

RESOLUTION NO. 2019-04

RESOLUTION OF THE BOARD OF DIRECTORS OF SOUTH SOUND 911, A PUBLIC AUTHORITY, APPROVING THE GROUND LEASE FOR THE PUBLIC SAFETY COMMUNICATIONS CENTER

WHEREAS, South Sound 911 and Pierce County have negotiated a financing agreement for the construction of the Public Safety Communications Center (PSCC); and

WHEREAS, the financing agreement stipulates that South Sound 911 and Pierce County will enter into a ground lease for the PSCC to be constructed on property owned by Pierce County; and

WHEREAS, the ground lease includes the right for South Sound 911 to purchase the Pierce County owned property at the conclusion of the lease term;

NOW, THEREFORE BE IT RESOLVED THAT THE BOARD OF DIRECTORS OF SOUTH SOUND 911 DOES HEREBY ADOPT THE FOLLOWING RESOLUTION:

Section 1. The Ground Lease Agreement (Agreement), in the form attached hereto as Exhibit A, is hereby approved by the Board of Directors.

Section 2. The Executive Director is authorized and directed to enter into the Agreement on behalf of South Sound 911.

Section 3. This resolution shall take effect and be in full force from and after its passage.

ADOPTED by the Board of Directors of South Sound 911, Pierce County, Washington.

DATED and SIGNED this 9th day of AUGUST, 2019.

SOUTH SOUND 911


BOARD OF DIRECTORS CHAIR

ATTEST:


Clerk of the Board

APPROVED AS TO FORM:



Peter Beckwith, General Counsel

GROUND LEASE AGREEMENT

Between

PIERCE COUNTY,

a municipal corporation and political subdivision of the State of Washington

as Lessor

and

SOUTH SOUND 911 Public Authority

a Washington public corporation

as Lessee

_____ , 2019
Public Safety Communications Center Project
Tacoma, Washington

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GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (“Ground Lease”) is made and entered into as of _____, 2019, by and between PIERCE COUNTY, a municipal corporation and political subdivision of the State of Washington (“Lessor”), and South Sound 911 Public Authority, (“SS911” or “Lessee”). Lessor and Lessee may hereinafter be referred to individually as “Party” and collectively as “Parties.”

RECITALS

- A. Lessor is the owner of the real estate legally described on **EXHIBIT A** attached hereto (“Land”) located at 3580 Pacific Avenue S. (Tax Parcel No. 7470023329), in the City of Tacoma in Pierce County, Washington.
- B. Lessee is a public development corporation chartered under the provisions of RCW 35.21, and was previously an emergency communications agency established by Pierce County and other Member public agencies, pursuant to a 2011 Interlocal Agreement for Communications Services.
- C. In 2011, Pierce County voters approved a ballot proposition authorizing imposition and collection of a countywide one tenth of one percent sales and use tax to fund emergency communications systems and facilities for SS911 (hereinafter the “South Sound 911 Tax”).
- D. Since 2011, when the Pierce County Council adopted Resolution No. R2011-87 submitting the ballot proposition for the South Sound 911 Tax, the County Council has recognized the need to construct a new building with facilities and systems to house SS911.
- E. Lessor and Lessee have negotiated a 2019 Agreement for Financing a Public Safety Communications Center (“PSCC”) project (the “PSCC Financing Agreement”) to include the following elements (collectively, the “PSCC Project”): Construction of a three-story, 75,000 square foot building that includes a Public Safety Answering Point to house police and fire emergency communications, a municipal emergency operations center (“EOC”), a public counter area for law enforcement records functions, and related administrative office (the PSCC Building); Furniture, fixtures, equipment, and systems to serve the numerous operational, administrative and support functions associated with the PSAP, EOC and data center (“FF & E”); and Improvements to the South 35th Street Communications Center to prepare it to serve as a PSCC back-up facility (“S 35th Street back-up facility improvements”).
- F. The construction, operation and maintenance of a PSCC Building on the Land would fulfill the governmental purpose of ensuring that emergency dispatch centers and associated communications systems are consolidated and coordinated so that they operate reliably in support of public safety.

- G. On May 21, 2019, the Pierce County Council adopted Resolution No. R2019-66 expressing the Council’s intent to authorize issuance of limited tax general obligation bonds in an amount sufficient to produce \$65 Million in proceeds needed to pay construction and related costs for the PSCC Project.
- H. The Pierce County Council expects to authorize the issuance by the County of a separate series of limited tax general obligations bonds designated as “Limited Tax General Obligation Bonds, 2019A (Public Safety Communications Center Project)” (the “2019A Bonds”), in an amount sufficient to produce \$65 Million in proceeds to finance the costs of the PSCC Project.
- I. The Parties contemplate that the Land will be leased to Lessee pursuant to this Ground Lease so that Lessee can construct on the Land the PSCC building as well as procure and install the FF & E, then operate and maintain the PSCC.
- J. The Parties contemplate the eventual conveyance of the Land to Lessee and that Lessee will own the PSCC building and the FF & E.
- K. Subject to the County Council’s authorization to surplus the Land, this Ground Lease includes a right to purchase the Land – improved with the PSCC - exercisable by Lessee once the County’s debt for the PSCC project is no longer outstanding and as well as subject to conditions as set forth in this Ground Lease.
- L. The Parties have negotiated a price of \$2.95 Million for Lessee’s right to Purchase the Land as Improved, and Lessee has already paid \$2.6 Million of that price – which monies were applied by the County in 2016 to the cost of demolishing the Puget Sound Hospital Building improvements on the Land.
- M. The Parties have negotiated a Rent of \$2.95 Million for the entire term of the Ground Lease - of which \$2.6 Million has already been paid by Lessee with an additional \$350,000 to be paid by the Effective Date of the Ground Lease.
- N. Despite Lessee’s prepayment of the negotiated price for the Land as improved with the PSCC, the Lessor will remain the owner of the Land until the County’s 2019A Bonds issued for the PSCC Project are no longer outstanding.
- O. The Parties recognize that there are financial obligations in the PSCC Financing Agreement that should be secured in this Ground Lease.
- P. The Parties also recognize that until the 2019A Bonds issued for the PSCC Project have been fully paid and retired and are no longer outstanding, the Lessee will forfeit its right to purchase the Land as improved if Lessee defaults on the Ground Lease or otherwise fails to fulfill its financial obligations related to ensuring payment of administration fees and making up the shortfall, if any, between the South Sound 911 Tax and the cost of debt service for the County’s 2019A Bonds.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the parties hereto agree as follows:

1. **The Demise.**

- 1.1 Demise. In consideration of the rents, covenants and agreements contained in this Ground Lease, Lessor hereby leases the Land to Lessee, and Lessee hereby leases the Land from Lessor upon and subject to the terms, covenants and conditions set forth in this Ground Lease, and subject to all encumbrances and matters of record as of the date of this Ground Lease.
- 1.2 Use of the Land. The Land shall be used and occupied only for the purpose of the development, construction, equipping, operation, use, replacement, repair and maintenance of the PSCC Building and its FF & E but, until Lessee commences such use and occupancy, Lessor reserves the right to continue to use and occupy the Land for its purposes at no cost. Lessee shall not use or permit the Land to be used for any other purpose without the prior written approval of Lessor.
- 1.3 Access and Utilities. Lessor and Lessee agree to mutually cooperate regarding the provision of reciprocal temporary and permanent pedestrian and vehicular access and utilities to, from, and over the Land and the PSCC Building to, from, and over adjacent lands of Lessor as reasonably necessary to facilitate the Project. Lessor and Lessee agree to execute such instruments, on mutually acceptable terms, as may be necessary to provide for such pedestrian and vehicular access, parking and utilities and agree to cooperate in the location thereof.
- 1.4 Construction Activity. Lessor hereby grants permission to Lessee to perform construction activity related to PSCC Building on adjacent lands of Lessor upon such terms, covenants and conditions as the Parties may mutually agree and, to the extent reasonably necessary, such rights shall be separately documented. Lessee and Lessor agree to mutually cooperate as to the timing, use, and location of such construction activity to ensure completion of the PSCC Building in a timely manner while maintaining Lessor's ability to utilize the adjacent lands for Lessor's ongoing operations.

2. **Term.**

- 2.1 Commencement. Subject to the terms and conditions of this Ground Lease, the term of this Ground Lease shall commence on the date that this Ground Lease is fully executed, acknowledged and delivered by Lessor and Lessee ("Effective Date").

2.2 Duration. The term of this Ground Lease shall continue from the Effective Date until the earlier of (i) December 31, 2036 or (ii) the date that all of the 2019A Bonds issued by the County for the PSCC Project are no longer outstanding, unless sooner terminated hereunder (“Term”).

3. **Rent.**

3.1 The Rent for the entire term of this Ground Lease, including any extensions shall be \$2.95 Million.

3.2 The Rent shall be payable by Lessee in advance by the Effective Date of this Ground Lease.

3.3 The Parties recognize Lessee’s payment of \$2.6 Million to Lessor in 2016 as pre-payment toward not only the Rent but also toward the Purchase Price for the Land as improved with the PSCC Building and its FF & E.

3.4 Lessee’s payment of Rent by the Effective Date of this Ground Lease shall be credited toward full payment of the Purchase Price for the Land as improved; provided that this credit shall be deemed extinguished in the event Lessor extinguishes Lessee’s Right to Purchase as provided in Section 14.

3.5 In the event that annual revenue received by the County from the South Sound 911 Tax is insufficient to meet the debt service requirements of the County’s 2019A Bonds, Lessee shall pay to Lessor contingent rent pursuant to Section 13 of this Ground Lease to make up any shortfall.

4. **Development of PSCC.**

4.1 Construction. Lessor and Lessee would not have entered into this Ground Lease but for the mutual interest in having a PSCC constructed, operated, and maintained on the Land to fulfill the governmental purpose of ensuring that emergency dispatch centers and associated communications systems are consolidated and coordinated so that they operate reliably in support of public safety. Lessee shall diligently cause the PSCC Building and FF & E to be designed, constructed, procured and/or installed in a good and workmanlike manner. Lessee shall not permit any development or construction on the Land except as consistent with the terms of this Ground Lease and the PSCC Financing Agreement between Pierce County and SS911 or as otherwise specifically approved in writing by Lessor.

4.2 Construction Project Management and Timely Information. It is acknowledged by the Parties that SS911 is in the best position to manage the construction of the

PSCC Building and ensure it meets the operational, maintenance, administrative support, and data center needs identified by SS911. The Parties further acknowledge that the PSCC Project is already underway in advance of this Ground Lease and that SS911 engaged a team led by architects Callison RTKL to design the PSCC Building, that design has been completed, and that SS911 has issued an invitation to bid to potential contractors for construction. To ensure expeditious construction and completion of the PSCC Project, Lessor and Lessee shall each proceed with all necessary due diligence and in good faith to complete such matters as require action or approval on the part of Lessor and Lessee. Lessee shall ensure that Lessor is kept informed about the Project's progress and has an opportunity to review and approve any additive, deductive or cost changes that may increase the overall construction bid amount. Provided, however, the Construction Drawings and Detailed Specifications for the Base Shell and Core building and Tenant Improvements shall not require review and acceptance by Lessor prior to issuance of invitation to bid. A copy of all design documents for the PSCC Building shall be delivered to Lessor within two (2) business days of the Effective Date of this Agreement.

- 4.2.1 To ensure that Lessor has adequate and timely information to make decisions that may be required of Lessor, Lessee shall ensure that Lessor is provided a copy of all notices, plans and specifications, change orders, applications for payment, progress reports, invoices, cash flow reports, documents or other agreements relevant to such decisions. Lessor shall have the right, but not the obligation, to attend all meetings relating to construction of the PSCC Building. A potential change that would cause the price for construction of the PSCC Building to increase, but where the increase is below the threshold of \$200,000, will not be deemed material. For potential increases to price that are below the \$200,000 threshold, Lessee may provide Lessor with general notice and respond to questions from Lessor's Project Representative on an as-needed basis.
- 4.2.2 If after acceptance of a bid for construction of the PSCC Building, changes are proposed to Construction Documents (Construction Drawings and Detailed Specifications), Lessor shall be provided an opportunity to review Construction Documents for issues that may affect overall construction cost and alert Lessee to such issues (if any).
- 4.2.3 Lessee shall send information referenced in Subsection 4.2.1 as well as invitations to attend project meetings to Lessor's Project Representative. Lessor shall review information and contact Lessee's Project Representative as contemplated in Subsection 4.2.2. The permissible delivery methods for such information include email, U.S. mail and overnight express delivery. The contacts and addresses for Lessor's Project Representative and

Lessee's Project Representative are as follows. Contacts may change with proper written notice pursuant to Section 19 (Notices) from the party making the change to the other party.

Lessor's Project Representative:
Pierce County
Attn: Karl Imlig
Director of Facilities Management
1102 Broadway, Suite 302
Tacoma, WA 98402
Email: karl.implig@piercecountywa.gov

Lessee's Project Representative:
South Sound 911
Attn: Janet Caviezel
Assistant Director
955 Tacoma Avenue South, Suite 202
Tacoma, WA 98402
Email: janet.caviezel@southsound911.org

- 4.3 Construction Contracts. The Parties contemplate that Lessee will contract for the construction of the PSCC Building and installation of FF&E with a General Contractor. Lessee shall ensure that the agreement between Lessee and the General Contractor for such construction ("General Construction Contract") incorporates and meets indemnity and insurance requirements as well as covenants relating to liens set forth in this Ground Lease. The Lessee shall provide Lessor with a copy of the General Construction Contract for Lessor's information. Lessor shall have the right to request all construction contracts and bids submitted by potential contractors and subcontractors.
- 4.4 Payment of PSCC Project Costs. Lessor and Lessee's respective Project Representatives shall meet to establish the expected expenditure schedule for use of proceeds of the 2019A Bonds to pay for PSCC Project costs and periodically adjust the schedule if needed to maintain its conformance with actual PSCC Project activities. Throughout the course of construction of the PSCC Project, Lessee shall submit to Lessor on at least a monthly basis application for payment with all supporting documentation that would be commercially reasonable to expect. Payments shall not be made absent concurrence from Lessor's Project Representative. Lessor shall have the right, but not the obligation, to give notice to Lessee objecting to any aspect of the submittals. If within five (5) business days after Lessor's Project Representative has received an application for payment, Lessor's Project Representative has not provided notice of Lessor's objection so as to allow Lessee to communicate a timely objection, Lessor will be deemed to have concurred and Lessee will be free to approve such submittals or take such other action as it deems appropriate with respect to any such submittal. Any dispute with respect to applications for payment shall be subject to dispute resolution pursuant to Subsection 4.5.

- 4.5 Project Management Dispute Resolution Process. Lessor and Lessee agree to follow the dispute resolution process set forth in this subsection to resolve disputes relating to construction drawings and detailed specifications, Construction Documents, and payments for PSCC project costs. In the event of a dispute relating to such subjects, the Parties' respective Project Representatives shall attempt to resolve the dispute as expeditiously as possible and shall cooperate so that construction and completion of the Project is not delayed. If, however, the Parties are unable to resolve the dispute within three (3) business days at the Project Representative level, the Project Representatives shall escalate the dispute for resolution at their respective Executive levels. If the dispute is not resolved within five (5) business days, either party may, by delivering written notice to the other, refer the matter to a neutral dispute resolution mediator to be chosen by agreement of the Parties. If the Parties fail to agree on a mediator within seven (7) business days, the Parties shall apply to Pierce County Superior Court for appointment of a neutral mediator. The mediator's recommendations shall be in writing, furnished to each Party, advisory only and shall be based on the pertinent Ground Lease provisions, and consider the facts and circumstances involved in the dispute. The fees and costs charged by the mediator shall be shared equally between the Parties. Either Party may further escalate the dispute to legal action only after the Parties have received the mediator's recommendations.
- 4.6 Permits and Compliance with Legal Requirements. Lessee shall ensure all permits, licenses, permissions consents and approvals required to be obtained from governmental agencies or third parties in connection with construction of the PSCC Building and installation of FF& E are secured. Lessee shall ensure that Lessor incurs no expense or liability in connection with securing permits and other approvals. All work on the Land shall be performed in accordance with all requirements of law and directions and regulations of governmental agencies having jurisdiction over the PSCC Project and Land.
- 4.7 Ownership of Improvements. During the Term of this Ground Lease, the PSCC Building and its FF & E shall be owned by Lessee. Upon the expiration of this Ground Lease or its earlier termination and subject to the conditions as set forth in Section 14 (Right to Purchase), Lessee may exercise its right to purchase the Land as improved with the PSCC. If Lessee exercises its Right to Purchase, Lessee will remain owner of the PSCC Building and its FF & E. If Lessor has extinguished Lessee's Right to Purchase pursuant to Section 14, Lessor shall be entitled to ownership of all improvements made to the Land by Lessee, and Lessee shall execute all necessary and appropriate documents to vest title to the PSCC building and its FF & E in Lessor, free and clear of any and all liens, encumbrances and security interest.
5. **Taxes and Utilities.**
- 5.1 Impositions. From the Effective Date through the expiration date or earlier termination of this Ground Lease, Lessee shall pay and discharge, on or before the due date, all real and personal property taxes and assessments (including assessments for special improvements), if any, license and permit fees, leasehold excise taxes and other excise taxes, if any with respect to the Land ("Impositions"). Lessee shall pay all Impositions

directly to the applicable government agency prior to delinquency and shall promptly provide proof of such payment to Lessor. To the extent taxes or other charges can be paid in installments, Lessee may pay them in installments.

- 5.2 Utilities. From the Effective Date through the expiration date or earlier termination of this Ground Lease, Lessee shall pay for all utilities and services, including without limitation, gas, electricity, water, sewer, storm water, garbage collection, telephone and telecommunications service used or consumed at the Land (“Utilities”). Lessee shall make any necessary arrangements to have the Utilities billed directly to Lessee.

6. **Condition of the Land.**

- 6.1 Acceptance of Land As-Is. Lessee hereby accepts the Land “as is”, in its existing condition as of the Effective Date. Lessee shall be responsible for all due diligence with regard to environmental condition of the Land and its suitability for construction of the PSCC Building.
- 6.2 Environmental Conditions. Lessee accepts the obligation to perform or to cause to be performed environmental remediation of existing Hazardous Substances (if any) on the Land or in such existing improvements as of the Effective Date, but only to the extent that such remediation can be performed within the budget for the PSCC Project. For purposes of this provision, environmental remediation shall mean any investigation, clean-up, response or other activity required by Environmental Laws with respect to such Hazardous Substances.

“Environmental Laws” means, as amended from time to time, the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., Federal Hazardous Materials Transportation Control Act, 42 U.S.C. § 1801 et seq., Federal Clean Air Act, 42 U.S.C. § 7401 et seq., Federal Water Pollution Control Act, Federal Water Act of 1977, 93 U.S.C. § 1251 et seq., Federal Insecticide, Fungicide and Rodenticide Act, Federal Pesticide Act of 1978, 7 U.S.C. § 136 et seq., Federal Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., Federal Safe Drinking Water Act, 42 U.S.C. § 300f et seq., Washington Water Pollution Control Act, RCW ch. 90.48, Washington Clean Air Act, RCW ch. 70.94, Washington Solid Waste Management Recovery and Recycling Act, RCW ch. 70.95, Washington Hazardous Waste Management Act, RCW ch. 70.105, Washington Hazardous Waste Fees Act, RCW ch. 70.95E, Washington Model Toxics Control Act, RCW ch. 70.105D, Washington Nuclear Energy and Radiation Act, RCW ch. 70.98, Washington Radioactive Waste Storage and Transportation Act of 1980, RCW ch. 70.99, Washington Underground Petroleum Storage Tanks Act, RCW ch. 70.148.

“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.

Lessor shall not be responsible for any claims, judgments, damages, penalties, fines, expenses, liabilities or losses relating to the release or disposal of Hazardous Substances on the Land during construction of the Project and the responsibility for the same shall remain with Lessee.

6.3 Lessor's Right to Inspect. Lessor shall have the right to inspect the Land at any time with reasonable notice to Lessee's Project Representative.

7. Liens.

7.1 Lessee's Duty. Lessee will not directly or indirectly create or permit to be created or to remain (other than construction liens arising in the ordinary course of construction of the Project that are discharged as and when due), and will discharge any mortgage, lien, security interest, encumbrance or charge on, pledge of or conditional sale or other title retention agreement with respect to the Land, any part thereof, the PSCC Building, Lessee's interest therein, or any equipment, fixtures or personalty on the Land that is imposed by or as a result of the actions of Lessee.

7.2 Covenant Against Liens. Lessee covenants and agrees that it shall not during the Term of this Ground lease suffer or permit any liens to be attached to, upon, or against the Land or the PSCC Building, for any reason. In the event of a failure to keep the Land and PSCC Building free and clear of all construction liens resulting from initial construction of the PSCC building, Lessee shall protect, defend, indemnify and hold Lessor harmless against any such liens.

7.3 Covenant to Remove Liens. Lessee shall promptly, and in all events and within thirty (30) days following the attachment of same, remove and discharge any and all liens which attach to, upon, or against the Land or PSCC Building. Lessee reserves the right to contest the validity or amount of any such lien in good faith provided that, within thirty (30) days after the filing of such lien, Lessee discharges said lien or records a bond which complies with the requirements of RCW 60.04.161 eliminating said lien as an encumbrance against the Land or PSCC Building. In the event Lessee fails to remove any such lien, Lessor may take such action as Lessor reasonably determines to remove such lien and all costs and expenses incurred by Lessor including, without limitation, amounts paid in good faith settlement of such lien and attorneys' fees and costs shall be paid by Lessee to Lessor together with interest thereon at the rate of twelve (12%) percent per year from the date advanced until paid. Lessee's obligations under this Section shall survive the Expiration Date of this Ground Lease.

8. Indemnity and Insurance.

8.1 Indemnity. Lessor and Lessee mutually agree that in any and all causes of action and/or claims or third-party claims arising out of or in connection with the terms, activities, use

and/or operations of this Ground Lease, including the Land and the PSCC Building, each Party shall be responsible to the other only to the extent of each other's comparative fault in causing the alleged damage or injuries and only to the extent permitted by law. As to any and all causes of action and/or claims or third-party claims arising from the sole fault of a Party to this Ground Lease ("Indemnifying Party") and to the extent permitted by law, the Indemnifying Party shall have the duty to defend, save and hold the other Party harmless and upon failure to do so, the Indemnifying Party shall pay the reasonable attorneys' fees, costs and expenses incurred by the other Party to this Ground Lease in defense of such claims and/or actions. Nothing contained within this Section 8.1 shall affect and/or alter the application of any other provision contained within this Ground Lease.

8.2 Property Insurance. At all times during the Term of this Ground Lease, Lessee shall maintain property insurance fully insuring, at 100% of replacement cost, such improvements, including the PSCC Building and its FF & E located on the Land, against loss or damage by fire and other perils currently covered by a special causes of loss commercial property insurance form. Lessee shall also cause the improvements to be insured against the perils of earthquake and flood, either as part of the aforementioned property insurance, or under a separate policy or policies; provided, however, that such coverage shall be maintained only so long as it is available at a commercially reasonable cost and in coverage amounts which are commercially available, but Lessee shall not be in default under this Ground Lease if coverage is no longer written, is unavailable for comparable properties or is not available at commercially reasonable premium amounts. The property insurance policy shall meet the requirements set forth in this Section.

8.3 General Contractor. By the date of execution of the General Construction Contract referenced in Section 4.3, Lessee shall cause the General Contractor to procure and maintain, at a minimum, without interruption from commencement of work throughout the General Construction Contract Term and for 30 days after Physical Completion under said Contract, insurance more particularly described in **EXHIBIT B** against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of work thereunder by the General Contractor, its agents, representatives, employees and/or subcontractors. The insurance requirements at Exhibit B are subject to change and negotiation with General Construction Contractor but significant changes are subject to approval of the County's Project Representative.

Pierce County shall be named as an additional insured for Contractors' insurance coverage. Lessee shall cause Contractors to furnish Pierce County with a certificate of insurance and copy of amendatory endorsements, including but not limited to additional insured endorsement evidencing auto liability and commercial general liability insurance of Contractors before commencement of work. Before any exposure to loss may occur, Lessee shall cause Contractors to provide copy to Pierce County of Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to the PSCC Project. All certified copies of all required insurance policies and evidence of coverage of all subcontractors shall be provided Pierce County.

8.4 Waiver of Subrogation. Lessee shall cause its property insurance carrier(s) to release and waive all rights of subrogation against Lessor to the extent a loss is covered by property insurance in force; provided, however, that this Section shall be inapplicable if it would have the effect of invalidating any insurance coverage of Lessee.

8.5 Minimum Scope of Insurance Coverage for Lessee.

8.5.1 Lessee's Coverages.

During the Term of this Lease, Lessee shall at a minimum maintain:

Commercial General Liability insurance (Insurance Services Office form number (CG00 001), covering Commercial General Liability with a limit of not less than \$5,000,000 combined single limit per occurrence; \$5,000,000 aggregate.

Automobile Liability insurance (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.

Worker's Compensation coverage as required by the Industrial Insurance Act of State of Washington, statutory limits.

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.

8.5.2 Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions in insurance coverage maintained by Lessee must be declared to and approved by Lessor. The deductible and/or self-insured retention of the policies shall not limit or apply to Lessor and shall be the sole responsibility of Lessee.

8.5.3 Other Insurance Provisions.

The insurance policies required by this Ground Lease are also to contain or be endorsed to contain the following provisions where applicable:

(a) Liability Policies:

- (1) Lessee's insurance coverage shall be primary insurance as respects Lessor, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by Lessor its officers, officials, employees and agents shall not

contribute with Lessee's insurance or benefit Lessee in any way.

- (2) Lessee'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.

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

(c) Acceptability of Insurers. Unless otherwise approved by Lessor:

- (1) 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. Participation in a self-insured, governmental risk pool shall satisfy the condition set forth in this section.

- (2) If at any time any of the foregoing policies shall fail to meet the above minimum standards, Lessee shall, upon notice to that effect from Lessor, promptly obtain a new policy and shall submit the same to Lessor with certificates and endorsements for approval.

9. Eminent Domain.

9.1 Award. In the event of any taking, partial or whole, Lessor shall be entitled to the entire award judgment or settlement from the condemning authority for the value of the Land taken by the condemning authority.

10. Maintenance and State of Good Repair.

Lessee shall be responsible, at Lessee's sole cost and expense, for maintaining the PSCC Building, its FF & E and other appurtenances, including any other improvements on the Land in a state of good order, condition and repair. Lessee shall take all actions and will perform all maintenance and repairs, whether interior, exterior, structural, non-structural, foreseen and unforeseen, ordinary and extraordinary, to keep all aspects and parts of the Land and improvements in good repair and condition, subject only to ordinary wear and tear. Lessee shall plan for as well as establish and fund a reserve account for repair, replacement and other capital improvements that may be needed at the PSCC Building.

11. Operating Costs.

Lessee shall be responsible for property management and operation of the PSCC Building and payment of all associated costs.

12. Use of PSCC Project Solely for Governmental Purpose; Maintenance of Lessee's Status as a Governmental Instrumentality.

All capital assets financed with proceeds of the 2019A Bonds issued by the County for the PSCC Project shall be used solely for its governmental purposes of operating, maintaining and otherwise carrying out the governmental functions of the PSCC. Lessee covenants and agrees that it shall not make or permit any sale, lease, management or service contract, or other arrangement that provides to any nongovernmental person any special legal entitlement to use the capital assets comprising the PSCC Project and financed with the 2019A Bonds issued by the County. Lessee covenants and agrees it will cooperate with Lessor as reasonably required for the County to maintain the tax-exempt status of the 2019A Bonds.

Lessee covenants that, so long as the 2019A Bonds remain outstanding, Lessee shall maintain its status as a governmental instrumentality, within the meaning of Internal Revenue Service Revenue Ruling 57-128 of the local government units that are parties to the interlocal agreement pursuant to which Lessee was created.

13. Financial Obligations relating to County's Issuance of 2019A Bonds

Pursuant to the financial obligations assumed by SS911 in the PSCC Financing Agreement, Lessee covenants and agrees as follows:

If annual revenue received by the County from the South Sound 911 Tax is at any time insufficient to meet the regularly scheduled debt service requirements of 2019A Bonds, Lessee shall pay to the County contingent rent in the amounts and at the times required to make up such shortfall and ensure that the County's 2019A Bonds are fully paid and retired. Lessee shall identify the sources of revenues and include in its adopted budget any necessary authorization to expend the revenues that it intends to rely on to make up any such shortfall. Lessee shall take into account and anticipate potential changes to expected revenues from the South Sound 911 Tax and consider and plan for contingencies to ensure that it will have sufficient other revenues to make up any such shortfall. To that end, Lessor will endeavor to provide to Lessee, as early as may be practicable in advance of any regularly scheduled debt service payment date for the 2019A Bonds, notice of any events or circumstances of which Lessor becomes aware that indicate that revenues expected to be received from the South Sound 911 Tax may be insufficient to pay, in full, the debt service requirements of the 2019A Bonds; provided, however, the provision of such notice shall not be a precondition to the obligation of Lessee to pay contingent rent to the County as required to make up any such shortfall.

14. Right to Purchase Land as Improved.

Lessee shall have the right to purchase the Land legally described at **EXHIBIT A** as improved with the PSCC Building and its FF & E for a Purchase Price of \$2.95 Million. The Resolution of the Pierce County Council approving execution of the PSCC Financing Agreement and this Ground Lease shall be deemed to satisfy the requirement in Pierce County Code Section 2.110.090 for County Council approval of terms and conditions prior to real property disposal. The Parties agree and acknowledge that such Resolution will have approved the terms and conditions for sale of the Land as improved set forth in this Section 14. If after approval of such Resolution by the County Council, the Parties wish to negotiate and amend the terms and conditions for sale in this Section 14, approval and ratification by the County Council will be required.

Payment of the purchase price will consist of the \$2.95 Million paid as Rent pursuant to this Ground Lease. As long as all Rent due to Lessor pursuant to this Ground Lease has been paid and all the other conditions in Section 14.1 are met, no additional payment to Lessee shall be required for conveyance of the Land to Lessee; provided, however, that Lessee shall be responsible for fees to record the Deed, and should escrow services be required, half the cost of closing. Should Lessee wish to insure title, Lessee shall pay all costs associated with obtaining title insurance.

14.1 Conditions for Lessee's exercise of Right to Purchase the Land as Improved – Closing Contingencies.

Lessee's exercise of the Right to Purchase the Land as Improved is subject to satisfaction of the following conditions:

- a. The County's 2019A Bonds shall have been fully paid and retired and are no longer outstanding.
- b. Lessee shall have paid the Rent for the entire Term of the Lease in the amount of \$2.95 Million by the Effective Date of this Ground Lease and shall have fully paid all contingent rent, if any, that has become due and payable pursuant to Section 13 of this Ground Lease.
- c. Lessee has not received any written notice from Lessor that Lessee is in breach of any major covenant in this Ground Lease, including but not limited to Sections 7, 12, and 13.
- d. Lessee has performed all its major obligations under this Ground Lease, including but not limited to meeting insurance requirements, operating the PSCC in a safe and secure manner, maintaining all improvements on the Land in a state of good repair.
- e. Lessee is not otherwise in default under this Ground Lease.
- f. Lessee has provided Lessor with a written notice of intent to exercise its Right to Purchase the Land as improved.

- g. Lessee waives all contingencies to closing on the purchase and sale of the Land as improved including but not limited to contingencies relating to title, environmental, and development approval.
- h. Lessee sends written confirmation to Lessor that Lessee has received the Environmental Section of the disclosure statement described in RCW 64.06.013 from Pierce County.
- i. Lessee sends written confirmation to Lessor that Lessee has paid to the applicable government agencies all Impositions owing as of the date of conveyance of title to the Land.

Upon the confirmation of each Party that all conditions in Section 14.1 are satisfied, Lessor shall execute a Deed substantially in the form as set forth at **EXHIBIT C** and provide the executed Deed to Lessee for recording. All exceptions that appear on title and all other matters of record shall be incorporated as Permitted Exceptions in the Deed.

14.2 When and How Right to Purchase May be Extinguished.

In the event that Lessee fails to perform the obligations set forth in Sections 12 and 13 related to the County's issuance of 2019A Bonds for the PSCC Project, Lessee agrees that Lessor may extinguish Lessee's Right to Purchase the Land as Improved if after written notice of breach of Sections 12 and 13 by Lessor and thirty (30) days' opportunity to cure such breach, Lessee has not cured said breach. In such event, Lessor may send written notice extinguishing Right to Purchase to Lessee that the Right to Purchase the Land as Improved is Extinguished, that such Right will not be restored without a renegotiation of the terms of the purchase and sale of the Land as Improved and that such new agreement will be subject to County Council approval. If Lessee's Right to Purchase the Land as Improved is extinguished by Lessor's written notice, Lessor shall be entitled to ownership of all improvements made to the Land by Lessee. Upon receipt of such written notice from Lessor, Lessee shall execute all necessary and appropriate documents to vest title to the PSCC Building and FF & E in Lessor free and clear of any and all liens, encumbrances and security interest.

15. **Events of Default by Lessee and Lessor's Remedies.**

15.1 Events of Default. The following occurrences or acts shall constitute an event of default under this Ground Lease:

- (a) Failure to Perform. If Lessee shall (i) default in making payment when due of any rent or any other amount payable by Lessee hereunder; or (ii) default in the observance or performance of any other substantial provision of this Ground Lease to be observed or performed by Lessee hereunder; and, in either case, if such default shall continue for thirty (30) calendar days, in each case after Lessor shall have given to Lessee notice specifying such default and demanding that the same be cured, or, with respect to a default under subsection (ii), if by reason of the nature thereof

such default cannot be cured by the payment of money and cannot with due diligence be wholly cured within such period of thirty (30) calendar days, if Lessee shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default and with all due diligence, it being intended in connection with a default not susceptible of being wholly cured with due diligence within such period that the time within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with all due diligence; or

- (b) Lessee's Financial Condition. If Lessee shall make a general assignment for the benefit of creditors, or shall file a petition in bankruptcy, or shall be adjudicated as bankrupt or insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or shall fail seasonably to contest the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Lessee or any material part of its properties.

15.2 Remedies Upon Lessee's Default.

In the event of any default by Lessee as defined hereinabove which default remains uncured after the expiration of the respective period set forth above, Lessor may exercise any remedy which may be available to Lessor at law or equity, including but not limited to actions for damages, and/or injunctive relief.

The Parties agree that the loss of Right to Purchase the Land as Improved is a potential consequence that Lessee may suffer in addition to or in lieu of other remedies that Lessor may exercise. The conditions for exercise of that Right to Purchase by Lessee as well as the conditions and procedures for Lessor to extinguish that Right to Purchase are set forth in Section 14. Lessor may extinguish the Right to Purchase the Land as Improved without establishing default by Lessee and without termination of this Ground Lease.

15.3 Cumulative Rights and Remedies.

The rights and remedies reserved to Lessor herein, including those not specifically described, shall be cumulative, and except as provided by Washington statutory law in effect at the time, Lessor may pursue any and all such rights and remedies at the same time or independently.

15.4 No Waiver.

No delay or omission of Lessor to exercise any right or remedy shall, except as expressly provided herein, be construed as a waiver of any such right or remedy or of any default by Lessee hereunder. The acceptance by Lessor of rent or any additional rent hereunder shall not be a waiver of any preceding breach or default by Lessee of any provision

hereof, other than the failure of Lessee to pay the particular rent accepted, regardless of Lessor's knowledge of such preceding breach or default at the time of acceptance of such rent, or, except as expressly set forth herein, a waiver of Lessor's right to exercise any remedy available to Lessor by virtue of such breach or default.

15.5 Attorneys' Fees; Venue.

If either Party incurs any expenses, including but not limited to reasonable attorneys' fees, consultant and expert witness fees, in connection with any action or proceeding instituted by any Party by reason of any default or alleged default of a Party hereunder, the Party prevailing in such action or proceeding shall be entitled to recover its reasonable expenses from the other Party hereto. For purposes of this provision, in any action or proceeding instituted pertaining to this Ground Lease, a Party shall be deemed the prevailing party if (i) judgment is entered substantially in favor of said Party or (ii) before trial or judgment the other Party shall pay all or any portion of the charges claimed by said Party, or the other Party shall eliminate the condition(s), cease the act(s) or otherwise cure the omissions(s) claimed by said Party to constitute a default by the other Party hereunder. The venue of any action arising out of or relating to this Ground Lease shall be in the Superior Court of Pierce County, Washington.

16. Quiet Enjoyment.

16.1 Lessee's Occupation of the Land. If and so long as Lessee shall pay all rent and all other amounts payable by Lessee hereunder whenever the same shall become due and shall keep all of the covenants and conditions required by it to be kept during this Ground Lease and shall perform all of its other obligations hereunder, Lessor covenants and agrees that, Lessor will not interfere with the peaceful and quiet occupation and enjoyment of the Land by Lessee, which occupation and enjoyment shall be without hindrance, ejection or molestation by Lessor.

17. Lessee to Comply with Applicable Laws and Agreements.

17.1 Compliance with Laws. Lessee shall not use the Land or permit anything to be done in or about the Land which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Lessee shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, and obtain all permits, licenses or other approvals required by governmental agencies or bodies. Lessee shall further comply with the requirements of any board or fire insurance underwriters or other similar bodies now or hereafter constituted, relating to, or affecting the condition, use or occupancy of the Land.

17.2 Compliance with Agreements. Lessee shall comply with all insurance policies and applicable agreements to which Lessee is a party or by which it is bound, now or hereafter in effect, and all agreements of which Lessee has notice and which are now in effect and applicable to the Land.

18. Waiver Limitations.

18.1 Waiver Limitations. The waiver by either Party of any term, covenant or condition herein contained on the part of the other Party to be performed shall not be deemed a waiver of such term, covenant or condition for any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Ground Lease, other than the failure of Lessee to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

19. Notices.

Addresses. All notices and demands shall be in writing, addressed to the person entitled to such notice, and sent by either: (a) United States mail, return receipt requested; (b) recognized overnight express service which customarily maintains a contemporaneous permanent delivery record; or (c) fax to the address of such person as set forth in this Agreement, or such address or addresses designated in writing from time to time. The notice shall be deemed delivered on the earlier of: (a) three (3) business days from deposit in the United States mail; (b) the delivery date as shown in the regular business records of the overnight courier service; or (c) the date of automatic confirmed receipt by the recipient's fax, as the case may be.

If to Lessor: Pierce County
Attn: Director of Facilities Management
1102 Broadway, Suite 302
Tacoma, WA 98402
Facsimile: 253-798-7401

Copy to: Attn: Deputy Prosecuting Attorney
Pierce County Prosecuting Attorney – Civil Division
955 Tacoma Avenue South, Suite 301
Tacoma, WA 98402
Facsimile: 253-798-6713

If to Lessee: South Sound 911 Public Authority
Attn: Janet Caviezel, Assistant Director
955 Tacoma Avenue South, Suite 202

Tacoma, WA 98402

For the purpose of this Section, addresses for notice may be changed by giving written notice of such change in the manner herein provided for giving notice.

20. Assignment and Subleasing.

20.1 Subleasing. Lessee shall not enter into any subleases or grant any permits or licenses that are inconsistent with the covenant as set forth in Section 12 to solely use capital assets for the governmental functions of the PSCC Project. Any proposed subleases of the Land shall be subject to the review and approval of Lessor which shall not be unreasonably withheld as long as it is consistent with covenants set forth in this Ground Lease.

20.2 Assignment. Lessee shall not assign, mortgage, or encumber this Ground Lease or delegate the duties of Lessee under this Ground Lease without the prior written consent of Lessor. A consent to one assignment shall not be deemed to be a consent by Lessor to any subsequent assignment by another person. This Ground Lease shall not, nor shall any interest of Lessee herein, be assignable by operation of law, without prior written consent of Lessor.

21. No Mortgage or Encumbrance.

In no event shall Lessee cause or allow any interest of Lessor to be subordinated to any other interest. Lessee shall not mortgage, pledge, encumber or assign the Land in whole or in part. If Lessee causes or allows encumbrance of the Land, said encumbrance shall be cause for immediate termination of this Ground Lease by Lessor. In the event of such an encumbrance, Lessee shall immediately remove or cause to be removed, at no expense to Lessor, said encumbrance.

22. Holding Over.

In the event that the Ground Lease has expired, and the Lessee's Right to Purchase the Land as Improved is extinguished, but Lessee holds over in its occupation of the Land or any portion of the Land, such holding over shall operate and be construed as a tenancy from month to month subject to the terms and conditions in this Ground Lease. However, nothing contained herein shall be construed as consent by Lessor to the holding over of the Land by Lessee.

23. Dispute Resolution.

The Parties shall endeavor to resolve any dispute regarding the interpretation of the terms of this Ground Lease first through negotiation. Any dispute with regard to the facts underlying an allegation of breach of this Ground Lease that could constitute a default or otherwise result in extinguishing the Lessee's Right to Purchase the Land as Improved shall be subject to a dispute resolution process that includes negotiation between the Parties' representatives, then escalation to the Parties' respective Executive if the dispute has not been resolved within ten (10) business

days. If after fifteen (15) business days the dispute is still not resolved, either party may, by delivering written notice to the other, request that the matter be referred to a neutral dispute resolution mediator to be chosen by agreement of the Parties. Said written notice and request for mediation shall include a summary of the facts relating to the dispute, identify the points of disagreement, include citations to the relevant provisions of this Ground Lease and propose three names for a potential mediator. If the Parties fail to agree on a mediator within seven (7) business days of receiving said written notice and request for mediation, the Parties shall apply to Pierce County Superior Court for appointment of a neutral mediator. The mediator's recommendations shall be in writing, furnished to each Party, advisory only and shall be based on the pertinent Ground Lease provisions, and consider the facts and circumstances involved in the dispute. The fees and costs charged by the mediator shall be shared equally between the Parties. Either Party may further escalate the dispute to legal action only after the Parties have received the mediator's recommendations.

24. Miscellaneous.

24.1 Time of Essence. Time is of the essence regarding performance of the covenants and agreements stated herein.

24.2 No Joint Venture or Agency. Nothing contained in this Ground Lease nor any of the acts of the parties hereto shall be construed nor is it the intent of the parties, to create a joint venture or partnership between Lessor and Lessee, nor is either Party the agent or representative of the other, and nothing in this Ground Lease shall be construed to create any such agency relationship or to hold either Party liable to anyone for goods delivered or services performed at the request of the other Party.

24.3 Amendments. No change in or addition to or waiver or termination of this Ground Lease any part hereof, shall be valid unless made in writing and signed by or on behalf of the Party charged therewith. Lessor and Lessee agree to negotiate in good faith any amendments to this Ground Lease that may be requested or required in connection with the issuance of the bonds to finance the PSCC Project.

24.4 Governing Law. This Ground Lease shall be construed in accordance with and governed by the laws of the State of Washington.

24.5 Headings. The article, section and paragraph headings herein contained are for the purposes of identification and reference convenience only and shall not be considered in construing this Ground Lease.

24.6 Successors and Assigns. Subject to the provisions hereof restricting the sublease or assignment by Lessee, all the terms and provisions of this Lease shall be binding upon and to the benefit of and be enforceable by the parties and the successors and assigns of the parties.

24.7 No Merger. In no event shall the leasehold interest of Lessee hereunder merge with any estate of Lessor in or to the Land. If Lessor acquires the leasehold interest of Lessee, such leasehold interest shall not merge with Lessor's fee interest in the Land and this Ground Lease shall remain in full force and effect.

24.8 Counterparts; Recording of Memorandum. This Ground Lease may be executed in several counterparts, each of which shall be deemed an original for all purposes. Either Lessor or Lessee shall have the right to record a memorandum of this Ground Lease and the parties shall cooperate in execution of such memorandum.

24.9 Survival. The indemnity provisions in this Ground Lease shall survive the expiration or earlier termination of this Ground Lease. The terms of the Right to Purchase set forth in Section 14 shall survive the expiration of this Ground Lease unless said Right to Purchase is earlier extinguished in accordance with Section 14.

24.10 Severability. In the event that any provision in this Ground Lease is held to be invalid by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provision in this Ground Lease.

24.11 Civil Rights Assurances. Lessee, in the use of the Land, the PSCC Building and its FF & E ("Facilities"), for itself, its representatives, successors in interest or assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the Land that: (a) no person on grounds prohibited under federal, state or local law, including race, creed, color, religion, national origin, sex, age, marital status, sexual orientation, veterans and military status, political affiliation or belief or the presence of any sensory, mental or physical handicap, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Facilities; (b) that in construction of any improvements on, over, or under such Facilities and the furnishing of services thereon, no person on grounds prohibited under federal, state or local law, including race, creed, color, religion, national origin, sex, age, marital status, sexual orientation, veterans and military status, political affiliation or belief or the presence of any sensory, mental or physical handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (c) that Lessee shall use the Facilities in compliance with all other requirements imposed by the state or federal agency having jurisdiction over the Facilities.

24.12 Schedule of Exhibits. This Ground Lease includes the following exhibits attached hereto and incorporated herein by this reference.

- EXHIBIT A Land Legal Description
- EXHIBIT B General Contractor Minimum Insurance Requirements
- EXHIBIT C Deed (Pursuant to Section 14 Right to Purchase)

IN WITNESS WHEREOF, Lessor and Lessee have executed this Ground Lease as of the date set forth in the first paragraph of this Ground Lease to evidence their agreement to the terms of this Ground Lease.

DATED the date first above written.

**PIERCE COUNTY
SIGNATURE PAGE**

Pierce County

By _____
Bruce F. Dammeier Date
Pierce County Executive

Recommended:

By _____
Finance Director Date

Approved as to legal form only:

By _____
Deputy Prosecuting Attorney Date

STATE OF WASHINGTON }

COUNTY OF _____ } ss.

I certify that I know or have satisfactory evidence that Bruce Dammeier is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Executive of PIERCE COUNTY, a municipal corporation and political subdivision of the State of Washington, to be the free and voluntary act of such municipal corporation for the uses and purposes mentioned in the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this _____ day of _____, 2019.

Printed Name _____
NOTARY PUBLIC in and for the State of Washington,
residing at _____
My Commission Expires _____

**SOUTH SOUND 911
SIGNATURE PAGE**

South Sound 911 Public Authority:

By _____
Andrew E. Neiditz Date
SS911 Executive Director

Approved as to form:

By _____
Peter Beckwith Date
SS911 General Counsel

STATE OF WASHINGTON }

COUNTY OF _____ } ss.

I certify that I know or have satisfactory evidence that Andrew E. Neiditz is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Executive Director of South Sound 911, a Washington public development authority, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this _____ day of _____, 2019.

Printed Name _____
NOTARY PUBLIC in and for the State of Washington,
residing at _____
My Commission Expires _____

EXHIBIT A TO GROUND LEASE

LAND LEGAL DESCRIPTION

ALL OF BLOCK 78, AMENDED MAP OF FIRST SCHOOL LAND ADDITION TO THE CITY OF TACOMA, ACCORDING TO PLAT RECORDED IN VOLUME 7 OF PLATS, PAGE 77, RECORD OF PIERCE COUNTY AUDITOR.

TOGETHER WITH THE NORTH HALF OF SOUTH 36TH STREET ADJOINING OR ABUTTING ON THE SOUTH, WHICH UPON VACATION, ATTACHED TO SAID PREMISES BY OPERATION OF LAW, AS VACATED BY ORDINANCE NO. 21203 OF THE CITY OF TACOMA RECORDED JUNE 7, 1978 UNDER RECORDING NO. 2827200.

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

TAX PARCEL NO. 7470023329
3580 PACIFIC AVENUE
TACOMA, WASHINGTON 98407

EXHIBIT B TO GROUND LEASE

MINIMUM INSURANCE REQUIREMENTS FOR GENERAL CONTRACTOR [subject to review/revision by contractor]

A. Indemnification

The Contractor shall defend, indemnify and hold the Owner and Pierce County, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the Owner.

If 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 Contractor and the Owner and Pierce County, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes 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.

B. Insurance Term

The Contractor shall procure and maintain insurance, as required in this Section, without interruption from commencement of the Contractor's work through the term of the contract and for thirty (30) days after the Physical Completion date, unless otherwise indicated herein.

C. No limitation

The Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the Owner's or Pierce County's recourse to any remedy available at law or in equity.

D. Minimum Scope of Insurance

The Contractor's required insurance shall be of the types and coverage as stated below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit, using ISO form CG 25 03 05 09 or an equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse or underground property damage.

The Owner and Pierce County shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the Owner using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Excess or Umbrella Liability insurance shall be excess over and at least as broad in coverage as the Contractor's Commercial General Liability and Automobile Liability insurance. SS911 and Pierce County shall be named as an additional insured on the Contractor's Excess or Umbrella Liability insurance policy. The Excess or Umbrella insurance coverage will drop down when underlying policy aggregate limits are exhausted.
5. Builders Risk insurance covering interests of the Owner, Pierce County the Contractor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on a special perils policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood, earthquake, theft, vandalism, malicious mischief, and collapse. The Builders Risk insurance shall include coverage for temporary buildings, debris removal, and damage to materials in transit or stored off-site. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Contractor. Higher deductibles for flood and earthquake perils may be accepted by the Owner upon written request by the Contractor and written acceptance by the Owner. Any increased deductibles accepted by the Owner will remain the responsibility of the Contractor. The Builders Risk insurance shall be maintained until the Owner has granted substantial completion of the project. An installation floater may be acceptable in lieu of Builders Risk for renovation projects only if approved in writing by the Owner.

E. Minimum Amounts of Insurance

The Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$3,000,000 each occurrence, \$6,000,000 general aggregate and a \$3,000,000 products-completed operations aggregate limit.
3. Excess or Umbrella Liability insurance shall be written with limits of not less than \$5,000,000 per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through the Contractor's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits.

4. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.

F. Owner Full Availability of Contractor Limits

If the Contractor maintains higher insurance limits than the minimums shown above, the Owner shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate of insurance furnished to the Owner evidences limits of liability lower than those maintained by the Contractor.

G. Other Insurance Provision

The Contractor's Automobile Liability, Commercial General Liability and Builders Risk insurance policies are to contain or be endorsed to contain that they shall be primary insurance as respects the Owner and Pierce County. Any insurance, self-insurance, or self-insured pool coverage maintained by the Owner or Pierce County shall be excess of the Contractor's insurance and shall not contribute with it.

H. Contractor Insurance for Other Losses

The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers, contractors or subcontractors as well as to any temporary structures, scaffolding and protective fences.

I. Waiver of Subrogation

The Contractor and the Owner waive all rights against each other, any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

J. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

Verification of Coverage

The Contractor shall furnish the Owner and Pierce County with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the Automobile Liability and Commercial General Liability insurance of the Contractor before commencement of the work. Before any exposure to loss may occur, the Contractor shall file with the Owner a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this project. Upon request by the Owner, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this contract and evidence of all subcontractors' coverage.

K. Subcontractors

The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Contractor shall ensure that the Owner and Pierce County are additional insureds on each and every Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

L. Notice of Cancellation

The Contractor shall provide the Owner and all Additional Insureds for this work with written notice of any policy cancellation within two business days of their receipt of such notice.

M. Failure to Maintain Insurance

Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the Owner may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Owner on demand, or at the sole discretion of the Owner, offset against funds due the Contractor from the Owner.

EXHIBIT C TO GROUND LEASE

DEED (PURSUANT TO SECTION 14 RIGHT TO PURCHASE)

WHEN RECORDED RETURN TO:

BARGAIN AND SALE DEED

Grantor: Pierce County, a municipal corporation and political subdivision of the State of Washington.

Grantee: _____

Abbreviated legal: Blk 78, School Land First, Vol. 7, P. 77, Pierce County
APN: 7470023329
Property Address: 3580 Pacific Avenue, Tacoma, WA 98407
Full legal description is on Exhibit A.

Tax parcel number(s): 7470023329

Grantor, Pierce County, a municipal corporation and political subdivision of the State of Washington, for and in consideration of ten dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, bargains, sells and conveys to _____ (“Grantee”) that certain real property located in Pierce County, Washington and legally described on **Exhibit A** attached hereto and by this reference incorporated herein, together with all interests, privileges and easements appurtenant thereto and any and all improvements located thereon (the “Subject Property”), subject to the permitted exceptions in **Exhibit B** attached hereto and by this reference incorporated herein. The conveyance hereby made is further subject to the following restriction that shall apply to Grantees that were formed under chapter 35.21 RCW: Thirty days’ advance written notice of any proposed sale or encumbrance of the Subject Property shall be provided by Grantee to the chief executive officer of Grantor and to all members of Grantor’s legislative body and to each local newspaper of general circulation, and to each local radio or television station or other news medication which has on file with Grantee a written request to be notified. Prior to any proposed sale or encumbrance of the Subject Property by Grantee, Grantee shall obtain approval of the governing body of the public corporation or authority for such proposed sale or encumbrance at a public meeting of which notice has been provided pursuant to RCW 42.30.080.

Dated this ____ day of _____, 20__.

EXHIBIT A TO DEED

SUBJECT PROPERTY LEGAL DESCRIPTION

ALL OF BLOCK 78, AMENDED MAP OF FIRST SCHOOL LAND ADDITION TO THE CITY OF TACOMA, ACCORDING TO PLAT RECORDED IN VOLUME 7 OF PLATS, PAGE 77, RECORD OF PIERCE COUNTY AUDITOR.

TOGETHER WITH THE NORTH HALF OF SOUTH 36TH STREET ADJOINING OR ABUTTING ON THE SOUTH, WHICH UPON VACATION, ATTACHED TO SAID PREMISES BY OPERATION OF LAW, AS VACATED BY ORDINANCE NO. 21203 OF THE CITY OF TACOMA RECORDED JUNE 7, 1978 UNDER RECORDING NO. 2827200.

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

TAX PARCEL NO. 7470023329
3580 PACIFIC AVENUE
TACOMA, WASHINGTON 98407

EXHIBIT B TO DEED

PERMITTED EXCEPTIONS

All exceptions noted in that ALTA commitment for title insurance issued by First American Title Insurance Company, Commitment No. 4266-3255848, dated June 7, 2019.

All facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.

All facts disclosed in the Existing Conditions Survey by Parametrix for South Sound 911 of Tax Parcel 7470023329, dated 05/2018.