replacement cost of all such improvements. Coverage shall be provided for (i) the perils of earth movement and flood; (ii) resultant damage from errors in design, plans, specifications, faulty workmanship, materials and construction; (iii) "extra expense"; (iv) all materials to be stored offsite and while in transit to the jobsite; (v) "cold testing" of all building systems; (vi) Owner's and Developer's loss of use of the Property due to delays in Project completion caused by covered peril losses to the Project, including loss of income and rents and soft costs

such as interest on the Bonds, real estate taxes and insurance premiums; (vii) the increased cost of construction, debris removal and demolition due to the operation of building laws and code upgrades; and (viii) direct physical damage to the Project and loss of use caused by an off premises power interruption. Coverage shall not be provided for Tenant's Personal Property and art not installed by the General Contractor. The policy shall include a waiver of subrogation provision, shall grant permission for partial occupancy of the facilities without having a detrimental effect on the coverage provided, and shall contain a separate debris removal limit of liability which is separate from, in addition to, and not part of the overall policy limit of liability. Notwithstanding the foregoing in this Section 16(b), Developer shall have the required Builder's Risk Policy in place no later than Commencement of Construction. The Builder's Risk Policy shall include Developer, General Contractor and its subcontractors, other Contractors, and Owner as insureds in an amount equal to their interest with a loss payable clause in favor of Trustee. Developer shall keep the Builder's Risk Policy in place from Commencement of Construction to the Commencement Date defined in the Building Lease.

b) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by Owner. The deductible and/or self-insured retention of the policies shall be the sole responsibility of Developer.

c) Other Insurance Provisions. The insurance policies required by this Agreement are to contain or be endorsed to contain the following provisions where applicable:

(i) Liability Policies:

A. Owner and Tenant, their officers, officials, employees and agents are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Developer in connection with this Agreement.

B. Developer's insurance coverage shall be primary insurance as respects Owner and Tenant, their officers, officials, employees and agents. Any insurance and/or self-insurance maintained by Owner and/or Tenant their officers, officials, employees and/agents shall not contribute with Developer's insurance or benefit Developer in any way.

C. Developer's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(ii) All Policies. Coverage shall not be canceled until after forty-five (45) days' (10 days' for non-payment) prior written notice has been given to Owner.

(iii) Acceptability of Insurers.

A. Unless otherwise approved by Owner and Tenant, insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated by Best's, with minimum surpluses the equivalent of Best's surplus size VIII.

B. If, at any time, any of the foregoing policies shall fail to meet the above minimum standards, Developer shall, upon notice to that effect from Owner, promptly obtain a new policy, and shall submit the same to Owner, with certificates and endorsements, for approval.

(iv) Verification of Coverage. Developer shall furnish Owner with certificates of insurance and endorsements required by this Agreement. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer. The certificates are to be on standard insurance industry Accord form 25-S with required endorsements attached and are to be received and approved by Owner prior

to the commencement of activities associated with this Agreement. Owner reserves the right to require Developer to deliver complete certified copies of all required policies at any time.

(v) Subcontractors. Developer shall include all subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages provided by subcontractors as evidence of compliance with the insurance requirements of this Agreement shall be subject to all of the requirements stated herein.

(vi) For All Coverages.

A. Each insurance policy shall be written on an "occurrence" form, excepting that insurance for professional liability, errors and omissions, when required, may be acceptable on a "claims made" form.

B. If coverage is approved (if approval is required above) and purchased on a "claims made" basis, Developer warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of completion of the work which is subject to said insurance.

C. By requiring such minimum insurance, Owner and/or Tenant shall not be deemed to, or construed to, have assessed the risks that may be applicable to Developer associated with this Agreement. Developer shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits or broader coverage.

D. Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(ies). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Lease Agreement.

d) Owner's Insurance. By the date of the execution of this Agreement between the Owner and the Developer, the Owner shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the performance of work hereunder by the Owner, its agents, representatives, employees and/or subcontractors. The cost of such insurance shall be paid by the Owner. Coverage shall be at least as broad as:

(i) General Liability: Insurance Services Office form number (CGOO 001 Ed. 11-88) covering Commercial General Liability, with a limit of not less than: \$1,000,000 combined single limit per occurrence, \$2,000,000 aggregate.

(ii) Workers' Compensation: Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, statutory limits.

e) Other Insurance Provisions. The insurance policies required by this Agreement are to contain or be endorsed to contain the following provisions where applicable:

(i) Liability Policies: The Owner, the Tenant and their respective officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Developer in connection with this Agreement.

A. To the extent of the Developer's negligence, insurance coverage shall be primary insurance as respects the Owner, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the Owner, its officers, officials, employees and/agents shall not contribute with the

Developer's insurance or benefit the Developer in any way.

B. Developer's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(ii) All Policies: Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice has been given to the Owner and Trustee.

(iii) Acceptability of Insurers: Unless otherwise approved by the Owner and Bond Insurer, all insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated by Best's, with a rating in one of the two highest categories maintained by Standard & Poor's Rating Group and Moody's Investors Service.

If at any time any of the foregoing policies shall be or become unsatisfactory to the Owner, due to a change in form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Owner, the Developer shall, upon notice to that effect from the Owner, promptly obtain a new policy, and shall submit the same to the Owner, with certificates and endorsements, for approval.

f) Verification of Coverage. The Developer shall furnish the Owner with certificates of insurance and endorsements required by this Agreement. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms reasonably approved by the Owner and are to be received and approved by the Owner prior to the commencement of activities associated with this Agreement. The Owner reserves the right to require complete certified copies of all required policies at any time.

g) Subcontractors. The Developer shall include all subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages provided by subcontractors as evidence of compliance with the insurance requirements of this Agreement shall be subject to all of the requirements stated herein (provided builders risk coverage must be carried only by the General Contractor).

h) Factory Mutual Engineering Plan Review. Developer shall submit to Factory Mutual Engineering Association or other mutually acceptable entity ("Factory Mutual"), for its review, plans of all elements of the building design and construction, including but not limited to: seismic and wind loading, roofing and HVAC systems, fire protection and alarm systems, and boiler systems (if any). Plans shall be submitted for review at the 90% design phase. All Factory Mutual recommendations shall be immediately shared with Owner, and Owner and Developer shall work together with Factory Mutual to reasonably incorporate those recommendations into the Project design. Developer is obligated under this Agreement to design and cause to construct the Project in compliance with Requirements of Law. However, Owner and Developer acknowledge that the Fixed Price may not include the cost of incorporating the recommendations of Factory Mutual, and if Owner elects to incorporate any of the Factory Mutual recommendations and such changes increase Project Costs, Owner shall bear the costs of those changes.

Upon completion of the fire protection system installations, one copy of the Contractor's Materials and Test Certificate shall be forwarded to Factory Mutual's District Office for their records:

Factory Mutual Engineering Association
601 108th Avenue N.E., Suite 1400
Bellevue, Washington 98004

Telephone: (425) 455-5333

17. Representatives.

a) Developer Representatives. Developer shall consult with Owner on initial assignments of personnel assigned to the Project. Owner agrees that the persons with overall responsibility for the work for the Project for the Developer shall be _____. The Project Manager shall be _____. Owner shall have the right to approve any changes in the personnel named above, such approval not to be unreasonably withheld.

b) Owner Representative. Owner designates as Owner's Representative authorized to act on the Owner's behalf with respect to the Project. Owner shall promptly render decisions to avoid delay in the orderly process of design and construction of the Project. Owner shall communicate with the Contractor and the Architect only through Developer. Owners Representative may be changed by Owner from time to time.

18. Accounting, Inspection and Audit.

a) Accounts. Developer shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement.

b) Inspection and Audit. Owner may, at its sole discretion, from time to time whether before or after Final Acceptance or termination of this Agreement inspect all books and records of Developer or any Contractor relating to the Project and/or elect to have an audit conducted to verify Project Costs through the date of the latest progress payment. If Owner so elects to conduct such an audit, it shall give notice to Developer, and such audit shall be conducted as soon as is reasonably feasible thereafter, but progress payments to Developer shall not be delayed pending the outcome of the audit. Such audit shall be conducted by an auditor selected by Owner, and Owner shall, except as hereinafter provided, pay the cost of such audit. Developer agrees to cooperate with the auditor and make available for examination at its principal office all of its books, records, correspondence and other documents deemed necessary to conduct the audit by the auditor. If the audit reveals a variation of one percent (1%) or more of the then Project Costs, Developer shall pay the cost of the audit, not to exceed \$10,000.

c) Preservation of Records. Developer shall preserve all records for a period of six (6) years after Final Payment hereunder; provided, however, if at any time prior to the expiration of seven (7) years after Final Payment, Developer proposes to dispose of any Contract Documents related to the Project, Developer shall deliver the same to Owner for disposition by Owner.

19. Construction Liens. Upon Final Acceptance of the Project and upon Owners request during the progress of the Project, Developer shall submit evidence that all payrolls, material bills and other indebtedness relating to the work have been paid. If at any time there shall be appropriate evidence of any lien or claim for which, if established, Owner shall be liable, or which would constitute a lien on the Project, and which is chargeable to Developer, Contractor or one of its subcontractors, upon written request by Owner, Developer or Contractor shall furnish a bond in form and amount satisfactory to remove such lien from the public records. If any potential lien claimant gives notice to Trustee in accordance with the provisions of RCW 60.04.221, there shall be no further disbursement of Bond proceeds until Developer shall have provided Trustee and Owner with a bond or other security in accordance with RCW 60.04.221 (5), to the amount claimed under the lien or notice until resolution of such dispute and payment of such lien, agreement with such potential lien claimant that such notice is withdrawn, or a court declaration that such notice is void in accordance with the provisions of RCW 60.04.221(9). Developer shall notify Owner and Trustee upon the filing of any lien or the service of any notice in connection with the Project.

20. Priority Agreements. Developer shall require the General Contractor to subordinate its lien rights, by agreement in form and substance satisfactory to Owner, to the lien of mortgage(s) securing the Bonds in favor of Trustee and Bond Insurer and their respective successors or assigns, and shall use its best efforts to obtain a similar subordination from all subcontractors under this Agreement. Any subcontractor which refuses to so subordinate its lien rights must be specifically approved in writing by Owner.

21. Damage and Destruction: Condemnation.

a) Damage and Destruction. After the happening of any casualty to the Project, Developer shall give Owner, Tenant and Trustee prompt written notice thereof generally describing the nature and cause of such casualty and the extent of the damage or destruction to the Project. Developer and Owner acknowledge, agree and assign all insurance proceeds which Developer or Owner may be entitled to receive prior to Final Acceptance of the Project with respect to damage or destruction to the Project to Trustee for deposit into the Project Fund held by Trustee under the Indenture, and the insurance carrier is hereby irrevocably instructed in accordance herewith. Such insurance proceeds shall be used to pay Project Costs, including increases in the Project Costs caused by such casualty. If, prior to the Substantial Completion of the Project, damage or destruction occurs to the Project, Developer shall proceed diligently to reconstruct and restore the Project in accordance with the Contract Documents and the provisions of this Agreement. Insurance proceeds deposited in the Project Fund shall be disbursed to Developer in accordance with the provisions of Section 9 herein for payment of progress payments for payment of the costs to repair and restore the Project. All costs of such repair or restoration of the Project exceeding the amount of the insurance proceeds shall be paid by Developer.

b) Condemnation. In the event of a partial condemnation of the Project to the extent that the Project may still be constructed in accordance with the Contract Documents, or may be constructed in accordance with the Contract Documents as modified by changes acceptable to Owner and Developer, Developer shall proceed diligently to construct the Project in accordance with the Contract Documents, as modified, if applicable. Any such partial condemnation proceeds shall be deposited in the Project Fund and disbursed in accordance with the provisions of Section 9 above. Condemnation proceeds shall be disbursed for such purposes whether or not such disbursements exceed the Fixed Price. In the event of a condemnation of all of the Project or so much thereof that the Project may no longer be constructed in accordance with the Contract Documents, this Agreement shall terminate, Developer shall be paid for all costs incurred as of the date of such condemnation (including costs that Developer is obligated to pay third parties as of that date, together with a pro-rata portion of the Developer's Overhead and the Developer's Fee), and the parties shall have no further obligations hereunder. In such event, after Developer has been paid in accordance with the foregoing sentence, all condemnation proceeds shall be paid applied by the Trustee pursuant to the Indenture.

22. Payment of Taxes/Assessments.

a) Real Property Taxes. Any and all real property taxes and assessments (including leasehold excise tax) levied against the Building Land and the Project or any portion thereof shall be paid by Owner until the Commencement of Construction. Developer shall pay all such taxes and assessments from the Commencement of Construction until Substantial Completion of the Project with respect to taxes and assessments levied on the remainder of the Project.

b) Other State and Local Taxes. Developer shall pay any and all state and local taxes assessed in connection with the Project (other than real property taxes and assessments as

provided in Section 22(a) above), including, but not limited to, state and local retail sales taxes and business and occupation taxes as part of the Fixed Price. Developer shall complete all necessary tax returns relating to such taxes and file the same with the applicable state or local governmental agency and remit, on or before the date such tax payment is due, payment of such state and local taxes to the proper taxing authority.

23. Default.

a) Developer Default. The following events shall constitute an "Event of Default" by Developer:

(i) If Developer shall fail to perform any material obligation under this Agreement.

(ii) If Developer persistently or repeatedly refuses or fails to cause to be supplied to the Project enough properly skilled workers or proper materials to complete the Project, including Tenant Improvements, or if Developer ceases work on the Project for a period of fourteen (14) consecutive days (subject to Unavoidable Delays);

(iii) If Developer misappropriates any funds received by Developer pursuant to the provisions of this Agreement;

(iv) If Developer persistently disregards and fails to comply with laws, ordinances or rules, regulations or orders of a public authority having jurisdiction over the Project.

(v) If, due to the actions of Developer, any Permit required for construction of the Project shall be revoked or canceled;

(vi) If there shall occur any lien or other encumbrance on the Building Land or the Project caused by Developer which is not bonded and removed in accordance with Section 19 above;

(vii) If there shall have occurred defective workmanship or materials within the Project which is not cured within the time period provided in Section 7 of this Agreement;

(viii) If Developer shall have assigned, pledged or encumbered its rights, duties or obligations under this Agreement in violation of Section 25 of this Agreement;

(ix) If any warranty made by Developer as set forth in Section 13 shall be untrue or breached in any material respect; or

(x) If Developer files a petition for bankruptcy or if it makes a general assignment for the benefit of Developer's creditors, or if a receiver is appointed on account of Developer's insolvency and any such petition or appointment is not dismissed within sixty (60) days.

b) Owner Remedies upon Developer Event of Default. Upon any Event of Default by Developer, Owner shall give Developer written notice of the same, whereupon following receipt of such written notice Developer shall have thirty (30) days within which to commence all necessary action to cure any such Event of Default, (and if such cure is commenced, proceed to diligently complete such cure within a reasonable period of time not to exceed 60 days), except with respect to Events of Default set forth in Section 23(a)(iii) and (viii) for which the cure period shall be ten (10) business days, or Section 23(a)(x) for which no cure period exists beyond the time period stated therein; provided however, that such cure period shall not apply to failure of Developer to achieve Substantial Completion of the Project on or before the Developer Obligation Date for the Project. In the event Developer fails to cure such Event of Default within the time period set forth above, Owner shall be entitled to the following remedies:

(i) To take over and complete the Project. Owner is hereby irrevocably appointed attorney-in-fact (the appointment being coupled with an interest) to incur

obligations, enforce contracts or agreements theretofore made by Developer and to do any and all things that are necessary and proper to complete the Project and be entitled to use the undisbursed Project Fund proceeds to pay Project Costs;

(ii) In addition to a claim for damages for such breach or default, and in addition to and without prejudice to any other right or remedy available under this Agreement or at law or in equity, the right to demand specific performance of this Agreement;

(iii) To withhold approval of further disbursement of Bond proceeds;

(iv) Bring an action for damages; or

(v) Terminate this Agreement without liability upon ten (10) days written notice.

c) Owner Default. The following shall constitute an "Event of Default" by Owner:

(i) Owner fails to cause Trustee to make disbursements to Developer of any sum of money owed to Developer pursuant to this Agreement as and when due, including without limitation, all monies due and owing from the Project Costs Account unless Developer shall have committed an Event of Default as set forth in Section 23(a) above;

(ii) Owner shall have assigned, pledged or encumbered its rights, duties or obligations under this Agreement in violation of Section 25; or

(iii) Owner shall have failed to perform any other material obligation under this Agreement.

d) Developer Remedies Upon Owner Event of Default. Upon any Event of Default by Owner, Developer shall give Owner written notice of the same. Upon receipt of such written notice Owner shall have ten (10) business days to cure any such Event of Default. In the event Owner fails to cure such Event of Default within said 10 day period, Developer shall be entitled to stop all work relating to the Project, if Developer so desires and shall further be entitled to pursue its rights and remedies at law and in equity under this Agreement, including without limitation, specific performance of Owners obligations hereunder.

e) Remedies Not Exclusive. No remedy conferred upon either party in this Agreement is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

24. Disputes. Owner and Developer agree to follow the independent resolution process set forth in this Section 24 to resolve disputes regarding preparation of the Construction Drawings and Detailed Specifications and changes to Construction Documents in an economic and time efficient manner so that such documents conform to the requirements of this Agreement, the Project Schedule is not adversely impacted, and the Project as constructed will satisfy the Project Requirements. In the event that a dispute arises between Owner and Developer during the design or construction of the Project regarding the adequacy of any Drawings or Specifications or the responsibility for any costs associated with any design development, addition or change (e.g., whether any design development is consistent with and reasonably inferable from the Project Requirements), the parties shall attempt to resolve such dispute as expeditiously as possible and shall cooperate so that the progress of the design and construction of the Project is not delayed. If, however, the parties are unable to resolve the dispute within three (3) business days, either party may, by delivering written notice to the other and the Bond Insurer, refer the matter to a dispute resolution mediator as set forth on the attached Exhibit H.

25. Miscellaneous.

a) Waiver. Any waiver by either of the parties of any breach of any covenant herein contained to be kept and performed by the other party shall not be deemed or considered as a

continuing waiver, and shall not operate to par or prevent the damaged party from declaring a forfeiture for any succeeding breach, either of the same condition or covenant or otherwise.

b) Neutral Authorship. In connection with the execution and delivery hereof, each party has been represented by counsel. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of both parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

c) Severability. If any portion or portions of this Agreement is declared void or unenforceable, it shall not affect the other provisions of this Agreement.

d) Relationship of Parties. Developer and Owner shall not be construed as joint venturers or general partners, and neither shall have the power to bind or obligate the other party except as set forth in this Agreement. Nothing herein shall be construed as reserving to Owner the right to control Developer's business.

e) No Third Party Rights. The provisions of this Agreement are intended solely for the benefit of, and may only be enforced: (i) by the parties hereto and their respective successors and assigns, including, as to Owner, Trustee and Bond Insurer, and (ii) with respect to rights expressly granted to Tenant in this Agreement, by Tenant. None of the rights or obligations of the parties herein set forth (or implied) is intended to confer any claim, cause of action, remedy, defense, legal justification, indemnity, contribution claim, set-off, or other right whatsoever upon or otherwise inure to the benefit of any Contractor, Architect, subcontractor, worker, supplier, mechanic, architect, insurer, surety, guest, member of the public, or other third parties having dealings with either of the parties hereto or involved, in any manner, in the Project.

f) Assignment: Encumbrance or Pledge. Neither this Agreement nor any rights or duties hereunder nor any benefits derived herefrom may be assigned, delegated, pledged or encumbered to any other person or entity by either party hereto without the express written consent of the other, which consent may be withheld by either party in the exercise of its absolute discretion, except that Owner may assign its rights under this Agreement to the Trustee and the Bond Insurer pursuant to the Indenture as security in connection with the financing described in Section 3 above.

g) Notices. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either party hereto by the other party, shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is addressed or in lieu of such personal service, three (3) days after it is deposited in the United States mail, first-class postage prepaid, certified or registered, return receipt requested, addressed as follows, or sent via facsimile transmission with received invoice followed by a "hard copy" mailed, regular mail, within one (1) business day to the fax number listed as follows:

Owner: _____

Developer: _____

Either party may change its address for the purposes of this section by giving written notice of such change to the other party in the manner provided in this Section. A copy of all notices, plans and specifications, change orders, invoices, documents or other agreements required to be delivered by one party to the other pursuant to this Agreement shall be simultaneously sent to Tenant and Bond Insurer at their addresses set forth below and Tenant shall have the right, but not the obligation, to attend all meetings and participate in all decisions to protect its leasehold interest under the Lease.

Tenant: PIERCE COUNTY
 South Sound 911
 955 Tacoma Ave. S., Suite 202
 Tacoma, Washington 98402
 Bond Insurer: [To be provided if applicable.] Attn:

h) Entire Agreement. This Agreement (and the exhibits referred to herein) constitute the entire agreement between the parties with respect to the subject matter hereof and may be amended only in writing signed by both parties.

i) Time is of the Essence. Time is of the essence of this Agreement.

j) Employees of Developer. Developer is acting under this Agreement as an independent contractor and nothing herein contained, or any acts of Developer or Owner, nor any other circumstances, shall be construed to establish Developer as an agent of Owner. Developer shall be responsible for each of Developer's employees or other persons performing services to be performed by Developer hereunder and for determining the manner and time of performance of all acts to be performed by Developer hereunder. Developer shall maintain all required industrial and worker's compensation insurance for all employees of Developer and shall cause all Contractors, Architect and all design professionals and other persons, firms and corporations employed to perform services in connection with the Project to provide worker's compensation and similar insurance with respect to their respective employees.

k) Exhibits. The Exhibits to this Agreement are:

<u>Exhibit</u>	<u>Description</u>	<u>Partial Section Reference</u>
A	Legal Description of Building Land	Recitals
B	Project Lease Agreement	Recitals; Section 1
C	Base Shell and Core Building	Section 1
D	Project Budget	Sections 1, 4{c}
E	List of Preliminary Plans and Specifications	Section 1
F	Project Schedule	Sections 1, 6{d}
G	Tenant Improvement Plans Delivery Date Schedule	Sections 2(b), 6{c}
H	Dispute Resolution Mediation	Section 24
I	List of Additional Warranties	Section 7(h)

DATED at Tacoma, Washington the day and year first above written.

OWNER: _____,

a Washington nonprofit corporation

By: _____

Its _____

DEVELOPER: _____,

By: _____

Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF BUILDING LAND

EXHIBIT B

PROJECT LEASE AGREEMENT

EXHIBIT C

BASE SHELL AND CORE BUILDING

EXHIBIT D

PROJECT BUDGET

EXHIBIT E

SCHEDULE OF PRELIMINARY PLANS AND OUTLINE SPECIFICATIONS

EXHIBIT F

PROJECT SCHEDULE

EXHIBIT G

TENANT IMPROVEMENT PLANS DELIVERY DATES

EXHIBIT H

DISPUTE RESOLUTION PROCEDURE

Owner and Developer shall act in good faith and deal fairly in performing their respective duties under this Agreement in order to accomplish their mutual objectives and avoid disputes. If a dispute arises with respect to design or construction of the Project, the parties agree to utilize the dispute resolution process contained herein, which will be non-binding but a condition precedent to having said dispute decided in court by a judge or jury.

1. Mediation. Pursuant to Section 24 of this Agreement, in the event a dispute arises between Developer and Owner with respect to design and/or construction of the Project the parties shall proceed in good faith to resolve such dispute as expeditiously as possible and shall cooperate so that the progress of the design and construction of the Project is not delayed. If, however, the parties are unable to resolve the dispute within three (3) business days, either party may refer the dispute to the Mediator named below.

1.1 *Mediator*. For any dispute which cannot be resolved by the parties, the mediator hereunder ("Mediator") shall be, or in the event he is unable or unwilling to act as such independent mediator, a mediator whom Owner and Developer have mutually designated to resolve such dispute. The Mediator is to act impartially and independently in the consideration of facts and conditions surrounding any dispute presented by Developer and Owner; however, the Mediator's recommendations concerning any such dispute are advisory only. The Mediator's recommendations shall be based on the pertinent provisions of this Agreement, and the facts and circumstances involved in the dispute. The Mediator's recommendations shall be furnished in writing to the parties.

1.2 *Developer Responsibility*. Developer shall furnish the Mediator one copy of all documents it might have, other than those furnished by the Owner, which are pertinent to the performance of the Mediator's duties hereunder.

1.3 *Owner Responsibility*. Owner shall furnish the Mediator one copy of all Contract Documents, including but not limited to the Building Design Guidelines, applicable contracts, interpretative reports, progress schedule and updates, monthly progress reports, and other documents pertinent to the performance of this Agreement and necessary to the performance of the Mediator's duties hereunder.

1.4 *Term*. Following execution of this Agreement, the Mediator shall have authority to act hereunder upon written request from either Owner or Developer and such authority shall terminate upon Final Acceptance, after Final Payment has been made.

1.5 *Payment*. The fees charged by the Mediator shall be shared equally by the parties. The Mediator's compensation shall include compensation for all materials, supplies, travel, office assistance and support and incidentals necessary to provide the services described herein. Payment for services rendered by the Mediator will be at the Mediator's standard hourly rate as approved by Owner and Developer prior to commencement of the dispute resolution proceeding.

1.6 *Legal Relationship*. The Mediator, in the performance of the duties described herein, is acting in the capacity of an independent agent and not as an employee of either Developer or Owner. The Mediator is absolved of any personal or professional liability arising from the recommendations made hereunder, unless due to gross negligence or willful malfeasance.

EXHIBIT I

LIST OF ADDITIONAL WARRANTIES