



PIERCE TRANSIT BOARD MEETING

**Training Center, Rainier Room
3720 96th Street SW, Lakewood, WA
October 10, 2016, 4:00 PM**

AGENDA

A Special Joint Meeting with the CTAG will be held prior to this meeting at 3:00 PM

CALL TO ORDER

ROLL CALL

PRESENTATIONS

- September Operator of the Month, Victor Santiago Trish Macomber, Transit Operator Assistant Manager
- Overview of Sound Transit 3 Ballot Measure Chelsea Levy, Sound Transit Govt. & Comm. Relations Officer
- CTAG 3rd Quarter Update Chris Karnes, CTAG Member
- Financial Report Kelli Dion, Budget Assistant Manager
- 2017 Legislative Priorities Alex Fastle, Govt. & Comm. Relations Officer

PUBLIC COMMENT

(Citizens wishing to provide comment will be given three minutes to comment on any transit-related matters regardless of whether it is an agenda item or not.)

CONSENT AGENDA

(Items listed below were distributed to Commissioners in advance for reading and study and are enacted with one motion. Item(s) may be moved to the Action Agenda at the request of a Commissioner.)

1. Approval of Vouchers, October 3, 2016
2. Minutes: Regular Board Meeting of September 12, 2016
3. FS 16-063, A Resolution Authorizing the Regional Transit ORCA Marketing and Transportation Demand Management Project Agreement with King County Metro Transit

4. FS 16-064, A Motion Authorizing Amendment No. 1 to Task Order No. 3 with Wiss, Janney, Elstner and Associates, Inc., for Design and Construction Administration at the Tacoma Dome Station for Lighting Changes and for the Design of Electric Vehicle Charging Stations
5. FS 16-065, A Motion Authorizing Task Orders 3, 4, 5 and 6 to the Master On-Call Agreement with Gray and Osborne for Architect/Engineering Services Related to four Transit Center and Park and Ride Renewal Projects at SR-512 Transit Center, 72nd Street Transit Center, Tacoma Mall Transit Center, and Tacoma Community College (TCC) Transit Center and Park-and-Ride
6. FS 16-068, A Resolution Adopting the Region 5 All Hazard Mitigation Plan - 2015-2020 Edition and the Pierce Transit Authority Addendum to the Region 5 Hazard Mitigation Plan; and Updating the 2004 Pierce County Natural Mitigation Plan

ACTION AGENDA

1. FS 16-066, Authority to Execute a Development and Option Agreement for the Lease of Real Property with Multi-Service Center for a Portion of the Property Located at 1319 East 72nd Street, Tacoma, Washington for Development of Housing for Veterans, Following Approval by the Federal Transit Administration
Dan Pike
Executive Director of Planning & Communications
2. FS 16-067, A Resolution Authorizing Execution of a Purchase and Sale Agreement with DMG Group for Sale of the property Located at 415 East 25th Street, Tacoma, Washington
Dan Pike
Executive Director of Planning & Communications

STAFF UPDATES/DISCUSSION

- CEO's Report
Sue Dreier, Chief Executive Officer

INFORMATIONAL BOARD ITEMS

- Chair Report
Chair Keel
- Sound Transit Update
Comm. Strickland or McCarthy
- Commissioners' Comments

EXECUTIVE SESSION

ADJOURNMENT

Overview of Sound Transit 3 Ballot Measure

Presented by: Chelsea Levy, Sound Transit Govt. & Comm.
Relations Officer

PROJECT DELIVERY TIMELINES



SOUND TRANSIT 3

August 2016

A PLAN TO KEEP OUR REGION MOVING

As the region's population grows, Sound Transit 3 would provide fast, predictable alternatives to traffic congestion, with new light rail, Bus Rapid Transit and commuter rail stations opening every few years.



Builds 62 more miles of light rail, connecting major urban centers from **Everett to Tacoma** and from **Ballard and West Seattle to Redmond**, south **Kirkland and Issaquah** with trains running every six minutes in peak hours. Extends **Tacoma Link to Tacoma Community College**.



Improves access to transit service by building **new parking spaces, and more miles of bicycle and pedestrian trails**.



Establishes bus rapid transit (BRT) service on I-405/ SR 518 all the way from Lynnwood to Burien and on SR 522 and NE 145th Street from Woodinville to Shoreline, with buses every 10 minutes in peak hours.

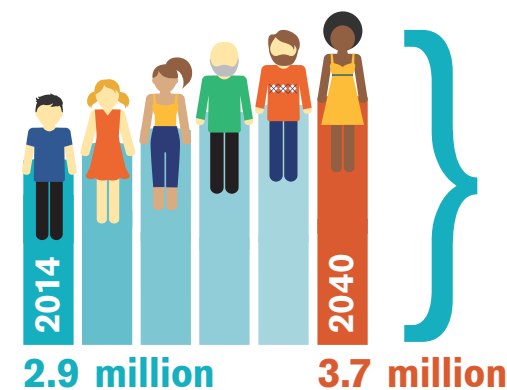


Helps protect the environment. With the completion of ST3, by 2040 the entire Sound Transit system will save an estimated 793,000 metric tons of greenhouse gas emissions annually.



Extends the **Souder south line** from Lakewood to DuPont to serve Joint Base Lewis/McChord and **builds additional parking and access improvements at Souder stations**.

1,000 NEW NEIGHBORS EVERY WEEK



Source: Puget Sound Regional Council

Last year, our region added 52,000 people¹ and an estimated 41,000 cars². In the next 25 years our populations is estimated to grow by more than 800,000¹.

With this growth, more people are competing for limited road space, dramatically increasing travel time – and travel headaches. Hours of delay on the Central Puget Sound region's freeways increased by 95 percent between 2010 and 2015³.

Source: ¹Puget Sound Regional Council

²U.S. Census Data

³2015 WSDOT Corridor Capacity Report

To request accommodations for persons with disabilities or for information in alternative formats, call 1-800-201-4900 / TTY Relay: 711 or email accessibility@soundtransit.org.

Sound Transit plans, builds and operates regional transit systems and services to improve mobility for Central Puget Sound.

Para obtener información acerca de la posible futura extensión del sistema de Sound Transit, llame al 1-800-823-9230 durante horas normales de oficina.

향후의 잠재적 Sound Transit 시스템 확장에 대한 정보는 업무 시간 중에 1-800-823-9230으로 문의해 주십시오.

Если вы хотите получить информацию о потенциальном расширении системы Sound Transit в будущем, позвоните по телефону 1-800-823-9230 в обычные рабочие часы.

Để biết thêm tin tức về khả năng mở rộng hệ thống Sound Transit trong tương lai, xin gọi số 1-800-823-9230 trong giờ làm việc thường lệ.

要瞭解 Sound Transit 系統將來可能會擴展的資訊，請在正常的辦公時間致電 1-800-823-9230。

Sound Transit 3 will knit the region together with greater mobility in the face of tremendous population and job growth, preparing the region for continued economic growth and a sustainable future.

PROPOSED PROJECTS



Light Rail

- From Overlake to downtown Redmond: 2024
- From Kent/Des Moines to Federal Way: 2024
- From Federal Way to Tacoma: 2030
- From West Seattle to downtown Seattle: 2030
- From Ballard to downtown Seattle: 2035
- From Lynnwood to Everett: 2036
- From south Kirkland to Issaquah: 2041
- Tacoma Link extension to Tacoma Community College: 2039
- Infill stations at S. Graham Street, S. Boeing Access Road and NE 130th Street: 2031



Bus Rapid Transit (BRT)

- I-405 and SR 518 from Lynnwood to Burien: 2024
- SR 522 and NE 145th Street: 2024



Commuter Rail

- Extends Sounder south service from Lakewood to DuPont: 2036
- Sounder south capacity and access improvements: 2024-2036
- Additional parking at Mukilteo and Edmonds stations: 2024

Bus Reliability Early Deliverables Program: 2019-2024

- Proposed operations of existing bus routes on the shoulders of I-5, I-405, I-90, SR 518 and SR 167
- Capped capital investments for improved bus speed and reliability while longer-term projects are planned and constructed on RapidRide bus service along King County Metro's C and D lines and Madison Street, as well as bus improvements to Tacoma's Pacific Avenue, and between east Pierce County and the Sumner Sounder Station

Planning Studies

- High-Capacity Transit (HCT) Environmental Study: Bothell to Bellevue
- HCT Study: Everett to Everett College
- HCT Study: Northern Lake Washington
- HCT Study: Light Rail extending from West Seattle to Burien and Renton
- HCT Study: Commuter Rail to Orting
- HCT Study: Tacoma Dome to Tacoma Mall



KEY	
PROPOSED ST3 PROJECTS	
	Link Light Rail
	Bus Rapid Transit
	Sounder Rail
	Proposed shoulder-running buses / bus speed and reliability
	Environmental study
	Future investment study
CURRENT AND PLANNED SERVICE	
	Link Light Rail
	Sounder Rail
	ST Express Bus
STATIONS	
	New station
	New station / added parking
	Improved station
	Major rail transfer

NOTE: All routes and stations are representative.

The ST3 Draft Plan proposes \$54 billion in mass transit projects over the next 25 years.

To pay for ST3, the plan would increase:

- sales tax by 0.5 percent, or 50 cents on a \$100 purchase
- license tabs (MVET) by 0.8%, or \$80 annually on a \$10,000 vehicle, and
- property tax by 25 cents for each \$1,000 of assessed valuation, or \$100 annually for a \$400,000 house.

The typical adult in the Sound Transit District would pay approximately \$169 per year, or \$14 per month in new taxes. Other funding sources include federal grants, bonds, existing Sound Transit taxes and fares.

SOUND TRANSIT 3 PLAN PROJECTS BY AREA

North



Link Light Rail

- Extends the Lynnwood Link extension that is on track for 2023 completion northward from Lynnwood to downtown Everett via SW Everett Industrial Center and I-5 with six (plus one provisional) new stations. Riders could travel from Everett to downtown Seattle (Westlake Station) in 60 minutes. Project completion: 2036
- New light rail stations would serve the areas of West Alderwood Mall, Ash Way, Mariner, SR 526/Evergreen, SR 99 (provisional), SW Everett Industrial Center and the area of the existing Everett Station, with parking investments at Mariner and Everett Stations.
- Funds a study of a potential future extension of light rail from downtown Everett to Everett Community College.



Sounder North Commuter Rail

- Constructs new parking and other access improvements in Edmonds and Mukilteo as early deliverables.

East



Link Light Rail

- Extends the East Link light rail line that is on track for 2023 completion, from Redmond's Overlake area to a new station with parking serving Southeast Redmond, continuing to downtown Redmond. Riders could travel from downtown Redmond to downtown Bellevue in 17 minutes. Project completion: 2024
- Establishes a new Eastside light rail line from South Kirkland to Issaquah with a connection via east Link to Seattle or Redmond and I-405 BRT to Lynnwood or Burien. Four new Eastside light rail stations would serve the areas of south Kirkland, Richards Road, Eastgate near Bellevue College, Lakemont (provisional station) and Central Issaquah, with a parking facility in Central Issaquah. Riders could travel from Central Issaquah to downtown Bellevue in 17 minutes. Project completion: 2041

- Funds a study between Bothell and Bellevue to complete environmental review for a potential future high-capacity transit line.



Bus Rapid Transit (BRT)

- Establishes BRT service from Lynnwood to Tukwila on I-405, continuing to the Burien Transit Center on SR 518 in new bus-only lanes. Project completion: 2024
- Additional parking is planned at Kingsgate/Totem Lake, NE 44th Street in Renton, and South Renton.
- New stations include NE 85th Street in Kirkland, NE 44th Street in Renton, and a new transit center in South Renton. BRT service will connect with existing freeway stops and transit centers in Lynnwood, Canyon Park, UW Bothell, Brickyard, Kingsgate/Totem Lake, Downtown Bellevue, Tukwila International Boulevard Station and Burien.
- Access by Kirkland residents to the system would be facilitated by the new NE 85th Street BRT freeway station along I-405. New bus-only lanes on NE 85th Street between I-405 and 6th would improve bus speed on NE 85th Street to the Kirkland Transit Center.
- BRT service on SR 522 and NE 145th Street would connect riders with the future Link light rail station on I-5 as well as planned I-405 BRT service, substantially improving transit options for residents of the Lake Forest Park, Kenmore, Bothell and Woodinville areas. Additional parking would be constructed at Lake Forest Park, Kenmore and Bothell.

Central



Link Light Rail

- Extends grade-separated light rail service from downtown Seattle to West Seattle with new stations serving the stadiums, SODO, Delridge, Avalon and Alaska Junction areas. Riders could travel from downtown Seattle (Westlake Station) to the West Seattle Junction in 17 minutes. Project completion: 2030
- Extends light rail to Ballard connecting with a new tunnel through downtown

Seattle, with stations in the areas of Denny, South Lake Union, Seattle Center, Smith Cove, Interbay and Ballard. Riders could travel from downtown Seattle (Westlake Station) to Ballard in 12 minutes. Project completion: 2035

- Builds a second light rail tunnel with four new and expanded stations between the International District and Denny area to support regional light rail routes through downtown Seattle. Project completion: 2035
- Adds new stations to the existing Link line at S. Graham Street, S. Boeing Access Road and NE 130th Street. Project completion: 2031
- Funds studies of potential future high-capacity transit investments to link West Seattle with Burien and Renton. An additional study of high capacity transit across northern Lake Washington would include connections along SR 520, SR 522, Ballard to Kirkland via University of Washington, Sand Point to Kirkland, and on to Redmond and/or Bellevue.



Bus Service Capital Improvements

- Makes capped capital investments for improved bus speed and reliability while longer-term projects are planned and constructed on RapidRide bus service along King County Metro's C and D lines and Madison Street.

South Corridor



Link Light Rail

- Extends light rail from Kent/Des Moines to Federal Way with two stations in Federal Way including parking structures at South 272nd and access to the existing Federal Way Transit Center. Project completion: 2024
- Light rail then continues farther south through Pierce County connecting with the major transit hub at the Tacoma Dome, including new stations in South Federal Way and East Tacoma and a new station with parking in Fife. Project completion: 2030
- Riders will be able to travel between the Tacoma Dome and the Federal Way Transit

Center in 19 minutes, and from the Federal Way Transit Center to downtown Seattle (Westlake Station) in 49 minutes.

- Extends Tacoma Link west to Tacoma Community College with six new stations along a route between the college and the voter-approved ST2 expansion to the Stadium and Hilltop districts on track to start construction in 2018.
- Funds a study of a potential future extension of light rail from Tacoma Dome Station to the Tacoma Mall area.



Souder South Commuter Rail

- Analysis and partner coordination prior to the adoption of a final ST3 measure will determine the most effective south corridor capital investments to serve more riders, including potential lengthening platforms for longer trains, and/or potential investments in tandem with BNSF to enable running more trains on an extended schedule.
- Extends Souder South service from Lakewood to a new station with parking at DuPont, with a station and parking facility at Tillicum, to help serve Joint Base Lewis/McChord.

- Increases parking and/or establishes other access improvements in the south corridor at Tukwila, Kent, Auburn, Sumner, Puyallup, Tacoma, South Tacoma, and Lakewood stations.
- Funds a study to explore future Souder South connections to Orting.



Bus Service Capital Improvements

- Provides a capital contribution to improve bus speed, reliability and convenience along Pacific Avenue in Tacoma.
- Provides capital improvements to facilitate the efficient flow of new and expanded bus connections between cities in East Pierce County and the Sumner Souder Station.

Region-wide



ST Express

- Sound Transit's regional bus system, which led the nation in number of Commuter Bus boardings for 2015 will build ridership in key long distance corridors. ST3 would fund approximately 600,000 annual hours to continue providing interim express bus service in future HCT corridors.

Other Draft Plan Elements

Multi-Modal Access

The ST3 Draft Plan enhances Sound Transit's customer access to stations. It includes funding at each station for improved access to the system, tailored to the geography, land use and population and employment density surrounding each rail station. Sound Transit is committed to providing multi-modal access to the regional transit system: non-motorized (bike and walking), transit connections with local partner services, pick-up & drop-off, and parking where appropriate. The plan includes a funding program for these improvements.

Transit-Oriented Development and Affordable Housing

Transit does more than move people from place to place. Well-coordinated transit and zoning supports transit-oriented development (TOD), resulting in residential and commercial neighborhoods that are compact, efficient, diverse and walkable. The ST3 Draft Plan targets resources toward coordinated planning with cities and counties to promote development of affordable housing near stations.

Operations and Maintenance Facilities for Bus and Rail

The new bus and rail lines provided under ST3 will include new maintenance facilities located strategically around the region to ensure efficient system operations. During environmental review prior to final project decisions, Sound Transit will work with cities and counties to determine the most appropriate locations for these essential facilities.

Innovation Fund

The ST3 Draft Plan includes funds to develop new transit technologies to:

- improve rider information and fare payment;
- study impact of connected vehicle and driverless vehicle technologies;
- build partnerships with public and private mobility service providers such as bikeshare, carshare, rideshare, and shuttle services;
- increase data analysis and research to identify and solve barriers to transit use;
- develop transportation demand management strategies to increase system ridership.

**PIERCE TRANSIT
BOARD OF COMMISSIONERS
MINUTES**

September 12, 2016

CALL TO ORDER

Chair Keel called the meeting to order at 4:02 pm.

Commissioners present:

Kent Keel, Chair of the Board, City of University Place Mayor Pro Tem
Don Anderson, City of Lakewood Mayor
Daryl Eidinger, City of Edgewood Mayor (*representing Fife/Milton/Edgewood*)
Heather Shadko, City of Puyallup Councilmember
Ryan Mello, City of Tacoma Councilmember
Marilyn Strickland, Mayor of the City of Tacoma

Commissioners excused:

Nancy Henderson, Vice Chair of the Board, Town of Steilacoom Councilmember
(*representing Auburn/Gig Harbor/Fircrest/Pacific/Ruston/Steilacoom*)
Pat McCarthy, Pierce County Executive
Rick Talbert, Pierce County Councilmember

Staff present:

Daniel Pike, Executive Director of Planning and Community Development
Dana Henderson, General Counsel
Deanne Jacobson, Assistant to the CEO/Clerk of the Board
Kristol Bias, Records Coordinator/Deputy Clerk of the Board

Staff excused:

Sue Dreier, Chief Executive Officer

PRESENTATIONS

August Operator of the Month ~ Doug Brown

Scott Gaines, Transit Operator Assistant Manager, honored Doug Brown for being selected August 2016 Operator of the Month. Mr. Gaines recognized Mr. Brown for providing exemplary customer service since being hired in 1982. (*Commissioner Mello arrived at 4:04 pm.*) Mr. Gaines read two passenger compliments that Mr. Brown received and announced Mr. Brown's retirement. The Board extended their appreciation to Mr. Brown for his years of service and Mr. Brown thanked the Board and Pierce Transit for the great experience the agency has provided.

July Employee of the Month ~ Chris Barry, Customer Service Supervisor

Jo Ann Artis, Transportation Manager, Service Support, honored Chris Barry for being selected July 2016 Employee of the Month. Ms. Artis recognized Ms. Barry for her excellent customer service and leadership skills. Ms. Artis read one customer comment that commended Ms. Barry's leadership and acknowledged her significant departmental productivity improvement. Ms. Barry extended her appreciation and recognized her Customer Service staff in part for her accomplishments.

August Employee of the Month ~ Sharon Stockwell, Senior Employer Services Coordinator

Mark Eldridge, Senior Program Administrator, honored Sharon Stockwell for being selected August 2016 Employee of the Month. Mr. Eldridge recognized Ms. Stockwell for providing exemplary customer service in creating and maintaining local customer business accounts. Ms. Stockwell expressed her enjoyment in working with local businesses and extended her appreciation for the many opportunities the agency has provided.

ngORCA (Next Generation ORCA)

Jay Peterson, Transit Development Manager, introduced Brittany Esdaile, ngORCA Program Manager; and Cheryl Huston, ORCA Regional Administrator.

Ms. Esdaile provided an overview of ngORCA since ORCA launched in 2009 and explained that fare collection technology has advanced greatly with the innovation of mobile apps and smartphones since the original system was developed, and it is important that paying for fare become easier and more flexible to improve the user's experience. The overview also included general facts, introduction, project roadmap and current status, customer survey results, creation of a fare evaluation team for upcoming regional fare forums, requirements, major changes and next steps.

Ms. Esdaile thanked Commissioners Rick Talbert and Ryan Mello for volunteering to represent Pierce Transit at the upcoming regional fare forums and a short discussion ensued regarding excitement for the program, passenger tracking provisions and fare structure timeline.

PUBLIC HEARING

Surplus of Vehicles

Kevin Zinski, Fleet Manager, presented on the item. Mr. Zinski gave a short overview of the vehicles scheduled for surplus and noted that they are at the end of their useful life. He also noted that two of the vans are eligible to be donated to nonprofit organizations through Pierce Transit's Care-a-van program.

Chair Keel provided instructions for the public hearing to citizens.

At 4:42 pm, the public hearing was opened and the following individual(s) commented:

Cinderella Helga, Lakewood, inquired as to where the surplus money would be directed to. Chair Keel deferred Ms. Helga's comment to the public comment portion of the Board meeting.

At 4:45 pm, the public hearing was closed.

PUBLIC COMMENT

Chair Keel provided direction for public comment and the following individual(s) spoke (*Ryan Mello exited the room at 4:46 pm and re-entered the room at 4:47 pm*):

Cinderella Helga, Lakewood, reported that some bus stop lights are not working and a rider does not get the full transfer value when they use their ORCA card in conjunction with cash.

Walt Hurd, Tacoma, reported that he has experienced the bus being late and overcrowded. Mr. Hurd suggested more bus stops be added to assist in reducing the amount of riders on the bus.

CONSENT AGENDA

(Items listed below were distributed to Commissioners in advance for reading and study and are enacted with one motion.)

Commissioners Strickland and Anderson **moved** and seconded to approve the consent agenda as presented.

Motion **carried**, 6-0.

1. Approval of Vouchers, September 1, 2016
Operating Fund #10
Self-Insurance Fund #40
Capital Fund #90
Voucher CK Nos. 351132 through 351649
Advance Travel Checks 1124 through 1124
Wire Nos. 1761 through 1791
Total \$7,656,966.15
2. Minutes: Regular Board Meeting of August 8, 2016
3. Second Quarter Sole Source/100K Report
4. FS 16-057, Authorized the Chief Executive Officer to enter into and execute a Sole Source 3-Year Agreement with Infront Consulting Group for Server and Desktop Patch Management services
5. FS 16-058, Approved Resolution No. 16-031 declaring forty-one (41) Ford E350 vans, twenty-seven (27) Ford E450 Shuttle vans, nineteen (19) Chevrolet Express 3500 vans, four (4) Chevrolet C1500XC pickup trucks, three (3) Chevrolet P30 vans, two (2) Chevrolet C2500 pickup trucks, two (2) Chevrolet P31442 vans, one (1) Ford F150 pickup truck, and one (1) Chevrolet S-10 pickup truck as surplus and authorize the sale or donation thereof

6. FS 16-059, Approved Resolution No. 16-032, amending Section 3.72.130, Vanpool Services – Defined – Fares of the Pierce Transit Code, as reflected in Exhibit A

ACTION AGENDA

1. **FS 16-060, Approved Resolution No 16-033, Adopting the 2016-2021 Transit Development Plan**

Commissioners Strickland and Shadko **moved** and seconded to adopt the Pierce Transit 2016-2021 Transit Development Plan as presented in Exhibit A.

Darin Stavish, Principal Planner, reported on the item noting that the formal adoption would allow Pierce Transit to use the plan as a guide for specific development of upcoming service designs, business strategies and budget considerations. The adoption would also allow for the plan to continue to be annually submitted to local agencies by Pierce Transit.

Mr. Stavish noted one written public comment was received and given to the Board prior to the start of this afternoon's meeting.

Motion **carried**, 6-0.

2. **FS 16-061, Approved Resolution No. 16-034, Donating a Surplus Vehicle to Goodwill of the Olympics and Rainier Region Pursuant to the Pierce Transit Care-a-van Program**

Commissioners Strickland and Mello **moved** and seconded to award a Care-a-van vehicle to Goodwill of the Olympics and Rainier Region subject to the terms and conditions of the Donation Agreement in substantially the same form as Exhibit A.

Tim Renfro, ADA Eligibility Administrator, reported on the item noting the award of the van would allow for vocational support for individuals with disabilities, low-income individuals, Veterans, at-risk youth and seniors.

Chair Keel presented representatives from the organization keys to the van and the representatives expressed their gratitude to Pierce Transit.

The Board commended the agency for coming forward and expressed overwhelming support for the Care-a-van program and the benefits that it provides to the community.

Motion **carried**, 6-0.

3. **FS 16-062, Approved Resolution No. 16-035, Donating a Surplus Vehicle to The Rescue Mission Pursuant to the Pierce Transit Care-a-van Program**

Time Renfro, ADA Eligibility Administrator, reported on the item noting the award of the van would allow for extended community outreach hours and services to homeless individuals, transportation for people to Adult Basic Education, GED prep classes and at-risk youth to various activities.

Commissioners Strickland and Anderson **moved** and seconded to award a Care-a-van vehicle to The Rescue Mission subject to the terms and conditions of the Donation Agreement in substantially the same form as Exhibit A. (*Don Anderson departed at 5:16 pm*).

Motion **carried**, 6-0.

Chair Keel presented representatives from the organization keys to the van and the representatives expressed their gratitude to Pierce Transit.

STAFF UPDATES/DISCUSSIONS

Overview of Passenger Restraint System (ADA)

Kevin Zinski, Fleet Manager, provided an overview of a new passenger restraint system that will arrive on new Pierce Transit buses. The new system will provide those in a mobility device the ability to board and secure the device on their own, giving them independence and saving the operator time and effort. Several other transit agencies are using this new system with much success.

Upon inquiry, staff noted that the new passenger restraint systems are not a mandated to be equipped on buses and new buses would be retrofitted with the new system.

Capital Projects Report

Heidi Soule, Project Management Office Manager, provided an update on Pierce Transit's latest Capital Projects Report that included updates on revenue vehicles, facilities/amenities and technology.

Comprehensive Service Analysis

Peter Stackpole, Service Planning Assistant Manager, provided an update on Pierce Transit's Comprehensive Route Network Analysis that included highlights of service evaluation, Board priorities, public priorities, restructure priorities, March 2017 service change, and next steps.

Chair Keel requested Mr. Stackpole's presentation be emailed to all Board members for further review.

INFORMATIONAL BOARD ITEMS

Chair Report

Chair Keel expressed his excitement for a new financial system.

Sound Transit Update

Commissioner Strickland extended her continued excitement for the Sound Transit 3 Plan as it will provide additional transit service, especially to those in the South Sound and noted that Tacoma's City Council will be passing a resolution in support of the Sound Transit 3 Plan.

Commissioners' Comments

None.

EXECUTIVE SESSION

At 5:42 pm, the regular meeting was recessed into Executive Session for approximately 15 minutes to evaluate the performance of a public employee, pursuant to RCW 42.30.110 (g). It was noted that formal action would occur in open session following the executive session.

RECONVENE

At 5:57 pm, the regular meeting was reconvened.

OTHER BUSINESS

Commissioners Strickland and Eidinger **moved** and seconded to adopt the CEO's 2015-2016 Composite Evaluation in accordance with the discussion of the CEO's performance which was held in Executive Session

Motion **carried**, 5-0.

Commissioners Strickland and Mello **moved** and seconded to increase the CEO's salary by 4.5 %; and to increase the contribution to her 401(a) account by 5% to take into account the fact that Pierce Transit does not contribute to Social Security for its employees, and directed staff to amend the CEO's employment contract accordingly.

Motion **carried**, 5-0.

Commissioner Mello noted that the Board is very happy with the performance of the CEO.

ADJOURNMENT

Chair Keel adjourned the meeting at 6:00 pm.

Motion **carried**, 5-0.

Deanne Jacobson
Assistant to the CEO/ Clerk of the Board

Kent Keel, Chair
Board of Commissioners

FACT SHEET

TITLE: A Resolution Authorizing the Execution of a Regional Transit ORCA Marketing and Transportation Demand Management Project Agreement with King County Metro Transit

DIVISION: Planning and Community Development

ORIGINATOR: Sharon Stockwell, Sr. Employer Services Coordinator

PRECEDING ACTION: N/A

COORDINATING DEPARTMENT: Employer Services

APPROVED FOR SUBMITTAL:

Chief Financial Officer

APPROVED FOR AGENDA:

Chief Executive Officer

General Counsel

ATTACHMENTS:

Proposed Resolution,
Exhibit A, Proposed Interlocal Agreement
Exhibit B, Proposed Master Agreement with King County Metro

BUDGET INFORMATION

2016 Budget Amount
N/A

Required Expenditure
\$0

Impact
\$0

Explanation: \$37,500 in revenue to Pierce Transit is expected for work performed and expenses incurred through June 30, 2017.

BACKGROUND:

King County's Metro Transit Division has been awarded a Puget Sound transit coordination grant from the Washington State Department of Transportation (WSDOT) to help integrate marketing efforts and improve outreach and customer coordination among various Puget Sound transit systems in order to improve the user experience, increase ridership, and make the most effective use of tax dollars.

King County Metro is using these grant funds to work with Pierce Transit, Sound Transit, Community Transit, Everett Transit, and the Seattle Department of Transportation to create and implement a public information program to raise regional awareness of the One Regional Card for All ("ORCA") card and implement Transportation

Demand Management (TDM) programs to increase the number of ORCA card holders in the central Puget Sound region.

The Project will be implemented in two phases. Phase I will be conducted in Fall 2016, and will be agency specific with each agency focusing on ORCA card distribution through their existing DM programs and markets specific to their service needs. Phase II will be conducted in spring 2017 and will be a unified regional TDM campaign. Agencies will identify target markets within their service area with low use of ORCA for fare payment.

Pierce Transit will be developing the postcard for the spring 2017 regional ORCA card distribution campaign, will manage the printing of approximately 350,000 postcards for mailing, and will ensure delivery of the postcards to the mailhouse specified by King County Metro Transit Division.

ALTERNATIVES:

Do not partner with the various Puget Sound transit agencies to raise regional awareness of the One Regional Card for All ("ORCA") card and increase the number of ORCA card holders in the central Puget Sound region.

RECOMMENDATION:

Approve Resolution No. 16-036, authorizing the Chief Executive Officer to enter into and execute a Regional Transit ORCA Marketing and TDM Project Agreement with King County Metro Transit Division to Implement TDM Programs.

RESOLUTION NO. 16-036

A RESOLUTION of the Board of Commissioners of Pierce Transit Authorizing the Execution of a Regional Transit ORCA Marketing and Transportation Demand Management Project Agreement with King County Metro Transit

WHEREAS, King County's Metro Transit Division ("Metro") has been awarded a Puget Sound transit coordination grant from the Washington State Department of Transportation (WSDOT) to help integrate marketing efforts and improve outreach and customer coordination among various Puget Sound transit systems in order to improve the user experience, increase ridership, and make the most effective use of tax dollars; and

WHEREAS, WSDOT and Metro entered into a transportation demand management ("TDM") agreement under which Metro will use grant funds to work with Pierce Transit, Sound Transit, Community Transit, Everett Transit and the Seattle Department of Transportation to create and implement a public information program to raise regional awareness of the One Regional Card for All ("ORCA") card and implement TDM programs to increase the number of ORCA card holders in the central Puget Sound region; and

WHEREAS, Metro will utilize the grant funds to implement the Regional Transit ORCA Marketing and TDM project ("Project") and, in coordination with the Regional TDM Steering Committee ("Committee"), will serve as the lead agency for the Project, including administering and billing the Grant and providing WSDOT required Project progress reports; and

WHEREAS, Pierce Transit will also work with the Committee, comprised of the partner transit agencies listed above, to implement the Project; and

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners of Pierce Transit as follows:

Section 1. The Board of Commissioners authorizes the Chief Executive Officer to enter into and execute a Regional Transit ORCA Marketing and TDM Project Agreement with King County Metro Transit Division to implement TDM programs to increase the number of ORCA card holders in the central Puget Sound region in substantially the same form as Exhibit A, which is attached hereto.

ADOPTED by the Board of Commissioners of Pierce Transit at their regular meeting thereof held on the 10th day of October, 2016.

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PIERCE TRANSIT

Kent Keel, Chair
Board of Commissioners

ATTEST/AUTHENTICATED

Deanne Jacobson, CMC
Clerk of the Board

REGIONAL TRANSIT ORCA MARKETING AND TDM PROJECT AGREEMENT

Between

**KING COUNTY, DEPARTMENT OF TRANSPORTATION,
METRO TRANSIT DIVISION**

And

PIERCE TRANSIT

THIS REGIONAL TRANSIT ORCA MARKETING AND TDM PROJECT AGREEMENT (the "Agreement") is made and entered into by and between Pierce County Public Transportation Benefit Area Corporation ("Pierce Transit" or "PT") and King County, a home rule charter county of the State of Washington, through its Department of Transportation, Metro Transit Division ("County"), either of which entity may be referred to hereinafter as "Party" or collectively as the "Parties."

WHEREAS, the County has been awarded a Puget Sound transit coordination grant ("Grant") from the Washington State Department of Transportation ("WSDOT") that is expected, among other things, to help integrate marketing efforts and improve outreach and customer coordination among various Puget Sound transit systems in order to improve the user experience, increase ridership, and make the most effective use of tax dollars; and

WHEREAS, under Agreement GCA 6141, Task Order F1 ("Task Order Agreement"), administered by WSDOT's Public Transportation Division, WSDOT and the County entered into a transportation demand management ("TDM") agreement under which the County will use Grant funds to work with Sound Transit, Pierce Transit, Community Transit, Everett Transit and the Seattle Department of Transportation to create and implement a public information program to raise regional awareness of the One Regional Card for All ("ORCA") card and implement TDM programs to increase the number of ORCA card holders in the central Puget Sound region; and

WHEREAS, pursuant to the Task Order Agreement, the County will utilize the Grant funds to implement the Regional Transit ORCA Marketing and TDM project ("Project") and, in coordination with the Regional TDM Steering Committee ("Committee"), will serve as the lead agency for the Project, including administering and billing the Grant and providing WSDOT required Project progress reports.

WHEREAS, PT will also work with the Committee, comprised of the partner transit agencies listed above, to implement the Project.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. PURPOSE OF AGREEMENT

Under the Task Order Agreement, the County will work with Sound Transit, Pierce Transit, Community Transit, Everett Transit, and the Seattle Department of Transportation to implement the Project, which is a TDM program intended to increase the number of ORCA card holders in the central Puget Sound region. The purpose of this Agreement is to establish the scope of work ("SOW") covered by the Agreement and the respective responsibilities of the Parties for implementation of the grant-funded community outreach and marketing activities that are the subject of the Project.

2. PIERCE TRANSIT'S RESPONSIBILITIES

- 2.1 PT shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to PT's performance of the tasks and responsibilities set forth with particularity in the SOW, which is attached hereto as Exhibit A and incorporated herein by this reference.
- 2.2 The Project objectives, timelines and budget are also described in Exhibit A.

3. COUNTY'S RESPONSIBILITIES

- 3.1 The County will reimburse PT for actual Grant-eligible costs incurred in performance of Project work performed pursuant to this Agreement as identified in the SOW. The County will reimburse PT up to a maximum, not-to-exceed amount of \$37,500.00 (the "Reimbursement Cap") over the duration of the Agreement. Funding for the Agreement will be via a combination of Grant funds and matching funds provided through the Regional ORCA fund, which will cover the card fee for cards purchased and distributed through this Project.
- 3.2 Pursuant to the Task Order Agreement, the County will serve as the lead agency for the Project and, in that capacity, will administer the Grant, including retaining responsibility for any reporting and/or invoicing for reimbursement from WSDOT that may be required under the terms of the Grant award.

4. INVOICE AND PAYMENT PROCEDURES

- 4.1 PT shall submit a completed invoice to the County detailing quarterly activities, outcomes, expenses and reimbursement amount due within thirty (30) days of each

quarter's end. PT will provide documentation to support its reimbursement request including copies of vendor invoices, print-outs from its financial system showing staff salaries and benefits, as well as other relevant documents. The County shall pay PT within thirty (30) calendar days after the County has received a completed invoice.

- 4.2 In the event that it is determined that an overpayment has been made to PT by the County, the County will bill PT for the amount of overpayment. PT shall pay the County within thirty (30) days of receipt of an invoice for overpayment.
- 4.3 In no event shall the total reimbursement to PT for work performed pursuant to this Agreement exceed the Reimbursement Cap provided for at Subsection 3.1 of this Agreement.

5. ASSIGNMENTS AND SUBCONTRACTS

- 5.1 Sub-grantee Compliance with Grant Assurances. This Agreement is subject to all applicable funding restrictions and/or grant assurances provided for in the Task Order Agreement and the Master Agreement for Transportation Demand Management Work (GCA 6141) (the "Master Agreement") between the County and WSDOT, which together are attached hereto as Exhibit B and incorporated herein by this reference. Any such funding restrictions and/or grant assurances shall be included in each subcontract and in all contracts PT enters into for the employment of any individuals, procurement of any incidental goods or supplies, or the performance of any work to be accomplished with funds awarded under the Task Order Agreement. As the sub-grantee of these funds, PT agrees to comply, and insure that any of its subcontractors comply, with the requirements of Exhibit B when performing work pursuant to this Agreement.
- 5.2 No Assignment without Consent. Neither this Agreement, nor any interest herein, may be assigned by either Party without the prior written consent of the other Party.

6. EFFECTIVE DATE AND DURATION

This Agreement will take effect upon the date the Agreement is signed by both Parties and will remain in effect until June 1, 2017, unless extended by agreement of the Parties consistent with Section 16 of this Agreement or earlier terminated pursuant to Section 8 of this Agreement.

7. DISPUTE RESOLUTION PROCESS

7.1 Designated Dispute Resolution Representatives.

The following individuals are the Designated Representatives for the purpose of resolving disputes that arise under this Agreement:

For the County: Bill Bryant, Manager
 Metro Transit Service Development
 201 South Jackson Street, MIS KSC-TR-0426
 Seattle, WA 98104 (206) 263-3109
Bill.Bryant@kingcounty.gov

For Pierce Transit: Dana Henderson, General Counsel
 Pierce Transit
 3701 96th Street SW
 Lakewood, WA 98499-4431
 (253) 777-4977
dhenderson@piercettransit.org

- 7.2 The County representative and the PT representative shall confer to resolve disputes that arise under this Agreement as requested by either Party. The designated representatives shall use their best efforts and exercise good faith to resolve such disputes.
- 7.3 In the event the Designated Representatives are unable to resolve the dispute, the appropriate PT Chief Executive Officer or her/his designee and the General Manager of the County's Metro Transit Division or her/his designee shall confer and exercise good faith to resolve the dispute.
- 7.4 In the event the PT Chief Executive and the General Manager of Metro Transit are unable to resolve the dispute, the Parties may, if mutually agreed in writing, submit the matter to non-binding mediation. The Parties shall then seek to mutually agree upon the mediation process, who shall serve as the mediator, and the time frame the Parties are willing to discuss the disputed issue(s).
- 7.5 If the Parties cannot mutually agree as to the appropriateness of mediation, the mediation process, who shall serve as mediator, or the mediation is not successful, then either Party may institute legal action in the King County Superior Court situated

in Seattle, Washington, unless another venue is mutually agreed to in writing.

- 7.6 The Parties agree that they shall have no right to seek relief in a court of law until and unless each of the above procedural steps has been exhausted.

8. TERMINATION

- 8.1 Termination for Convenience. Either Party may terminate this Agreement upon thirty (30) days written notice to the other Party. In the event of termination of this Agreement, the Parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.
- 8.2 Termination for Cause. If either Party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either Party violates any of these terms and conditions, the aggrieved Party will give the other Party written notice of such failure or violation. The responsible Party will be given the opportunity to initiate a correction of the violation or failure within fifteen (15) calendar days. If failure or violation is not corrected within the mutually agreed upon time period, this Agreement may be terminated immediately by written notice of the aggrieved Party to the other.
- 8.3 Termination for Non-Appropriation or Loss of Grant Funding. In addition to termination for default, the County may terminate this Agreement for non-appropriation or loss of state grant funding by giving not less than thirty (30) calendar days' written notice thereof to PT.

9. LEGAL RELATIONS

- 9.1 No Third Party Beneficiaries. It is understood that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other person or entity.
- 9.2 No Partnership or Joint Venture. No joint venture, agent-principal relationship or partnership is formed as a result of this Agreement.
- 9.3 Independent Capacity. The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees or agents of the other Party.
- 9.4 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

9.5 Jurisdiction and Venue. The King County Superior Court, situated in Seattle, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

9.6 Mutual Negotiation and Construction. This Agreement and each of the terms and provisions hereof shall be deemed to have been explicitly negotiated between, and mutually drafted by, both Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either Party.

10. RECORDS RETENTION AND AUDIT

10.1 Maintenance of Records. During the term of the Agreement and for a period of not less than six (6) years from the date of its expiration or earlier termination, the records and accounts pertaining to this Agreement are to be kept available by both Parties for inspection and audit by the other Party and the State Auditor, and copies of all records, accounts, documents, or other data pertaining to the Agreement will be furnished upon reasonable notice. If any litigation, claim or audit is commenced, the records and accounts, along with supporting documentation, shall be retained until all litigation, claim, or audit has been resolved even though such litigation, claim, or audit continues past the six-year retention period.

10.2 Disclosure of Public Records. The Parties acknowledge that all non-privileged, non-exempt records that may be maintained pursuant to Subsection 10.1 of this Agreement are subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW.

11. FORCE MAJEURE

Either Party to this Agreement shall be excused from performance of its responsibilities and obligations under this Agreement, and shall not be liable for damages due to failure to perform, during the time and to the extent that it is prevented from performing by a cause directly or indirectly beyond its control, including, but not limited to: late delivery or nonperformance by vendors of materials or supplies; any incidence of fire, flood, snow, earthquake, or acts of nature; strikes or labor actions; accidents, riots, insurrection, terrorism, or acts of war; order of any court or civil authority; commandeering material, products, or facilities by the federal, state or local government; or national fuel shortage; when satisfactory evidence of such cause is presented to the other Party to this Agreement, and provided that such non-performance is beyond the control and is not due to the fault or negligence of the Party not performing.

12. NONDISCRIMINATION

Pierce Transit agrees to comply with all applicable federal, state, and local laws, rules, and regulations pertaining to nondiscrimination and agrees to require the same of any and all subcontractors providing services or performing any work using funds provided under this Agreement. During the performance of this Agreement, neither Pierce Transit nor any entity subcontracting under the authority of this Agreement, shall discriminate or tolerate harassment on the basis of sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification, in the administration or delivery of services or any other benefits under this Agreement. King County Code Chapter 12.16 and 12.17 are incorporated herein by reference, and such requirements shall apply to this Agreement.

13. INDEMNIFICATION

Pierce Transit and its successors and assigns shall protect, save, defend, indemnify and hold harmless the County, its elected officials, officers, employees, and agents while acting within the scope of their employment as such, from any and all costs, claims, actions, judgments, and/or awards of damages or costs of any nature whatsoever, arising out of or in any way resulting from Pierce Transit's acts or omissions in performing its obligations under this Agreement. Pierce Transit agrees that it is fully responsible for the acts and omissions of its own contractors, subcontractors, employees, and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents.

Pierce Transit agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of Pierce Transit's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the County only, and only to the extent necessary to provide the County, its elected officials, officers, employees, and agents with a full and complete indemnity of claims made by Pierce Transit's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them. The provisions of this Section 13 shall survive the expiration or earlier termination of this Agreement.

14. WAIVER

A failure by either Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the Party and attached to the original Agreement.

15. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

16. CHANGES AND MODIFICATIONS

This Agreement may be changed, modified, or amended only by written agreement executed by authorized representatives of both Parties.

17. REPRESENTATION ON AUTHORITY OF SIGNATORIES

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

18. ALL TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

19. CONTRACT MANAGEMENT

All contact information for the management of this Agreement shall be identified herein and may be updated by either Party for its agency only and shall be submitted in writing or electronic mail to the other Party. Any update to the Contract Managers shall state the effective date of said update.

Contract Manager	Pierce Transit	King County
Contact Name	Sharon Stockwell	Penny Lara
Title	Senior Employer Services Coordinator	Transportation Planner III King County Metro
Address	Pierce Transit 3701 96 th Street SW Lakewood, WA 98499-4431	201 S Jackson Street MS KSC-TR-0411 Seattle, WA 98104
Telephone	(253) 581-8112	(206) 263-8372
E-mail	sstockwell@piercetransit.org	Penny.Lara@kingcounty.gov

20. EXECUTION OF AGREEMENT

This Agreement may be executed in two (2) counterparts, either of which shall be regarded for all purposes as an original.

IN WITNESS THEREOF the Parties hereto have executed this Agreement by duly authorized representatives on the dates shown below their respective signatures.

KING COUNTY

By:

Carol Cooper, Supervisor,
Metro Transit Division
King County Department of
Transportation

Date: _____

PIERCE TRANSIT

By:

Sue Dreier, Chief Executive Officer
Pierce Transit

Date: _____

EXHIBIT A

Scope of Work

Scope of Work

The County will be working with Sound, Pierce, Community, Everett Transit and Seattle Department of Transportation to implement TDM programs to increase the number of ORCA card holders in the central Puget Sound region. This Project will be coordinated with the Regional ORCA Marketing project being implemented by ST, in coordination with the ORCA Regional Marketing Committee.

The Project will be implemented in two phases. Phase I, to be conducted in Fall 2016, will be agency specific with each agency focusing ORCA card distribution through their existing TDM programs and focused on markets specific to their service needs. Phase II, to be conducted in Spring 2017, will be a unified regional TDM campaign implemented in conjunction with the Project.

PT Responsibilities

1. PT will participate in development of the Project work plan and performance measurement plan for the Project.
2. PT will implement a locally relevant ORCA card distribution TDM project in Fall 2016.
3. PT will develop a postcard for the Spring 2017 regional ORCA card distribution campaign. PT will coordinate with the participating TDM agencies, including the County, Sound Transit, Community Transit, Everett Transit and the Seattle Department of Transportation, in developing the postcard and finalizing print requirements.
4. PT will manage printing of the postcard for mailing, and will ensure delivery of the postcards to the mailhouse specified by COUNTY.
5. PT will provide metrics for evaluation of both the Fall 2016 and Spring 2017 campaigns, as agreed upon by the Parties through development of a performance measurement plan.

Budget

The County will reimburse PT for expenses incurred, not to exceed \$37,500, as follows:

1. Fall 2016 campaign - \$17,500 for ORCA card value, materials and/or related expenses
2. Spring 2017 campaign - \$20,000 for development and printing of approximately 350,000 postcards

Project Description, Deliverables, and Funding

Concept	Increase access to ORCA cards.
Strategy	<p>Partner agencies will conduct outreach campaigns to distribute pre-loaded ORCA cards via existing TDM programs and outreach channels. ORCA card distribution will be achieved both through agency-specific and the regional campaign to be implemented under this Agreement. Agencies will identify target markets within their service areas, based on available data regarding low use of ORCA for fare payment. PT will manage development and printing of postcards. PT will send out a request for quotes to print the postcards, then select low bidder. PT will create artwork, get approval from the regional partner agencies, and work with the printer. PT will arrange for that low bid printer to deliver the postcards to the mailing vendor. The County will procure a mailing vendor, and lead and manage all work with the mailing vendor.</p>
Deliverables	<p>2.1 Project Work Plan including specific outcomes, timeline, milestones, and budget details addressing participant and match funds.</p> <p>2.2 Mutually agreeable Performance Measurement Plan.</p> <p>2.3 Produce a Project Summary Report which at a minimum includes the following: Overview of the Project, how grant funds were spent (participant and match funds), and the extent to which Project outcomes were met, and a description of best management practices that can be transferred to other transit agencies.</p>

GCA 6141

Master Agreement for Transportation Demand Management Work by King County	
Washington State Department of Transportation Public Transportation Division 401 - 2nd Avenue South Suite 300 Seattle, WA 98104 Contact Person: Robert Kutrich (206) 464-1231	Work Performed By: King County Department of Transportation 201 South Jackson Street KSC-TR-0815 Seattle, WA 98104-3856 Federal ID #: 91-6001327 Contact Person: Carol Cooper (206) 684-1623
Agreement Number: GCA 6141	

THIS **Master Transportation Demand Management ("TDM") Agreement** (hereinafter "**Agreement**") is made and entered into between the STATE OF WASHINGTON, by and through the Washington State Department of Transportation, hereinafter the "STATE," and King County, a home rule charter county of the State of Washington, by and through the King County Department of Transportation (DOT), hereinafter the "COUNTY." Either entity may be referred to hereinafter individually as "Party" or collectively as the "Parties."

WHEREAS, the Legislature recognizes the STATE's leadership role in establishing and implementing effective commute trip reduction programs (RCW 70.94.547); and

WHEREAS, the Legislature finds that implementing commute trip reduction is an effective way to reduce traffic congestion (RCW 70.94.521); and

WHEREAS, RCW 47.06.050 requires that when planning capacity and operational improvements the STATE's first priority is to assess strategies to enhance the operational efficiency of the existing system; and

WHEREAS, RCW 47.01.078 directs the STATE to develop strategies to reduce the per capita vehicle miles traveled, to consider efficiency tools including commute trip reduction and other demand management tools, and to promote the integration of multimodal planning in support of the transportation system policy goals described in RCW 47.04.280; and

WHEREAS, RCW 47.06.050 states that strategies to enhance the operational efficiencies include, but are not limited to, access management, transportation system management, and demand management (Strategies); and

WHEREAS, the Legislature has directed the STATE to increase the integration of public transportation and the highway system, to facilitate coordination of transit services and planning, and to maximize opportunities to use public transportation to improve the efficiency of transportation corridors (RCW 47.01.330); and

WHEREAS, RCW 47.80.010 encourages the State and local jurisdictions to identify opportunities for cooperation to achieve statewide and local transportation goals; and

WHEREAS, the STATE is planning, developing, and constructing a number of projects, including but not limited to projects to improve sections of State Route 99, State Route 520, State Route 405, and other state routes (Projects); and

WHEREAS, it is anticipated that at least some of the Projects will cause substantial traffic congestion during construction; and

WHEREAS, it is anticipated that some of the work under this **Agreement** will mitigate the effects of traffic congestion caused by the Projects; and

WHEREAS, the COUNTY has experience and expertise in developing and implementing Strategies that reduce the number of single occupancy vehicle trips and improve the efficiency of state and local transportation systems; and

WHEREAS, the STATE will work cooperatively with the COUNTY to develop and implement integrated Strategies as directed in the STATE's *Moving Washington* plan; and

WHEREAS, the STATE has determined that it is in the public interest for the COUNTY to perform certain elements of work to implement said Strategies; and

WHEREAS, this **Agreement** is intended to serve as a framework for a number of individual **Task Orders** that the STATE and COUNTY will subsequently enter into as part of this cooperative effort; and

WHEREAS, the actual work to be performed under this **Agreement** will be identified by executed **Task Orders**, which will specify the specific funding source for the work to be performed for each **Task Order**; and

WHEREAS, any state funding for work under this **Agreement** is authorized in the state biennial Transportation Budget(s) and any supplemental budget(s) thereto for the state program(s) specified in the **Task Order**; and

WHEREAS, some of the individual tasks may be funded by federal grants pursuant to the authority vested in the STATE through RCW 47.04.170; and

WHEREAS, any federal funding for work under this **Agreement** is authorized in the state biennial Transportation Budget(s) and any supplemental budget(s) thereto and pursuant to the federal authorities and program(s) specified in the **Task Order**; and

NOW THEREFORE, pursuant to RCW 47.28.140, RCW 47.52.090, and chapter 39.34 RCW, and in consideration of the terms, conditions, and performances contained herein, and the attached Exhibits which are incorporated and made a part hereof, the Parties mutually agree as follows:

1. PURPOSE AND SCOPE

1.1 The provisions of this **Agreement** shall govern the individual **Task Orders** to be executed between the STATE and COUNTY for work to be performed by the COUNTY at the STATE's request, and for the STATE's reimbursement to the COUNTY for said work.

1.2 The general scope of work under this **Agreement** includes TDM work or services (Work) consistent with STATE transportation strategies to improve transportation system efficiency. Elements of Work consistent with this scope include:

- (a) Performing or developing studies and reports;
- (b) Performing planning activities;
- (c) Developing, implementing, and enhancing TDM Strategies and programs; and
- (d) Improving existing transportation facilities with appurtenances such as signs, bicycle lockers, wheelchair ramps, transit shelters, and transit signal priority system components (Project Equipment).

2. TASK ORDERS

2.1 Each **Task Order** shall be prepared by the STATE and approved by the COUNTY for Work requested under this **Agreement**. **Task Orders** shall be in the format shown and contain the provisions as set forth in the Task Order Format, **Exhibit 1**, attached hereto and by this reference made part of this **Agreement**. The **Task Orders** will be numbered sequentially and shall include the following:

- (a) a start and end date for performing the Work;
- (b) a detailed scope of work with deliverables and scheduled milestones, which shall define the roles and responsibilities of the COUNTY and the STATE;
- (c) the funding source(s) for the Work;
- (d) a maximum reimbursable cost to establish a maximum funding level for the Work, provided, however, that the County shall have no further obligation to perform work under any Task Order once the maximum reimbursable cost has been reached; and
- (e) language stating that the provisions of this **Agreement** are incorporated by reference into the Task Order.

2.2 The **Task Order** may, if applicable, include Federal Transit Administration Provisions, attached hereto as **Exhibit A to Exhibit 1**, or Project Equipment Provisions, attached hereto as **Exhibit B to Exhibit 1**. **Exhibit A to Exhibit 1** and **Exhibit B to Exhibit 1** are by the aforementioned references incorporated herein and made part of the **Agreement**; provided, however, that any proposed Task Order that involves project equipment will identify and specify with particularity the nature of the project equipment involved.

2.3 Notwithstanding any other provision of this **Agreement** the COUNTY expressly reserves the right to decline to enter into any **Task Order** to perform the Work proposed by the STATE.

3. PAYMENT AND BILLING

3.1 Payment. The STATE will reimburse the COUNTY for the full actual direct salary and related direct non-salary costs associated with the COUNTY'S performance of specific **Task**

Order Work undertaken pursuant to this **Agreement**. Related direct non-salary costs include all other related Work items excluding overhead and direct salary costs.

3.2 Maximum Funding. This **Agreement** does not authorize funding for any Work and contains no guarantees for any minimum or maximum amount of Work or funding. The Parties shall agree to a maximum amount of funding under each **Task Order** for all eligible costs associated with the Work, which shall be specified in each **Task Order**. The STATE shall not be obligated for any expenditure in excess of the maximum funding amount for each **Task Order** unless prior written authorization is received from the STATE and an amendment to the **Task Order** is executed; provided, however, that the County shall have no further obligation to perform Work pursuant to a **Task Order** once the maximum funding amount is reached. The COUNTY must perform Work in advance of reimbursement.

3.3 Invoices and Billing. Partial payments to the COUNTY shall be made by the STATE throughout the term of each **Task Order**, subject to the STATE's receipt and subsequent approval of detailed billing invoices from the COUNTY for the Work outlined in the **Task Order** and any amendments thereto. The COUNTY shall submit invoices for actual direct salary and related direct non-salary costs incurred within the timeframe of the executed **Task Order**. The COUNTY may submit invoices no more than once a month and no less than once per quarter. An invoice must be submitted no later than ninety (90) calendar days after the Work is completed, except as denoted below.

3.3.1 For all Work performed up to and including June 30 of each year the COUNTY must submit an invoice to the STATE no later than July 15 of that same year to be eligible for payment. The COUNTY may notify the STATE in writing that the COUNTY requests additional time to provide invoices. Upon the STATE's receipt of such written notification the STATE may choose to accrue funds to allow the COUNTY additional time to provide invoices. The COUNTY must obtain written approval from the STATE by June 15 of each year for any requests for accruals or requests for additional time to submit invoices, which approval shall not be unreasonably withheld or delayed by the STATE. Otherwise, the STATE will not pay invoices received after that date for Work performed up to and including June 30 of each year.

3.3.2 The STATE agrees to make payment for the Work done by the COUNTY within thirty (30) calendar days from receipt of a STATE-approved invoice from the COUNTY.

3.3.3 The COUNTY shall submit a final invoice to the STATE within ninety (90) calendar days or no later than July 15 of the same year after completion of the Work, whichever date comes first, unless previously authorized by the State in accordance with Section 3.3.1, which approval shall not be unreasonably withheld or delayed. Any payment request for funds received after that date will not be eligible for reimbursement. Requests for additional time to submit an invoice shall be in accordance with Section 3.3.1, above

4. DESIGNATED REPRESENTATIVES

4.1 Notice. Any notice or communication required or permitted to be given pursuant to this **Agreement** shall be in writing, and shall be sent postage prepaid by United States Postal Service, to the designated representatives identified below unless otherwise indicated in writing by the Parties.

For the STATE: Robert Kutrich
 WSDOT Public Transportation Division
 401 – 2nd Avenue South
 Suite 300
 Seattle, WA 98104-3850
 kutrinf@wsdot.wa.gov

For the COUNTY: Carol Cooper
 Senior Transportation Planner
 MS YES-TR-0600
 King County Metro Transit Division
 400 Yesler Way
 Seattle, WA 98104
 Carol.Cooper@kingcounty.gov

5. AMENDMENT

5.1 Amendment. Either Party may request changes to the provisions of this **Agreement**. Any such changes must be mutually agreed upon and incorporated by written amendment to this **Agreement**. No variation or alteration of the terms of this **Agreement** shall be valid unless made in writing and signed by authorized representatives of the Parties hereto prior to beginning any Work to be covered by any amendment.

6. DISPUTE RESOLUTION

6.1 Disputes and Remedies. The Parties, through their designated representatives identified in Section 4.1 of this **Agreement**, shall use their best efforts, through good faith discussion and negotiation, to resolve any disputes pertaining to this **Agreement** that may arise between the Parties. If these designated representatives are unable, after good faith efforts, to resolve a dispute, the STATE's Puget Sound Public Transportation Manager and the COUNTY'S Metro Transit General Manager shall review the matter and attempt to resolve it. If they are unable to resolve the dispute, the STATE's Public Transportation Assistant Director and the COUNTY'S DOT Deputy Director will meet and engage in good faith negotiations to resolve the dispute. In the event they cannot resolve the dispute, the STATE's Public Transportation Director and the COUNTY'S DOT Director will meet and engage in good faith negotiations to resolve the dispute. The Parties agree to exhaust each of these informal dispute resolution efforts before seeking to resolve disputes in a court of law or any other forum.

7. ACCOUNTING RECORDS

7.1 Project Accounts. The COUNTY agrees to establish and maintain for the **Task Order** Work either a separate set of accounts or separate accounts within the framework of an established accounting system that can be identified with the Work. The COUNTY agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Work shall be clearly identified, readily accessible and available to the STATE upon its reasonable request, and, to the extent feasible, kept separate from documents not pertaining to the Work.

7.2 Documentation of Project Costs and Program Income. The COUNTY agrees to support all allowable costs charged to the Work, including any approved services contributed by the COUNTY or others, with properly executed payrolls, time records, invoices, contracts, or

vouchers describing in detail the nature and propriety of the charges. The COUNTY also agrees to maintain accurate records of all program income derived from implementing the Work.

8. RECORDS RETENTION, AUDIT, AND INSPECTION

8.1 Retention of Records. During the progress of an individual **Task Order** and for a period not less than six (6) years from the date of final payment by the STATE, the records and accounts pertaining to the **Task Order** and accounting therefore are to be kept available by the Parties for inspection and audit by Washington State, the STATE, King County, the COUNTY, the Federal Transit Administration, and/or the Federal Highway Administration and copies of all records, accounts, documents, or other data pertaining to the **Task Order** will be furnished by the COUNTY upon reasonable request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained by the COUNTY until all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the six (6)-year retention period.

8.2 General Audit Requirements. The COUNTY agrees to obtain any other audits as the STATE shall decide in its sole discretion are reasonably required. Project closeout will not alter the COUNTY'S audit responsibilities.

8.3 Inspection. The COUNTY agrees to permit the STATE, and the State Auditor, or their authorized representatives, to inspect all **Task Order** Work materials, payrolls, maintenance records, and other data, and to audit the books, records, and accounts of the COUNTY and its subcontractors pertaining to the Work. The COUNTY agrees to require each third party to permit the STATE, and the State Auditor, or their duly authorized representatives, to inspect all work, materials, payrolls, maintenance records, and other data and records involving that third party contract, and to audit the books, records, and accounts involving that third party contract as it affects the Work.

9. TASK ORDER FUNDING REQUIREMENTS

9.1 In order to preserve the option of utilizing a variety of funding sources to reimburse the Work covered by this **Agreement**, the Parties agree to comply with the applicable laws, regulations, and requirements of each funding source. Each **Task Order** shall identify the funding sources for the Work and shall include each fund's relevant provisions, as set forth in Section 2, TASK ORDERS, above.

10. EFFECTIVENESS AND DURATION

10.1 This **Agreement** is effective upon execution by both Parties and will remain in effect until December 31, 2018, unless otherwise amended or terminated.

11. DOCUMENTATION

11.1 The STATE may require the submission of periodic reports and documentation from the COUNTY to verify that the COUNTY or its subcontractors are meeting funding and accountability requirements, such as civil rights or disadvantaged business enterprises. Subject to the terms and conditions described in this **Agreement**, the Parties shall agree to documentation requirements for Work as specified in the scope of work for each **Task Order**.

12. TERMINATION OF AGREEMENT

12.1 Termination for Convenience. Except as otherwise provided in this **Agreement**, the STATE may terminate this **Agreement** or any **Task Order** by giving sixty (60) calendar days written notice to the COUNTY. The COUNTY may also terminate this **Agreement** or any **Task Order** by giving sixty (60) calendar days written notice to the STATE. Upon termination of this **Agreement**, all **Task Orders** shall automatically terminate. Individual **Task Orders** may be terminated in the same manner as provided for in this subsection 12.1, unless another manner is provided for in an individual task order, but that termination would not automatically terminate the Master Agreement.

12.2 Termination by the COUNTY for Non-Appropriation or Lack of Funds. The COUNTY may terminate this **Agreement** or any **Task Order** in the event that sufficient COUNTY funds are not appropriated, or otherwise become unavailable, to cover performance of any Work undertaken by the COUNTY under this **Agreement** prior to reimbursement by the STATE. Such termination shall be upon thirty (30) calendar days' written notice to the STATE or at the close of the COUNTY'S current appropriation year, whichever comes first. The COUNTY'S appropriation year ends on December 31st of each year.

12.3 Termination by the STATE for Non-appropriation or Unavailability of Funds. The STATE may terminate this **Agreement** or any **Task Order** at any time in the event that appropriated federal or state funds to cover the Work agreed to under this **Agreement** are withdrawn by federal or legislative action, or otherwise become unavailable.

12.4 Termination by either Party for Breach. Either Party may terminate the **Agreement** or any **Task Order** if either Party materially breaches, or fails to perform any of the requirements of the **Agreement** or any **Task Order** provided that the breaching Party has failed to cure the condition(s) causing that breach after fourteen (14) days written notice by the non-breaching Party.

12.5 Should a **Task Order** or the **Agreement** be terminated under Section 12.1, 12.2, or 12.3 of the **Agreement** prior to fulfillment of the terms stated therein (termination date), the COUNTY shall only be reimbursed for actual direct salary and related direct non-salary costs properly incurred by the COUNTY prior to the termination date. The cost of any Project Equipment which has been purchased by the COUNTY prior to the termination date shall be reimbursed if the following two conditions are met and approved in writing by STATE, which approval shall not be unreasonably withheld or delayed: i) the COUNTY endeavors to return the Project Equipment for a refund; and ii) the COUNTY is unable, with reasonable efforts not requiring litigation and with STATE's concurrence, which concurrence shall not be unreasonably withheld or delayed,, to obtain a refund for the Project Equipment from the vendor. The COUNTY agrees to follow STATE's instructions for disposal of any Project Equipment thus reimbursed.

12.6 If a **Task Order** or this **Agreement** is terminated by either Party to this **Agreement** under Section 12.4 of the **Agreement**, the non-breaching Party shall not be obligated to continue to perform pursuant to the **Agreement** and shall retain all rights and remedies arising from the nonperformance of the breaching Party.

13. INDEMNIFICATION AND LIMITATION OF LIABILITY

13.1 The COUNTY shall indemnify and hold harmless the STATE, its agents, employees, and officers harmless from and process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs (hereinafter referred to collectively as "claims"), of whatsoever kind or nature brought against the STATE arising out of, in connection with or incident to the execution of this **Agreement** and/or the COUNTY'S performance or failure to perform any aspect of this **Agreement**. This indemnity provision applies to all claims against the STATE, its agents, employees and officers arising out of, in connection with or incident to the negligent acts omissions of the COUNTY, its agents, employees and officers. Provided, however, that nothing herein shall require the COUNTY to indemnify and hold harmless or defend the STATE, its agents, employees or officers to the extent that claims are caused by the negligent acts or omissions of the STATE, its agents, employees or officers. The indemnification and hold harmless provision shall survive termination of this **Agreement**.

13.2 The COUNTY specifically assumes potential liability for actions brought by COUNTY'S employees and/or subcontractors and solely for the purposes of this indemnification and defense, the COUNTY specifically waives any immunity under the State Industrial Insurance Law, Title 51 Revised Code of Washington.

14. NONDISCRIMINATION

14.1 The Parties agree to comply with all applicable federal, state, and local laws, rules, and regulations pertaining to nondiscrimination and agree to require the same of all authorized agents and/or subcontractors providing services or performing any Work using funds provided under this **Agreement**.

15. GENERAL

15.1 No Agency, Partnership, or Third Party Beneficiaries. It is understood and agreed that this **Agreement** is solely for the benefit of the Parties hereto and gives no rights to any other person, party or entity. No joint venture, agent-principal relationship, or partnership is formed as a result of this **Agreement**. No officers, employees or agents of one Party, or any of its contractors or subcontractors, shall be deemed, or represent themselves to be, employees or agents of the other Party.

15.2 Waiver of Default. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this **Agreement** shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this **Agreement** unless stated to be such in writing, signed by authorized representatives of the Parties, and attached to the original **Agreement**.

15.3 Entire Agreement. This **Agreement** embodies the Parties' entire understanding and agreement on the issues covered by it, except as may be modified by written amendment to this **Agreement**, and supersedes any prior negotiations, representations or draft agreements on this matter, either written or oral.

15.4 Master Agreement. The provisions of this Master Agreement and individual **Task Orders** issued by the STATE are intended to be mutually complementary. In case of any discrepancy between the provisions, the Master Agreement shall prevail over the **Task Order**.

15.5 Governing Law and Venue. This **Agreement** shall be interpreted in accordance with the laws of the State of Washington. Any legal action arising out of this **Agreement** shall be brought in the Thurston County Superior Court situated in Olympia, Washington.

15.6 Force Majeure. Either Party to this **Agreement** shall be excused from performance of any responsibilities and obligations under this **Agreement**, and shall not be liable for damages due to failure to perform, during the time and to the extent that it is prevented from performing by a cause directly or indirectly beyond its control, including, but not limited to: late delivery or nonperformance by vendors of materials or supplies; any incidence of fire, flood, snow, earthquake, or acts of nature; strikes or labor actions; accidents, riots, insurrection, terrorism, or acts of war; order of any court of competent jurisdiction or authorized civil authority commandeering material, products, or facilities by the federal, state or local government; or national fuel shortage; when satisfactory evidence of such cause is presented to the other Party to this **Agreement**, and provided that such non-performance is beyond the control and is not due to the fault or negligence of the Party not performing. In no event should this provision eliminate the STATE's obligation to make payment for invoices submitted for Work performed by the COUNTY pursuant to this **Agreement**.

15.7 Severability. If any provision of this **Agreement** is held invalid by a court of competent jurisdiction, the remainder of the **Agreement** shall not be affected thereby if such remainder would then continue to serve the purposes and objectives originally contemplated by the Parties.

15.8 Attorneys' Fees. In the event of litigation or other action brought to enforce the terms contained in this **Agreement**, each Party agrees to bear its own attorneys' fees, witness fees, and other costs.

15.9 Survival. The provisions of this Section 15 (General) shall survive any termination or expiration of this **Agreement**.

15.10 Order of Precedence. In the event of any conflicts, resolution shall be resolved in the following order of precedence:

- A. Applicable federal and state law and regulations;
- B. Terms and conditions of the **Agreement** including its exhibits; and
- C. The applicable **Task Order**.

16.0 Authority to Sign. The undersigned acknowledge that they are authorized to execute this **Agreement** and bind their respective entities to the obligations set forth herein.

IN WITNESS WHEREOF, the Parties hereto have executed this **Agreement** as of the Party's date signed last below.

KING COUNTY
DEPARTMENT OF TRANSPORTATION

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION

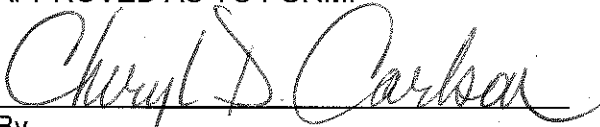
By: Harold S. Taniguchi
Director, King County DOT

By: Brian Lagerberg
Director, Public Transportation Division

Date

Date

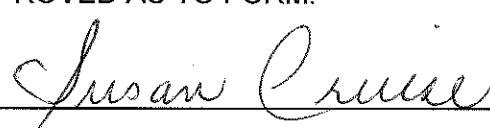
APPROVED AS TO FORM:


By
Deputy Prosecuting Attorney

Date

10/5/11

APPROVED AS TO FORM:


By
Assistant Attorney General

Date

July 1, 2011

GCA 6141

Master Agreement for Transportation Demand Management Work
by King County

Exhibit 1

Task Order Format

GCA 6141 Task Order _____	
Transportation Demand Management Work by King County	
[project title]	
Washington State Department of Transportation Task Order Manager: [name] (206) [phone] [email]	King County Department of Transportation Task Order Manager: [name] (206) [phone] [email]
Maximum Reimbursable Cost: \$ [insert number]	
Task Order Term: [start date (Month day, year)] through [end date (Month day, year)].	
Funding Sources: [select the specific funding sources for this Task Order]	
Federal Funds <input type="checkbox"/> Job Access and Reverse Commute (JARC) – pursuant to 49 United States Code (USC) §5316. <input type="checkbox"/> Congestion Mitigation and Air Quality Improvement Program (CMAQ) – authorized under 49 USC chapter 53 of title 23, the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, continued under the Transportation Equity Act for the 21st Century (TEA-21), and re-authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 114 (Aug. 10, 2005) for congestion mitigation and air quality improvement programs under 23 USC §149. <input type="checkbox"/> Transportation Investment Generating Economic Recovery (TIGER Discretionary Grant) – authorized under the American Recovery and Reinvestment Act of 2009 (ARRA), enacted as Pub. Law 111-5, February 17, 2009, for projects under 49 USC Chapter 53. <input type="checkbox"/> [name of other federal program or funding source]	
State Highway Funds <input type="checkbox"/> Alaskan Way Viaduct and Seawall Replacement Program <input type="checkbox"/> Interstate 405 Corridor Program <input type="checkbox"/> SR 520 Bridge Replacement and HOV Program <input type="checkbox"/> [name of other highway program or funding source]	
Other State Funds <input type="checkbox"/> Commute Trip Reduction (CTR) Program <input type="checkbox"/> Vanpool Investment Program (VIP) <input type="checkbox"/> [name of other state program or funding source]	
Local Funds <input type="checkbox"/> [name of local program or funding source]	
Other <input type="checkbox"/> [name of program or funding source]	

THIS Task Order _____ is made and entered into between the Washington State Department of Transportation, hereinafter the "STATE," and King County, by and through its Department of Transportation, hereinafter the "COUNTY."

WHEREAS, Agreement GCA 6141, Master Agreement for Transportation Demand Management Work by King County (**Agreement**), sets forth the terms and conditions applicable to the Parties' obligations regarding the COUNTY'S performance of Transportation Demand Management work or services (Work) for the STATE.

WHEREAS, the Parties wish to enter into a **Task Order** for the COUNTY to perform Work for [insert project title].

NOW, THEREFORE, in consideration of the terms, conditions, and performances contained in the **Agreement**, this **Task Order**, and the attached exhibits, the Parties mutually agree as follows:

Exhibits [optional] The following exhibits are attached hereto and incorporated into this **Task Order** (check all that apply):

☐ **Exhibit A**, Federal Transit Administration (FTA) Provisions

Where an inconsistency is identified between a provision of GCA 6141 and a provision included in **Exhibit A** referenced above or in a FTA special provision stated below under Additional Terms and Conditions, the language of the federal provision has precedence.

The COUNTY understands and agrees that Federal laws, regulations, and directives applicable to the **Task Order** on the date on which the FTA Authorized Official awarded Federal assistance may be modified from time to time. In particular, new Federal laws, regulations, and directives may become effective after the date of execution of this **Task Order**, and may apply to this **Task Order**. The COUNTY agrees that the most recent of such Federal laws, regulations, and directives, as may be amended, will apply to the administration of this **Task Order** at any particular time, except to the extent that FTA determines otherwise in writing.

☐ **Exhibit B**, Project Equipment Provisions

Scope of Work The COUNTY shall perform the Work described below:

Task	Description
1	
2	
...	

Scope of Work Deliverables and Schedule The milestone dates listed below are meant to be used as a guideline, and may be changed as necessary once project work begins, as mutually agreed in writing by both Parties.

Task	Deliverable	Milestone Date
1		
2		

...

The maximum reimbursable cost for all Work associated with this **Task Order** will be *[insert total dollar amount spelled out]* (\$ *[insert number]*).

Payment under this **Task Order** will be made in accordance with Section 3, *PAYMENT AND BILLING*, of GCA 6141.

Additional Terms and Conditions *[optional]*

The Parties agree to the following additional terms and conditions for the performance of the Work under this **Task Order**:

[When applicable, additional items, clauses, conditions, or provisions specific to the Work that are consistent with GCA 6141 shall be inserted here. When applicable, FTA special provisions from the FTA Master Agreement for specific funding programs shall be inserted here. Delete this provision if not needed.]

All other terms and conditions of **Master Agreement** GCA 6141 shall be incorporated and by this reference made part of this **Task Order**, as if fully set forth herein.

NOW, THEREFORE, are the Parties hereto have executed this **Task Order** _____ as of the Party's date signed last below.

KING COUNTY
DEPARTMENT OF TRANSPORTATION

By _____

Title _____

Date _____

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION

By _____

Title _____

Date _____

GCA 6141

Master Agreement for Transportation Demand Management Work by King County

EXHIBIT A

Federal Transit Administration Provisions

**Section 1
General**

The COUNTY agrees to include these provisions in each subcontract financed in whole or in part with Federal assistance provided by Federal Transit Administration (FTA) and in all contracts it enters into for the employment of any individuals, procurement of any materials, or the performance of any Work under this **Task Order**. It is further agreed that these clauses shall not be modified, except to identify the subcontractor or other person or entity that will be subject to its provisions. In addition, the following provision shall be included in any advertisement or invitation to bid for any procurement by the COUNTY under this **Task Order**:

Statement of Financial Assistance -

This Agreement is subject to a financial assistance contract between the Washington State Department of Transportation and the Federal Transit Administration and the appropriations of the State of Washington.

**Section 2
Procurement**

The COUNTY shall make purchases of any incidental goods, essential supplies, or Project Equipment pursuant to this **Task Order** through procurement procedures approved in advance by the STATE and consistent with the following provisions:

A. General Procurement Requirements. The COUNTY shall comply with third party procurement requirements of 49 U.S.C. chapter 53 and other applicable Federal Laws in effect now or as subsequently enacted; with U.S. Department of Transportation (DOT) third party procurement regulations of 49 C.F.R. § 18.36 and other applicable Federal Regulations pertaining to third party procurements and subsequent amendments thereto. The COUNTY shall also comply with the provisions of FTA Circular 4220.1.F, "Third Party Contracting Requirements," November 1, 2008, and any later revision thereto, except to the extent FTA determines otherwise in writing, which by this reference are incorporated herein; and any reference therein to "Grantee" shall mean COUNTY. The COUNTY agrees that it may not use FTA assistance to support its third party procurements unless there is satisfactory compliance with Federal laws and regulations.

B. Full and Open Competition. In accordance with 49 U.S.C. § 5325(a), the COUNTY agrees to conduct all procurement transactions in a manner that provides full and open competition as determined by FTA.

C. Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal laws or regulations, the COUNTY agrees to comply with the requirements of 49 U.S.C. § 5325(h) by not expending or otherwise using any Federal assistance awarded to support a procurement using exclusionary or discriminatory specifications.

D. Preference for United States Products and Services. To the extent applicable, the COUNTY agrees to comply with the following U.S. preference requirements:

1. **Buy America.** The COUNTY agrees to comply with 49 U.S.C. § 5323(j), with FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661, and any later amendments thereto.
2. **Cargo Preference—Use of United States-Flag Vessels.** The COUNTY agrees to comply with 46 U.S.C. § 55305 and U.S. Maritime Administration regulations, "Cargo Preference—U.S.-Flag Vessels," 46 C.F.R. Part 381, to the extent those regulations apply to the Work.
3. **Fly America.** The COUNTY understands and agrees that the Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Work unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

E. Geographic Restrictions. The COUNTY agrees to not use any State or Local geographic preference, except those expressly mandated or encouraged by federal statute or as permitted by FTA.

F. Preference for Recycled Products. To the extent applicable, The COUNTY agrees to comply with U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials", 40 C.F.R. Part 247, which implements section 6002 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962. Accordingly, the COUNTY agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

G. National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the COUNTY agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

H. Government Orders. In case any lawful government authority shall make any order with respect to the Work or Project Equipment, or any part thereof, or the PARTIES hereto or either PARTY, the COUNTY shall cooperate with the STATE in carrying out such order and will arrange its operation and business so as to enable the STATE to comply with the terms of the order.

Section 3 Incorporation of Federal Terms

A. Purchasing. This **Task Order's** provisions include, in part, certain Standard Terms and Conditions required by FTA, whether or not expressly set forth herein. All contractual provisions as set forth in FTA Circular 4220.1E are hereby incorporated by reference. All FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this **Task Order**. The COUNTY shall not perform any act, fail to perform any act, or refuse to comply with any STATE request, which would cause the STATE to be in violation of any FTA term or condition.

B. Federal Changes. The COUNTY shall at all times comply with all applicable FTA regulations, policies, procedures and directives, whether or not they are referenced in this **Task Order** and agrees to comply with any amendments promulgated by the FTA, during the term of this **Task Order**. The COUNTY'S failure to so comply shall constitute a material breach of this **Task Order**.

Section 4

No Obligation by the Federal Government

A. The STATE and the COUNTY acknowledge and agree that, regardless of any concurrence by the Federal Government or approval of the solicitation or award of this **Task Order**, the Federal Government is not a party to this **Task Order** and shall not be subject to any obligations or liabilities to the COUNTY, subcontractor, lessee or any other participant at any tier of the Work (whether or not a PARTY to this **Task Order**) pertaining to any matter resulting from this **Task Order**.

B. No contract between the COUNTY and its subcontractors, lessees, or any other participant at any tier of the Work shall create any obligation or liability of the STATE with regard to this **Task Order** without the STATE's specific written consent, notwithstanding its concurrence in, or approval of, the award of any contract or subcontract or the solicitations thereof. The COUNTY hereby agrees to include this provision in all contracts it enters into for the employment of any individuals, procurement of any materials, or the performance of any Work to be accomplished under this **Task Order**.

Section 5

Ethics

A. Code of Ethics. The COUNTY agrees to maintain a written code or standards of conduct that shall govern the performance of its officers, employees, board members, or agents engaged in the award and administration of contracts, subagreements, leases, third party contracts, or other arrangements supported by Federal assistance. The code or standards shall provide that the COUNTY'S officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential subcontractor, lessee, sub-recipient, or participant at any tier of the Work, or agent thereof. The COUNTY may set *de-minimis* rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. These codes or standards shall prohibit the COUNTY'S officers, employees, board members, or agents from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain. As permitted by State or Local Law or Regulations, such code or standards shall include penalties, sanctions, or other disciplinary actions for violations by the COUNTY'S officers, employees, board members, or agents, or by subcontractors, lessees or sub-recipients, other participants or their agents. The COUNTY must fully comply with all the requirements and obligations of chapter 42.52 RCW that govern ethics in State and Local Governments.

1. **Personal Conflict of Interest.** The COUNTY'S code or standards shall prohibit the COUNTY'S employees, officers, board members, or agents from participating in the selection, award, or administration of a contract supported by "Federal Funds" if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the parties set forth below has a financial or other interest in the firm or entity selected for award:
 - a. The employee, officer, board member, or agent;
 - b. Any member of his or her immediate family;
 - c. His or her partner; or
 - d. An organization that employs, or is about to employ, any of the above.
2. **Organizational Conflict of Interest.** The COUNTY'S code or standard of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the Work to be performed under a proposed third party contract, subagreement, lease, or other arrangement at any tier may, without some restrictions on future activities, result in

an unfair competitive advantage to the third party contractor or impair its objectivity in performing the Work under this **Task Order**.

B. Debarment and Suspension. The COUNTY agrees to comply and assures the compliance of each sub-recipient, lessee, third party contractor, or other participant at any tier of the Work with the requirements of Executive Orders Numbers 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations "Non-procurement Suspension and Debarment" 2 C.F.R. Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S.OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)", 2 C.F.R. Part 180. The COUNTY agrees to and assures that its sub-recipients, lessees, third party contractors, and other participants at any tier of the Work will review the "Excluded Parties Listing System" at <http://epls.arnet.gov/> before entering into any third subagreement, lease, third party contract, or other arrangement in connection with the **Task Order**.

C. Bonus or Commission. The COUNTY affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain approval of its application for Federal financial assistance for this **Task Order**.

D. Relationships with Employees and Officers of the STATE. The COUNTY shall not extend any loan, gratuity or gift of money in any form whatsoever to any employee or officer of the STATE, nor shall the COUNTY rent or purchase any Equipment and materials from any employee or officer of the STATE.

E. Employment of Former STATE Employees. The COUNTY hereby warrants that it shall not engage on a full, part-time, or other basis during the period of this **Task Order**, any professional or technical personnel who are, or have been, at any time during the period of this **Task Order**, in the employ of the STATE without written consent of the STATE.

F. Restrictions on Lobbying. The COUNTY agrees to:

1. Comply with 31 U.S.C. § 1352(a) and will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending this **Task Order**; and
2. Comply, and assure compliance by each subcontractor at any tier, each lessee at any tier and each sub-recipient at any tier, with applicable requirements of U.S. DOT regulations, "New Restriction on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. §1352; and
3. Comply with Federal statutory provisions to the extent applicable prohibiting the use of Federal assistance Funds for activities designed to influence Congress or a state legislature on legislation or appropriations, except through proper, official channels.

G. Employee Political Activity. To the extent applicable, the COUNTY agrees to comply with the provisions of the "Hatch Act," 5 U.S.C. §§ 1501 through 1508, and §§ 7324 through 7326, and Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees," 5 C.F.R. Part 151. The "Hatch Act" limits the political activities of state and local agencies and their officers and employees, whose principal employment activities are financed in whole or in part with "Federal Funds" including a loan, grant, or cooperative agreement. Nevertheless, in accordance with 49 U.S.C. § 5307(k)(2)(B) and 23 U.S.C. § 142(g), the "Hatch Act" does not apply to a non-supervisory employee of a transit system (or of any other agency or entity performing related functions) receiving assistance pursuant to the SAFETEA-LU provisions and/or receiving FTA assistance to whom the "Hatch Act" does not otherwise apply.

H. False or Fraudulent Statements or Claims. The COUNTY acknowledges and agrees that:

1. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.*, and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its activities in connection with the **Task Order**. Accordingly, by executing this **Task Order**, the COUNTY certifies or affirms the truthfulness and accuracy of each

statement it has made, it makes, or it may make in connection with the Work covered by this **Task Order**. In addition to other penalties that may apply, the COUNTY also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the COUNTY to the extent the Federal Government deems appropriate.

2. **Criminal Fraud:** If the COUNTY makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement in connection with this **Task Order** authorized under 49 U.S.C. chapter 53 or any other Federal Law, the Federal Government reserves the right to impose on the COUNTY the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001 or other applicable Federal Law to the extent the Federal Government deems appropriate.

I. Trafficking in Persons. To the extent applicable, the COUNTY agrees to comply with, and assures the compliance of each subrecipient with, the requirements of the subsection 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g), and the provisions of Subsection 3.g of FTA Master Agreement (17) dated October 1, 2010, which by this reference is incorporated herein as if fully set out in this **Task Order**, and any amendments thereto, and accessible at <http://www.fta.dot.gov/documents/17-master.pdf>, consistent with U.S. OMB guidance, "Trafficking in Persons: Grants and Cooperative Agreements," 2 C.F.R. Part 175.

Section 6 Civil Rights

The COUNTY shall comply with all applicable civil rights laws, regulations and directives except to the extent that the Federal Government determines otherwise in writing. These include but are not limited to, the following:

A. Nondiscrimination in Federal Transit Programs. The COUNTY agrees to comply, and assures compliance by each third party contractor, lessee or other participant at any tier, with the provisions of 49 U.S.C. §5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity;

B. Nondiscrimination-Title VI of the Civil Rights Act. The COUNTY agrees to comply, and assure compliance by each third party contractor at any tier, with all provisions prohibiting discrimination on the basis of race, color, or national origin, of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*; and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the COUNTY also agrees to follow all applicable provisions of FTA Circular 4702.1A, "Title VI and Title VI-Dependent Guidelines for Federal Transit Assistance Recipients," May 13, 2007, and any other applicable implementing Federal Directives that may be issued;

C. Equal Employment Opportunity. The COUNTY agrees to comply, and assures compliance by each third party contractor, lessee or other participant at any tier of this Work, with all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and 49 U.S.C. § 5332 and any implementing Federal Regulations and any subsequent amendments thereto. Except to the extent FTA determines otherwise in writing, the COUNTY also agrees to comply with any applicable Federal equal employment opportunity (EEO) directives that may be issued. Accordingly:

1. The COUNTY agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The COUNTY agrees to take affirmative action to ensure that applicants are employed and

that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The COUNTY shall also comply with any implementing requirements FTA may issue.

2. If the COUNTY is required to submit and obtain Federal Government approval of its EEO program, that EEO program approved by the Federal Government is incorporated by reference and made part of this **Task Order**. Failure by the COUNTY to carry out the terms of that EEO program shall be treated as a violation of this **Task Order**. Upon notification to the COUNTY of its failure to carry out the approved EEO program, the Federal Government may impose such remedies, as it considers appropriate, including termination of Federal financial assistance, or other measures that may affect the COUNTY'S eligibility to obtain future Federal financial assistance for transportation projects.

D. Nondiscrimination on the Basis of Sex. The COUNTY agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with any implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.

E. Nondiscrimination on the basis of Age. The COUNTY agrees to comply with applicable requirements of:

1. The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and with implementing U.S. Health and Human Services, "Nondiscrimination on the basis of Age in Programs and Activities Receiving Federal Financial Assistance," 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal financial assistance.
2. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 through 634, and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, which prohibits discrimination against individuals on the basis of age.

F. Disabilities-Employment. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the COUNTY agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the COUNTY agrees to comply with any implementing requirements FTA may issue.

G. Disabilities-Access. The COUNTY agrees to comply with the requirements of 49 U.S.C. § 5301(d) which state the Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement said policy. The COUNTY also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibit discrimination on the basis of handicap; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires the provision of accessible facilities and services to be made available to persons with disabilities; and the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to persons with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the COUNTY agrees to comply with applicable implementing Federal regulations and any later amendments thereto, and agrees to follow applicable Federal directives except to the extent FTA approves otherwise in writing. Among those regulations and directives are the following:

U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37; U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27; Joint U.S. Architectural and Transportation Barriers Compliance Board U.S. DOT regulations; "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38; U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35; U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36; U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19; U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630; U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Custom Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and Federal civil rights and nondiscrimination directives implementing the foregoing regulations, except to the extent the Federal Government determines otherwise in writing.

H. Drug or Alcohol Abuse. Confidentiality and Other Civil Rights Protections. The COUNTY agrees to comply with the confidentiality and other civil rights provisions of the Drug Abuse Office and Treatment Act of 1972, as amended 21 U.S.C. §§ 1101 *et seq.*, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended; 42 U.S.C. §§ 4541 *et seq.*, and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

I. Access to Services for Persons with Limited English Proficiency. The COUNTY agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with provisions of U.S. DOT Notice "DOT Policy Guidance Concerning Recipients Responsibilities to Limited English Proficient (LEP) Persons," 70 Fed. Reg. 74087 December 14, 2005.

J. Environmental Justice. The COUNTY agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.

K. Other Nondiscrimination Statutes. The COUNTY agrees to comply with all applicable provisions of other Federal Laws, Regulations, and Directives pertaining to and prohibiting discrimination and other nondiscrimination statute(s) that may apply to the Work including chapter 49.60 RCW.

Section 7

Participation of Disadvantaged Business Enterprises

The COUNTY shall take the following measures to facilitate participation by disadvantaged business enterprises (DBE) in the Work:

A. The COUNTY agrees to comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26; and

B. The COUNTY agrees that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any third party contract, or sub-agreement supported with Federal assistance derived from the U.S. DOT or in the administration of its DBE program or the requirements of 49 C.F.R. Part 26. The COUNTY agrees to take all necessary and reasonable steps under 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third party contracts and sub-agreements supported with Federal assistance derived from the U.S. DOT. The COUNTY'S DBE program, as required by 49 C.F.R. Part 26

and approved by the U.S. DOT, if any, is incorporated by reference and made part of this **Task Order**. Implementation of the DBE program is a legal obligation, and failure to carry out its terms shall be treated as violation of this **Task Order**. Upon notification to the COUNTY of its failure to implement its approved DBE program, the U.S. DOT may impose sanctions as provided for under 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*

Section 8

Energy Conservation and Environmental Requirements

A. Energy Conservation. The COUNTY shall comply with the mandatory standards and policies relating to energy efficiency standards and policies within the Washington State energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 *et seq.*, and any amendments thereto.

B. Environmental Protection. The COUNTY agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. §§ 4321 through 4335; Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; joint Federal Highway Administration (FHWA)/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622, and subsequent Federal environmental protection regulations that may be promulgated. The COUNTY agrees to comply with 23 U.S.C. §§ 139 and 326 as applicable and implement those requirements in accordance with the provisions of joint FHWA/FTA final guidance "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 *Fed. Reg.* 66576 *et seq.*, November 15, 2006, and any applicable Federal Directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing.

Section 9

Accounting Records

A. Project Accounts. The COUNTY agrees to establish and maintain for the **Task Order** either a separate set of accounts or separate accounts within the framework of an established accounting system that can be identified with the Work, in compliance with applicable Federal laws and regulations. The COUNTY agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Work shall be clearly identified, readily accessible and available to the STATE and FTA upon request and, to the extent feasible, kept separate from documents not pertaining to the Work.

B. Funds Received or Made Available for the Work. The COUNTY agrees to deposit in a financial institution, all advance Work payments it receives from the Federal Government and record in the Work Account all amounts provided by the Federal Government in support of this **Task Order** and all other funds provided for, accruing to, or otherwise received on account of the Work (Project funds) in accordance with applicable Federal Regulations and other requirements FTA may impose. Use of financial institutions owned at least 50 percent by minority group members is encouraged.

C. Documentation of Project Costs and Program Income. The COUNTY agrees to support all costs charged to the Work, including any approved services contributed by the COUNTY or others, with properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The COUNTY also agrees to maintain accurate records of all program income derived from implementing the Work, except certain income determined by FTA to be exempt from Federal program income requirements.

D. Checks, Orders, and Vouchers. The COUNTY agrees to refrain from drawing checks, drafts, or orders for goods or services to be charged against the Work Account until it has received and filed a properly signed voucher describing in proper detail the purpose for the expenditure.

Section 10

Audits, Inspection, and Retention of Records

A. Submission of Proceedings, Agreements, and Other Documents. During the course of the Work and for six (6) years thereafter, the COUNTY agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Work as the STATE may require. Reporting and record-keeping requirements are set forth in 49 C.F.R. Part 18. Project closeout does not alter these recording and record-keeping requirements. Should an audit, enforcement, or litigation process be commenced, but not completed, during the aforementioned six-year period then the COUNTY'S obligations hereunder shall be extended until the conclusion of that pending audit, enforcement, or litigation process.

B. General Audit Requirements. The COUNTY agrees to perform the financial and compliance audits required by the Single Audit Act Amendments of 1996, 31 U.S.C. §§ 7501 *et seq.* As provided by 49 C.F.R. § 18.26, these financial and compliance audits must comply with the provisions of OMB Circular A-133, Revised, "Audits of States, Local Governments, and Non-Profit Organizations," the latest OMB A-133 Compliance Supplement for U.S. DOT, and any further revision or supplement thereto. The COUNTY also agrees to obtain any other audits required by the Federal Government. The COUNTY agrees that audits will be carried out in accordance with U.S. General Accounting Office "Government Auditing Standards." The COUNTY agrees to obtain any other audits required by the STATE. Project closeout will not alter the COUNTY'S audit responsibilities.

C. Inspection. The COUNTY agrees to permit the STATE, the State Auditor, the United States Department of Transportation, and the Comptroller General of the United States, or their authorized representatives, to inspect all Work materials, payrolls, maintenance records, and other data, and to audit the books, records, and accounts of the COUNTY and its contractors pertaining to the Work, as required by 49 U.S.C. § 5325(g).

Section 11

Labor Provisions

A. Contract Work Hours and Safety Standards Act. The COUNTY shall comply with, and shall require the compliance by each subcontractor at any tier, any applicable employee protection requirements for non-construction employees as defined by the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3701 *et seq.*, and specifically, the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702 and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)" at 29 C.F.R. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and implementing U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926.

B. Fair Labor Standards Act. The COUNTY agrees that the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 201 *et seq.*, apply to employees performing Work involving commerce. The COUNTY shall comply with the Fair Labor Standards Act's minimum wage and overtime requirements for employees performing Work in connection with the **Task Order**.

C. Overtime Requirements. No contractor or subcontractor contracting for any part of the **Task Order** Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such Work to work in excess of forty (40) hours in such workweek unless such laborer or

mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

D. Payrolls and Basic Records. Payrolls and basic records relating thereto shall be maintained by the COUNTY during the course of the Work and preserved for a period of six (6) years thereafter for all laborers and mechanics working at the site of the Work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the Work). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act, daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the COUNTY shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. COUNTY'S employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

E. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (C) of this Section the COUNTY and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such COUNTY and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (C) of this Section, in the sum of ten dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (C) of this Section.

F. Withholding for unpaid wages and liquidated damages. The COUNTY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of Work performed by the COUNTY or subcontractor under any such contract or any other Federal contract with the same prime COUNTY, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime COUNTY, such sums as may be determined to be necessary to satisfy any liabilities of such COUNTY or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (E) of this Section.

G. Public Transportation Employee Protective Agreement. To the extent required by Federal Law, the COUNTY agrees to implement the Work in accordance with the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Work and that comply with the requirements of 49 U.S.C. § 5333 (b), in accordance with the U. S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215 and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of public transportation employee protective arrangements to FTA. The COUNTY agrees to implement the Work in accordance with the conditions stated in that U.S. DOL certification, which certification and any documents cited therein are incorporated by reference and made part of this **Task Order**. The COUNTY also agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program that is most current as of the date of execution of this **Task Order** and any alternative

comparable arrangements specified by U.S. DOL for application to the Work in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revision thereto.

Section 12

Planning and Private Enterprise

The COUNTY agrees to implement the **Task Order** in a manner consistent with the plans developed in compliance with the applicable planning and private enterprise provisions of 49 U.S.C. §§ 5303, 5304, 5306, and 5323(a)(1); joint Federal Highway Administration (FHWA)/FTA regulations, "Statewide Transportation Planning: Metropolitan Transportation Planning," 23 C.F.R. Part 450 and 49 C.F.R. Part 613; and any amendments thereto and with FTA regulations, "Major Capital Investment Projects," 49 C.F.R. Part 611, to the extent that these regulations are consistent with the SAFETEA-LU amendments to the public transportation planning and private enterprise laws, and when promulgated, any subsequent amendments to those regulations. To the extent feasible, the COUNTY agrees to comply with the provisions of 49 U.S.C. § 5323(k), which affords governmental agencies and non-profit organizations that receive Federal assistance for non-emergency transportation from Federal Governmental sources (other than U.S. DOT) an opportunity to be included in the design, coordination, and planning of transportation services. During the implementation of the **Task Order**, the COUNTY agrees to take into consideration the recommendations of Executive Order No. 12803, "Infrastructure Privatization," 31 U.S.C. § 501 note, and Executive Order No 12893, "Principles for Federal Infrastructure Investments," 31 U.S.C. § 501 note.

Section 13

Substance Abuse

A. Drug and Alcohol Abuse. The COUNTY agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations and the STATE to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. Part 655 and review the testing process. The COUNTY agrees further to submit annually the Management Information System (MIS) reports to the STATE by February 28th each year for the useful life of the Project Equipment.

B. Privacy Act. The COUNTY agrees to comply with the confidentiality and other civil rights provisions of the Drug Abuse Office and Treatment Act of 1972, Pub. L. 92-255, March 21, 1972, as amended, 21 U.S.C. §§1101 *et seq.*, the Comprehensive Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, Pub. L. 91-616, December 31, 1970, as amended 42 U.S.C. §§4541 *et seq.*, and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, including amendments to these acts. The COUNTY understands the requirements of confidentiality concerning persons covered and/or receiving services and/or treatment regarding alcohol and drug abuse, as defined in the aforementioned acts as applicable, including any civil and criminal penalties for not complying with the requirements of confidentiality and that failure to comply with such requirements may result in termination of this **Task Order**.

Section 14

Federal "\$1 Coin" Requirements

To the extent required by the Federal Government, the COUNTY agree to comply with the provisions of section 104 of the Presidential \$1 Coin Act of 2005, 31 U.S.C. § 5112(p), so that the COUNTY'S equipment and facilities requiring the use of coins or currency will be fully

capable of accepting and dispensing \$1 coins in the connection with that use. The COUNTY also agrees to display signs and notices denoting the capability of its equipment and facilities on its premises where coins or currency are accepted or dispensed, including on each vending machine.

Section 15 Insurance

In addition to other insurance requirements that may apply, the COUNTY agrees as follows:

Minimum Requirements. At a minimum, the COUNTY agrees to comply with the insurance requirements normally imposed on the COUNTY by its State and local laws, regulations, and ordinances, except to the extent that the Federal Government determines otherwise in writing.

Section 16 Termination

In addition to the Parties' agreement with regard to termination for convenience as set forth in the Agreement, the Parties shall comply with 49 C.F.R. 18.43 and, if either Party terminates for convenience the Master Agreement or a Task Order, the Parties shall comply with 49 C.F.R. 18.44.

A. **STATE's Termination for Convenience.** If the STATE decides, as set forth in the Agreement, to terminate for convenience the Agreement or any Task Order the Parties shall agree upon the termination conditions including the effective date and, in the case of a partial termination of a Task Order, the portion to be terminated.

B. **COUNTY's Termination for Convenience.** If the COUNTY decides to terminate for convenience the Agreement or any Task Order the COUNTY shall set forth the reasons for the termination, the effective date, and, in the case of partial termination of a Task Order, the portion to be terminated. If, in the case of partial termination, the STATE determines that the remaining portion of the Task Order will not accomplish the purposes of the Task Order, the STATE may terminate the Task Order in its entirety under either 49 C.F.R. 18.43 or 49 C.F.R. 18.44(a).

C. **STATE's Termination for COUNTY's Noncompliance.** If the COUNTY materially fails to comply with a term of the Agreement or a Task Order as set forth in 49 C.F.R. 18.43 (a) the STATE, in addition to the other remedies set forth in 49 C.F.R. 18.43, may terminate the Agreement and/or such Task Order.

GCA 6141

Master Agreement for Transportation Demand Management Work by King County**EXHIBIT B****Project Equipment Provisions****Section 1
General**

The COUNTY agrees to include these provisions in each subcontract and in all contracts it enters into for the employment of any individuals, procurement of any materials, or the performance of any Work under this **Task Order**. It is further agreed that these clauses shall not be modified, except to identify the subcontractor or other person or entity that will be subject to its provisions. In addition, the following provision shall be included in advertisement or invitation to bid for any procurement by the COUNTY under this **Task Order**:

Statement of Financial Assistance:

"This Agreement is subject to the appropriations of the State of Washington."

**Section 2
Inspection Upon Delivery**

The COUNTY shall inspect Project Equipment purchased pursuant to this **Task Order** at the time of delivery to the COUNTY. Upon receipt and written acceptance of Project Equipment, the COUNTY agrees that it has fully inspected the Project Equipment and accepts it as being in good condition and repair, and is satisfied with the Project Equipment and that the Project Equipment complies with all regulations, rules, and laws.

**Section 3
Reports and Use of Project Equipment**

A. The COUNTY agrees that the Project Equipment shall be used as set forth in the **Task Order**. The COUNTY further agrees that it will not use or permit the use of the Project Equipment in a negligent manner or in violation of any law, or so as to avoid any insurance covering the same, or permit the Project Equipment to become subject to any lien, charge, or encumbrance. Should the COUNTY unreasonably delay or fail to use the Project Equipment the COUNTY agrees that it may be required to refund the entire amount of the Federal and/or state-funded share expended on the **Task Order**. The COUNTY shall immediately notify the STATE when any Project Equipment is withdrawn from use or when Project Equipment is used in a manner substantially different from that identified in the **Task Order**. If the Project Equipment is permanently removed from service the COUNTY agrees to immediately contact the STATE for instructions regarding the disposal of the Project Equipment.

B. Reports. The COUNTY shall advise the STATE regarding the progress of the Work at such times and in such manner as the STATE and/or FTA may require, including, but not limited to, interim reports. The COUNTY shall keep satisfactory written records with regard to the use of Project Equipment and shall submit the following reports to, and in a form and at such times prescribed by, the STATE:

1. Reports describing the current usage of Project Equipment and other data which the STATE and/or FTA may request.
2. In the event any portion of the Project Equipment sustains disabling damage the COUNTY shall notify the STATE immediately after the occasion of the damage, including the circumstances thereof.
3. The COUNTY shall collect and submit to the STATE, at such time as the STATE may require, such financial statements, data, records, contracts, and other documents related to the Work as may be deemed necessary by the STATE and/or the FTA.

C. Remedies for Misuse or Noncompliance. The COUNTY shall not use any Project Equipment in a manner different from that set forth in the **Task Order** unless permission to do so is granted in writing by the STATE. If the STATE determines that Project Equipment has been used in a manner different from that set forth in the **Task Order**, the STATE may direct the COUNTY to dispose of the Project Equipment acquired by the COUNTY. The STATE may also withhold payments should it determine that the COUNTY has failed to comply with any provision of this **Task Order**. If Federal participation and funding is either reduced or canceled as a result of a breach by the COUNTY, the COUNTY is then liable for all damages from the breach, even though those damages exceed the price payable under this **Task Order**.

Section 4 **Maintenance of Project Equipment**

The COUNTY shall make all necessary repairs and reasonably maintain the Project Equipment to assure it remains in good and operational condition. All service, materials, and repairs in connection with the use and operation of the Project Equipment shall be at the COUNTY'S expense. The COUNTY agrees to, at a minimum, service the Project Equipment and replace parts at intervals recommended in the manuals provided by the component manufacturers, or sooner if needed. The COUNTY shall take the Project Equipment to an appropriate service and repair facility for any service and repair under the manufacturer's warranty. The STATE and/or the FTA shall not be liable for repairs. When federal assistance grants are involved, the COUNTY shall comply with the equipment management requirements identified in 49 C.F.R. Part 18.32(d); and any reference therein to "grantee" shall mean the COUNTY. The COUNTY shall retain records of all maintenance and parts replacement performed on the Project Equipment. The COUNTY shall provide copies of such records to the STATE, upon request.

Section 5 **Liens on Equipment**

The STATE shall have legal ownership of all Project Equipment the COUNTY acquires or modifies using the Federal and/or state funds identified in the **Task Order**. The COUNTY accepts the STATE's legal ownership of Project Equipment and agrees that it shall not use the Project Equipment as collateral, nor shall the COUNTY encumber the Project Equipment in any way. The COUNTY shall follow the terms stated in Section 3, *Reports and Use of Project Equipment*, regarding the disposition of all Project Equipment.

Section 6 **Loss or Damage to Project Equipment**

A. The COUNTY, at its own expense, shall cover any loss, theft, damage, or destruction of the Project Equipment using either of the following methods:

1. The COUNTY shall maintain property insurance for non-vehicle equipment adequate to cover the value of the Project Equipment; or
 2. The COUNTY shall provide a written certificate of self-insurance to the STATE. The COUNTY will cover from its own resources the costs of repairing or replacing any Project Equipment, if it is stolen, damaged, or destroyed in any manner.
- B.** If the damage to the Project Equipment does not result in a total loss, payments for damage shall be paid directly to the COUNTY. The COUNTY shall, within thirty (30) days, either:
1. Devote all of the insurance proceeds received to repair the Project Equipment and place it back in service, and the COUNTY shall, at its own expense, pay any portion of the cost of repair which is not covered by insurance; or
 2. In the event the COUNTY certified to self-insurance, devote all funds necessary to repair the Project Equipment and place it back into service.
- C.** If the Project Equipment is a total loss, either by theft or damage, the insurance proceeds or equivalent shall be paid directly to the COUNTY. The COUNTY shall within sixty (60) days of loss, theft, or damage, notify the STATE that it either:
1. Intends to replace the lost Project Equipment; or
 2. Does not intend to replace the lost Project Equipment and shall return to the STATE its portion of the insurance proceeds.
- D.** If the STATE determines that the total loss occurred under circumstances in which the COUNTY fulfilled its obligations under this **Task Order** then the STATE will either pay or rebate to the COUNTY its proportionate share of such proceeds received.
- E.** Coverage, if obtained or provided by the COUNTY in compliance with this Section, shall not be deemed as having relieved the COUNTY of any liability in excess of such coverage as required by Section 13, *Indemnification and Limitation of Liability*, of GCA 6141, or otherwise.

FACT SHEET

TITLE: Authority To Execute Amendment No. 1 To Task Order No. 3 with Wiss, Janney, Elstner and Associates, Inc. for Design and Construction Administration at the Tacoma Dome Station for Lighting Changes and for the Design of Electric Vehicle Charging Stations

DIVISION: Finance

ORIGINATOR: Clint Steele, Senior Project Manager

PRECEDING ACTION:

Resolution No. 16-025, Amending Capital Budget for TDS Mid-life Maintenance Project to include Lighting replacement.

COORDINATING DEPARTMENTS: Budget, Project Management Office, Transit Development

APPROVED FOR SUBMITTAL:

Chief Financial Officer

APPROVED FOR AGENDA:

Chief Executive Officer

General Counsel

ATTACHMENTS:

N/A

BUDGET INFORMATION

Current Budget Amount
\$4,371,045

Required Expenditure
Contract: \$ 57,932.45
20% Contingency: 11,586.49
Total: \$ 69,518.94

Impact
\$0

Explanation: This expenditure includes a 20% design contingency that will only be used if unforeseen conditions arise that require additional consulting services. The proposed contract with Wiss, Janney, Elstner Associates, Inc. is for \$57,932.45 plus a 20% contingency of \$11,586.49 for a total approved amount, including contingency, of \$69,518.94.

BACKGROUND:

Tacoma Dome Station (TDS) Mid-life Maintenance is a multi-year, multi-faceted project to repair identified issues at the Tacoma Dome Station Parking Garages. After a competitive procurement process, Wiss Janney Elstner Associates, Inc. was selected as the most qualified and responsive firm and a Master Agreement between Pierce Transit and Wiss Janney Elstner Associates, Inc. was established on January 22, 2013. Three Task Orders have been approved by the Pierce Transit Board of Commissioners since then (outlined below). An amendment to the 2016 capital budget under resolution 16-025 in the amount of \$1,500,000 was approved at the July 11, 2016 Board of

Commissioner's meeting to add lighting replacement to the current budget and scope for TDS Mid-life Maintenance project.

Task Order No.1 -

Signed in early February 2013, Task Order No.1 focused on the initial condition assessment of the parking garages and associated amenities and to deliver a report and rough order of magnitude (ROM) estimates for the various repair needs identified. The cost for the condition assessment totaled \$118,379.95.

Task Order No. 2 –

From the condition assessment created through Task Order No.1, and recognizing that the parking structures were 12 to 15 years old and in need of mid-life rehabilitation work, Pierce Transit asked Wiss, Janney Elstner and Associates, Inc. to take the completed condition assessment and further research the issues and create technical design solutions for the repairs including drawings and specifications that could go out to public bid. Task Order No. 2 was signed in early February of 2015. There was a \$2,200 amendment to Task Order No. 2 to do a sub-contracted inspection of the Southwest elevator tower that was not identified in the original scope. Task Order No. 2 cost \$175,827 in total.

Task Order No. 3 –

Task Order No. 3 provides engineering and construction administration services through the bidding and construction phases of the TDS Mid-life Maintenance project for the scope identified in Task Order No. 2. Wiss Janney Elstner Associates, Inc., is best suited for this continued consultant assistance having developed the design documents and specifications for the work that will be done by a general contractor and their sub-contractors. This scope did not include lighting replacement. Task Order No. 3 is for \$220,376 with an approved 10% design contingency if needed for \$22,037 for a total approved amount of \$242,413.

This fact sheet seeks approval for Amendment No. 1 to Task Order No. 3 -

Under Amendment No. 1 to Task Order No. 3, Wiss, Janney, Elstner and Associates, together with their electrical sub-consultant, will provide electrical engineering design services and construction administration for the replacement of all light fixtures and lighting controls in the garages with LED light fixtures and current updated code compliant controls. They will also provide electrical engineering design services for future electric vehicle charging stations, planning for up to 5 charging stations per garage. These services will include specifications and drawings that will be incorporated into the bid documents to go out to public bid together with the TDS Mid-Life Maintenance project.

The anticipated outcome is the removal and replacement of 1,400 existing high pressure sodium and metal halide light fixtures with new LED light fixtures and the design for up to 10 electric vehicle charging stations. The benefits to Pierce Transit are greater than just the projected 30 - 40% annual operating cost savings which is significant by itself. With the electrical engineer's analysis, Pierce Transit will work with Tacoma Public Utilities to acquire all possible rebates to help recover some of the costs of the project. In addition to the cost savings, overall lighting will be significantly improved. The illumination produced from LED light fixtures has been shown to provide better lighting both for users and for security camera monitoring systems. There will also be an improved sense of safety for our night time customers with better lighting. This project will also promote the use of electric vehicles helping to reduce carbon emissions.

Amendment No. 1 to Task Order No. 3 is for \$57,932.45 with an approved 20% design contingency if needed for \$11,586.49 for a total approved amount of \$69,518.94.

ALTERNATIVES:

1. Do not proceed with Amendment No. 1 to Task Order No. 3. This is not a recommended alternative as electrical engineering services are needed for design, permitting, and technical assistance to ensure that current lighting codes are met and that we get the best engineered lighting system possible for illumination, lighting control, efficiency and cost savings.

RECOMMENDATION:

Authorize the Chief Executive Officer to enter into and execute Amendment No. 1 to Task Order No. 3 with Wiss, Janney, Elstner and Associates for a total approved amount of \$69,518.94 for electrical engineering and design services to add light fixture replacement, lighting controls, and design for electric vehicle charging stations for the TDS Mid-Life Maintenance project.

FACT SHEET

TITLE: Authority to Execute Task Orders 3, 4, 5 and 6 to the Master On-Call Agreement with Gray and Osborne for Architect/Engineering Services Related to Four Transit Center and Park and Ride Renewal Projects

DIVISION: Finance

ORIGINATOR: Clint Steele,
Senior Project Manager

PRECEDING ACTION:

Approval to Negotiate and Execute Master Agreement for Agency Architect/Engineer and Related Services (approved at Executive Finance Committee meeting, March 27, 2013).

Resolution 16-026 to amend the 2016 Capital budget in the amount of \$3,000,000 to add four Transit Center and Park and Ride Renewal projects.

COORDINATING DEPARTMENT: Project Management Office, Transit Development

APPROVED FOR SUBMITTAL:

Chief Financial Officer

APPROVED FOR AGENDA:

Chief Executive Officer

General Counsel

ATTACHMENTS:

N/A

BUDGET INFORMATION

2016 Budget Amount
\$3,000,000

Required Expenditure

Impact
\$0

Task Order No. 3
SR-512 Transit Center \$90,170.00
10% Contingency for SR-512 9,017.00
Subtotal: \$99,187.00

Task Order No. 4
Tacoma Mall Transit Center \$123,145.00
10% Contingency for Tacoma Mall 12,314.50
Subtotal: \$135,459.50

Task Order No. 5
72nd Street Transit Center \$110,366.00
10% Contingency for 72nd Street 11,036.60

FACT SHEET
PAGE 2

Subtotal: \$121,402.60

Task Order No. 6

TCC Transit Center and Park & Ride \$131,855.00

10% Contingency for TCC 13,185.50

Subtotal: \$145,040.50

Total for task orders 3, 4, 5, & 6 \$ 501,089.60
(includes 10% Contingency)

Explanation: Staff requests authorization to execute four Task Order Agreements under Pierce Transit's Master On-Call Agreement with Gray & Osborne for architecture and engineering services as follows:

Task Order No. 3 for the SR-512 Transit Center will be for \$90,170.00. A 10% design contingency of \$9,017.00 will be used only if additional engineering services are necessary, bringing the approved amount to \$99,187.00.

Task Order No. 4 for the Tacoma Mall Transit Center will be for \$123,145.00. A 10% design contingency of \$12,314.50 will be used only if additional engineering services are necessary, bringing the approved amount to \$135,459.50.

Task Order No. 5 for the 72nd Street Transit Center will be for \$110,366.00. A 10% design contingency of \$11,036.60 will be used only if additional engineering services are necessary, bringing the approved amount to \$121,402.60.

Task Order No. 6 for the Tacoma Community College (TCC) Transit Center and Park and Ride will be for \$131,855.00. A 10% design contingency of \$13,185.50 will be used only if additional engineering services are necessary bringing the approved amount to \$145,040.50

BACKGROUND:

On July 11, 2016, the Board of Commissioners approved a budget amendment to the 2016 capital budget to include the four Transit Center and Park and Ride renewal projects listed above. Pierce Transit needs civil and architectural design services to prepare specifications and engineered drawings for permitting prior to public bidding for construction.

If contracted for this scope of work with one of Pierce Transit's on-call civil engineers, Gray and Osborne, the underlying Master On-Call Agreement with Gray and Osborne requires that any task order valued over \$50,000 must be approved by the Board of Commissioners.

ALTERNATIVES:

An alternative would be to send out a Request for Qualifications to solicit different engineering firms and conduct a competitive procurement process. However, when Gray and Osborne Engineers were selected as an on-call A&E firm, a qualification based competitive process was undertaken, and it was contemplated by all parties that additional work would be assigned to this contractor by task order. Another qualification based competitive selection process would result in a significant delay of the projects and is therefore not recommended. It would likely prevent the work from being bid in February/March 2017, which is the most optimal time to bid weather dependent summer work. Gray and Osborne, one of Pierce Transit's on-call civil engineering consultants, has extensive experience in this type of work and is therefore the best suited for these projects.

RECOMMENDATION:

Authorize the Chief Executive Officer to enter into and execute Task Order Nos. 3, 4, 5, and 6 to the Master On-Call Agreement with Gray and Osborne for Architect/Engineering Services Related to four transit center renewal projects: SR-512 Transit Center, 72nd Street Transit Center, Tacoma Mall Transit Center, and Tacoma Community College (TCC) Transit Center and Park-and-Ride in the amount of \$ 501,089.60.

FACT SHEET

TITLE: A Resolution Adopting the Region 5 All Hazard Mitigation Plan – 2015-2020 Edition and the Pierce Transit Addendum to the Region 5 Hazard Mitigation Plan; and Updating the 2004 Pierce County Natural Mitigation Plan

DIVISION: Public Safety

ORIGINATOR: Trent Stephens, Deputy Chief, Transit Police

PRECEDING ACTION: Resolution No. 2010-31, Hazard Mitigation Plan

COORDINATING DEPARTMENT: Pierce Transit Public Safety and Pierce County Department of Emergency Management

APPROVED FOR SUBMITTAL:

Chief Financial Officer

APPROVED FOR AGENDA:

Chief Executive Officer

General Counsel

ATTACHMENTS:

Proposed Resolution
Exhibit A, Proposed FEMA Hazard Mitigation Plan (provided electronically)

BUDGET INFORMATION

2016 Budget Amount
N/A

Required Expenditure
None

Impact
None

BACKGROUND:

Public Law 106-390 The Disaster Mitigation Act of 2000 was passed by Congress on October 30th, 2000. This act required local jurisdictions to have a disaster mitigation plan in order to obtain either Pre-Disaster Mitigation (PDM) or Hazard Mitigation Grant Program (HMGP) funds.

The proposed 2015-2020 Hazard Mitigation plan is required by the Federal Emergency Management Agency (FEMA) and is a guide for decision makers as they commit resources to reducing the effects of natural and manmade hazards. This in partnership with Pierce County DEM, who is coordinating this effort will all government agencies.

In addition, The Region 5 Hazard Mitigation Plan is a multijurisdictional plan encompassing 72 jurisdictions to include cities and towns, fire districts, school districts, universities and special-purpose districts such as utilities and the Port of Tacoma. This Plan is a natural and manmade hazard mitigation plan. As such it addresses those hazards that are considered part of the natural environment of Pierce County. The plan recognizes the economic loss, personal injury, and damage that can arise from hazards. If Pierce Transit is to apply for grant funding for Hazard Mitigation, this plan is required under 44CFR 2016 prior to the receipt of project funding.

The Hazard Mitigation Plan includes Pierce Transit's Assets and provides a basis to apply for Federal Grants to mitigate known hazards. When a large scale incident occurs it provides a basis to apply for Federal Aid within Region 5.

ALTERNATIVES:

None.

RECOMMENDATION:

Approve Resolution No. 16-039, adopting the Region 5 All Hazard Mitigation Plan – 2015-2020 Edition and the Pierce Transit Addendum to the Region 5 Hazard Mitigation Plan; and updating the 2004 Pierce County Natural Mitigation Plan in substantially the same form as Exhibit A.

RESOLUTION NO. 16-039

A Resolution Of The Board Of Commissioners Adopting The Region 5 All Hazard Mitigation Plan – 2015-2020 Edition And The Pierce Transit Addendum To The Region 5 Hazard Mitigation Plan; And Updating The 2004 Pierce County Natural Hazard Mitigation Plan

WHEREAS, the Federal Disaster Mitigation Act of 2000 requires that for all disasters declared on or after November 1, 2004, applicants for sub-grants following any disaster must have an approved Natural Hazard Mitigation Plan in accordance with 44CFR 201.6 prior to receipt of Hazard Mitigation Grant Program project funding; and

WHEREAS, the Federal Disaster Mitigation Act of 2000 requires that for Pre-Disaster Mitigation grant program project funding on or after November 1, 2003, applicants must have an approved Natural Hazard Mitigation Plan in accordance with 44CFR 201.6 prior to receipt of project funding; and

WHEREAS, the All Hazard Mitigation Plan Update represents the commitment of Pierce Transit along with other surrounding government entities to reduce the risks from natural, man-made and technological hazards, serving as a guide for decision makers as they commit resources to reducing the affects of hazards, and it is in the public interest to proceed with the planning process in a timely manner; and

WHEREAS, Pierce Transit has participated with the Pierce County Department of Emergency Management in the development of the District's All Hazard Mitigation Plan Update, and recognizes the economic loss, personal injury, and damage that can arise from these hazards; and

WHEREAS, The Hazard Mitigation Plan details Pierce Transit's Assets and provides a basis to apply for Federal Grants to mitigate known hazards. When a large scale incident occurs it provides a basis to apply for Federal Aid within Region 5; and

WHEREAS, reduction of these impacts can be achieved through a comprehensive coordinated planning process which includes an updated risk assessment that provides the factual basis for activities proposed in the mitigation strategies to reduce losses and vulnerabilities, a five-year cycle for plan maintenance, and documentation of formal adoption by Pierce Transit; and

WHEREAS, the 2015-2020 Region 5 All Hazard Mitigation Plan Edition has been completed and approved by the State and the Federal Emergency Management Agency; and

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners of Pierce Transit as follows:

Section 1. The Region 5 Hazard Mitigation Plan, 2015-2020 Edition, is hereby adopted as set forth in Exhibit A, which is attached hereto; and

Section 2. The Pierce Transit Addendum to the Region 5 Hazard Mitigation Plan, an update to the 2004 Pierce County Natural Hazard Mitigation Plan is hereby adopted and shall be in full force and effect upon passage and signatures hereon.

ADOPTED by the Board of Commissioners of Pierce Transit at their regular meeting thereof held on the 10th day of October, 2016.

Kent Keel, Chair
Board of Commissioners

ATTEST/AUTHENTICATED

Deanne Jacobson, CMC
Clerk of the Board

FACT SHEET

TITLE: Authority To Enter Into and Execute a Development And Option Agreement for the Lease of Real Property with Multi-Service Center for a Portion of the Property At 1319 East 72nd Street, Tacoma, Washington For Development of Housing For Veterans

DIVISION: Planning and Community Development

ORIGINATOR: Janine Robinson, Sr. Planner

PRECEDING ACTION: N/A

COORDINATING DEPARTMENT: Transit Development

APPROVED FOR SUBMITTAL:

Chief Financial Officer

APPROVED FOR AGENDA:

Chief Executive Officer

General Counsel

ATTACHMENTS:

Proposed Resolution
Exhibit A, Proposed Development and Option to Lease Agreement

BUDGET INFORMATION

2016 Budget Amount
N/A

Required Expenditure
\$0

Impact
N/A

Explanation: There is no direct cost associated with entering into the Development and Option Agreement to Lease.

Overview of 72nd and Portland Transit Center:

The site is located just west of the northwest corner of 72nd and Portland Avenue in Tacoma, Washington. Construction of the Transit Center in 1994-95 included \$622,172 in Federal Transit Administration (FTA) funds (WA90-0156), amounting to 29% of the total construction costs. The total site is 2.6 acres, currently comprised of three distinct uses, including about 56% devoted to access and transit operations, 24% devoted to 68 park and ride stalls, and 20% to passive open space and stormwater swales (grass and landscaped area). The park and ride is minimally used, with counts showing a daily average of one car using the park and approximately 44% of the current site is either not utilized or is significantly underutilized by Pierce Transit and its customers.

This location is in one of the City of Tacoma's Mixed Use Center Pedestrian Streets, on which higher density urban environments are encouraged through the creation of pleasant pedestrian environments, strong connections with

transit options and close proximity to shopping, services and residential opportunities. The site is zoned CCX - Community Commercial Mixed-Use.

Five local Pierce Transit routes currently serve the transit center with services to the east to Puyallup and Sumner, north to downtown Tacoma and Tacoma Dome Station, west to Lakewood, and northwest to Tacoma Mall. In 2014, the Agency had identified this transit center as one with potential for more intense use with its location and large area of under-utilized space as a possible location for transit-oriented development.

Proposal for Transit-Oriented Development:

In 2015, Pierce Transit received an unsolicited proposal for development of a Veterans housing project that would utilize approximately 30% of the total site area, including a portion of the park and ride and open space areas at the transit center for approximately 52 units of housing for low income veterans. The proposed project will consist of approximately 60,000 square feet of residential, common and program space. Specifically, the project will provide 39 services-enriched supportive housing units to formerly homeless veterans and their dependents. These 39 units will be Veterans Administration VASH Section 8 HUD rental assistance programs. The remaining 11 non-supportive housing units will be targeted to formerly homeless veterans and their dependents that are eligible for general Low Income Housing Tax Credit (LIHTC) rental non-supportive service housing. The housing will be located on the upper four floors with program areas dispersed primarily on the first floor along with secured child and classroom spaces on the second floor. The project will also have a secured, staffed lobby.

Staff reviewed the proposed project internally and with City of Tacoma staff. Staff also reviewed a proposed process with FTA staff and then advertised a Public Notice of Receipt of Unsolicited Proposal in August 2015 in the Tacoma Daily Index, Daily Journal of Commerce and The News Tribune. This process met the federal requirement to provide for fair and open competition for the use of Agency real property. Alternative proposals for use of the transit center property were due on September 22, 2015. No competing proposals were received.

This project is being proposed by the ownership and development team of Multi-Service Center (MSC) and Shelter Resources, Inc. (SRI). MSC is one of 31 Community Action Agencies throughout Washington State, and more than 1,000 in the nation. These agencies work to build healthy communities and eliminate poverty in their communities. With its headquarters in Federal Way and more than 500 housing units in its portfolio, MSC is a leader in bringing affordable housing options to both South King and Pierce Counties.

MSC is ultimately interested in a long-term (75-year) ground lease for the portion of the site to be occupied by the Veterans' housing, and they favor an up-front capital lease payment. Pierce Transit has obtained an appraisal of the property to determine the fair market value for the property to be developed for multi-family residential uses. The conceptual design as proposed is based on little to no impact to the transit operations on the site. This project has potential to enhance transit usage at this location while providing a valuable asset to the community and to our Veterans.

Proposed Option To Lease:

The Development and Option to Lease Agreement will provide a period of time – approximately two years – during which the developer can complete due diligence and solidify project financing, plans and permits. The Option is attached hereto as Exhibit A and is summarized below:

Effect: Grants exclusive option to lease the project site – does not mandate that Pierce Transit agree to the lease, contemplates that parties will continue to negotiate lease during this period.

Term: upon execution and expires December 31, 2018.

Terminates if MSC does not:

- Apply for Low Income Housing Tax Credit (LIHTC) funding by January 2017
- Receive LIHTC allocation by July 31, 2018
- Obtain financing by July 31, 2018

Activities during option period:

- No restrictive covenant may encumber the transit center operations at the site and is subject to approval by PT
- During option period, MSC to conduct inspections and investigations of site and any physical testing subject to notice and approval by Pierce Transit; no due diligence may interfere with transit operations.
- Pierce Transit will not encumber the project portion of the site during the option period except as necessary for transit operations.
- MSC will provide a proposed subdivision plat.
- If Pierce Transit ends operations of the transit center during the option period, the Agency will give MSC 6 months' notice and either party can terminate the Option agreement and MSC receives a refund of the option price and out of pocket expenses
- 30 days prior to expiration of the Option, MSC will provide, for Pierce Transit approval:
 - site plan;
 - design and construction drawings;
 - specifications;
 - schedule;
 - completion bond;
 - premises restoration bond; and
 - access and construction management plan.

Americans with Disabilities Act (ADA): Acknowledges Pierce Transit's priority to ensure access to the Transit Center to people with disabilities and the Agency may condition approval of the above on changes intended to improve access to people with disabilities even if beyond requirements of ADA.

Consultant review for Pierce Transit: MSC pays costs for Pierce Transit to hire consultants to assist with review of above documents.

Negotiation of Ground Lease: Ground lease will be negotiated during the Option period and is subject to approval by Pierce Transit's Board of Commissioners (BOC) and FTA. The option agreement acknowledges that FTA and BOC may withhold approval of Ground Lease.

Option Price: \$10,000. If the parties are unable to agree on the ground lease, the option may not be exercised and MSC is entitled to a refund of the Option price. If agreed, Option price is applied towards Capital lease payment.

Timeline and Next Steps After Option Period:

Any final ground lease of this property is subject to approval by the FTA and the Pierce Transit Board of Commissioners. The FTA is currently reviewing this Development and Option Agreement, and the Agency is awaiting FTA approval to proceed. Staff seeks Board approval to proceed with this Option once the FTA approves of same. The developer has begun seeking funding from both public and private sources. During the Option period, anticipated to be approximately one year, staff will seek FTA and Board approval of the proposed final 75-year Ground Lease. A general and high level timeline for this project is as follows:

October 2016: Board and FTA Approval to enter into Option Agreement

Fall 2016 to Spring 2017: Funding applications and preliminary design

Fall 2017: Final Design, application for permits, Ground Lease approval

Fall 2017- Fall 2018: Construction

Early 2019: Full lease-up of apartments

Alternatives:

Do not enter into the Development and Option to Lease Agreement with Multi-Service Center.

Recommendation:

Approve Resolution No. 16-037, authorizing Pierce Transit to enter into and execute a Development and Option Agreement for the Lease of Real Property with Multi-Service Center regarding Development of a portion of the property at 1319 East 72nd Street, Tacoma, Washington for development of housing for Veterans, following approval by the Federal Transit Administration.

RESOLUTION NO. 16-037

1 A RESOLUTION Of The Board Of Commissioners of Pierce Transit Authorizing the Chief Executive Officer to
2 Enter Into and Execute a Development and Option Agreement for the Lease of Real Property with Multi-
3 Service Center for a Portion of the Property Located at 1319 East 72nd Street, Tacoma, Washington
4 For Development off Housing For Veterans
5

6 WHEREAS, Pierce Transit owns a 2.6 acre property located at 1319 East 72nd Street in Tacoma,
7 Washington that is the site of the 72nd and Portland Transit Center and Park and Ride (the "Transit Center");
8 and

9 WHEREAS, the Federal Transit Administration assisted with approximately 29% of the funding for
10 construction of the Transit Center; and

11 WHEREAS, in 2014, Pierce Transit had identified the park and ride portion of the Transit Center as
12 underutilized land with potential for Transit-Oriented Development (TOD); and

13 WHEREAS, in 2015, Multi-Service Center proposed development of a Veterans housing project on the
14 park and ride and open space areas of the Transit Center; and

15 WHEREAS, Pierce Transit advertised a Public Notice of Receipt of Unsolicited Proposal in August 2015
16 to allow for fair and open competition for the use of Agency real property; and

17 WHEREAS, no alternative proposals for the use of the Transit Center property were received by the
18 due date of September 22, 2015; and

19 WHEREAS, the site is zoned for mixed-use development and is located in a commercial area with
20 access to shops and services, in addition to transit service, for future residents of the project; and

21 WHEREAS, Multi-Service Center (MSC) is a non-profit corporation that is a leader in bringing
22 affordable housing options and services to eliminate poverty in South King and Pierce Counties; and

23 WHEREAS, a Development and Option to Lease Agreement will provide a period of time –
24 approximately two years – during the which MSC can complete due diligence and solidify project financing,
25 plans and permits; and

26 WHEREAS, the Ground Lease will be negotiated during the Option period and will be subject to
27 approval by the Board of Commissioners and FTA; and

28 WHEREAS, MSC will pay \$10,000 to Pierce Transit to be held in escrow for the Option to Lease, which
29 is refundable if both parties do not agree on the Ground Lease; and

30 WHEREAS, FTA must review and approve the Development and Option Agreement prior to Pierce
31 Transit executing such agreement, and the Agency is currently waiting on such approval; and

1
2 NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners of Pierce Transit as follows:

3 Section 1. The Board of Commissioners authorizes Pierce Transit to enter into and execute a
4 Development and Option to Lease Agreement with Multi-Service Center regarding development of a
5 portion of the property at 1319 East 72nd Street, Tacoma, WA for housing for Veterans, following approval
6 by the Federal Transit Administration in substantially the same form as Exhibit A hereto.
7

8 ADOPTED by the Board of Commissioners of Pierce Transit at their regular meeting thereof held on
9 the 10th day of October, 2016.

10 PIERCE TRANSIT

11
12 _____
13 Kent Keel, Chair
14 Board of Commissioners
15
16

17 ATTEST/AUTHENTICATED

18
19 _____
20 Deanne Jacobson, CMC
21 Clerk of the Board
22
23

Development and Option Agreement for the Lease of Real Property

This Development and Option Agreement for the Lease of Real Property (“**Option Agreement**”) is made and entered into effective the ____ day of _____, 2016 by and between Pierce County Public Transportation Benefit Area Corporation, a Washington municipal corporation (“**Optionor**”), the Multi-Service Center, a Washington not for profit corporation (“**MSC**”), and Shelter Resources Inc., a Washington corporation (“**SRI**”);

WHEREAS, Optionor is the owner of that certain real property located at 72nd Avenue East and Portland Avenue, in Pierce County, Washington and legally described in *Exhibit A* hereto (the “**Property**”), which is currently utilized as a transit center and park-and-ride lot (collectively, the “**Transit Center**”);

WHEREAS, MSC is a not for profit corporation engaged in the business of providing housing and related services for low income individuals and families, including but not limited to low income veterans;

WHEREAS, SRI is a developer of affordable housing projects and would be the co-developer of the Project (as defined below) with MSC;

WHEREAS, MSC desires to develop a portion of the Property as generally indicated on the initial site plan attached hereto as *Exhibit B* (the “**Project Site**”) into approximately 52 units of housing to serve low income veterans (the “**Project**”);

WHEREAS, on or about May 28, 2015, MSC and SRI approached Optionor on an unsolicited basis to propose the potential development of the Project on the Project Site;

WHEREAS, Optionor advertised the potential availability of the Property by means of publication of a Notice of Unsolicited Proposal in the Tacoma Daily Index, Daily Journal of Commerce, The News Tribune and www.piercetransit.org from approximately August 25, 2015 through September 22, 2015 to determine whether any other parties may be interested in the development of the Property;

WHEREAS, Optionor received no inquiries or expressions of interest from other interested parties during the period of such advertisement or at any time thereafter;

WHEREAS, it is consistent with Optionor’s mission to facilitate transit-oriented development near its transit centers;

WHEREAS, the Project was found to be consistent with the Pierce Transit Unsolicited Proposal Policy in that the Project is: (i) in alignment with the Optionor’s strategic goals; (ii) likely to enhance transit usage of the Property; and (iii) likely to increase ridership;

WHEREAS, the Project does not appear to interfere or conflict with Optionor's need, use, or intended use of the Property;

WHEREAS, Optionor is willing to grant to MSC an option to lease the Project Site for the development of the Project as more fully set forth herein;

WHEREAS, MSC intends to use a variety of private and public funding sources to so develop the Project, including but not limited to the utilization of Low Income Housing Tax Credits and funds from Pierce County, the City of Tacoma, the Washington State Department of Commerce and the Federal Home Loan Bank;

WHEREAS, in order to obtain such tax credits, MSC has formed MSC Tacoma Veterans, LLLP, a Washington limited liability limited partnership ("**MSC Tacoma**"), in which MSC Tacoma Manager, LLC, a Washington limited liability company wholly-owned by MSC, serves as the general partner;

WHEREAS, it is anticipated that MSC and/or SRI will incur significant predevelopment costs prior to the actual construction of the Project;

WHEREAS, MSC and SRI are willing to incur such costs only upon the execution and delivery of this Option Agreement setting forth certain rights and obligations of the parties and providing MSC the exclusive right to lease the Project Site pursuant to a ground lease agreement in form and substance acceptable to Optionor and MSC and to be negotiated during the Option Term (as defined below) (the "**Ground Lease**");

NOW THEREFORE, in consideration of the payment to Optionor of the sum of \$10,000.00 (the "**Option Price**"), receipt of which is hereby acknowledged, and such other valuable consideration as Optionor shall obtain from the development of the Project, Optionor hereby grants MSC the exclusive option to lease the Project Site ("**Option**") upon the terms and conditions set forth herein:

1. Term: Unless sooner terminated by Optionor pursuant to Section 2 below, this Option shall remain in effect until 11:00 pm December 31, 2018. The period between the date of this Option Agreement and December 31, 2018 is hereafter referred to as the "**Option Term**."
2. Funding Applications Conditions: Unless such conditions are waived by Optionor, in its sole and absolute discretion, this Option shall terminate upon MSC's failure to meet the following project funding milestones:
 - a. Submittal of an application to the Washington State Housing Finance Commission, including the Combined Funders Application, for an award of 2017 low income housing tax credits in the amount of at least \$1,000,000 on or before the application deadline for such application, which is early January 2017;

- b. In the event the Project does not receive a 2017 allocation of low income housing tax credits, submittal of an application to the Washington State Housing Finance Commission for an award of 2018 low income housing tax credits in the amount of at least \$1,000,000 on or before the application deadline for such application, which is early January 2018;
- c. An allocation of low income housing tax credits by the Washington State Housing Finance Commission in the amount of at least \$1,000,000 on or before July 31, 2018; and
- d. Obtaining binding written commitments for debt or equity financing for the full anticipated cost of the Project in form and substance acceptable to Optionor on or before July 31, 2018.

If any financing for the Project will require that an encumbrance of any kind be recorded against the Property, including, without limitation, any mortgage, deed of trust, regulatory agreement or restrictive covenant, the terms of such encumbrance shall be subject to approval by Optionor, which shall not be unreasonably withheld so long as Optionor determines, in its reasonable discretion, that such encumbrance will not interfere with the operation of the Transit Center. The exercise of the Option by MSC or MSC Tacoma, as applicable, shall be conditioned upon Optionor's prior approval thereof. No such mortgage, deed of trust or other security agreement shall encumber Optionor's fee interest in the Property. Subject to Optionor's right to review and approve the same as provided in this paragraph, a restrictive covenant or regulatory agreement may encumber the Project Site, but not the Transit Center Site (as defined below).

- 3. Due Diligence: During the Option Term, MSC, MSC Tacoma or SRI and their respective contractors, developers and consultants shall be entitled to conduct any and all necessary inspections and investigations of the Project Site, including but not limited to verification of compliance of the Project Site with applicable zoning, building, health and safety laws, regulations and codes, inspection for hazardous waste, environmental testing, all necessary surveys, structural examinations, soils examinations, engineering tests and any other inspections or investigations of the Project Site. No such testing or inspections shall be performed on any portion of the Property other than the Project Site (collectively, the "**Transit Center Site**") without the prior written consent of Optionor, which shall be subject to Optionor's satisfaction, in its sole discretion, that such testing or inspections are necessary and will be conducted in a manner that does not interfere with the operation of the Transit Center. Optionor shall reasonably cooperate, at no expense to Optionor, with such inspections (and cooperate with making a representative available for such purposes) during normal business hours. Prior to entering the Project Site (or the Transit Center Site, if permitted by Optionor) for purposes of any such testing or inspection, MSC, SRI and MSC Tacoma (if applicable) shall

provide, and shall cause each agent or contractor performing any such work at the Property on their behalf to provide, proof of liability insurance coverage in form and amount reasonably acceptable to Optionor. At Optionor's request, such coverage shall identify Optionor as an additional insured. MSC or SRI shall provide Optionor with a minimum of 24 hours' advance written notice (which may include confirmed email) before entering the Property for any purpose. No such testing or inspections of the Project Site shall interfere with Optionor's use of the Transit Center Site for transit purposes, and MSC, SRI and/or MSC Tacoma, as applicable, shall immediately upon notice from Optionor discontinue any testing or inspections that are having an adverse impact on Optionor's transit operations, as reasonably determined by Optionor. In the performance of any such testing or inspections, MSC, SRI and/or MSC Tacoma, as applicable, shall, and shall cause their respective agents and contractors to, use commercially reasonable efforts to minimize interference with parking by transit users at the Property. If any testing or inspection is reasonably anticipated to result in 10% or more of the parking spaces at the Property being unavailable for 24 hours or more, or 25% of the parking spaces at the Property being unavailable for any period of time during the Option Term, MSC shall notify Optionor at least ten business days in advance and shall reasonably cooperate with Optionor to schedule such inspection or testing at a time that minimizes interference with transit users. MSC's and/or SRI's contractors shall not conduct physical testing, drilling, boring, sampling and removal of, on or through the surface of the Property (or any part or portion thereof) including, without limitation, ground borings (collectively, "**Physical Testing**"), without the consent of Optionor, which shall not be unreasonably withheld. In connection with any request for consent to Physical Testing, MSC and/or SRI shall provide Optionor with a summary of the actions it intends to take, including a description of any samples it intends to collect and the analyses it intends to perform on any samples. MSC, SRI and/or MSC Tacoma and their contractors, inspectors and agents will promptly restore any physical damage caused by such inspections, investigations or tests. Any and all samples, sample residues, byproducts from the sampling process, extracts, well purgings, core borings and hazardous and other wastes derived from the any Physical Testing when removed from the Property shall be deemed the Property of MSC and shall be transported and disposed of by MSC and/or SRI in accordance with applicable law. MSC, SRI and MSC Tacoma shall be responsible for the conduct of their employees and agents. MSC and/or SRI shall provide to Optionor copies of any surveys, reports, assessments and other materials with respect to the Property or the Project prepared by any third party consultant on behalf of MSC, SRI and/or MSC Tacoma in connection with the diligence activities described in this Section 3. MSC and SRI agree that entry upon the Property shall be limited to the extent necessary for the performance of the activities set forth in this Section 3.

4. Title: As of the date hereof, title to the Property is subject only to those exceptions identified on *Exhibit C* hereto. Optionor shall not, prior to the

exercise of the Option, incur any encumbrances on the Property without the prior consent of MSC, which shall not be unreasonably withheld, conditioned or delayed, provided such encumbrance does not adversely impact the development of the Project. Notwithstanding the foregoing, MSC's consent shall not be required with respect to any encumbrance required or imposed by applicable law or any encumbrance necessary in connection with Optionor's use of the Property as a Transit Center, as determined by Optionor in Optionor's sole discretion. If MSC determines that any such encumbrance renders the Property unfit for the development of the Project, MSC's sole remedy shall be to terminate this Option Agreement and receive a refund of the Option Price. Upon exercise of the Option, Optionor shall take such steps as be required to remove any exceptions of encumbrances not identified on *Exhibit C* and not otherwise permitted under this Section 4.

5. Right of First Refusal: Title to the Property is currently encumbered by a Right of First Refusal to Purchase Real Property dated December 20, 1994 (the "**ROFR**"), granted by Optionor to the Capital Development Corporation and the State of Washington, and recorded in the official records of Pierce County, Washington, as instrument number 9412290869. The benefit of the Option extends to "the Capital Development Corporation, or the State of Washington, whichever shall be in ownership of the contiguous property to the North" of the Property. Neither the Capital Development Corporation nor the State of Washington is presently in ownership of such contiguous property. Therefore Optionor believes that the ROFR is of no further force and effect and, in any event, does not apply to the transaction contemplated by this Option Agreement. Optionor shall use commercially reasonable efforts to satisfy any requirements of any title company insuring the leasehold interest in the Project Site upon exercise of the Option for removal of the ROFR as an exception to the leasehold title policy. However, Optionor shall not be in default under this Option Agreement if Optionor is unable to cause the ROFR to be removed as an exception despite commercially reasonable efforts.
6. Subdivision: As a condition to the exercise of the Option and the execution and delivery of the Ground Lease, Optionor and MSC anticipate that the Project Site will need to be legally subdivided from the Transit Center Site. If MSC desires to further pursue its investigation of the Project, MSC shall deliver to Optionor a subdivision plat, with a proposed legal description for the Project Site and Transit Center Site, on or prior to June 30, 2017 (the "**Proposed Subdivision Plat**"). The Project Site as depicted and described in the Proposed Subdivision Plat shall substantially conform to the initial site plan as shown on *Exhibit B* attached hereto. If MSC does not submit a Proposed Subdivision Plat on or prior to such date, MSC shall be deemed to have elected not to exercise the Option and this Option Agreement shall terminate, subject to those terms and conditions hereof which survive termination. Within 15 business days following receipt of the Proposed Subdivision Plat, Optionor shall either approve the proposal or provide reasonably detailed objections thereto. If Optionor provides objections to the

Proposed Subdivision Plat, MSC and Optionor shall work together in good faith to address any such objections and reach agreement on a final proposal. Upon Optionor's approval of a Proposed Subdivision Plat (such proposal, hereafter, an "**Agreed Subdivision Plat**"), MSC shall submit such Agreed Subdivision Plat to the City of Tacoma for review and approval, and Optionor shall reasonably cooperate with MSC in connection with such submission, review and approval. If the City of Tacoma requires any material changes to the Agreed Subdivision Plat, or requires any mitigation or offsite improvements, or any changes to the Project Site or Transit Center Site as a condition to granting approval to the Agreed Subdivision Plat (in any such case, the "**Approval Conditions**"), then Optionor and MSC shall each have a period of 15 business days following notification of the Approval Conditions in which to accept such conditions or reject such conditions. If MSC or Optionor reject any Approval Condition, then MSC may elect to appeal such Approval Condition through any appropriate process. However, if MSC does not elect to appeal such Approval Condition or if such appeal is not successful, then the sole remedy available to either MSC or Optionor shall be to terminate this Option Agreement. Upon approval of the Agreed Subdivision Plat (as the same may have been modified) by the City of Tacoma and acceptance by Optionor and MSC or any Approval Conditions, the Agreed Subdivision Plat (as the same may have been modified) shall be the "**Final Subdivision Plat**." The satisfaction of any Approval Conditions shall be the sole obligation of MSC, SRI and MSC Tacoma (if applicable), and if any Approval Conditions must be satisfied prior to the filing or recording of the Final Subdivision Plat, the satisfaction of such Approval Conditions shall be a condition to the exercise of the Option by MSC. The Final Subdivision Plat shall not be filed or recorded unless and until the Option is exercised and FTA Approval (as hereinafter defined) has been obtained, in which case it shall be filed concurrently with the execution and delivery of the Ground Lease by Optionor. Any and all costs associated with the subdivision of the Project Site and the Transit Center Site shall be borne solely by MSC, including, without limitation, any costs to be incurred in connection with the preparation, revision, review, filing, processing, discussion and negotiation thereof, including consultants' and attorneys' fees, as well as any and all costs to be incurred in connection with the satisfaction of any Approval Conditions.

7. Project Submissions: At least 30 days prior to the expiration of the Option Term, MSC shall furnish to Optionor, for Optionor's approval, the following (collectively the "**Project Submissions**"):
 - a. A site plan of the proposed Project in form and detail reasonably satisfactory to Optionor, indicating the location of the proposed improvements, the location of utilities serving the Project and all significant landscaping elements.
 - b. Comprehensive design and construction drawings, plans and specifications in form and detail reasonably satisfactory to Optionor

for the purpose of reviewing the potential impacts to Optionor's Transit Center operations, depicting the proposed Project and including, without limitation, a description of the exterior building materials intended to be used therein and a description of the proposed methods of constructing the Project. Upon Optionor's approval, the foregoing shall be collectively referred to as the "**Plans and Specifications.**"

- c. A construction schedule for the Project (a "**Construction Schedule**") in a form reasonably acceptable to Optionor setting forth all projected milestone dates of the Project.
- d. A form of labor and material Payment and Performance Surety Bond (AIA Form A312) to be issued at Closing (as defined below), with a dual obligee rider, for the general contractor and any subcontractor's reasonably required by Optionor, which shall be in form and content satisfactory to Optionor (with a copy of the construction contract or applicable subcontract attached thereto), which will, upon issuance, insure the completion of the construction of the Project (the "**Completion Bond**"). The Completion Bond shall be issued by a corporate surety with an A.M. Best Co. rating of "A" and otherwise acceptable to Optionor and authorized and admitted to do business and to issue and execute bonds in the State of Washington. The Completion Bond shall provide that it may not be terminated or cancelled without at least 60 days prior written notice to Optionor.
- e. A form of bond to be issued at Closing, which shall be in form, substance and amount acceptable to Optionor, as security for the due and faithful performance of MSC's or MSC Tacoma's (as applicable) obligation to demolish and remove the improvements and restore the Project Site upon expiration or termination of the Ground Lease (the "**Premises Restoration Bond**"). The Premises Restoration Bond shall be issued by a corporate surety with an A.M. Best Co. rating of "A" and otherwise acceptable to Optionor and authorized and admitted to do business and to issue and execute bonds in the State of Washington. The Premises Restoration Bond shall provide that it may not be terminated or cancelled without at least 60 days prior written notice to Optionor.
- f. An access and construction management plan with respect to the construction of the Project in form, content and detail reasonably satisfactory to Optionor (the "**Construction Access Plan**"). The Construction Access Plan shall contain performance specifications and an approximate schedule of times during the Construction Schedule when MSC Tacoma, and its employees, contractors, subcontractors, or agents anticipate needing access to the Property to undertake the construction activities.

Optionor shall be entitled to approve, in its reasonable discretion, each aspect of the Project Submissions. For the avoidance of doubt, it shall be deemed reasonable for Optionor to withhold its approval to any aspect of the Project Submissions if Optionor determines that such aspect would result in unacceptable interference with the operation of the Transit Center, or if such aspect requires the consent of any other governmental authority or third party and such consent has not been granted. MSC acknowledges that Optionor has a particular interest in ensuring access to the Transit Center to individuals with disabilities. Therefore, without limiting Optionor's discretion in approving the Project Submissions, Optionor may condition its approval of the Plans and Specifications on changes intended to improve access to the Transit Center to individuals with disabilities, which changes may exceed those required under the Americans with Disabilities Act or other applicable State or Federal accessibility laws. In addition to the foregoing, MSC shall submit to Optionor, for its approval, at least 30 days prior to submission to the appropriate governmental authorities, all completed applications for any approvals, permits or licenses for the construction of the Project. Optionor shall respond to any such request for approval within ten business days with any comments or questions regarding MSC's submission so that MSC may incorporate Optionor's comments into such submission.

Optionor shall have the authority and right to hire internal and/or independent consultants, at the sole cost and expense of MSC, to review the Plans and Specifications and to bill MSC for the commercially reasonable cost of any such consulting services. However, Optionor shall be under no obligation to perform any such review and any such review performed by or on behalf of Optionor shall be solely for the benefit of Optionor. No such review or approval from Optionor shall be regarded as a warranty on behalf of Optionor or its consultants that the Plans and Specifications are architecturally or structurally sound, adequate or suitable for the proposed use of the Project or conform to any legal requirements, and no such review or approval shall give rise to any liability on the part of Optionor or its consultants.

8. Finalization of Ground Lease: Optionor and MSC shall negotiate in good faith an agreed form of the Ground Lease (the "**Proposed Ground Lease**") at least 90 days prior to the expiration of the Option Term. The Proposed Ground Lease shall be acceptable in form and substance to Optionor and MSC. If Optionor and MSC reach an agreement on the form and substance of the Proposed Ground Lease, MSC shall promptly submit the Proposed Ground Lease to its prospective funders, lenders, tax credit investors and any other party whose approval is required for MSC Tacoma's execution thereof. Any revisions to the Proposed Ground Lease required by such parties shall be submitted to Optionor no later than 60 days prior to the expiration of the Option Term, and such revisions shall be subject to Optionor's approval, which shall not be unreasonably withheld, conditioned or delayed. Upon Optionor's approval of any such revisions, Optionor shall promptly submit the

Proposed Ground Lease, as the same may have been revised, to Optionor's Board of Commissioners and to the Federal Transit Administration (the "FTA") for approval. Any revisions to the Proposed Ground Lease required by Optionor's Board of Commissioners and/or the FTA shall be submitted to MSC for approval promptly upon receipt thereof, which approval shall not be unreasonably withheld, conditioned or delayed. MSC understands that either the FTA or Optionor's Board of Commissioners may review any other materials that each deems relevant, including the plans and specifications for the Project, in connection with their respective review of the Proposed Ground Lease, and may withhold approval of the Proposed Ground Lease for reasons other than the content of the Proposed Ground Lease. Each of Optionor, MSC, SRI and MSC Tacoma shall cooperate with any requests for additional information from any party entitled to approve the Proposed Ground Lease pursuant to this Section 8, including making representatives available to attend meetings. The Proposed Ground Lease, upon approval by all necessary parties as provided in this Section 8, shall thereafter constitute the form of the Ground Lease to be executed at Closing. The agreement of Optionor and MSC upon the final terms of the Ground Lease, and the approval thereof by Optionor's Board of Commissioners and the FTA, shall be a condition precedent to the exercise of the Option by MSC. If, despite good faith efforts, Optionor and MSC are not able to agree upon the terms of a Proposed Ground Lease within the time period specified above, or if any party entitled to consent to the Proposed Ground Lease pursuant to this Section 8 withholds such consent, or if any such party's consent is conditioned upon revisions that are not reasonably acceptable to MSC or Optionor, as applicable, then such failure to obtain agreement or approval shall not constitute a default under this Option Agreement by either party, but the Option may not be exercised and MSC shall be entitled to a refund of the Option Price.

9. Condition of Property during the Option Term: During the term of this Option Agreement, Optionor shall not execute any new, or extend any existing, license, lease, operating agreement or other agreement relating to the possession, use, maintenance, or operation of the Project Site unless the same is terminable on not more than 30 days' notice, without penalty, upon exercise of the Option and entry into the Ground Lease. Optionor shall not be restricted in any respect from entering into any such agreement with respect to the Transit Center Site, as long as the same does not encumber the Project Site.
10. Development Agreements: During the term of the Option, Optionor shall not enter into any development agreements or similar agreements with respect to the Project Site that would encumber the Project Site or would otherwise impose obligations upon MSC or be incompatible with the development of the Project, in each case, with any party without MSC's prior consent, which may be withheld in MSC's sole and absolute discretion. Optionor shall not be restricted in any respect from entering into any such agreement with respect to

the Transit Center Site, as long as the same does not encumber the Project Site.

11. Termination of Agreement upon Cessation of Transit Center Use: Notwithstanding anything to the contrary herein, MSC and SRI acknowledge that the continued use of the Property by Optionor for Transit Center purposes is contingent upon the continued allocation of funding for transit services and for the operation and maintenance of the Property, which allocation cannot be guaranteed. If Optionor ceases to, or anticipates ceasing to, use the Property for Transit Center purposes, whether because of a discontinuance of funding or otherwise, the Property may no longer be appropriate for transit-oriented development, and Optionor may pursue other options for the use or disposition of the Property. In such event, Optionor shall notify MSC at least six months prior to the anticipated cessation of Transit Center operations. Either party shall have the option, within 30 days following the delivery of such cessation notice by Optionor, to terminate this Option Agreement by written notice to the other party, in which case MSC shall be entitled to a refund of the Option Price, as well as a reimbursement of the actual out-of-pocket expensed incurred by MSC in good faith in connection with its diligence investigations of the Property.
12. Mechanic's Liens: MSC, SRI and/or MSC Tacoma shall promptly remove, by payment, bonding or otherwise, any mechanic's liens on the Property that arise out of any inspection, testing or other use of the Property, or any portion thereof, by any such party or their respective agents or contractors, whether pursuant to this Option Agreement, the transactions contemplated hereby or otherwise. Optionor may, at any time, in its sole and absolute discretion, remove, by payment, bonding or otherwise, any such lien, and MSC, SRI and MSC Tacoma (if and when this Option Agreement is assigned to MSC Tacoma) shall, upon demand from Optionor, reimburse Optionor for the reasonable costs incurred by Optionor in connection with such removal, including reasonable attorney's fees.
13. Indemnification: MSC, SRI and MSC Tacoma (if and when this Option Agreement is assigned to MSC Tacoma) (collectively, "**Indemnitors**") shall jointly and severally indemnify, save and hold Optionor and Optionor's commissioners, officers, agents, employees, invitees, successors, and assigns (collectively "**Indemnitees**") harmless against all losses, costs, expenses, liabilities, claims, litigation, demands, proceedings and damages (including attorneys' fees) suffered or incurred by Optionor or any such Indemnitees arising out of the breach of this Option Agreement by any Indemnitor, the exercise by any Indemnitor or their respective employees, agents and contractors of the rights granted under this Option Agreement, or the release of any hazardous substances on, under or about the Property by any Indemnitor or their respective employees, agents and contractors, except to the extent that such losses, costs, expenses, liabilities, claims, litigation, demands, proceedings and damages (including attorneys' fees) are predominantly caused

by or predominantly arise from any negligent or willful misconduct of the party seeking indemnification. Each Indemnitor waives any claims against Optionor arising out of the exercise by any such Indemnitor or their respective employees, agents and contractors of their rights under this Option Agreement, other than claims that are predominantly caused by or predominantly arise from any negligent or willful misconduct of Optionor and each Indemnitor hereby assume all responsibility for claims against Optionor by the contractors, subcontractors, employees, and agents of any Indemnitor other than claims that are predominantly caused by or predominantly arise from Optionor's negligence or willful misconduct. The foregoing indemnification shall survive the exercise of the Option or the termination of this Option Agreement.

14. Representations: MSC represents and warrants to Optionor as follows:

- a. It is a non-profit corporation validly existing under the laws of the State of Washington.
- b. The execution and delivery of this Option Agreement on behalf of MSC and the performance of its obligations hereunder are duly authorized by all necessary corporate action, and the individual(s) executing this Option Agreement on behalf of MSC have all necessary power and authority to execute and deliver this Option Agreement on behalf of MSC.
- c. Neither MSC nor any of its affiliates are in violation of any laws relating to terrorism or money laundering, including without limitation Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism and/or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (the "**USA Patriot Act**").

SRI represents and warrants to Optionor as follows:

- a. It is a corporation validly existing under the laws of the State of Washington.
- b. The execution and delivery of this Option Agreement on behalf of SRI and the performance of its obligations hereunder are duly authorized by all necessary corporate action, and the individual(s) executing this Option Agreement on behalf of SRI have all necessary power and authority to execute and deliver this Option Agreement on behalf of SRI.

- c. Neither SRI nor any of its constituent owners or affiliates are in violation of any laws relating to terrorism or money laundering, including without limitation the USA Patriot Act.
15. Assignment: Optionor agrees that MSC may assign this Option Agreement to MSC Tacoma without prior consent of Optionor, so long as MSC or a wholly-owned subsidiary of MSC is the sole general partner of MSC Tacoma. The prior written consent of Optionor shall be required for an assignment to any other party, which consent may be withheld in Optionor's sole and absolute discretion. In such event, MSC and MSC Tacoma shall be jointly and severally liable for the payment and performance of all of MSC's obligations under this Option Agreement.
16. Exercise of Option: Subject to the satisfaction of the terms and conditions hereof, MSC or MSC Tacoma, as applicable, may exercise its Option hereunder by delivering to Optionor, on or before 11:00 pm December 31, 2018, written notice (the "**Exercise Notice**") of its intent to exercise the Option and to acquire a leasehold estate in the Project Site in accordance with the Ground Lease.
17. Closing: If MSC or MSC Tacoma, as applicable, timely delivers an Exercise Notice, the closing (the "**Closing**") of the ground lease transactions contemplated by this Option Agreement shall occur on a date mutually acceptable to Optionor and MSC or MSC Tacoma, as applicable, in accordance with this Section 17. On or prior to the date of Closing, (a) MSC or MSC Tacoma shall deliver to Optionor (i) two original counterparts of the Ground Lease, duly executed and acknowledged by MSC or MSC Tacoma, as applicable, (ii) three original counterparts of the memorandum of Ground Lease (to be further described in the Ground Lease), duly executed and acknowledged by MSC or MSC Tacoma, as applicable (the "**Memo of Lease**"), (iii) one original of the completion guaranty (to be further described in the Ground Lease), duly executed by SRI, (iv) a capital lease payment in the amount of not less than \$559,855 (to be further described in the Ground Lease and shall be an amount equal to the appraised value of the property based on an appraisal prepared by a certified appraiser obtained not more than 6 months prior to the date of exercise of the option and performed with consistent assumptions and methodology with the existing appraisal with an effective date of May 3, 2016) (the "**Capital Lease Payment**"), less the amount of the Option Price, (v) the Completion Bond, in the agreed upon form, duly executed by the issuer thereof, and (vi) the Premises Restoration Bond, in the agreed upon form, duly executed by the issuer thereof, and (b) Optionor shall deliver to MSC or MSC Tacoma, as applicable (i) two original counterparts of the Ground Lease, duly executed and acknowledged by Optionor, (ii) three original counterparts of the Memo of Lease, duly executed and acknowledged by Optionor (the "**Memo of Lease**"), and (iii) the Final Subdivision Plat, duly executed and acknowledged by Optionor. The Final Subdivision Plat shall be filed and/or recorded in the appropriate office(s) of Pierce County and/or the

City of Tacoma on the date of Closing, immediately prior to the recording of the Memo of Lease. Notwithstanding the foregoing, at the option of either party, the foregoing documents and payment may be delivered to a mutually acceptable escrow agent, pursuant to escrow instruction in form and substance reasonably acceptable to both parties, to be held in escrow pursuant to an escrow agreement reasonably acceptable to Optionor and MSC or MSC Tacoma, as applicable.

18. Notices: All notices hereunder shall be delivered by a recognized overnight courier service or by certified mail, return receipt requested, to the address(es) set forth below or to such other address(es) of a party as are set forth in a notice by that party to the other party:

If to Optionor: Pierce Transit
3701 - 96th Street SW
Lakewood, Washington 98499
Attention: Dana Henderson, General Counsel

With a copy to: K&L Gates LLP
925 Fourth Avenue, Suite 2900
Seattle, Washington 98104
Attn: Rhys Hefta

If to MSC/SRI/MSCTacoma:

Multi-Service Center
P.O. Box 23699
Federal Way, Washington 98093
Attn: Robin Corak, Executive Director

and:

Shelter Resources Inc.
2223 - 112th Ave. NE, Suite 102
Bellevue, WA 98004
Attn: Mark Thometz

With a copy to: Kantor Taylor Nelson Evatt & Decina PC
901 Fifth Avenue, Suite 4000
Seattle, Washington 98164
Attn: Mark Kantor

19. Miscellaneous: If any term in this Option Agreement shall be deemed unenforceable, such term shall be deemed independent from the remainder of this Option Agreement, the enforceability of which shall in no way be affected thereby, and the term in question shall be deemed to be rewritten so as to be enforceable to the fullest extent possible consistent with the intention of the

parties. No purported alteration, amendment, change, waiver, termination or other modification of this Option Agreement shall be binding upon any of the parties hereto or have any other force or effect in any respect or particular, unless the same shall be in writing and signed by or on behalf of the parties to be charged therewith. All prior understandings and agreements among the parties are merged in this Option Agreement, which alone fully and completely express the understandings among the parties thereto and which are entered into after full investigation. This Option Agreement shall be given a fair and reasonable construction in accordance with the intention of the parties hereto and without regard to or aid of canons requiring construction against the party responsible for the drafting of the same. No failure or delay of any party in the exercise of any fight given to such party hereunder, or the waiver by any party of any condition hereunder for its benefit, shall constitute a waiver of any other or further fight, nor shall any single or partial exercise of any fight preclude other or further exercise thereof or any other fight. The waiver of any breach hereunder shall not be deemed to be a waiver of any other or subsequent breach hereof. This Option Agreement may be executed in one or more counterparts each counterpart of which shall constitute an executed agreement. The parties hereto do hereby agree that this Option Agreement and the fights and obligations of the parties hereto shall be governed by the laws and jurisdiction of the State of Washington.

Signature Page to Option to Lease and Development Agreement

IN WITNESS WHEREOF, this Option Agreement is made and entered into in multiple original counterparts on the day and year first above written.

Pierce County Public Transportation Benefit Area Corporation, a Washington municipal corporation

By: _____
Name: _____
Its: _____

Date: _____

Multi-Service Center, a Washington not for profit corporation

By: _____
Name: _____
Its: _____

Date: _____

Shelter Resources Inc., a Washington corporation

By: _____
Name: _____
Its: _____

Date: _____

(Notary Acknowledgments follow)

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of Pierce County Public Transportation Benefit Area Corporation, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____

_____ (Print Name)

Notary Public

My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of Multi-Service Center, a Washington not for profit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____

_____ (Print Name)

Notary Public

My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me and said person acknowledged that he/she signed
this instrument, on oath stated that he/she was authorized to execute the instrument and
acknowledged it as the _____ of Shelter Resources Inc., a
Washington corporation, to be the free and voluntary act of such party for the uses and
purposes mentioned in the instrument.

DATED: _____

_____ (Print Name)

Notary Public

My appointment expires: _____

Exhibit A
Legal Description of Property

LOTS 1 TO 12, INCLUSIVE, BLOCK 49; LOTS 1 TO 12 INCLUSIVE, BLOCK 50; THAT PORTION OF LOTS 1 TO 12, INCLUSIVE, BLOCK 51, DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTHWEST CORNER OF SAID BLOCK 51;
THENCE NORTH 01°54'47" EAST 37.25 FEET ALONG THE WEST LINE OF SAID BLOCK 51;
THENCE SOUTH 88°21'52" EAST 308.87 FEET TO THE EAST LINE OF SAID BLOCK 51;
THENCE SOUTH 01°54'37" WEST 36.37 FEET ALONG THE EAST LINE OF SAID BLOCK 51 TO THE SOUTHEAST CORNER OF SAID BLOCK 51;
THENCE NORTH 88°31'37" WEST 308.84 FEET ALONG THE SOUTH LINE OF SAID BLOCK 51 TO THE POINT OF BEGINNING;

TOGETHER WITH THOSE PORTIONS OF EAST 71ST STREET LYING BETWEEN BLOCKS 50 AND 51, AND THE ALLEYS LYING BETWEEN BLOCKS 49 AND 50, ALL AS VACATED BY ORDINANCE NO. 23409 OF THE CITY OF TACOMA, RECORDED UNDER RECORDING NUMBER 8602030338, ALL IN THE PLAT OF UNION PACIFIC ADDITION TO TACOMA, ACCORDING TO PLAT RECORDED IN VOLUME 7 OF PLATS, PAGE 1, IN PIERCE COUNTY, WASHINGTON;

(ALSO KNOWN AS PARCEL "B" OF THAT CERTAIN BOUNDARY LINE ADJUSTMENT SURVEY, RECORDED UNDER RECORDING NUMBER 9406020287, RECORDS OF PIERCE COUNTY, WASHINGTON);

TOGETHER WITH THAT CERTAIN ACCESS EASEMENT AND ROAD MAINTENANCE AGREEMENT, INCLUDING ALL OBLIGATIONS AND BENEFITS THEREUNDER, RECORDED UNDER PIERCE COUNTY RECORDING NUMBER 9312010751.

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

Exhibit B
Preliminary Site Plan of Project Site

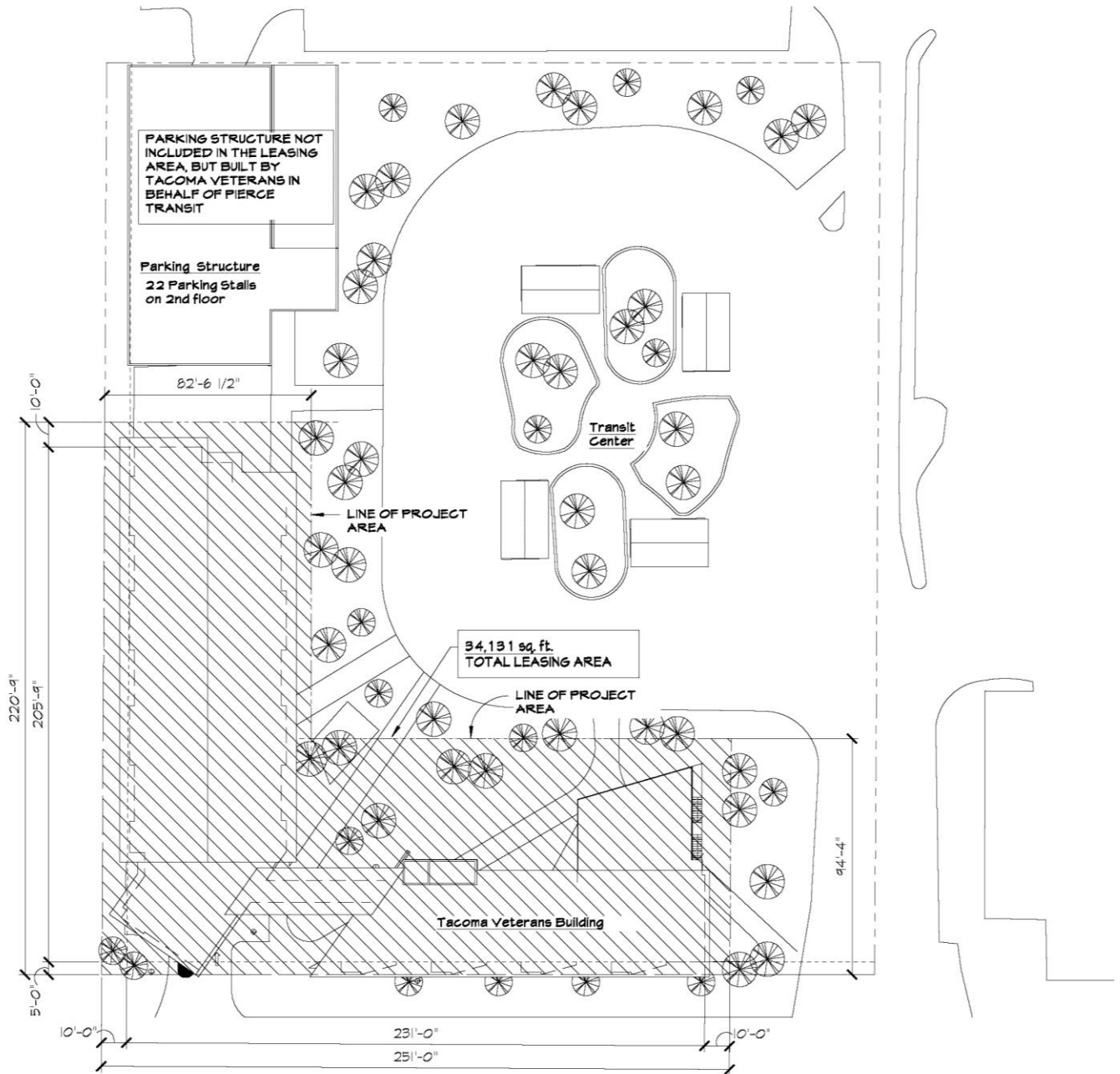


Exhibit C
Existing Exceptions

- 1) SERVICE CHARGES, AS FOLLOWS, TOGETHER WITH INTEREST, PENALTY AND STATUTORY FORECLOSURE COSTS, IF ANY, AFTER DELINQUENCY:
(1ST HALF DELINQUENT ON MAY 1; 2ND HALF DELINQUENT ON NOVEMBER 1)

TAX ACCOUNT NO.:	916000 059 2		
YEAR	BILLED	PAID	BALANCE
2016	\$ 7.08	\$7.08	\$0.00

TOTAL AMOUNT DUE, NOT INCLUDING INTEREST AND PENALTY: \$0.00.

LEVY CODE:	005
ASSESSED VALUE LAND:	\$747,300.00
ASSESSED VALUE IMPROVEMENTS:	\$367,300.00

- 2) THE LAND HEREIN DESCRIBED IS CARRIED ON THE TAX ROLLS AS EXEMPT, HOWEVER, IT WILL BECOME TAXABLE FROM THE DATE OF EXECUTION OF A CONVEYANCE TO A TAXABLE ENTITY AND SUBJECT TO THE LIEN OF REAL PROPERTY TAXES FOR THE BALANCE OF THE YEAR.

TAX ACCOUNT NO. 916000 059 2.

- 3) RESERVATION OF EASEMENT ORDINANCE NO. 23409 AND THE TERMS AND CONDITIONS THEREOF:

RESERVED BY:	CITY OF TACOMA
PURPOSE:	PUBLIC UTILITIES
AREA AFFECTED:	VACATED ALLEY AND STREET
RECORDED:	FEBRUARY 3, 1986
RECORDING NO.:	8602030338

- 4) AMENDED CONCOMITANT AGREEMENT AND THE TERMS AND CONDITIONS THEREOF:

RECORDED:	OCTOBER 21, 1993
RECORDING NO.:	9310210373
REGARDING:	REZONE OF CERTAIN PROPERTY

SAID AGREEMENT RESCINDS AGREEMENTS RECORDED UNDER RECORDING NUMBERS 8508050215 AND 9103250283.

- 5) GRANT OF RECIPROCAL ACCESS EASEMENTS AND ROAD MAINTENANCE AGREEMENT AND THE TERMS AND CONDITIONS THEREOF:

RECORDED:	DECEMBER 1, 1993
RECORDING NO.:	9312010751

- 6) EASEMENT AND THE TERMS AND CONDITIONS THEREOF:

GRANTEE:	CITY OF TACOMA, A MUNICIPAL CORPORATION
PURPOSE:	TRAFFIC SIGNAL POLE, WIRES AND EQUIPMENT
AREA AFFECTED:	SOUTH EASTERLY PORTION OF SAID PREMISES
RECORDED:	SEPTEMBER 2, 1994
RECORDING NO.:	9409200252

7) RESERVATION OF EASEMENT AND THE TERMS AND CONDITIONS THEREOF:

RESERVED BY: CAPITAL DEVELOPMENT COMPANY, INC., A WASHINGTON
CORPORATION
PURPOSE: INGRESS, EGRESS AND UTILITIES
AREA AFFECTED: WESTERLY PORTION OF SAID PREMISES
RECORDED: DECEMBER 29, 1994
RECORDING NO.: 9412290870

8) EASEMENT AND THE TERMS AND CONDITIONS THEREOF:

GRANTEE: PUGET SOUND ENERGY, INC., A WASHINGTON
CORPORATION
PURPOSE: GUY WIRES, ANCHOR POLES AND ANCHORS
AREA AFFECTED: A PORTION OF SAID PREMISES
RECORDED: DECEMBER 13, 2001
RECORDING NO.: 200112130980

9) RIGHT OF FIRST REFUSAL TO PURCHASE REAL PROPERTY AND THE TERMS AND
CONDITIONS THEREOF:

GRANTED TO: CAPITAL DEVELOPMENT OR THE STATE OF WASHINGTON
RECORDED: DECEMBER 29, 1994
RECORDING NO.: 9412290869

FACT SHEET

TITLE: A Resolution Authorizing the Chief Executive Officer to Enter Into and Execute a Purchase and Sale Agreement with DMG Group for Sale of the Property Located at 415 East 25th Street, Tacoma, Washington

DIVISION: Planning and Community Development

ORIGINATOR: Janine Robinson, Sr. Planner, Transit Development

PRECEDING ACTION:

FS 16-028, Declaration of the property as surplus

FS 16-050, Authority to enter into negotiations with DMG Group

COORDINATING DEPARTMENT: Transit Development

APPROVED FOR SUBMITTAL:

Chief Financial Officer

APPROVED FOR AGENDA:

Chief Executive Officer

General Counsel

ATTACHMENTS:

Proposed Resolution
Exhibit A, Proposed Purchase and Sale Agreement

BUDGET INFORMATION

2016 Budget Amount
N/A

Required Expenditure
\$0

Impact
N/A

Explanation: There is no direct cost associated with entering into the Purchase and Sale Agreement.

BACKGROUND:

Pierce Transit acquired the site at 415 E 25th in 1999 for \$496,000 using 86.5% Federal Transit Administration (FTA) funds. It has served as a construction staging area and storage facility adjacent to the Tacoma Dome Station; however, the property has been on the agency's Excess Real Property Plan for a number of years with a view towards Transit-Oriented Development (TOD).

In mid-2013, Pierce Transit worked cooperatively with the Tacoma Housing Authority (THA) on a Feasibility Study for development of a mixed-use residential/commercial TOD on the property.

During 2014 and 2015, Pierce Transit and the City of Tacoma Community and Economic Development Department worked cooperatively to seek a developer to implement a Transit-Oriented Mixed Use Development.

In May 2015, Pierce Transit entered into negotiations with a developer selected through a Request for Interest (RFI) process. Negotiations ended with the developer through mutual agreement in fall 2015.

A new RFI process was initiated in early 2016 and three statements of interest (SOIs) were received. A Selection Committee of three City of Tacoma staff, two Pierce Transit staff, and one Dome District Development Group representative completed review of the proposals and interviews with the three interested teams. Following that process, the Committee recommended that Pierce Transit enter into a purchase and sale agreement with DMG Group based on their proposed transit-oriented development project and team.

The recommended development proposes five stories of apartments totaling at least 100 units over an indoor market/farmers market, other retail to benefit residents and transit users and one floor of auto parking.

The purchase and sale agreement (PSA) provides for the following terms:

- Sales price of the value as appraised on July 7, 2016 at \$710,000
- Earnest money deposit in the amount of \$106,500 [15% of sales price]
- Due Diligence Period of 30 days, extendable for an additional 30 days for a total of 60 days if a Phase II Environmental Site Assessment is needed.
- Development Agreement, which is to be signed at the end of the due diligence period contains terms that govern DMG's activities during the contract period, and upon closing, commits DMG to building the project in accordance with the Development Agreement and the Restrictive Covenant. In the Development Agreement, the project is specifically described as mixed use, with one floor of parking, one level of retail and five levels of residential of at least 100 units. Pierce Transit reserves the right to approve plans and schedule at all phases.
- Completion Guaranty, to be delivered at closing, guaranteeing the buyer's performance of its obligations under the Development Agreement.
- Closing to occur at the earlier of (i) 10 days after DMG has obtained all land use and building permits, or (ii) one year from the effective date of the PSA, subject to any necessary Board and/or FTA approvals.
- Restrictive Covenant to be signed at closing and runs with the land. The Restrictive Covenant requires the property owner to operate the project as described in the project description (i.e., final number of units, retail size), provide parking for car-share vehicles and bicycles, transit passes for residents, on-site fitness center, lounge and game area, dog and bicycle wash areas, rooftop deck and community room with a barbeque area. Requires the owner to submit an annual transportation management plan. Provides for assignable repurchase rights to Pierce Transit if construction is not completed by certain dates.

FTA reviewed the appraisal and appraisal review and has provided concurrence on the disposition at the appraised value. Pierce Transit must use 86.5% of the proceeds of the sale towards another FTA-eligible capital project.

Tacoma Dome Station is one of the most comprehensive multi-modal centers in Puget Sound. There is potential for this project to be a significant catalyst to further transit oriented development in the Dome District which will increase transit ridership, get more cars off the roads and provide quality of life benefits to Tacoma's residents.

Projected timeline is as follows:

- Due diligence period: through mid-December, 2016;
- Development Agreement period: from commencement of the due diligence period through closing;
- Closing to occur ten days after permits are obtained or one year from date of signature on the PSA: approximately mid-October, 2017;
- Substantial Completion slated for late-September, early-October, 2018.

The Purchase and Sale Agreement and all exhibits thereto are attached as Exhibit A hereto.

ALTERNATIVES:

Do not enter into a purchase and sale agreement with the recommended developer and do not pursue sale of property at this time.

RECOMMENDATION:

Approve Resolution No. 16-038, authorizing Pierce Transit to enter into and execute a purchase and sale agreement with DMG Group for sale of the property located at 415 East 25th Street in Tacoma, Washington, in substantially the same form as Exhibit No. A.

RESOLUTION NO. 16-038

A RESOLUTION of the Board of Commissioners of Pierce Transit Authorizing the Chief Executive Officer to Enter Into and Execute a Purchase and Sale Agreement with DMG Group Regarding Development of 415 East 25th Street, Tacoma, Washington

WHEREAS, Pierce Transit acquired property at 415 East 25th Street in Tacoma, Washington in 1999 during construction of Tacoma Dome Station; and

WHEREAS, the subject property was acquired for \$496,000 using 86.5% Federal Transit Administration funds; and

WHEREAS, the property is considered Excess Real Property and is an excellent candidate for Transit-Oriented Development; and

WHEREAS, Pierce Transit held a public hearing and the Board of Commissioners declared the property as surplus on August 8, 2016;

WHEREAS, the City of Tacoma Economic Development Department has assisted Pierce Transit with soliciting interested developers through a Request for Interest process; and

WHEREAS, three developers responded with Statements of Interest for development of the site; and

WHEREAS, Pierce Transit and City Staff along with a Dome District representative completed review of the proposals and interviews with the three interested developer teams; and

WHEREAS, staff recommends selection of the DMG Group's project and team; and

WHEREAS, the Board of Commissioners authorized staff to negotiate a Purchase and Sale Agreement (PSA) with the developer at its meeting held on August 8, 2016; and

WHEREAS, the Federal Transit Administration has authorized the sale of the property at the appraised value; and

WHEREAS, the Purchase and Sale Agreement includes a Development Agreement and a Restrictive Covenant requiring the land to be developed for residential and commercial uses with parking, amenities and transit supportive features; and

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners of Pierce Transit as follows:

Section 1. The Board of Commissioners authorizes Pierce Transit to execute a Purchase and Sale Agreement, with DMG Group regarding Development of 415 East 25th Street, Tacoma, Washington in substantially the same form as Exhibit No. A, which is attached hereto.

ADOPTED by the Board of Commissioners of Pierce Transit at their regular meeting thereof held on the 10th day of October, 2016.

Kent Keel, Chair
Board of Commissioners

ATTEST/AUTHENTICATED

Deanne Jacobson, CMC
Clerk of the Board

PURCHASE AND SALE AGREEMENT

by and between

**PIERCE COUNTY PUBLIC TRANSPORTATION BENEFIT AREA CORPORATION,
a Washington municipal corporation,**

as “Seller”

and

**DMG CAPITAL GROUP LLC,
a Washington limited liability company,**

as “Buyer”

Dated: October __, 2016

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List of Exhibits

Exhibit A	Legal Description
Exhibit B	Form of Development Agreement
Exhibit C	Form of Restrictive Covenant
Exhibit D	Form of Completion Guaranty
Exhibit E	Form of Deed
Exhibit F	Access Terms

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “Agreement”) is dated as of October __, 2016 (the “Effective Date”) and is by and between the PIERCE COUNTY PUBLIC TRANSPORTATION BENEFIT AREA CORPORATION, a Washington municipal corporation (“Seller”), and DMG CAPITAL GROUP LLC, a Washington limited liability company (“Buyer”). This Agreement is made with reference to the following recitals:

Recitals

A. Seller is a public transit authority providing local and regional public transportation options for residents, business owners and employees of and visitors to Pierce County.

B. Seller owns the real property, which is commonly known as 415 East 25th Street, Tacoma, WA, Pierce County Parcel No. 2075210034, which is legally described on Exhibit A attached hereto (the “Land”).

C. Seller’s Board of Commissioners declared the property surplus following a public hearing on August 8, 2016, and authorized execution of this Purchase and Sale Agreement at its regular meeting held on [REDACTED], 2016.

D. Seller desires that the Land, which is adjacent to Pierce Transit’s Tacoma Dome Station, be developed as a transit-oriented development (“TOD”) project containing certain mix of uses, including, without limitation, multi-family residential, commercial retail and accessory parking.

E. The City of Tacoma (“City”), in cooperation with Seller, issued a Request for Interest for a TOD project on the Land (“RFI”).

F. Buyer, in response to the RFI, submitted a Statement of Interest to the City dated April 15, 2016 proposing a mixed-use TOD project on the Land that would be comprised of one level of parking, one level of commercial retail and five levels of residential uses containing approximately 100 residential units (the “Project”). Thereafter, Buyer submitted to Seller a Letter of Intent dated June 29, 2016 setting forth the terms of the purchase. The Project is more particularly defined and described in Section 3 hereto.

G. Upon its acquisition of the Land, Buyer intends to develop the Project on the Land in accordance with and subject to the terms and conditions set forth herein.

H. Seller wishes to sell, and Buyer wishes to buy, the Property (as hereinafter defined) subject to the terms and conditions of this Agreement.

Agreement

NOW, THEREFORE, in consideration of the foregoing promises, and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree as follows:

1. Purchase and Sale.

1.1 The Property. In consideration of their mutual covenants set forth in this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase and accept from Seller, for the Purchase Price (as defined in Section 2.1) and on the terms and conditions set forth in this Agreement, all of Seller's right, title and interest in and to the following:

(a) The Land;

(b) All rights, covenants, interests, privileges and easements appurtenant to the Land, including without limitation all minerals, oil, gas and other hydrocarbon substances on the Land, all development rights, permits, entitlements, air rights, water, water rights and water stock relating to the Land, and any and all easements, rights-of-way and other appurtenances used in connection with the beneficial use and enjoyment of the Land (collectively, the "Appurtenances"); and

(c) Any buildings and other improvements located on the Land, including, without limitation, any utility systems on the Land (collectively, the "Improvements").

There is no personal property or intangibles included in the transaction provided for herein. The Land, the Appurtenances and the Improvements are collectively referred to as the "Property."

2. Purchase Price.

2.1 Purchase Price. The purchase price for the Property shall be (i) SEVEN HUNDRED TEN THOUSAND and 00/100 Dollars (\$710,000.00) (the "Purchase Price"). The Purchase Price shall be payable as provided below. Not later than 10:00 a.m., Pacific time, on the Closing Date (as defined in Section 4.2), Buyer shall deposit with the Escrow Holder (as defined in Section 2.2), via wire transfer, the Purchase Price, less the Deposit (as defined in Section 2.2), together with Buyer's share of closing costs and prorations.

2.1 Earnest Money. Upon execution of this Agreement, Buyer shall deposit in cash the amount of ONE HUNDRED SIX THOUSAND FIVE HUNDRED and 00/100 Dollars (\$106,500.00) as earnest money deposit hereunder (the "Deposit"), which shall be held by Ticor Title Company, by and through Heather Davidson, at 1201 Pacific Avenue, Suite 600, Tacoma, Washington, as the escrow holder hereunder ("Escrow Holder"). The Deposit (including interest earned thereon, if any) shall be applicable to the Purchase Price. The Deposit shall be nonrefundable, except that the Deposit shall be refunded to Buyer in the event that (i) one of Buyer's Conditions Precedent (as defined in Section 5) is not satisfied within the time period applicable to such condition, (ii) Buyer terminates this Agreement in accordance with Section 6.1, 7.3 or 12 hereof, or (iii) the transaction fails to close under circumstances that would entitle Buyer

to a refund of the Deposit under Section 13.1. At Buyer's election, the Deposit shall be held by Escrow Holder in an interest bearing account. In the event that the Closing (as defined in Section 4.2) shall not occur for any reason, any interest earned on the Deposit shall be paid to the party entitled to the Deposit in accordance with the terms and conditions of this Agreement. Buyer shall provide all information required by Escrow Holder in order to hold the Deposit in an interest bearing account.

3. Development Approvals and Charges. Following Closing (as defined in Section 4.2), Buyer shall develop the Project on the Land as provided in and subject to the terms and conditions of this Agreement, the terms and conditions set forth in a Development Agreement to be entered into by and between Seller and Buyer in accordance with Section 10.1 hereof, a form of which is attached hereto as Exhibit B (the "Development Agreement"), and the Restrictive Covenant to be entered into by Seller and Buyer at Closing substantially in the form of Exhibit C attached hereto (the "Restrictive Covenant").

4. Escrow; Closing.

4.1 Escrow. Escrow Holder shall hold the escrow and conduct the Closing under and in accordance with this Agreement. Buyer and Seller shall execute and deliver to Escrow Holder such instructions as may be necessary or convenient to implement the terms of this Agreement and close the transaction contemplated by this Agreement, provided that they are not inconsistent with the terms of this Agreement.

4.2 Closing; Closing Date. The consummation of the purchase and sale of the Property ("Closing") shall take place on a Business Day (as hereinafter defined) that is the earlier of (i) ten days after Permits (as defined in Section 5.1(e)) are obtained for the Project, or (ii) one year from the date hereof (the "Closing Date"). Notwithstanding, Seller shall have the right, which may be exercised in Seller's sole and absolute discretion, to extend Closing from time to time, but not more than 60 days in the aggregate.

4.3 Buyer's Deliveries. At or before Closing, Buyer shall deposit (or cause to be deposited) into escrow the following items:

(a) funds transmitted by wire transfer in the amount of the Purchase Price (less the amount of the Deposit), together with Buyer's share of closing costs and prorations, as provided in this Agreement;

(b) two counterparts of the Restrictive Covenant executed by Buyer (and acknowledged);

(c) an irrevocable and unconditional guaranty of performance from David Myaskovsky ("Guarantor"), in the form of Exhibit D attached hereto, guaranteeing the full and faithful performance of Buyer's obligations under the Development Agreement (the "Completion Guaranty"); and

(d) a real estate excise tax affidavit executed by Buyer.

4.4 Seller's Deliveries. At or before Closing, Seller shall cause to be delivered into Escrow the following documents:

(a) a bargain and sale deed to the Property in the form attached hereto as Exhibit E (the "Deed"), subject only to the Permitted Exceptions (as defined in Section 6.2), properly executed and acknowledged on behalf of Seller, and an accompanying excise tax affidavit;

(b) two counterparts of the Restrictive Covenant executed by Seller (and acknowledged); and

(c) a certificate executed by Seller to the effect that Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

4.5 Proof of Authority. Buyer and Seller each shall deliver such proof of authority and authorization to enter into this Agreement and consummate the transaction contemplated by this Agreement, and such proof of power and authority of the individual(s) executing and delivering any instruments, documents or certificates to act for and bind such party, as reasonably may be required by the Title Company (as defined in Section 4.8(c)).

4.6 Other Documents. Buyer and Seller shall deliver such other documents or instruments as are reasonably required to consummate this transaction in accordance with this Agreement, including without limitation closing statements.

4.7 Possession. Seller shall deliver possession of the Property to Buyer at Closing.

4.8 Disbursement and Other Actions. At the Closing, Escrow Holder promptly shall undertake all of the following in the manner indicated:

(a) Funds. Disburse all funds deposited with Escrow Holder by Buyer as follows:

(i) Disburse the Purchase Price to Seller, net the total amount chargeable to Seller, if any, as the result of prorations and credits pursuant to Section 11.

(ii) Disburse the remaining balance of the funds, if any, to Buyer promptly following the Closing.

(b) Recording. Cause the Deed and the Restrictive Covenant and any other documents that the parties may mutually direct to be recorded in the Official Records of Pierce County, Washington and obtain conformed copies thereof for distribution to Buyer and Seller.

(c) Title Policy. Direct Ticor Title Company (the "Title Company") to issue the Title Policy (as defined in Section 6.2) to Buyer in accordance with Section 6.

(d) Disbursement of Documents to the Parties. Disburse to each party the counterpart documents per the instructions of the Parties.

5. Conditions Precedent to Closing.

5.1 Buyer's Conditions. For Buyer's benefit (and waivable by Buyer, and only Buyer, at any time), the following are conditions precedent to Buyer's obligation to consummate this transaction described in this Agreement ("Buyer's Conditions Precedent") and must be satisfied or waived by the date or within the time period indicated:

(a) Inspection Condition. The Inspection Condition (as defined in Section 15.1) shall have been satisfied or waived on or prior to the expiration of the Due Diligence Period.

(b) Title Policy. On the Closing Date, the Title Company is prepared to issue the Title Policy to Buyer as of the Closing Date in accordance with Section 6 of this Agreement, subject to the satisfaction by Buyer of any conditions to the issuance thereof to be satisfied by Buyer.

(c) Representations and Warranties. On the Closing Date, Seller's representations and warranties contained in Section 7.1 are true and correct as if made as of the Closing Date, except as provided in Section 7.3.

(d) Seller's Performance. Seller has duly and timely performed each and every other material obligation to be performed by Seller under this Agreement before Closing.

(e) Permits. Buyer has obtained all discretionary approvals, permits and consents required under the Legal Requirements from the City of Tacoma to construct the Project pursuant to and in accordance with the terms and conditions of the Development Agreement, except those that are purely ministerial in nature and those that, by their nature, would be obtained at a later stage in the development of the Project ("Permits").

5.2 Seller's Conditions. For Seller's benefit (and waivable by Seller, and only Seller, at any time), the following are conditions precedent to Seller's obligation to consummate this transaction ("Seller's Conditions Precedent") and must be satisfied or waived by the date or within the time period indicated:

(a) Buyer's Performance. Buyer has duly and timely performed each and every material obligation to be performed by Buyer under this Agreement prior to Closing.

(b) Buyer's Representations and Warranties. Buyer's representations and warranties set forth in Section 7.2 are true and correct as if made as of the Closing Date, except as provided in Section 7.3.

(c) Approvals. Seller shall have obtained all necessary approvals in writing regarding the sale of the Property to Buyer in accordance with the terms and conditions of this Agreement, including, without limitation, from the Board of Commissioners of the Pierce County Public Transportation Benefit Area Corporation and the Federal Transit Administration. This condition shall be deemed waived if Seller has not provided Buyer with written notice of non-satisfaction of this condition on or before _____, 201__.

6. Evidence of Title.

6.1 Commitment. Within ten days from the Effective Date, Seller shall cause the Title Company to deliver to Buyer a preliminary title commitment for an extended coverage 2006 ALTA owner's policy of title insurance ("Commitment"), together with the underlying documents forming the basis of the exceptions. Buyer may, at its sole cost and expense, obtain an ALTA/NSPS survey of the Property (the "Survey"). Buyer shall have until 30 days after the Effective Date to object to any matter disclosed in the Commitment or the Survey by giving written notice (a "Title Defect Notice") of the objection to Seller and Title Company. If, after the initial issuance of the Commitment and giving of the initial Title Defect Notice, the Title Company amends the Commitment by adding a new exception thereto, or a revision to the Survey reveals any new matters affecting title, Buyer shall be entitled to give a new Title Defect Notice to such exception or matter within five Business Days after receipt of the amendment. Any matters not referenced in a timely Title Defect Notice shall be deemed approved by Buyer and shall be included as Permitted Exceptions (as defined below).

Within 15 Business Days after receiving a Title Defect Notice, Seller shall notify Buyer in writing of any disapproved exception(s) that Seller declines to cure ("Seller's Title Defect Cure Notice"). If Seller fails to timely give the Seller's Title Defect Cure Notice, then Seller shall be deemed to have given a Seller's Title Defect Cure Notice in which Seller declines to cure any matters set forth in the applicable Title Defect Notice on the last day of such 15-Business Day period. Thereafter Buyer shall have five Business Days after receipt (or deemed receipt) of Seller's Title Defect Cure Notice to provide written notice to Seller that Buyer either waives the exception that Seller has declined to cure (which thereafter shall constitute a Permitted Exception) or elects to terminate this Agreement. If Buyer fails to provide such notice within such five Business Day period, Buyer shall be deemed to have waived the right to object to the exception (which shall thereafter constitute a Permitted Exception) and waived its right to terminate this Agreement by reason thereof.

Anything to the contrary in this Agreement notwithstanding, Seller shall have no affirmative obligation to expend any funds or incur any liabilities to cause any title exceptions or matters to be removed from the Commitment or the Survey (or any updates thereto) or insured over, except that Seller shall pay or discharge any lien or monetary encumbrance voluntarily created, permitted or assumed by Seller (except current taxes and assessments) and not created by or resulting from the acts of Buyer or other parties not related to Seller.

6.2 Issuance of Policy. At Closing, Buyer and Seller shall anticipate that the Title Company will be prepared to issue an extended coverage 2006 ALTA owner's title insurance policy ("Title Policy") in the amount of the Purchase Price insuring Buyer and subject only to the following (collectively, the "Permitted Exceptions") (a) a lien for real property taxes and assessments, not then delinquent; (b) title exceptions approved or deemed approved by Buyer under Section 6.1; (c) matters affecting the condition of title to the Property resulting from the actions or activities of Buyer, its agents or contractors, or created by or with the consent of Buyer; (d) the Restrictive Covenant; (e) a memorandum of the Development Agreement; and (f) standard owner's exceptions in the Title Policy.

7. Representations and Warranties.

7.1 Seller. Seller represents and warrants that as of the date it executes this Agreement: Subject to Section 5.2(c) hereof, Seller has the legal power, right and authority to enter into this Agreement and all documents required to be executed by Seller under this Agreement and to consummate the transaction contemplated by this Agreement.

(b) To Seller's actual knowledge, there are no pending or threatened (in writing) actions, suits, arbitrations, claims or proceedings, at law or in equity, adversely affecting the Property or to which Seller is a party by reason of Seller's ownership of the Property, including any eminent domain proceeding.

(c) Except for any matters shown on the Commitment and the Reports (as defined in Section 15.3), Seller has not entered into any oral or written leases, subleases, rental agreements licenses, service or maintenance agreements or other contracts or agreements (written or oral) with respect to the ownership, operation, maintenance, use or occupancy with respect to the Property or any portion thereof that would encumber the Property or bind Buyer after Closing.

(d) Seller has not received any written notices from any governmental authority with respect to any violation of any statute, ordinance or regulation applicable (or alleged to be applicable) to the Property.

(e) To Seller's actual knowledge, the Reports are all of the reports that are in Seller's possession as of the Effective Date regarding the physical condition of the Property prepared within ten years preceding the Effective Date, and the books, records, leases, agreements and other items made available to Buyer pursuant to this Agreement comprise all material documents in Seller's possession regarding the operation and condition of the Property.

Seller shall promptly notify Buyer of any new event or circumstance of which Seller has actual knowledge that occurs or arises after the date hereof and that makes any representation or warranty of Seller under this Agreement untrue in any respect that would materially affect Buyer's development of the Property.

The term "actual knowledge" as used herein means the knowledge of Janine Robinson, Senior Planner with Seller without special duty of inquiry or investigation with respect to this transaction, and the records of Seller maintained at 3701 96th Street SW, Lakewood, Washington. The foregoing representations and warranties shall be deemed made as of Closing except to the extent modified by a notice delivered by Seller pursuant to Section 7.3 notifying Buyer of any changes arising prior to Closing.

7.2 Buyer. Buyer represents and warrants that as of the date it executes this Agreement and as of Closing:

(a) Buyer is a limited liability company duly formed and validly existing in accordance with laws of the State of Washington.

(b) Buyer has the legal power, right and authority to enter into this Agreement and the documents required to be executed by Buyer under this Agreement and to consummate the transactions contemplated by this Agreement.

(c) All requisite action (corporate, partnership, limited liability company or otherwise) has been taken by Buyer in connection with the entering into this Agreement and the documents required hereby to be executed by Buyer and the consummation of the transactions contemplated hereby.

(d) The entry by Buyer into this Agreement and the performance of all of the terms, provisions and conditions contained herein will not, or with the giving of notice or the passage of time, or both, would not, violate or cause a breach or default under any other agreements to which Buyer is a party or by which it is bound.

(e) There is no action in the nature of litigation, claim, investigation or other proceeding pending, or threatened against Buyer which could interfere with its ability to execute and/or perform under this Agreement.

(f) Buyer has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or dissolution, or any similar action under any federal, state or local law for the bankruptcy, reorganization, arrangement, composition, liquidation, relief, aid, or dissolution of debtors, or suffered the filing of any such petition by its creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of its assets, or (iv) suffered the attachment or other judicial seizure of all or substantially all of its assets.

(g) Each of the Buyer and its members is not a person, company, firm, partnership or other legal entity, with whom Seller is restricted from doing business under regulations of the Office of Foreign Asset Control (“**OFAC**”) of the Department of the Treasury of the United States of America (including, those Persons named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or otherwise be associated with such Persons.

7.3 Changes in Representations and Warranties. The foregoing representations and warranties are to be made by the parties as of the date hereof and, except as hereafter provided, as of the Closing Date. If after the Effective Date and before the Closing Date a party making a representation and warranty (the “Representing Party”) becomes aware of facts that would cause such representation and warranty to be untrue or incomplete, the Representing Party shall notify the other party (the “Nonrepresenting Party”) in writing within five Business Days after discovery of the new facts, and include copies of documents or materials, if any, related to such new facts. If a representation and warranty can no longer be accurately made by the Representing Party and this is (i) due to a state of facts first arising after the Effective Date, (ii) not intentionally caused by the Representing Party, (iii) such new state of facts materially and adversely affects a right, remedy or obligation of the Nonrepresenting Party under this Agreement, prevents a party from performing as required herein, or, if Buyer is the Nonrepresenting Party, increases the costs associated with Buyer’s intended use of the Property or decreases value of the Property, then the Nonrepresenting Party may by written notice to the Representing Party elect to terminate this Agreement. In such event, Escrow Holder shall

promptly return the Deposit, as applicable, to Buyer and neither party shall have any further obligations hereunder (except as otherwise stated herein). Such election must be exercised within ten Business Days after the Nonrepresenting Party receives the written notice of the new facts from the Representing Party as provided above (and in any event before the Closing Date). During such ten Business Day period, however, the parties shall negotiate in good faith about possible solutions to address the change in facts (e.g., proposals for courses of actions to cure the issue or price adjustments). If the Nonrepresenting Party elects to proceed to Closing notwithstanding the new facts affecting a representation and warranty, it shall have no claim against the Representing Party by reason of the affected representation and warranty and the affected representation and warranty shall be deemed modified to reflect the new state of facts.

8. AS IS. EXCEPT AS PROVIDED IN THE REPRESENTATIONS AND WARRANTIES IN THIS AGREEMENT, BUYER ACKNOWLEDGES AND AGREES TO PURCHASE AND TAKE TITLE TO THE PROPERTY IN ITS "AS IS" AND "WHERE IS" CONDITION. BUYER REPRESENTS AND WARRANTS TO SELLER THAT:

(i) BUYER WILL HAVE DILIGENTLY EXAMINED AND INVESTIGATED TO BUYER'S FULL SATISFACTION THE CONDITION OF THE PROPERTY, SELLER'S DISCLOSURE DOCUMENTATION (IF ANY) AND ALL OTHER MATTERS THAT IN BUYER'S JUDGMENT AFFECT BUYER'S DEVELOPMENT AND USE OF THE PROPERTY AND BUYER'S WILLINGNESS TO ACQUIRE THE PROPERTY PURSUANT TO THIS AGREEMENT.

(ii) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND ANY EXHIBITS ATTACHED, NEITHER SELLER NOR ANY REAL ESTATE BROKER, AGENT OR OTHER REPRESENTATIVE OF SELLER HAS MADE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER REGARDING THIS TRANSACTION OR ANY FACT RELATING THERETO, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS OR WARRANTIES CONCERNING THE CONDITION OF THE PROPERTY, ACCESS, ZONING LAWS, ENVIRONMENTAL MATTERS, UTILITIES, OR ANY OTHER MATTER AFFECTING THE PROPERTY OR THE USE THEREOF. BUYER IS RELYING AND WILL RELY SOLELY ON BUYER'S OWN INSPECTIONS, TESTS, AUDITS, STUDIES AND INVESTIGATIONS.

(iii) BUYER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, ITS DEVELOPMENT OR USE, COMPLIANCE WITH LAW OR OTHERWISE RELATING THERETO MADE OR FURNISHED BY SELLER OR ANY REAL ESTATE BROKER OR AGENT REPRESENTING OR PURPORTING TO REPRESENT SELLER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, VERBALLY OR IN WRITING, EXCEPT THE REPRESENTATIONS AND WARRANTIES OF SELLER AS SPECIFICALLY SET FORTH IN THIS AGREEMENT AND THE DEED.

(iv) IF BUYER HAS NOT EXERCISED ITS RIGHT TO TERMINATE THIS AGREEMENT AS PROVIDED HEREIN, BUYER SHALL ACCEPT

THE PROPERTY "AS IS" AND "WHERE IS" WITH ALL FAULTS AT CLOSING AND, EXCEPT AS SET FORTH IN SECTION 7.1, SECTION 28 AND THE DEED, WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED OR STATUTORY OF ANY KIND WHATSOEVER BY SELLER, ANY REAL ESTATE BROKER, AGENT OR OTHER REPRESENTATIVES OF SELLER. EXCEPT IN THE EVENT OF SELLER'S FRAUD, IF BUYER PURCHASES THE PROPERTY UNDER THIS AGREEMENT, THEN BUYER SHALL BE DEEMED TO HAVE AGREED TO ACCEPT TITLE TO THE PROPERTY SUBJECT TO ANY ENVIRONMENTAL CONTAMINATION DISCOVERED ON THE PROPERTY BEFORE OR AFTER CLOSING AND TO HAVE WAIVED AND RELEASED ITS RIGHT TO RECOVER FROM SELLER, AND ITS BOARD MEMBERS, COMMISSIONERS, OFFICIALS, OFFICERS, MANAGERS, ATTORNEYS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS OF SELLER AND FROM ANY REAL ESTATE BROKERS OR AGENTS REPRESENTING OR PURPORTING TO REPRESENT SELLER, ANY AND ALL DAMAGES, LOSSES, LIABILITIES, COSTS, OR EXPENSES WHATSOEVER (INCLUDING ATTORNEYS' FEES AND COSTS) AND CLAIMS THEREFOR, WHETHER DIRECT OR INDIRECT, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THAT MAY ARISE ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE CONDITION OF THE PROPERTY OR ANY LAW, ORDINANCE, OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED (42 U.S.C. SECTIONS 9601 ET SEQ.), THE RESOURCES CONSERVATION AND RECOVERY ACT OF 1976 (42 U.S.C. SECTIONS 6901 ET SEQ.), THE CLEAN WATER ACT (33 U.S.C. SECTIONS 1251 ET SEQ.), THE SAFE DRINKING WATER ACT (14 U.S.C. SECTIONS 1401-1450), THE HAZARDOUS MATERIALS TRANSPORTATION ACT (49 U.S.C. SECTIONS 1801 ET SEQ.), THE TOXIC SUBSTANCE CONTROL ACT (15 U.S.C. SECTIONS 2601-2629), AND THE MODEL TOXICS CONTROL ACT, RCW 70.105D. SUCH WAIVER AND RELEASE SHALL NOT APPLY WITH RESPECT TO ANY RELEASE OF HAZARDOUS SUBSTANCES OR ANY DAMAGE TO THE PROPERTY RESULTING THEREFROM THAT IS CAUSED BY SELLER, OR SELLER'S MANAGERS, EMPLOYEES, OFFICERS, OFFICIALS, BOARD MEMBERS, COMMISSIONERS, AGENTS, SUCCESSORS OR ASSIGNS THAT OCCURS AFTER CLOSING AND AFFECTS THE PROPERTY.

9. Environmental Issues.

9.1 No Environmental Representations. Buyer agrees and acknowledges that Seller has made no representations or warranties concerning the presence or absence of any Hazardous Substances (hereinafter defined) on, in, under or about the Land or any property adjacent to the Land and that Seller has made no representation or warranty concerning the existence or non-existence of any past or present violation of, or obligation arising in connection with any Environmental Laws (hereinafter defined) affecting the Land. Buyer pursuant to Section 15 will have an opportunity prior to Closing to perform any and all inspections of the Land that Buyer deems necessary to satisfy itself with the environmental condition of the Premises. Buyer hereby waives any and all claims, actions, causes of actions, suits or demands of any nature against Seller which the Buyer may have now or in the future for damages, payments, costs or expenses (including, without limitation, claims of contribution or indemnity and any expenses of investigation or the condition of the Premises, regardless of the results of such investigation, and

claims arising under, or pursuant to, any Environmental Laws) suffered by Buyer as a result of the presence or alleged presences of any Hazardous Substances on, in, under or near the Land, the violation, at any time in the past, present or future, of any Environmental Laws affecting the Land or the existence of any undischarged obligation under any Environmental Law relating to the Land. Buyer acknowledges and agrees there may be Hazardous Substances within the Property's boundaries and/or emanating from the Property, the Property may have contamination that has not yet been discovered or is otherwise unknown as to nature and extent, and the Property may be potentially subject to contamination in the future from offsite sources (the "Contamination"). The term "Hazardous Substance(s)" as used in this Agreement means any hazardous waste or other substances listed, defined, designated or classified as hazardous, dangerous, radioactive, toxic, solid waste or a pollutant or contaminant in any Environmental Law, including without limitation (a) petroleum products and petroleum byproducts; (b) polychlorinated biphenyls; (c) asbestos; and (d) chlorinated solvents. The term "Environmental Law" includes any federal, state, municipal or local law, statute, ordinance, regulation, order or rule pertaining to health, industrial hygiene, environmental conditions or hazardous substances, including without limitation the Washington Model Toxics Control Act, RCW ch. 70.105B et seq. and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq., the Resources Conservation And Recovery Act Of 1976 (42 U.S.C. Sections 6901 et seq.), the Clean Water Act (33 U.S.C. Sections 1251 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Sections 1801 et seq.) and the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629).

9.2 Buyer's Release, and Waiver of Claims. Effective as of Closing, Buyer shall be deemed to have released and forever discharged Seller and the City, each of the City's and Seller's officials, commissioners, board members, employees, officers, elected members, agents, successors and assigns from any claim or cause of action that Buyer has or may have that is related to the Contamination or the presence or alleged presence of Hazardous Substances at, below, or emanating from the Property. Except as expressly provided herein, Buyer shall have no duty to defend or indemnify Seller or any employees, officers, officials, commissioners, board members, agents, successors or assigns of Seller from any claims, causes of actions or liabilities whatsoever asserted against Seller by a third party, including but not limited to claims by a private party or governmental entity (other than Buyer) alleging loss or seeking contribution or any other relief under any Environmental Law or common law.

9.3 Rights Reservation. Notwithstanding the foregoing provisions of this Section 9, upon Closing, Buyer and Seller reserve all their rights and defenses against any non-parties to this Agreement, including but not limited to the right to seek cost recovery or contribution under any Environmental Law, statute or common law, regarding the presence, investigation or cleanup of any Hazardous Substance on, at, under, around or migrating from the Property. In addition, notwithstanding the foregoing, the waivers and releases contained in this Section 9 shall not apply to the extent of third party claims brought against one party alleging an action in violation of an Environmental Law with respect to the Property by the other party.

10. Development Matters.

10.1 Development Agreement. Provided that this Agreement shall not have been terminated by Buyer pursuant to and in accordance with Section 15.1 hereof, upon the expiration of the Due Diligence Period (as defined in Section 15.1), Buyer and Seller will enter into a Development Agreement, a form of which is set forth on Exhibit B attached hereto.

10.2 Restrictive Covenant. At Closing, Buyer will enter into a Restrictive Covenant, a form of which is set forth on Exhibit C attached hereto.

11. Costs and Expenses. Seller shall pay (a) the premium for the standard coverage portion of the Title Policy, (b) one-half (1/2) of all escrow fees and costs, and the cost of recording the Deed, (c) all of the cost of the appraisal for the Property, and (d) Seller's share of prorations. Buyer shall pay for (i) the premiums for the extended coverage portion of the Title Policy, if elected by Buyer, and for any additional title insurance coverage or endorsements, (ii) the costs of the Survey, (iii) any recording charges (other than for the Deed), (iv) one-half (1/2) of all escrow fees and costs, and (v) Buyer's share of prorations. Because Seller is a public entity, no excise tax will be due on the Sale. Buyer and Seller shall each pay their own legal and professional fees and fees of other consultants. The Property is currently exempt from property taxes, so there are no taxes to prorate. All property taxes and assessments arising from and after Closing shall be the sole responsibility of Buyer. All other costs and expenses shall be allocated between Buyer and Seller in accordance with the customary practice in County of Pierce, State of Washington. If the transaction is terminated by either party on account of default by the other, the defaulting party shall pay all escrow and title costs billed by the Escrow Holder and Title Company.

12. Condemnation. If before the Closing Date any condemnation or eminent domain proceedings are initiated that might result in the taking of all of the Property, then this Agreement shall terminate. If such proceeding proposes to take less than all of the Property, and the portion of the Property to be taken is necessary for the development of the Project and the Project cannot be reasonably and economically reconfigured (each, a "Material Taking"), Buyer may:

(i) terminate this Agreement by written notice to Seller whereupon the parties shall proceed in accordance with Section 14 for a termination that is for the failure of a condition; or

(ii) proceed with the Closing, in which event Seller shall assign to Buyer in writing at Closing all of Seller's right, title and interest in and to any award made in connection with such condemnation or eminent domain proceedings.

Seller shall immediately notify Buyer in writing of the commencement or occurrence of any condemnation or eminent domain proceedings. If such proceedings would result in a Material Taking of the Property, Buyer shall then notify Seller, within ten Business Days of Buyer's receipt of Seller's notice, whether Buyer elects to exercise its rights under clause (a) or clause (b) of this Section 12. Closing shall be delayed, if necessary, until the later to occur of (i) the Closing Date or (ii) five Business Days after the expiration of the ten-Business Day period. If Buyer fails to timely elect to proceed under this Section 12, then Buyer will be

deemed to have elected clause (b) above. If a taking is not a Material Taking, the parties shall proceed in accordance with clause (b) above.

13. Legal and Equitable Enforcement of this Agreement.

13.1 Default by Seller. This Agreement pertains to the conveyance of real property, the unique nature of which is hereby acknowledged by the parties. Consequently, if Seller refuses or fails without legal excuse to convey the Property to Buyer as required by this Agreement, or otherwise defaults in its obligations hereunder, and provided that Buyer is not default in its obligations hereunder and there are no events, which with the passage of time and/or delivery of notice would constitute Buyer's default hereunder, Buyer shall have the right to terminate this Agreement upon written notice to Seller and receive a return of the Deposit paid, plus all reasonable out-of-pocket costs actually paid by Buyer to its attorney and consultants in connection with the negotiation of this Agreement and performing Inspections (as defined in Section 15.1), in which case neither party shall have any further obligations to the other hereunder, except for the obligations and indemnities expressly stated to survive termination of this Agreement. In no event shall Seller be liable to Buyer for any damages to Buyer, other than the return of the Deposit and recovery of out-of-pocket costs discussed in this Section 13.1 if Buyer elects to terminate this Agreement.

13.2 Default by Buyer. If Buyer fails without legal excuse to complete the purchase of the Property, the Deposit shall be forfeited to Seller as liquidated damages which, together with payment by Buyer of any attorney's fees and enforcement costs due under Section 30 below, is the sole and exclusive remedy against Buyer available to Seller for Buyer's failure to complete the purchase of the Property as required under this Agreement. In no event shall Seller be entitled to specific performance against Buyer for such failure. If the Closing fails to occur by reason of Buyer's default, the parties agree that the damages that Seller would suffer thereby are difficult or impossible to determine. The parties agree that the Deposit is a reasonable estimate of such damages and shall be and constitute valid liquidated damages, and not a penalty, considering all circumstances that exist on the date of this Agreement, including: (1) the relationship of the foregoing sum to the range of harm to Seller that could reasonably be anticipated; and (2) the anticipation that proof of actual damages would be impracticable or extremely difficult to determine. This provision is not intended to apply to obligations that survive a termination of this Agreement, and Seller shall be entitled to receive and retain amounts due or paid thereunder in addition to the Deposit.

13.3 Default under the Development Agreement. Buyer's default under the Development Agreement beyond any applicable cure period shall constitute Buyer's default hereunder, and in the event of such default by Buyer, Seller shall have all rights and remedies under this Agreement and/or the Development Agreement, and all other rights and remedies available in law or equity.

14. Termination for Failure of Condition. If any of the closing conditions set forth herein are not satisfied or waived by the date provided in such condition, the party entitled to benefit of such condition shall have the right to terminate this Agreement and the escrow provided for herein by giving written notice of such termination to the other party and to Escrow Holder. In the event of such termination, all escrow and title charges shall be divided equally

between the parties and this Agreement will be of no further force and effect and the parties shall have no further liability except as expressly set forth in this Agreement for matters expressly stated to survive termination of this Agreement, including, without limitation, those set forth in the Access Terms (as defined in Section 15.2). All documents delivered to Escrow Holder shall be returned to the depositing party, the Deposit shall be delivered to the party entitled to the Deposit and Buyer shall return to Seller all due diligence items delivered by Seller to Buyer.

15. Due Diligence.

15.1 Due Diligence Period. For a period of 30 days from the Effective Date (the “Due Diligence Period”), Buyer, in its sole discretion and at its sole expense, shall have the opportunity to inspect and approve the physical condition and use of the Property, the economic feasibility of the Project and any other matters relating to the Property as Buyer elects to undertake (collectively, the “Inspections”), including without limitation, the availability of financing, access, utility services, zoning, engineering, soils and environmental conditions, status of neighboring projects and a survey (the “Inspection Condition”). Any invasive testing of the Property (including Phase II environmental sampling) shall be subject to Seller’s prior review and approval. In the event that Buyer shall reasonably determine that a Phase II environmental inspection of the Property shall be required, and Seller shall permit Buyer to perform said inspection, in its sole discretion, then the Due Diligence Period shall be automatically extended to include an additional 30 days for a total of 60 days from the Effective Date.

The Inspection Condition must be satisfied or waived by the end of the Due Diligence Period. If for any reason whatsoever Buyer determines that the Property is unsuitable for its purposes in its sole and absolute discretion and notifies Seller of such decision in writing before the end of the Due Diligence Period, then this Agreement shall terminate. If Buyer does not provide written notice to Seller of its approval of the Inspection Condition by the end of the Due Diligence Period, the Inspection Condition shall not be satisfied and this Agreement shall terminate. In the event of such termination before the end of the Due Diligence Period, Escrow Holder shall promptly return the Deposit to Buyer. If Buyer delivers written notice to Seller that the Inspection Condition is satisfied or that Buyer is waiving the Inspection Condition on or prior to the expiration of the Due Diligence Period, this Agreement shall not terminate and the Deposit shall not be refundable to Buyer by reason of the Inspection Condition.

15.2 Access to Property. Further, until the Closing Date or earlier termination of this Agreement, Buyer, its lender, and their respective authorized contractors, engineers, surveyor, appraiser, consultants, employees and agents shall have the right to enter onto the Property for purposes of undertaking the Inspections, except those that are invasive nature, which require Seller’s prior written approval as provided in this Section 15. Any such entry shall be subject to the terms and conditions set forth in Exhibit F attached hereto (“Access Terms”). Buyer agrees to indemnify Seller and to hold Seller, Seller’s agents and employees harmless from and against any and all losses, costs, damages, claims or liabilities including, but not limited to, construction, mechanic’s and material men’s liens and attorneys’ fees, to the extent caused by Buyer’s entry upon the Property, including the conduct of the Inspections, by Buyer or its contractors, consultants, employees or agents under this Section 15.2. This indemnity shall survive Closing or termination of this Agreement.

15.3 Reports and Disclosure Statement. Within two Business Days from the Effective Date, Seller shall deliver to Buyer copies of all reports about the physical condition of the Property that were prepared within ten years preceding the Effective Date and which are in Seller's possession, including but not limited to all environmental reports, surveys, soil reports, plans, notices from any governmental entities regarding the physical condition of the Property, engineering, zoning, hydrological and all other documents relating to the physical condition of the Property and any code or governmental violations related thereto, except to the extent that any such report, information, document, plans and/or notices shall be publicly available (and Seller does not have a paper copy thereof in its possession) or may be obtained or available through the Commitment or Survey if a Survey is obtained or provided (collectively, the "Reports"). Seller disclaims any responsibility for the accuracy of any information contained in the Reports, and Buyer acknowledges that it shall use the Reports at its own risk. If this Agreement terminates or the purchase and sale fails to close, Buyer promptly shall return the Reports (and all copies thereof) to Seller.

To the maximum extent permitted by RCW 64.06, Buyer expressly waives its right to receive from Seller a seller disclosure statement as provided for in RCW 64.06 (the "Seller Disclosure Statement"). Seller and Buyer acknowledge that Buyer cannot waive its right to receive the environmental section of the Seller Disclosure Statement (which is contained in Section 6 of the form) if the answer to any one of the questions therein would be "yes". Seller will provide the same, with only such environmental section completed by Seller, to Buyer within ten days after the Effective Date. Nothing in the Seller Disclosure Statement creates a representation or warranty by Seller, nor does it create any rights or obligations in the parties except as set forth in RCW 64.06, as amended. Buyer is advised to use due diligence to inspect the Property to Buyer's satisfaction, subject to the terms of this Agreement, and Seller may not have knowledge of defects that careful inspection might reveal. Buyer specifically acknowledges and agrees that the Seller Disclosure Statement is not part of this Agreement, Seller has no duties to Buyer other than those set forth in this Agreement, including delivery of the completed environmental section of the Seller Disclosure Statement, Buyer has no independent cause of action under the Seller Disclosure Statement and, specifically and without limitation, Buyer will not have a remedy for economic loss resulting from negligent errors, inaccuracies or omissions on the Seller Disclosure Statement.

16. Notice. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

If to Seller:

Pierce County Public Transportation Benefit Area
Corporation
3701 96th Street SW
Lakewood, Washington 98499
Attention: General Counsel
Phone: (253) 777-4977
Email: dhenderson@piercetransit.org

With a copy to:

K&L Gates LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104

Attention: Rhys Hefta
Phone: (206) 623-7022
Email: rhys.hefta@klgates.com

If to Buyer:

DMG Capital Group LLC

[REDACTED]
[REDACTED]

Attention: David Myaskovsky
Phone: (____) _____
Email: [REDACTED]

With a copy to:

Garvey Schubert Barer
1191 Second Ave., 18th floor
Seattle, WA 98101
Attention: R. Spitzer
Phone: (206) 464-3939
Email: rspitzer@gsblaw.com

Any such notices shall be either (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three days after deposit, postage prepaid in the U.S. mail, (b) sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered when actually delivered pursuant to the records of such courier, (c) hand delivered, in which case notice shall be deemed delivered on the date of the hand delivery, or (d) sent via electronic mail, in which case notice shall be deemed delivered upon transmission (provided such notice shall immediately follow thereafter via one of the methods specified under clauses (b) or (c)). Any notice given by counsel to a party shall have the same effect as if given by such party. The above addresses and phone numbers may be changed by written notice to be provided the other party in accordance with this Section 16; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

17. Governing Law; Jurisdiction. The construction, validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Washington. In the event any action is brought to enforce any of the provisions of this Agreement, the parties agree to be subject to the jurisdiction in the Pierce County Superior Court for the State of Washington or in the United States District Court for the Western District of Washington.

18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

19. Captions. The captions in this Agreement are inserted for convenience of reference and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

20. Assignability. Buyer shall not assign its rights under this Agreement without Seller's prior written consent. Notwithstanding the foregoing, by written notice to Seller at least five days prior to Closing, Buyer may assign this Agreement, together with the Development Agreement, to an affiliate majority owned and controlled by, directly or indirectly, David Myaskovsky, who shall also retain control of the development of the Project. Such entity shall assume in writing all obligations of Buyer hereunder and under the Development Agreement pursuant to an assumption agreement in form and substance reasonably satisfactory to Seller. No such assignment shall relieve the Buyer identified herein from its obligations under this Agreement and the Development Agreement, and Buyer shall remain liable for the performance of all obligations under this Agreement and the Development Agreement on a joint and several basis. This Agreement may not be assigned independently of the Development Agreement.

21. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns.

22. Modifications; Waiver. No waiver, modification amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is sought.

23. Entire Agreement. This Agreement contains the entire agreement, including all of the exhibits attached hereto, between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations or statements, oral or written, are superseded hereby.

24. Fair Construction; Severability. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the context may require. The parties hereby acknowledge and agree that each was properly represented by counsel and this Agreement was negotiated and drafted at arms' length so that the judicial rule of construction to the effect that any ambiguities are to be construed against the drafting party shall be inapplicable in the interpretation of this Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning and consistent with the other provisions contained herein in order to achieve the objectives and purposes of this Agreement. If any term, provision, covenant, clause, sentence or any other portion of the terms and conditions of this Agreement or the application thereof to any person or circumstances shall apply, to any extent, become invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect, unless rights and obligations of the parties have been materially altered or abridged by such invalidation or unenforceability.

25. Survival. The representations and warranties in this Agreement shall survive the Closing of this transaction for a period of 12 months following Closing, and written notice of any claim by a party for a breach thereof must be delivered to the other party within such time period. In addition to those indemnities and agreements that are expressly stated herein to survive the termination or expiration of this Agreement or Closing, the indemnities and agreements contained in Exhibit F (Access Terms), Section 9 (Environmental), Section 15.2 (Access to Property), Section 28 (Brokers) and Section 30 (Attorneys' Fees) shall survive the termination or expiration of this Agreement, and shall survive the Closing and shall not be

merged into the Deed. Except for the foregoing provisions, all other agreements of the parties contained in this Agreement shall terminate upon Closing.

26. No Personal Liability of Officers or Directors.

26.1 Seller. Buyer acknowledges that this Agreement is entered into by Seller as a municipal corporation and Buyer agrees that no individual official, commissioner, board member, officer, elected person, employee or representative of Seller shall have any personal liability under this Agreement or any document executed in connection with the transactions contemplated by this Agreement.

26.2 Buyer. Seller acknowledges that this Agreement is entered into by Buyer as a limited liability company and Seller agrees that no individual officer, director, member or representative of Buyer shall have any personal liability under this Agreement. Notwithstanding the foregoing, nothing shall preclude personal liability under the Completion Guaranty.

27. No Third Party Rights. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement. No term or provision of this Agreement shall be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder, except as may be otherwise expressly provided herein. Nothing in this section is intended to modify the restrictions on assignment contained in Section 20 hereof.

28. Brokers. Seller and Buyer represent each to the other that each has had no dealings with any broker, finder or other party concerning Buyer's purchase of the Property. Seller agrees to indemnify and hold Buyer harmless from all loss, cost, damage or expense (including reasonable attorney's fees) incurred by Buyer as a result of any claim arising out of the acts of Seller for a commission, finder's fee or similar compensation made by any broker, finder or any party who claims to have dealt with Seller. Buyer agrees to indemnify and hold Seller harmless from all loss, cost, damage or expense (including reasonable attorney's fees) incurred by Seller as a result of any claim arising out of the acts of Buyer for a commission, finder's fee or similar compensation or made by any broker, finder or any party who claims to have dealt with Buyer. The indemnities contained in this Section 28 shall survive the Closing or the termination of this Agreement.

29. Business Days; Computation of Time. The term "Business Day" as used herein means any day on which banks in the State of Washington are required to be open for business, excluding Saturdays and Sundays. In the computation of any period of time hereunder, the day of the act or event from which the period of time runs shall be excluded and the last day of such period shall be included. If any deadline hereunder falls on a day that is not a Business Day, then the deadline will be deemed extended to the next following Business Day.

30. Attorneys' Fees. If any legal action or other proceeding is brought for the enforcement of this Agreement (including, without limitation, enforcement of any obligation to indemnify, defend or hold harmless), or because of an alleged dispute, default or misrepresentation in connection with any of the provisions of this Agreement, the substantially

prevailing party shall be entitled to recover the reasonable attorneys' fees (including those in any bankruptcy or insolvency proceeding), accountants' and other experts' fees and all other fees, expenses and costs incurred in connection with that action or proceeding, in addition to any other relief to which it may be entitled. This Section 30 shall survive the Closing or the termination of this Agreement.

31. Time of Essence. Time is of the essence of this Agreement.

32. Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, and as all laws may be amended from time to time, Developer agrees that it will not discriminate against any employee or applicant for tenancy at this Project because of race, color, creed, national origin, sex, age, or disability. In addition, Developer agrees to comply with applicable federal implementing regulations and other implementing requirements Federal Transit Administration may issue.

[signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

SELLER:

PIERCE COUNTY PUBLIC
TRANSPORTATION BENEFIT AREA
CORPORATION,
a Washington municipal corporation

By: _____

Name: _____

Title: _____

BUYER:

DMG CAPITAL GROUP LLC,
a Washington limited liability company

By: _____

Name: _____

Its: _____

EXHIBIT A

Legal Description

Lot(s) 6 through 12, inclusive, Block 7521, The Tacoma Land Company's First Addition to Tacoma, W.T., according to the plat thereof, recorded July 7, 1884, records of Pierce county Auditor;

Together with that portion of vacated "E" Street, abutting thereon and attached thereto by Operation of Law, as vacated by City of Tacoma Ordinance No. 26418 and recorded under recording number 200010030311.

Situate in the City of Tacoma, County of Pierce, State of Washington.

EXHIBIT B

Form of Development Agreement

(See Attached)

EXHIBIT C

Form of Restrictive Covenant

(See Attached)

EXHIBIT D

Form of Completion Guaranty

(See Attached)

GUARANTY OF COMPLETION

This Guaranty of Completion (this “Guaranty”) is made as of _____, 2016, by David Myaskovsky (“Guarantor”), in favor of the PIERCE COUNTY PUBLIC TRANSPORTATION BENEFIT AREA CORPORATION, a Washington municipal corporation (“Pierce Transit”), with reference to the following facts.

RECITALS

A. Contemporaneously herewith, [DMG CAPITAL GROUP LLC, a Washington limited liability company] (“Developer”), is purchasing the property in the City of Tacoma, Washington commonly known as 425 East 25th Street, Tacoma, WA, Pierce County Parcel No. 2075210034 (the “Property”), pursuant to that certain Purchase and Sale Agreement dated as of _____, 2016 by and between Pierce Transit and Developer (the “Purchase Agreement”).

B. Concurrently with the execution and delivery of the Purchase Agreement, Pierce Transit and Developer entered into a Development Agreement that provides for terms and conditions under which Developer may design and construct the Project (as defined in the Purchase Agreement and Development Agreement). Capitalized terms not otherwise defined herein shall have the meaning given them in the Purchase Agreement.

B. As additional consideration for the purchase of the Property, Developer is required under the Purchase Agreement to cause Guarantor to provide this Guaranty to Pierce Transit.

C. Guarantor is a member of Developer and will benefit from the purchase of the Property by Developer. Guarantor understands that development of the Project is crucial to the mission and goals of Pierce Transit and that Pierce Transit would not sell the Property to Developer without this Guaranty.

GUARANTY AGREEMENT

NOW, THEREFORE, in consideration of the sale of the Property to Developer and as required by the Purchase Agreement, Guarantor unconditionally and irrevocably guarantees to Pierce Transit the full, faithful, timely and complete performance by Developer of Developer’s obligations under the Development Agreement, including, without limitation, the completion of the Project in accordance therewith. Guarantor further agrees to pay all costs and expenses, including attorneys’ fees, that may be incurred by Pierce Transit in enforcing this Guaranty. The obligations of Guarantor under this paragraph are called the “Obligations.”

If for any reason there is an Event of Default by Developer under the Development Agreement then, in any such event, Guarantor, upon receipt of notice from Pierce Transit, agrees to cure such default and to perform, or cause Developer to perform, all of Developer’s obligations under the Development Agreement.

If Guarantor fails to cure or cause cure of Developer’s default as provided above (such cure by Guarantor in any event to commence not later than 30 days after notice to Guarantor from Pierce Transit and thereafter proceed diligently and continuously, subject to Force Majeure

(as defined in the Development Agreement)), Pierce Transit, at Pierce Transit's option and in its sole discretion, and without limiting any other rights and remedies hereunder or available under applicable law, shall have the right to complete the Project. Pierce Transit's rights to complete the Project shall be subject to the rights of the construction lender to the Project to also complete the Project, such that if such lender is undertaking the construction of the Project, Pierce Transit shall not interfere with such construction activity (provide that such construction activity is in compliance with the Development Agreement). The amount of all expenditures reasonably incurred by Pierce Transit in curing the default shall be immediately due and payable by Guarantor to Pierce Transit.

Guarantor shall be responsible and liable to Pierce Transit for any losses, costs or expenses that Pierce Transit may suffer or incur as a result of any breach by Guarantor of any of the terms of this Guaranty or in the event that any of the representations or warranties made in writing by Guarantor to Pierce Transit are or were incorrect. If Guarantor defaults under this Guaranty, Pierce Transit may enforce this Guaranty against any or all persons liable hereunder and pursue any rights and remedies available at law or in equity, including without limitation actions for damages and specific performance. Guarantor agrees that, given the unique nature of the proposed development on the Property, Pierce Transit may not be in a position to complete the development and that specific performance is an appropriate remedy hereunder. In the event of any default under this Guaranty or in any action to enforce this Guaranty, Pierce Transit shall be entitled to recover all reasonable costs and expenses, including experts, accountants and attorney's fees and costs and including any such fees in any bankruptcy and appellate proceedings.

Guarantor agrees that its liability shall not be impaired or affected by (i) any renewals or extensions of the time for performance under the Development Agreement; (ii) any enforcement of or any forbearance or delay in enforcing the Development Agreement against Developer; (iii) any modifications of the terms or provisions of the Development Agreement; (iv) any settlement, release or compromise with Developer (except to the extent that the same are in a writing signed by Developer and Pierce Transit); (v) any lack of notice to Guarantor from Pierce Transit except that expressly provided for herein. Pierce Transit has no obligation to resort for payment to Developer or to any other person or entity or their properties, or to resort to any security, property, rights or remedies whatsoever, before enforcing this Guaranty.

Any other provisions hereof notwithstanding, this Guaranty shall terminate upon the issuance by Pierce Transit of a written certificate that Developer has fully complied with the Development Agreement or repurchase of the Property by Pierce Transit pursuant to the Restrictive Covenant of even date herewith by and between Pierce Transit and Developer.

All diligence in collection, protection, or enforcement and all presentment, demand, protest and notice (except as expressly required hereunder), as to anyone and everyone, whether Developer, Guarantor or others, of dishonor or default, the creation and existence of the Obligations, the acceptance of this Guaranty or any extensions of credit and indulgence hereunder, are hereby expressly waived. The payment by Guarantor of any amount pursuant to this Guaranty shall not in any way entitle Guarantor to any rights by way of subrogation or otherwise against Developer unless and until the full amount owing to Pierce Transit in respect of the Obligations has been indefeasibly paid and the Obligations have been fully performed.

Upon the occurrence of an Event of Default under the Development Agreement, Pierce Transit may exercise any right or remedy it may have at law or in equity against Developer under the Development Agreement. No such action by Pierce Transit will release or limit the liability of Guarantor to Pierce Transit, if the effect of that action is to deprive Guarantor of the right to collect reimbursement from Developer for any sums paid to Pierce Transit.

Guarantor assumes full responsibility for keeping fully informed of the financial condition of Developer and all other circumstances affecting Developer's ability to perform its obligations to Pierce Transit and agrees that Pierce Transit will have no duty to report to Guarantor any information that Pierce Transit receives about Developer's financial condition or any circumstances bearing on its ability to perform.

All notices which may be or are required to be given pursuant to this Guaranty shall be in writing and delivered to the parties at the following addresses:

If to Seller: Pierce County Public Transportation Benefit Area
Corporation
3701 - 96th Street SW
Lakewood, Washington 98499
Attention: General Counsel
Phone: (253) 777-4977
Email: dhenderson@piercetransit.org

With a copy to: K&L Gates LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104
Attention: Rhys Hefta
Phone: (206) 623-7022
Email: rhys.hefta@klgates.com

If to Guarantor: David Myaskovsky

Attention: _____
Phone: (____) _____
Email: _____

With a copy to: Garvey Schubert Barer
1191 Second Ave., 18th floor
Seattle, WA 98101
Attention: R. Spitzer
Phone: (206) 464-3939
Email: rspitzer@gsblaw.com

Any such notices shall be either (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three days after deposit, postage prepaid in the U.S. mail, (b) sent by a nationally recognized overnight courier, in which case notice shall be deemed

delivered when actually delivered pursuant to the records of such courier, (c) hand delivered, in which case notice shall be deemed delivered when actually delivered, or (d) sent via electronic mail, in which case notice shall be deemed delivered upon transmission (provided such notice shall immediately follow thereafter via one of the methods specified under clauses (b) or (c)). The above addresses and phone numbers may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

This Guaranty shall be binding upon Guarantor, and upon the successors and assigns of Guarantor. This Guaranty shall run for the benefit of Pierce Transit, its successors and assigns.

This Guaranty may only be changed by an instrument in writing signed by the party against whom enforcement hereof is sought.

Guarantor acknowledges that the transactions contemplated hereby have been negotiated in the State of Washington, that Guarantor is to perform its obligations hereunder in the State of Washington and that after due consideration and consultation with counsel Guarantor and Pierce Transit have elected to have the internal laws of Washington apply hereto. Accordingly, this Guaranty shall be deemed made under and shall be construed in accordance and governed by the internal laws of the State of Washington without regard to principles of conflicts of laws. Guarantor hereby consents to the nonexclusive jurisdiction of the state courts located in Pierce County, Washington and the federal courts in the Western District of Washington. Guarantor waives the defense of forum non conveniens in any such action and agrees that this Guaranty may be enforced in any such court.

If this Guaranty is executed by more than one party constituting Guarantor, it is specifically agreed that Seller may enforce the provisions hereof with respect to one or more of such parties constituting Guarantor without seeking to enforce the same as to all or any such parties. Each of the parties constituting Guarantor hereunder hereby waives any requirement of joinder of all or any other of the parties constituting Guarantor in any suit or proceeding to enforce the provisions of this Guaranty. The liability hereunder of all parties constituting Guarantor shall be joint and several.

David Myaskovsky

EXHIBIT E

Form of Bargain and Sale Deed

(See Attached)

After Recording Return To:

[DMG CAPITAL GROUP LLC]

Attention: _____

BARGAIN AND SALE DEED

GRANTOR: PIERCE COUNTY PUBLIC TRANSPORTATION BENEFIT AREA
CORPORATION

GRANTEE: [DMG CAPITAL GROUP LLC]

Abbreviated Legal Description: L6-12, B7521, Tacoma Land Co's 1st Add'n to Tacoma, W.T.

Assessor's Tax Parcel ID#: 2075210034

THE GRANTOR, PIERCE COUNTY PUBLIC TRANSPORTATION BENEFIT AREA CORPORATION, a Washington municipal corporation, for and in consideration of ten dollars (\$10) in hand paid, bargains, sells and conveys to the Grantee, [DMG CAPITAL GROUP LLC, a Washington limited liability company], the following described real estate, situated in the County of Pierce, State of Washington.

See Exhibit A attached hereto.

Subject to those matters listed in Exhibit B attached hereto and incorporated herein by this reference.

[Signature Pages Follow]

Dated _____, 201__.

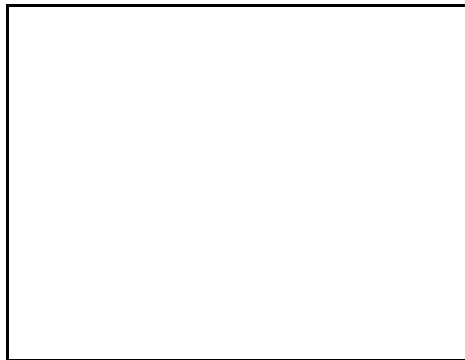
PIERCE COUNTY PUBLIC
TRANSPORTATION BENEFIT AREA
CORPORATION, a Washington
municipal corporation

By: _____
Name: _____
Its: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, and said person acknowledged that he/she signed this
instrument, on oath stated that he/she was authorized to execute the instrument and
acknowledged it as the _____ of Pierce County Public
Transportation Benefit Area Corporation to be the free and voluntary act of such party for the
uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

EXHIBIT A TO DEED

Legal Description

Lot(s) 6 through 12, inclusive, Block 7521, The Tacoma Land Company's First Addition to Tacoma, W.T., according to the plat thereof, recorded July 7, 1884, records of Pierce county Auditor;

Together with that portion of vacated "E" Street, abutting thereon and attached thereto by Operation of Law, as vacated by City of Tacoma Ordinance No. 26418 and recorded under recording number 200010030311.

Situate in the City of Tacoma, County of Pierce, State of Washington.

EXHIBIT B TO DEED

Exceptions

[TO BE ADDED]

EXHIBIT F

Access Terms

The terms and conditions set forth in this Exhibit F form a part of and are incorporated by reference into the Purchase and Sale Agreement by and between PIERCE COUNTY PUBLIC TRANSPORTATION BENEFIT AREA CORPORATION, a Washington municipal corporation, as seller (“Seller”), and DMG CAPITAL GROUP LLC, a Washington limited liability company, as buyer (“Buyer”), pursuant to which Buyer has a right to purchase the Property (the “Agreement”).

(1) Seller grants to Buyer and its contractors and consultants (“Consultants”) a temporary non-exclusive license, subject to terms hereof, to enter upon the Property for the purpose of conducting activities on the Property to investigate the condition thereof and the feasibility of the Project as well as planning for the Project (the “Investigation Activities”). In no event shall any drilling, penetrations or other invasive testing or inspections be done without the written approval of Seller.

The license granted herein shall continue in force from the date hereof and terminate upon the earlier to occur of (i) the Closing or (ii) the earlier termination of this Agreement for any reason.

(2) Buyer shall or shall cause its Consultants to remove all equipment, materials and debris used in or resulting from the Investigation Activities before the end of the license period specified above unless Buyer purchases the Property pursuant to this Agreement. If Seller approves of any invasive testing, all samples derived from the Investigation Activities when removed from the Property shall be transported and disposed of by Buyer or Consultants in accordance with applicable law.

(3) All persons who enter the Property pursuant to the Agreement assume the risk of doing so. Buyer waives any claims against Seller and releases Seller from any liability for any loss, damage or injury to Buyer, its Consultants or their property arising from the Investigation Activities, excluding those claims to the extent arising out of the gross negligence or willful misconduct of Seller, its employees, agents and contractors. Seller shall not be responsible for the safety of Buyer or its Consultants in their conduct of the Investigation Activities. Except as expressly provided in the Agreement, Seller has no responsibility or liability whatsoever for the condition of the Property. Buyer and its Consultants must comply with any reasonable instructions and directions of Seller with regard to the Investigation Activities. Buyer will repair and restore the Property to at least as good condition as existed before Buyer’s or its Consultant’s entry onto the Property. Buyer and its Consultants shall be responsible for any damage done to the Property by Buyer or its Consultants. While on the Property pursuant to the Agreement, Buyer will comply and will cause all Consultants to comply with all applicable government laws and regulations

concerning the Investigation Activities on the Property. Buyer will not suffer or permit to be enforced against the Property any mechanics, materialmen's or contractors liens or any claim for damage arising from the work of any survey, tests, investigation, repair, restoration, replacement or improvement performed by Buyer or its Consultants as part of the Investigation Activities, and Buyer shall pay or cause to be paid all claims or demands with respect to the same before any action is brought to enforce the same against the Property.

Buyer will indemnify, protect, defend and hold Seller, its officers, commissioners, board members and employees harmless from any loss, damage, injury, accident, fire or other casualty, liability, claim, lien, cost or expense (including attorneys' fees) of any kind or character, including environmental damages or loss, to the extent arising from or caused by (a) entry on the Property by Buyer or its Consultants pursuant to this Agreement, (b) any act or omission of Buyer or any of its Consultants in the conduct of the Investigation Activities, (c) a violation or alleged violation by Buyer or its Consultants of any law or regulation in their conduct of the Investigation Activities, or (d) violation of the Agreement by Buyer or any of its Consultants. Pierce Transit's right of indemnity under this section shall not limit or waive any other legal claim or defense Pierce Transit may have outside of the Agreement. With respect to any contractual matters that Buyer establishes are within the scope of RCW 4.24.115, the scope of this indemnity shall be limited with regard to damages for bodily injury to persons or damage to property resulting from the concurrent negligence of Buyer or its agents or employees and of Pierce Transit or their agents or employees, as to which Buyer agrees to indemnify Pierce Transit under this section to the extent of the negligence of Buyer, its agents and employees.

IN CONNECTION WITH THIS INDEMNITY, BUYER WAIVES ANY IMMUNITY IT MAY HAVE UNDER INDUSTRIAL INSURANCE LAW, RCW TITLE 51. THIS WAIVER WAS MUTUALLY NEGOTIATED.

Buyer's Initials

Seller's Initials

(4) Buyer shall, during the term of the Agreement, maintain and cause any consultants and contractors entering the Property to maintain commercial general liability insurance, with the coverage of not less than \$1,000,000 for each occurrence and a \$2,000,000 general aggregate limit, on an occurrence basis from a reputable insurer licensed to do business in Washington, and shall, upon request, furnish to Pierce Transit certificates of insurance evidencing such coverage. Pierce Transit and any other party reasonably requested by Pierce Transit will be named as an additional insured under the policy.

(5) All of the covenants of Buyer and indemnities by Buyer hereunder shall survive Closing or the termination of the Agreement and license granted hereunder.

(6) All Investigation Activities shall be performed solely at Buyer's expense, and neither Buyer nor Consultants shall look to Pierce Transit for reimbursement of or contribution for all or any part of those expenses.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is dated as of _____, 2016 (the "Effective Date"), between the PIERCE COUNTY PUBLIC TRANSPORTATION BENEFIT AREA CORPORATION, a Washington municipal corporation ("Pierce Transit") and DMG CAPITAL GROUP LLC, a Washington limited liability company ("Developer").

RECITALS

A. Pursuant to that certain Purchase and Sale Agreement by and between Pierce County Public Transportation Benefit Area Corporation, a Washington municipal corporation, as seller and DMG Capital Group LLC, a Washington limited liability company, as buyer (the "Sale Agreement"), entered into concurrently herewith, Developer has agreed to purchase that certain real property commonly known as 415 East 25th Street, Tacoma, WA, Pierce County Parcel No. 2075210034, legally described in Exhibit A attached hereto and made a part hereof (the "Property").

B. As described in the Sale Agreement, because the Property is adjacent to certain transit facilities operated by Pierce Transit and/or other agencies, including, without limitation, Sound Transit and the FTA (hereinafter defined) (collectively, the "Transit Facilities"), Pierce Transit desires that the Property be developed with a transit oriented development project that would be appropriate to promote and continue the growth of the Tacoma Dome area and in a way that will contribute to public amenities and the economic revitalization of such area and the City of Tacoma in general.

D. The conceptual plan for development described in this Agreement may result in applications that may in turn be subject to appropriate and subsequent development and site-specific State Environmental Policy Act, land use, development, public, and other applicable review prior to the start of any construction under this Agreement.

E. The Project is a private undertaking to be contracted, constructed and operated by Developer with Developer's resources and will provide a significant development of the Property with accompanying public amenities and economic redevelopment benefits to the public. The parties intend by this Agreement to set forth their mutual agreement and undertakings with regard to the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual undertaking and promises contained herein, and the benefits to be realized by each party and in future consideration of the benefit to the general public by the creation and operation of the Project upon the

Property, and other valuable consideration, the adequacy of which is hereby acknowledged, the parties agree as follows:

Section 1. Definitions. The following terms shall have the meanings set forth below:

“Business Day” means any day on which banks in the State of Washington are required to be open for business, excluding Saturdays and Sundays.

“Closing” means the close of the sale of the Property pursuant to the Sale Agreement.

“Commencement of Construction” and “Commence(s) Construction” means that vertical construction of the building has begun, following excavation. Performance of site preparation work alone shall not constitute “Commencement of Construction.”

“Commencement of Demolition” and “Commence(s) Demolition” means the demolition of any building, structure or improvement on the Property. Performance of any preparation work alone shall not constitute “Commencement of Demolition.”

“Completion Bond” has the meaning given in Section 3.4(c) herein.

“Concept Design Documents” means an architectural or artist’s rendering that illustrates the scope of the Project, its location within the Property, and the relationship of the Project to its surroundings, consistent with the Legal Requirements and the scope of development. The intent of the Concept Design Documents is to provide, visually and in text, an idea as to the nature and density of the Project and its proposed mix of uses.

“Construction Documents” means, collectively, all construction documentation that Developer is required to submit to Governmental Authorities as part of the process to obtain land use and building permits for the Project and Improvements, and upon which Developer and Developer’s contractors will rely in building the Project. These documents are based on the Concept Design Documents and Schematic Design Documents.

“final completion” or “finally complete” shall mean completion of the Project and Improvements in accordance with the Sale Agreement, this Agreement, the Restrictive Covenant and all Legal Requirements, including completion of all punch list items and the issuance of one or more final certificates of occupancy covering the entire Project.

“Force Majeure” has the meaning given in Section 14.18 herein.

“FTA” means the Federal Transit Authority, or any successor agency with jurisdiction over the Property or the Transit Facilities.

“Governmental Authorities” means any board, bureau, commission, department or body of any local, municipal, county, state or federal governmental or quasi-governmental unit, or any subdivision thereof, or any utility provider serving the Property, having, asserting, or acquiring jurisdiction over or providing utility service to the Project, the Property and/or the management, operation, use, environmental cleanup or improvement thereof, including, without limitation, the FTA.

“Improvements” means all buildings, structures, improvements and fixtures to be constructed in, under or upon the Property, and all sidewalks, accessways, roadways, pedestrian areas, public amenities, parking areas, utility and utility distribution facilities, lighting, signage, landscaping and other infrastructure improvements to be built by Developer on the Property, or relating to the Property.

“Legal Requirements” means all local, county, state and federal laws, ordinances and regulations and other rules, orders, requirements and determinations of any Governmental Authorities now or hereafter in effect, whether or not presently contemplated, applicable to the Property, the Project or its ownership, operation or possession, including (without limitation) all those relating to parking restrictions, building codes, zoning or other land use matters, The Americans With Disabilities Act of 1990, as amended (as interpreted and applied by the public agencies with jurisdiction over the Property), life safety requirements and environmental laws with respect to the handling, treatment, storage, disposal, discharge, use and transportation of Hazardous Substances.

“Material Modification” shall have the meaning given in Section 3.5.

“Mortgage” means a first mortgage or deed of trust encumbering Developer’s interest in the Property, and “Mortgagee” means a holder of a Mortgage.

“Pierce Transit Approvals” means the approvals of all Plans pursuant to Section 3.5, performed by Pierce Transit in its capacity as the approving party under this Agreement. Pierce Transit Approvals shall not constitute any of the regulatory approvals required under the applicable Legal Requirements to construct the Project.

“Plans” means, collectively, the Site Plan, Concept Design Documents, the Schematic Design Documents and the Construction Documents, as and when approved by Pierce Transit pursuant to Section 3.

“Project” means the development of the Property comprised of a mixed use project, consisting of (i) one level of parking containing approximately [REDACTED] vehicular parking spaces (including approximately [REDACTED] spaces for car sharing services) and bicycle parking/storage for approximately [REDACTED] bicycles; (ii) one level of commercial retail space containing approximately [REDACTED] square feet, (a) with [REDACTED] square feet of indoor farmer’s market and merchant plaza and (b) the remaining [REDACTED] square feet to be rented for retail uses that support transit riders; and (iii) five levels of for-rent residential

space containing a minimum of 100 residential units, each of which shall contain complete and separate facilities for living, sleeping, eating, cooking (equipped with a cooking range or microwave oven, refrigerator and sink) and sanitation for a single person or a household), and including the following amenities: (a) fitness center for residents on-site; (b) resident lounge and game area; (c) dog and bicycle wash areas; and (d) rooftop deck and community room with a barbeque area.

“Project Schedule” means the schedule for construction of the Project approved by Pierce Transit, which schedule shall contain certain construction milestones as Pierce Transit shall require (*e.g.*, permit date, demolition commencement date, construction start date, completion of site preparation work, substantial completion, etc.) and provide for construction of the Project and Improvements to be substantially complete by the Substantial Completion Date.

“Released Parties” has the meaning given in Section 3.4.4 herein.

“Restrictive Covenant” means the Restrictive Covenant dated as of Closing by and between Pierce Transit and Developer, which shall be recorded against the Property in the official public records of Pierce County, Washington contemporaneously with Closing.

“Sale Agreement” has the meaning given in Recital A.

“Schematic Design Documents” means:

- (i) Site plans showing the Project and all Improvements, in relation to the Property, with all proposed connections to existing or proposed roads, utilities and services;
- (ii) Plans, elevations, typical cross-sections and typical wall sections of all building areas;
- (iii) Number and type of housing units, number and square feet of retail spaces, the total square feet of community spaces and the number of parking stalls;
- (iv) Elevations of all building exterior walls to determine the site lines and the specific configuration and relationship of design elements of the building exterior in relationship to streets;
- (v) A preliminary exterior finish schedules for the Improvements;
- (vi) A description of servicing requirements, trash areas, loading docks, etc.; and
- (vii) Calculation of gross building areas.

“Site Plan” means the site plan depicting the location and layout of various elements of the Project, including the location of the retail use, residential units, and parking, accessways and major site features.

“substantial completion” or “substantially complete” means completion of the Project and Improvements, except for minor punch list items. The Project shall not be substantially complete until (a) Developer has completed all of the work necessary for one or more temporary certificates of occupancy required for the entirety of the Project; (b) the Project is ready for opening, occupancy and residency; (c) the Project has been constructed in accordance with the Sale Agreement, this Agreement, the Restrictive Covenant and Legal Requirements and in accordance with the Plans approved by Pierce Transit in all material respects; (d) all elements required for the functioning of the Project shall be operational and in good working order and condition; (e) the Improvements as designed shall be weather tight and waterproof to reasonable commercial standards and applicable Legal Requirements; (f) the fire and life safety systems within the Project shall be operational and in good working order; (g) the mechanical and electrical systems shall be operational and in good working order; (h) all finish work as designed is completed including but not limited to plumbing, fire and life safety, sprinkler systems, doors, partitions, cabinetry, doors, floor coverings, except for minor punch list items, and the removal of all construction debris; and (i) all offsite improvements, including, but not limited to, roadway improvements, site utilities, sidewalks, parking areas, other street improvements and landscaping are substantially completed and construction barricades and equipment have been removed, except in each case minor punch list items that do not materially affect use and occupancy of the Project.

“Substantial Completion Date” means September 30, 2018, subject to extension for Force Majeure.

“Transit Facilities” has the meaning given in recital B.

“Transit Improvements” has the meaning given in Section 3.4.4 herein.

Section 2. Intent and Relations.

2.1 Generally. The parties agree that Developer has sole responsibility for construction, obtaining all necessary permits and approvals and complying with all Legal Requirements as they relate to ownership, construction and operation of the Project.

Developer shall at its own cost furnish all plans, engineering, supervision, labor, material, supplies and equipment necessary for completion of the Project.

2.2 Standards. Developer shall perform the terms of this Agreement according to the following standards:

2.2.1 The construction of the Project by Developer shall comply with, and be performed in accordance with, Legal Requirements, the Plans, the Project Schedule (subject to Force Majeure delays), the Restrictive Covenant and this Agreement.

2.2.2 Developer agrees to promptly begin (not later than fifteen (15) days after the Effective Date) and thereafter with diligence and commercially reasonable efforts design the Project, obtain Pierce Transit's approval of the Plans pursuant to Section 3.5 hereof, and obtain permits for the Project. Upon Closing, Developer shall commence construction of the Project in accordance with the Plans, Project Schedule, Restrictive Covenant, this Agreement and Legal Requirements and in a good and workmanlike manner and of good quality.

2.2.3 Developer shall cause a copy of this Agreement to be delivered to its architects and general contractor(s).

Section 3. Development.

3.1 Generally. Developer shall hereafter prepare the Plans for the development of the Project and submit them to Pierce Transit's review and approval pursuant to Section 3.5. Such submittal shall be in addition to and shall not substitute for any regulatory permit review required under Legal Requirements, if any. If, in Pierce Transit's reasonable judgment, the Plans submitted provide for the construction of the Project in accordance with this Agreement and the Restrictive Covenant, and do not in any respect interfere with the continued use of the Transit Facilities for public transportation purposes, Pierce Transit shall approve them per Section 3.5. Any approval by Pierce Transit of the Plans hereunder is in its capacity as the approving party under this Agreement, and shall not constitute any of the regulatory approvals required under the applicable Legal Requirements to obtain the permits necessary to construct the Project and Improvements. Developer shall submit the Plans in a timely manner to permit timely Commencement of Demolition and Commencement of Construction such that substantial completion of the Project and Improvements can be achieved on or prior to the Substantial Completion Date (subject to Force Majeure delays).

In the event that Developer, despite commercially reasonable good faith efforts, is unable to obtain any permit or approval from any applicable governmental authority required in connection with the construction of the Project in compliance with the uses required pursuant to the definition of 'Project' in Section 1 hereof ("Required Uses"), Developer may request in writing a change or deviation from the Required Uses for Pierce Transit's review and approval in Pierce Transit's sole discretion. Notwithstanding the foregoing, with respect to any such requested change or deviation that is limited to the retail use and floor area requirement under subsection (ii)(a) or (b) of the definition of 'Project' in Section 1 hereof or the residential amenities required under subsection (iii)(a) - (d) of said definition, Pierce Transit shall not unreasonably withhold, condition or delay its approval

of such proposed change(s) or deviation(s). Any such request granted by Pierce Transit may, in Pierce Transit's reasonable discretion, be granted on a one-time or temporary basis with regard to uses but not permanent improvements, in which case such deviation shall be effective upon written confirmation from Pierce Transit, or may be granted on a permanent basis as a change in the Required Uses, in which case this Agreement shall be amended to reflect such change.

Developer shall construct and complete the Project and Improvements on the Property in a manner that conforms to the Plans. Developer will not start construction prior to satisfaction of the conditions set forth in Section 3.2 below. Developer shall commence and proceed with such construction until the Project and the Improvements have been finally completed.

3.2 Conditions Precedent to Commencement of Demolition. The following conditions shall have been satisfied before commencing construction on the Property:

3.2.1 Compliance with the Sale Agreement. Developer shall be in compliance with this Agreement and the Restrictive Covenant and all other terms under the Sale Agreement that are stated to survive Closing, all contracting requirements and receipt of all necessary permits for construction of the Project and Improvements.

3.2.2 Approval. Developer shall have obtained all Pierce Transit Approvals pursuant to Section 3.5.

3.2.3 Fee Ownership. The Closing shall have occurred and Developer shall have fee ownership of the Property.

3.2.4 Permits. Developer shall have obtained all permits and other regulatory approvals for the demolition of all buildings, structures and improvements on the Property from the City of Tacoma and any other applicable Governmental Authority.

3.3 Conditions Precedent to Commencement of Construction. The following conditions shall have been satisfied before commencing construction on the Property:

3.3.1 Compliance with the Sale Agreement. Developer shall be in compliance with this Agreement and the Restrictive Covenant and all other terms under the Sale Agreement that are stated to survive Closing, all contracting requirements and receipt of all necessary permits for construction of the Project and Improvements.

3.3.3 Approval. Developer shall have obtained all Pierce Transit Approvals pursuant to Section 3.5.

3.3.5 Fee Ownership. The Closing shall have occurred and Developer shall have fee ownership of the Property.

3.3.6 Permits. Developer shall have obtained all permits and other regulatory approvals for the construction of the Project and Improvements from the City of Tacoma and any other applicable Governmental Authority, including without limitation all land use and building permit(s) for the Improvements (excluding the tenant improvements in the retail space).

3.3.8 Completion Bond. Developer shall have delivered to Pierce Transit one or more Completion Bonds as required by Pierce Transit in accordance with Section 3.4.1.

3.4 Construction Obligations and Development Fees.

3.4.1 In General.

(a) Permitting of the Improvements will be Developer's responsibility. Developer shall submit the permit applications to the applicable Governmental Authorities.

(b) Developer is responsible for all excavation and disposal of soils and other materials it removes from the Property in accordance with all Legal Requirements.

(c) Developer shall deliver, prior to Commencement of Construction, and thereafter maintain at all times until final completion of the Project, a full labor and material Payment and Performance Surety Bond (AIA Form A312), with a dual obligee rider in favor of Pierce Transit and Developer and otherwise in a form acceptable to Pierce Transit (with a copy of the construction contract or applicable subcontract attached thereto), from Developer's general contractor and any subcontractor's reasonably required by Pierce Transit, in an amount not less than the full amount of the construction contract and all subcontracts, and insuring the completion of the construction of the Project (the "Completion Bond"). The Completion Bond shall be issued by a corporate surety with an A.M. Best Co. rating of "A-X" and otherwise acceptable to Pierce Transit and authorized and admitted to do business and to issue and execute bonds in the State of Washington. The Completion Bond shall provide that it may not be terminated or cancelled without at least 60 days prior written notice to Pierce Transit. Prior to the effective date of the termination of the Completion Bond, or within 30 days following a downgrade of the issuer of the Completion Bond that would result in the issuer no longer satisfying the rating requirement specified above, Developer shall obtain and deliver to Pierce Transit a replacement bond satisfying the requirements of this Section 3.4.1(c).

3.4.2 Developer Road and Utility Work. Developer shall, at its cost and expense, obtain all permits necessary for, and install and/or construct all required offsite improvements, which may include, among other things, road improvements (including, without limitation, sidewalk improvements) and all utilities necessary for the Project as

part of its construction of the Project or required pursuant to or as a condition of any permits for the Project, in accordance with all Legal Requirements.

3.4.3 Transit Facilities. Developer shall not cause damage to the any of the Transit Facilities adjacent to the Property, including related facilities and any utilities serving the Transit Facilities. Developer shall exercise appropriate caution in the performance of any work on the Property. If the Transit Facilities or any utilities serving the Transit Facilities are damaged as a result of any action or omission of Developer or any of its contractors or subcontractors, Developer shall immediately repair and restore the same to the condition existing immediately prior to such damage, at Developer's sole expense. If Developer fails to immediately commence repair of such damage, Pierce Transit, without being under any obligation to do so and without waiving Developer's obligations hereunder, may repair and restore such damage at Developer's expense, and Developer shall reimburse Pierce Transit for all costs incurred in connection therewith immediately upon demand from Pierce Transit. Developer shall design the Project and Improvements such that they do not interfere with the operation of or access to the Transit Facilities as determined by Pierce Transit in its sole reasonable discretion. For purposes of clarification, any such determination by Pierce Transit or any other approval, consent or permission by Pierce Transit hereunder does not constitute and shall not be deemed to constitute an approval, permission or consent by any other party, including, without limitation, the City of Tacoma, Sound Transit and FTA. Developer acknowledges that the construction of the Project and Improvements will require careful attention to and coordination between any construction planned or proposed by Pierce Transit, City of Tacoma and/or Sound Transit. The adequacy of Developer's plans for such coordination shall be a critical part of Pierce Transit's review and approval of Plans.

3.4.4 Negative Impacts. Developer hereby agrees and acknowledges that the Property is adjacent to an existing and/or future Transit Facilities and that, from time to time, Pierce Transit, the City of Tacoma, Sound Transit, FTA or any other transportation, transit or other governmental or quasi-governmental agency may construct one or more new Transit Facilities, including new equipment, fixtures, machinery and/or other improvement, and/or replace, renovate or remodel any existing Transit Facilities (collectively, "Transit Improvements"). Any one or more of the Transit Facilities may be discontinued at any time.

Developer acknowledges that the on-going operation of the Transit Facilities and/or any Transit Improvements may cause or result in certain impacts, including, without limitation, with respect to air quality, noise, dust, vibration, lighting, traffic, parking and other impacts that may be associated with such work. Moreover, the general operation of Transit Facilities may have other impacts and consequences, including, without limitation, an increased number of people generally around the Transit Facilities and an increase in traffic, waste and noise (collectively, "Potential Impacts").

Developer has fully analyzed all impacts from the Transit Facilities and the Transit Improvements, and understands the potential for the negative impacts as set forth above. Developer shall design, construct, use and operate Project subject to and taking into consideration the Potential Impacts. To the fullest extent permitted under applicable Legal Requirements, Developer, for itself, its affiliates, successors and assigns, including, without limitation, any tenants, licensees, or occupants of all or any portion of the Project, agrees that: (a) none of the foregoing will sue or commence any action, claim, counterclaim or cross-claim, or otherwise seek affirmative relief against any of the Released Parties (as defined below) arising out of any Potential Impacts; and (b) each does hereby release the Released Parties from any claim, demand, lawsuit or cause of action in law or equity arising out of any of or related to any Potential Impacts; provided, however, that no Released Party shall be released from any claim to the extent resulting from the negligence or willful misconduct of such Released Party (except that, for purposes of this proviso, negligent hiring, by itself, shall not be deemed to constitute negligence on the part of a Released Party). For purposes hereof, “Released Parties” means Pierce Transit, its commissioners, officers, directors, managers, members, employees, agents and contractors, and their respective successors and assigns. Each lease or other agreement permitting occupancy of any portion of the Project shall include, for the express benefit of the Released Parties, a release of claims against the Released Parties substantially similar to the foregoing. The provisions of this Section 3.4.4 shall survive termination or expiration of this Agreement.

3.4.5 Development and Other Fees. Developer is responsible for payment of all development, utility, hookup, capacity, permit, plan check, SEPA and other fees, charges and surcharges required by Governmental Authorities arising from the ownership of the Property and its development. At the times required by any Governmental Authority, Developer shall pay all fees and development charges required in connection with the issuance of the Project permits. These include: (i) a pre-application fee, required to be paid before the initial coordination meeting between the City of Tacoma and Developer’s architect and engineering representatives; (ii) plan check, fire plan check and traffic concurrency surcharge, at the time of application for the applicable item; (iii) other fees, at the time of permit issuance; and (iv) certain fees as provided below.

3.5 Pierce Transit Approval Process. Developer shall submit for approval to Pierce Transit, in turn, a draft of the Project Schedule containing Developer’s best estimate the construction schedule for the Project, the Concept Design Plan, Schematic Design Plan and Construction Documents in a timely manner to permit Developer to promptly commence and achieve substantial completion of the Project on or prior to the Substantial Completion Date. Developer shall use best efforts to prepare and submit such draft of the Project Schedule within 5 days from the Effective Date, for Pierce Transit’s review. The Project Schedule shall not be final unless and until Pierce Transit shall have delivered to Developer written approval of the Project Schedule. Pierce Transit shall review the Plans pursuant to this Section 3.5 for consistency with design, transportation, access and

circulation, walkability, public space (including public/private space) and other planning and development principles relating to transit oriented development projects, not for compliance with any Legal Requirements. This design review and approval is in addition to, and separate from, any regulatory review and permitting process for the Project that Pierce Transit would conduct under the Legal Requirements.

Developer's request for Pierce Transit's approvals hereunder shall be in writing and shall include all information reasonably required by Pierce Transit for Pierce Transit to make an informed decision with respect to the applicable step in the approval process under this Section 3.5. Such process of submittal, review, comment and re-submittal by Developer shall continue until such time as the submitted material has been approved by Pierce Transit.

Approval shall not be required for any modification, replacement, alteration or addition (but excluding any relocation) to any previously approved submission, unless there is a Material Modification from the previously approved submission. For any Material Modifications thereto proposed by Developer, the procedure shall be as described in this section. As used in this Agreement, a "Material Modification" shall be one that would (i) change any major design elements of the Project, such as, by way of example, material changes to pedestrian and vehicular circulation and access, and open space intended to be open to the general public; any material change in the composition of the Project (including, without limitation, unit sizes, unit count, and number and mixture of unit types); modification of sidewalks, outdoor furnishing and landscape plan (other than minor modifications such as a replacement of tree and/or plant type/species with a similar type/species); and any other material change to the site plan, landscape plan, floorplans (other than the layout of individual residential or commercial units); (ii) cause the Project not to be developed in accordance with the Sale Agreement, this Agreement and the Restrictive Covenant; or (iii) result in or cause any change in the Project Schedule or a delay in achieving any construction milestone contained therein, in each case, by 10 or more days, subject to Force Majeure delays. Any Material Modification of any Plan or Project Schedule shall be submitted to Pierce Transit for prior written approval, which shall not be unreasonably withheld, conditioned or delayed.

3.5.1 Concept Design Plan. Developer shall use best efforts to prepare and submit a "Concept Design Plan" for the development of the Property within 15 days from the Effective Date (to the extent not already delivered to Pierce Transit) to conform to the Project Schedule. In designing the Project, Developer shall design its interior pedestrian and vehicular circulation plan to coordinate with the City of Tacoma's plans for the adjacent rights of way, and those of Pierce Transit and Sound Transit.

The Concept Design Plan to be submitted by Developer for approval shall be consistent with all requirements set forth in the Sale Agreement, this Agreement and the Restrictive Covenant.

3.5.2 Schematic Design Plan. Developer shall use best efforts to prepare and submit to Pierce Transit a “Schematic Design Plan” for the Project and Improvements, consistent with the Concept Design Plan approved by Pierce Transit, within 21 days from the date of Pierce Transit’s approval of the Concept Design Plan.

3.5.3 Construction Plans. Upon Pierce Transit’s approval of the Concept Design Plan, Developer shall use best efforts to prepare and submit to Pierce Transit a “Construction Plans” for the Project and Improvements, consistent with the Schematic Design Plan approved by Pierce Transit, within the time period specified in the approved Project Schedule. The Construction Plans will include the Project Schedule, containing additional detail as requested by Pierce Transit.

3.6 Governmental Approvals. Developer shall apply, at its sole cost, to the appropriate Governmental Authorities or third parties for, and shall diligently pursue and obtain within one year from the date hereof, all permits, licenses, permissions, consents or approvals required in connection with the construction of the Project and the Improvements, subject to Force Majeure delays.

3.7 FTA Approval. Developer agrees and acknowledges that this Agreement may be subject to approval by the FTA and/or other federal governmental agencies. Notwithstanding any approval of or consent to this Agreement by any such agency, Developer agrees and acknowledges that such agency is not a party to this Agreement and shall not be subject to any obligation or liability hereunder in connection with this Agreement or pertaining to any matter relating to this Agreement.

3.8 FTA Terms. This Agreement includes, in part, certain Standard Terms and Conditions required by the FTA and/or the U.S. Department of Transportation, whether or not expressly set forth in this Agreement. All requirements set forth in the most recent effective version of FTA Circular 4220.1, and as amended from time to time, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms will be deemed to control in the event of a conflict with other provisions contained in this Agreement.

Section 4. Disclaimers, Indemnity, Preparation of Site; Utilities. Pierce Transit shall not be responsible for any demolition or site preparation in connection with the Project or any existing improvements on the Property. Pierce Transit makes no representations as to the availability or capacity of utility connections or service to the Property. Developer shall make arrangements for utility services directly with utility service providers. Any costs of installation, connection, relocating or upgrading utilities shall be paid by Developer.

4.2 AS IS. Pierce Transit makes no warranties or representations as to the suitability of the soil conditions or any other conditions of the Property or improvements thereon for any Improvements to be constructed by Developer. Developer agrees,

represents and warrants that it has not relied on representations or warranties, if any, made by Pierce Transit or any commissioner, manager, employee or agent thereof as to the physical or environmental condition of the Property or the improvements thereon for any Improvements to be constructed by the Developer.

4.3 Approvals and Permits. Approval by Pierce Transit of any item in its capacity as seller pursuant to the Sale Agreement or the Pierce Transit Approvals pursuant to Section 3.5 of this Agreement shall not constitute a representation or warranty by Pierce Transit that such item complies with Legal Requirements and Pierce Transit assumes no liability with respect thereto. Developer acknowledges that Pierce Transit has not made any representation or warranty with respect to Developer's ability to obtain any permit or approval, or to meet any other requirements for development of the Property or Project. Nothing in this Agreement is intended or shall be construed to require that Pierce Transit, in the exercise of any of its discretionary authority under its regulatory ordinances, approve the required permits for the Project or grant regulatory approvals. Pierce Transit is under no obligation or duty to supervise the design or construction of the Projects or Improvements pursuant to this Agreement. Pierce Transit's approval of the Plans under this Agreement shall not constitute any representation or warranty, express or implied, as to the adequacy of the design or any obligation on Pierce Transit to insure that work or materials are in compliance with the Plans or any building requirements imposed by any Governmental Authority. Pierce Transit is under no obligation or duty, and disclaims any responsibility, to pay for the cost of construction of the Project Improvements, the cost of which shall at all times remain the sole liability of Developer.

4.4 Indemnity. Developer shall indemnify, defend and hold Pierce Transit, its employees, officers and board members harmless from and against all claims, liability, loss, damage, cost, or expense (including reasonable attorneys' fees, court costs, and amounts paid in settlements and judgment) (collectively, "Claims") arising out of Developer's development of the Project or the Improvements, operation of the Property or the construction of the Project, including any act or omission of Developer or its members, agents, employees, representatives, contractors, subcontractors, successors or assigns on or with respect to the Property, but excluding any Claims arising from the negligent or wrongful actions of Pierce Transit. With respect to any contractual matters that Developer establishes are within the scope of RCW 4.24.115, the scope of this indemnity shall be limited with regard to damages for bodily injury to persons or damage to property resulting from the concurrent negligence of Developer or its agents or employees and of Pierce Transit or their agents or employees, as to which Developer agrees to indemnify Pierce Transit under this section to the extent of the negligence of Developer, its agents and employees. This indemnification shall survive the expiration of this Agreement.

Promptly following receipt of notice, an indemnitee hereunder shall give Developer written notice of any claim for which Developer has indemnified it hereunder, and Developer shall thereafter vigorously defend such claim using counsel reasonably accepted

to the indemnitee, at its sole cost, on behalf of such indemnitee. Failure to give prompt notice to Developer shall not constitute a bar to the indemnification hereunder. If Developer is required to defend any action or proceeding pursuant to this section to which action or proceeding an indemnitee is made a party, such indemnitee shall be entitled (but shall not have any obligation) to appear, defend or otherwise take part in the matter involved, at its election, by counsel of its own choosing. To the extent an indemnitee is indemnified under this section, Developer shall bear the cost of the indemnitee's defense, including reasonable attorneys' fees and costs. No settlement of any non-monetary Claim shall be made without Pierce Transit's written approval, not to be unreasonably withheld.

IN CONNECTION WITH THIS INDEMNITY, DEVELOPER WAIVES ANY IMMUNITY IT MAY HAVE UNDER INDUSTRIAL INSURANCE LAW, RCW TITLE 51. THIS WAIVER WAS MUTUALLY NEGOTIATED.

Pierce Transit's Initials

Developer's Initials

Section 5. Environmental Issues.

5.1 Contamination. The Property, due to its nature of being located in an area of the City of Tacoma that has been characterized historically by various industrial uses, with some or all of the prior uses of the Property having had some uses that were industrial in nature, may have environmental contamination within its boundaries and/or emanating from the Property and may have contamination not yet been discovered or is otherwise unknown as to nature and extent, and it may be potentially subject to Contamination in the future from sources off of the Property. The parties intend that, as between Developer and Pierce Transit, Developer or its successors will be solely responsible for undertaking any and all remediation of the Property to the extent required by applicable law. Notwithstanding the foregoing, Pierce Transit shall be responsible for (i) the release of any new Hazardous Substance on the Property and (ii) the release of any additional amount of Hazardous Substance existing as of the Effective Date (but excluding any Contamination and Hazardous Substance existing on or about the Premises as of the Effective Date and any condition exacerbated thereby), to and only to the extent that any such release occurs after the Effective Date and is directly and solely caused by Pierce Transit's active use or management of the Property, it being the intent of the parties that Pierce Transit shall not be responsible for any Hazardous Substance or Contamination existing on or about the Property as of the Effective Date, or any Contamination caused or exacerbated thereby, all of which shall be the sole responsibility of Developer.

The term “Contamination” means Hazardous Substances within the boundaries and/or emanating from the Property, including contamination that has not yet been discovered or is otherwise unknown as to nature and extent, and future contamination from offsite sources. The term “Hazardous Substance(s)” as used in this Agreement means any hazardous waste or other substances listed, defined, designated or classified as hazardous, dangerous, radioactive, toxic, solid waste or a pollutant or contaminant in any Environmental Law, including (a) petroleum products and petroleum byproducts; (b) polychlorinated biphenyls; and (c) chlorinated solvents. The term “Environmental Law” includes any federal, state, municipal or local law, statute, ordinance, regulation, order or rule pertaining to health, industrial hygiene, environmental conditions or hazardous substances, including without limitation the Washington Model Toxics Control Act, RCW ch. 70.105B et seq. and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq. The term “Release” means any intentional or unintentional entry of any Hazardous Substance into the environment, including but not limited to the abandonment or disposal of containers of Hazardous Substances unless permitted by applicable regulations.

5.2 Developer’s Release, and Waiver of Claims. Developer hereby releases and forever discharges, and waives all claims against the Released Parties from any claim or cause of action that Developer has or may have that is related to the Contamination or the presence or alleged presence of Hazardous Substances at, below, or emanating from the Property, except for (i) the release of any new Hazardous Substance on the Property and (ii) the release of any additional amount of Hazardous Substance existing as of the Effective Date (but excluding any Contamination and Hazardous Substance existing on or about the Premises as of the Effective Date and any condition exacerbated thereby), to and only to the extent that any such release occurs after the Effective Date and is directly and solely caused by Pierce Transit’s active use or management of the Property.

5.3 Rights Reservation. Notwithstanding the foregoing, Developer and Pierce Transit reserve all their rights and defenses against any non-parties to this Agreement, including but not limited to the right to seek cost recovery or contribution under the Washington Model Toxics Control Act, RCW 70.105D et seq., the Comprehensive Environmental Response and Liability Act of 1980, as amended, 42 USC § 9601 et seq., or any other Environmental Law, statute or common law, regarding the presence, investigation or cleanup of any Hazardous Substance on, at, under, around or migrating from the Property. In addition, notwithstanding the foregoing, the waivers and releases contained in this Section 5 shall not apply to the extent of third party claims brought against one party alleging an action in violation of an Environmental Law with respect to the Property by the other party.

Section 6. Liens. NOTICE IS HEREBY GIVEN THAT PIERCE TRANSIT WILL NOT BE LIABLE FOR ANY LABOR, SERVICES, MATERIALS OR EQUIPMENT FURNISHED OR TO BE FURNISHED TO DEVELOPER OR ANYONE

HOLDING AN INTEREST IN THE PROPERTY (OR ANY PART THEREOF)
THROUGH OR UNDER DEVELOPER.

Section 7. Insurance.

7.1 Insurance Requirements. Developer shall, at a minimum, at all times during the term of this Agreement, maintain and keep in force insurance covering the Project, as provided below.

7.1.1 Builders Risk. Upon Commencement of Construction, Builders Risk insurance covering interests of Pierce Transit, Developer, its contractor, subcontractors, and sub-subcontractors in the Project work. Builders Risk insurance shall be on a all-risk policy form (and may be in a separate policy or included in the property insurance policy) and shall insure against the perils of fire and extended coverage and physical loss or damage including flood (if the buildings on the Property are located in a special flood hazard area and flood insurance is available), earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of not more than \$50,000 for each occurrence. Higher deductibles for flood (if applicable) and earthquake perils may be accepted by Pierce Transit upon written request by the Developer and written acceptance by Pierce Transit. Builders Risk insurance shall be written in the amount of the completed value of the Project with no coinsurance provisions.

7.1.2 Commercial General Liability. Commercial General Liability insurance shall be written with limits no less than \$5,000,000 each occurrence and a \$5,000,000 general aggregate limit. The Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 (or equivalent form) and shall cover liability arising from premises, operations, stop gap liability, independent contractors, personal injury and advertising injury, and liability assumed under an insured contract. Developer's Commercial General Liability insurance shall be endorsed to name Pierce Transit as an additional insured using ISO Additional Insured endorsement CG 20 26 07 04 – Additional Insured Designated Person or Organization or a substitute endorsement providing equivalent coverage.

7.2 Insurance Policies. Insurance policies required herein:

7.2.1 Shall be issued by companies authorized to do business in the State of Washington having an A.M. Best rating of at least A-X.

7.2.2 Developer's insurance coverage shall be primary insurance as respects Pierce Transit, and shall name Pierce Transit and any other party reasonably requested by Pierce Transit as additional insured.

7.2.3 Each such policy or certificate of insurance mentioned and required in this Section 7 shall have attached thereto (1) an endorsement that such policy shall not be canceled without at least 30 days prior written notice to Developer and Pierce Transit; (2) an endorsement to the effect that the insurance as to any one insured shall not be invalidated by any act or neglect of any other insured; (3) an endorsement pursuant to which the insurance carrier waives all rights of subrogation against the parties hereto; and (4) an endorsement pursuant to which this insurance is primary and noncontributory.

7.2.4 The certificates of insurance and insurance policies shall be furnished to Developer and Pierce Transit before Commencement of Construction under this Agreement. The certificate(s) shall clearly indicate the insurance and the type, amount and classification, as required under this Section 7.

7.2.5 Cancellation of any insurance or non-payment by Developer of any premium for any insurance policies required by this Agreement shall constitute an immediate Event of Default under Section 10 of this Agreement, without cure or grace period. In addition to any other legal remedies, Pierce Transit at its sole option after written notice may obtain such insurance and pay such premiums for which, together with costs and attorneys' fees, Developer shall be liable to Pierce Transit.

Section 8. Destruction. If the Improvements are totally or partially destroyed at any time during the term of this Agreement, Developer shall reconstruct or repair the damage consistent with the terms of this Agreement. In any event, Developer shall at its cost secure the Property, clear the debris and generally make the Property as safe and attractive as practical given the circumstances.

If for any reason the Improvements are not reconstructed as provided above, without limiting any other rights or remedies that Pierce Transit has, no further development of the Property can occur without the prior approval of Pierce Transit. This Agreement shall continue to restrict future development of the Property and Developer or any successor of Developer shall obtain Pierce Transit's approval of the development plan (and all other required regulatory approvals) before the Property is developed, which approval shall not be unreasonably withheld, conditioned or delayed so long as any such development is consistent with this Agreement and the Restrictive Covenant.

Section 9. Right to Assign or Otherwise Transfer. Developer represents that Developer's purchase of the Property is intended for development and not for transfer (as defined in Section 9.1) prior to final completion of the Project. During the term of this Agreement, any transfers of the Property pursuant to the following sections shall be made expressly subject to the terms, covenants and conditions of this Agreement.

9.1 Prohibited. Prior to Closing, this Agreement may be assigned together with and in accordance with the Sale Agreement. Thereafter, Developer will not transfer the Property or any part thereof without the prior written consent of Pierce Transit, which

consent shall be at the sole reasonable discretion of Pierce Transit. In the exercise of such discretion, Pierce Transit shall consider the financial wherewithal, experience and reputation of the proposed transferee, as well as the development plan, financing plan (debt and equity), consultants and project personnel of such proposed transferee. Pierce Transit may condition its consent to any such transfer upon the delivery of a replacement completion guaranty by a principal of transferee acceptable to Pierce Transit. Any such proposed transfer shall be subject to approval of Pierce Transit's Board of Commissioners.

"Transfer" as used herein includes any sale, conveyance, transfer, ground lease or assignment, whether voluntary or involuntary, of any interest in the Property and includes transfer to a trustee in bankruptcy, receiver or assignee for the benefit of creditors, any merger, consolidation, liquidation or dissociation of Developer. In addition, "transfer" includes any sale or any transfer of direct or indirect interests in Developer or any of its constituent entities, other than transfers of minority interest that do not individually or in the aggregate result in the change of control or management of Developer, the Property or the Project or transfers of equity interests.

9.2 Permitted Transfers. Notwithstanding Section 9.1, Pierce Transit shall not unreasonably withhold its consent to a transfer of the Property to a transferee entity that is controlled by David Myaskovsky and whose day-to-day management is controlled by David Myaskovsky.

9.3 Transfer Document. If Pierce Transit approves of a transfer under Section 9.1 or 9.2, Developer shall deliver to Pierce Transit (a) a copy of the document evidencing the implementation of such transfer, including a suitable estoppel agreement(s), and (b) a written assumption of all obligations of Developer under this Agreement executed by the transferee in form reasonably satisfactory to Pierce Transit.

9.4 Assumption. The transferee (and all succeeding and successor transferees) shall succeed to and assume all rights and obligations of Developer under this Agreement, including any unperformed obligations of Developer as of the date of such transfer. No transfer by Developer, or any transferee, shall release Developer, or such transferee, from the Developer's obligations under this Agreement without the express written consent and release by Pierce Transit, and Developer shall remain liable for the performance of all obligations under this Agreement on a joint and several basis with such transferee.

9.5 Effect of Prohibited Transfers. Any transfer or purported transfer of the Property during the term of this Agreement without the prior written consent of Pierce Transit shall be null and void, and upon any such transfer or purported transfer, Pierce Transit shall have the right, in its sole discretion, to repurchase the Property in accordance with the procedures set forth in Section 11.1 hereof and Section 3 of the Restrictive Covenant. Such transferee shall be obliged to sell the Property to Pierce Transit (or its designee) on the same terms and conditions as those upon which the transfer was made,

except that the purchase price payable by Pierce Transit shall not exceed the purchase price payable under Section 11.1, for transfers prior to Commencement of Construction, or Section 5 of the Restrictive Covenant, for transfers after Commencement of Construction.

Section 10. Default By Developer. Developer's failure to keep, observe or perform any of its duties or obligations under this Agreement shall be a default hereunder, including, without limitation, any of the following specific events:

(a) The failure of Developer to substantially comply with the standards of performance for the Project as set forth in Section 2 of this Agreement, including without limitation submission of Plans and permit applications for approval as required under Section 3.

(b) The failure of Developer to submit and obtain approval as to any modifications of the Plans as required in Section 3.5.

(c) The failure of Developer to construct the Project substantially in accordance with this Agreement.

(d) Conversion of any portion of the Property or the Improvements to any use prohibited under the Restrictive Declaration, or, except as expressly permitted pursuant to Section 3.1 hereof, the discontinuance of any Required Use or the conversion of any portion of the Property or the Improvements subject to the Required Uses any other use(s).

(e) The failure of Developer to comply with Section 7 of this Agreement.

(f) The making by Developer or David Myaskovsky, who, as a member of Developer, provided a guaranty of completion of even date herewith as required under the Sale Agreement ("Guarantor"), of an assignment for the benefit of creditors or filing a petition in bankruptcy or of reorganization under any bankruptcy or insolvency law or filing a petition to effect a composition or extension of time to pay its debts.

(g) The appointment of a receiver or trustee of all or any of the property of Developer or Guarantor, which appointment is not vacated or stayed within 60 days, or the filing of a petition in bankruptcy against Developer or for its reorganization under any bankruptcy or insolvency law that not dismissed or stayed by the court within 60 days after such filing.

(h) Any sale, assignment or other transfer in violation of Section 9 of this Agreement.

(i) The failure of Developer to provide and maintain any security required under this Agreement, including, without limitation the Completion Bond.

(j) Any default in the performance of any other obligations of Developer hereunder or under the Sale Agreement or the Restrictive Covenant, which continues beyond any applicable notice and/or cure period(s).

(k) Subject to Force Majeure delays, the failure of Developer to achieve construction milestones for the Project as set forth in the Project Schedule, including, without limitation, a failure to achieve substantial completion of the Project by the Substantial Completion Date.

The happening of any of the above described events shall be an “Event of Default” hereunder. Notwithstanding the foregoing, except in the case of Sections 10 (f), (g), (h), and (j) (but only if the applicable default under the Sale Agreement or Restrictive Covenant was not subject to a prior notice and cure period in such agreement) above as to which notice but no cure period shall apply, Developer shall have 30 days following written notice from Pierce Transit to cure such default (or if such default cannot reasonably be cured within such 30-day period, if Developer commences such cure within such 30-day period and thereafter diligently and continuously pursue such cure to completion within one hundred (100) days after written notice from Pierce Transit).

Section 11. Remedies For Developer Default.

11.1 Repurchase. If an Event of Default occurs after Closing but prior to the time that Developer Commences Construction of the Project and such Event of Default is not cured within any applicable cure period for such Event of Default under Section 10 or under Section 11.4, Pierce Transit shall have the right to repurchase the Property for the purchase price paid by Developer for the Property under the Sale Agreement and on the other terms set forth in Section 5 of the Restrictive Covenant as if Pierce Transit exercised the Repurchase right under said section. For purposes of clarification, the purchase price payable under Section 5 of the Restrictive Covenant shall not apply to Pierce Transit’s remedies under this Section 11.1.

In addition, Pierce Transit shall have all rights and remedies provided in Section 11.2, the Sale Agreement and all other rights and remedies available in law or equity.

11.2 Other Remedies. Pierce Transit shall have all cumulative rights and remedies under law or in equity, including but not limited to the following:

11.2.1 Damages. Developer shall be liable for any and all damages incurred by Pierce Transit, except that Developer shall not be liable for consequential damages incurred by Pierce Transit.

11.2.2 Specific Performance. Pierce Transit shall be entitled to specific performance of Developer's obligations under this Agreement without any requirement to prove or establish that Pierce Transit does not have an adequate remedy at law. Developer hereby waives the requirement of any such proof and acknowledges that Pierce Transit would not have an adequate remedy at law for Developer's commission of an Event of Default hereunder.

11.2.3 Injunction. Pierce Transit shall be entitled to restrain, by injunction, the actual or threatened commission or attempt of an Event of Default and to obtain a judgment or order specifically prohibiting a violation or breach of this Agreement without, in either case, being required to prove or establish that Pierce Transit does not have an adequate remedy at law. Developer hereby waives the requirement of any such proof and acknowledges that Pierce Transit would not have an adequate remedy at law for Developer's commission of an Event of Default hereunder.

11.2.4 Guaranty and Damages. Pierce Transit shall be entitled to draw upon, enforce, commence an action for equitable or other relief, and/or proceed against Developer and Guarantor for all monetary damages, costs and expenses arising from the Event of Default and to recover all such damages, costs and expenses, including reasonable attorneys' fees.

11.2.5 Termination. Pierce Transit shall have the right to terminate this Agreement and, if such election shall be prior to Closing, the Sale Agreement by delivery of written notice to Developer.

11.3 Copy of Notice of Default to Mortgagee. Whenever Pierce Transit shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations or covenants under this Agreement (a "Default Notice"), Pierce Transit shall at the same time forward a copy of such Default Notice to each Mortgagee that provides a written request for such notice to Pierce Transit, in each case at the last address of such holder provided to Pierce Transit. Notwithstanding the foregoing, the failure of Pierce Transit to provide a copy of a Default Notice to a Mortgagee concurrently with the delivery of the same to Developer shall not constitute a default on the part of Pierce Transit and shall not affect the validity of a Default Notice properly sent to Developer.

11.4 Mortgagee's Option to Cure Defaults. After any default in or breach of this Agreement by Developer or its successor in interest, each Mortgagee shall (insofar as the rights of Pierce Transit are concerned) have the right, at its option, to cure or remedy such breach or default within (i) with respect to any default that can be cured by payment

of money, ten days from the Mortgagee's receipt of the Default Notice, or (ii) with respect to all other defaults, 30 days from the Mortgagee's receipt of the Default Notice.

11.4.1 Mortgagee shall notify Pierce Transit in writing of its election to cure Developer's default within five days from Mortgagee's receipt of a Default Notice, including, without limitation, its election to continue construction and complete the Project and the Improvements.

11.4.2 Prior to the expiration of a Mortgagee's cure period(s) provided in this Section 11.4, provided that Mortgagee shall be in compliance with the conditions to the Mortgagee's cure rights set forth herein, Pierce Transit shall not effect or cause a termination of this Agreement. If any Event of Default specified in the Default Notice is not cured prior to the expiration of Mortgagee's cure period(s), Pierce Transit shall be entitled to exercise any and all rights and remedies set forth in this Agreement, Restrictive Covenant, the Sale Agreement or otherwise available at law or in equity as a result of such default, without further notice or opportunity to cure on the part of any Mortgagee.

11.4.3 With respect to any Event of Default that is not susceptible to cure by Mortgagee, or is not susceptible to cure by Mortgagee unless and until Mortgagee acquires possession and control of the Property, provided that Mortgagee shall have notified Pierce Transit within 30 days from its receipt of a Default Notice of its intent to foreclose upon the Property and complete the Project, and thereafter diligently pursues foreclosure or other means of acquiring possession and control of the Property, and upon acquiring possession and control of the Property Mortgagee does diligently pursue the completion of the Project in accordance with the terms of this Agreement and cures any and all Events of Default susceptible to cure by such Mortgagee, then such performance by Mortgagee shall be deemed to cure any such Event of Default and Mortgagee shall have a reasonable period of time in which to complete the Project, notwithstanding the Substantial Completion Date and any milestone dates in the Project Schedule that are no longer reasonably achievable. Any work performed by a Mortgagee in connection with the exercise of Mortgagee's rights under this Section 11.4.3 shall be subject to all applicable terms and conditions of this Agreement, including the approved final Construction Documents.

11.4.4 Without limiting the rights of Mortgagees as stated in Section 11.4.3, and whether or not any Default Notice has been delivered hereunder, a Mortgagee shall have the right, but not the obligation, at any time prior to Pierce Transit's exercise of the repurchase right under Section 11.1, comply with and perform Developer's monetary obligations hereunder, with payment of all due interest and late charges, if any, to procure any insurance, to pay any liens, to do any other act or thing required of Developer hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent the occurrence of an Event of Default.

11.5 Provisions Surviving Termination. The provisions of Section 3.4.4 (Negative Impacts), Section 4.4 (Indemnity), Section 5 (Environmental Issues) and Section 14.16 (Attorneys' Fees) shall survive the expiration or termination of this Agreement.

Section 12. OFAC. Each of Developer and its members is not a person, company, firm, partnership or other legal entity, with whom Pierce Transit is restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury of the United States of America (including, those persons named on OFAC's Specially Designated and Blocked persons list) or under any statute, executive order (including, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or otherwise be associated with such persons.

Section 13. Representations and Warranties. Each party hereby represents and warrants to the other that (a) it has full right, power and authority to enter into this Agreement and perform in accordance with its terms and provisions; (b) the individuals signing this Agreement on its behalf have the authority to bind and to enter into this transaction; and (c) it has taken all requisite action to legally authorize the execution, delivery, and performance of this Agreement.

Section 14. Miscellaneous.

14.1 Estoppel Certificates. Pierce Transit and Developer shall at any time and from time to time, within fifteen (15) days after written request by the other, execute, acknowledge and deliver, to the party requesting same or to any prospective mortgagee, assignee or subtenant designated by Developer, a certificate stating that (i) this Agreement is in full force and effect and has not been modified, supplemented or amended in any way, or if there have been modifications, identifying such modifications, and if this Agreement is not in force and effect, the certificate shall so state; and (ii) to its knowledge, all conditions under the Agreement have been satisfied by Pierce Transit or Developer, as the case may be, and that no defenses or offsets exist against the enforcement of this Agreement by the other party, or, to the extent untrue, the certificate shall so state. The party to whom any such certificate shall be issued may rely on the matters therein set forth and thereafter the party issuing the same shall be estopped from denying the veracity or accuracy of the same.

14.2 Inspection. Pierce Transit shall have the right at all reasonable times after reasonable advance notice and in accordance with applicable written safety procedures of Developer, which has been provided in advance to Pierce Transit, inspect the Property, including any construction work thereon, to determine compliance with the provisions of this Agreement. Further, Pierce Transit shall have all rights in its regulatory capacity to inspect the Property and construction activity.

14.3 Entire Agreement. This Agreement, the Restrictive Covenant and any documents referenced herein and attached as exhibits thereto contain the entire agreement between the parties as to the subject matter hereof and supersedes all prior discussions and understandings between them with reference to such subject matter.

14.4 Modification. This Agreement may not be amended or rescinded in any manner except by an instrument in writing signed by a duly authorized representative of each party hereto in the same manner as such party has authorized this Agreement.

14.5 Successors and Assigns; Joint and Several. This Agreement shall run with the land and shall be binding upon and inure to the benefit of the successors in interest and assigns of each of the parties hereto except that there shall be no transfer of any interest by Developer except pursuant to the express terms of this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor or assign of such party who has acquired its interest in compliance with the terms of this Agreement, or under law. The obligations of Developer and of any other party who succeeds to its interests hereunder or in the Property shall be joint and several.

14.6 Notices. All notices which may be or are required to be given pursuant to this Agreement shall be in writing and delivered to the parties at the following addresses:

If to Pierce Transit: Pierce County Public Transportation Benefit Area
Corporation
3701 96th Street SW
Lakewood, Washington 98499
Attention: General Counsel
Phone: (253) 777-4977
Email: dhenderson@piercetransit.org

With a copy to: K&L Gates LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104
Attention: Rhys Hefta
Fax No.: (206) 370-7675
Phone: (206) 623-7022
Email: rhys.hefta@klgates.com

If to Developer: DMG Capital Group LLC
[REDACTED]
[REDACTED]
Attention: David Myaskovsky
Fax No.: () [REDACTED]
Phone: () [REDACTED]

Email:

With a copy to:

Garvey Schubert Barer
1191 Second Ave., 18th floor
Seattle, WA 98101
Attention: R. Spitzer
Phone: (206) 464-3939
Email: rspitzer@gsblaw.com

Any such notices shall be either (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three days after deposit, postage prepaid in the U.S. mail, (b) sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered when actually delivered pursuant to the records of such courier, (c) hand delivered, in which case notice shall be deemed delivered when actually delivered, or (d) sent via electronic mail, provided that receipt of same is telephonically confirmed by the recipient or his or her assistant, in which case notice shall be deemed delivered upon transmission (provided that such notice shall immediately follow thereafter via one of the methods specified under clause (b) or (c))). Any notice given by counsel to a party shall have the same effect as if given by such party. The above addresses and phone numbers may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

14.7 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14.8 Waiver. No waiver by any party of any provision of this Agreement or any breach thereof shall be of any force or effect unless in writing by the party granting the waiver; and no such waiver shall be construed to be a continuing waiver. The waiver by one party of the performance of any covenant, condition, or promise shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition, or promise hereunder. The waiver by either or both parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time.

14.9 Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by the other party.

14.10 Governing Law; Jurisdiction. This Agreement shall be interpreted under and pursuant to the laws of the State of Washington. In the event any action is brought to enforce any of the provisions of this Agreement, the parties agree to be subject to the jurisdiction in the Pierce County Superior Court for the State of Washington or in the United States District Court for the Western District of Washington.

14.11 No Joint Venture. Nothing contained in this Agreement shall create any partnership, joint venture or other arrangement between Pierce Transit and Developer.

14.12 No Third Party Rights. The parties intend that the rights, obligations, and covenants in this Agreement and the collateral instruments shall be exclusively enforceable by Pierce Transit and Developer, their successors and assigns. No term or provision of this Agreement shall be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder, except as may be otherwise expressly provided herein. Nothing in this section is intended to modify the restrictions on assignment. Nothing in this section is intended to modify the restrictions on assignment contained in Section 9 hereof.

14.13 Recording. A memorandum of this Agreement substantially in the form attached hereto as Exhibit B (“Memorandum”) shall be recorded and indexed against the Property in the official public records of Pierce County, Washington. Without limiting the foregoing, Pierce Transit shall have the right, in its sole discretion, to record this Agreement in the official public records of Pierce County, Washington, and in the event that the Sale Agreement or this Agreement shall terminate for any reason, to record a termination of this Agreement and/or the Memorandum in the official public records of Pierce County, Washington.

14.13. Termination of the Memorandum of this Agreement. Upon final completion of the Project in accordance with this Agreement, the Sale Agreement and the Restrictive Covenant, and satisfaction of all conditions set forth in this Section 14.13.1, Developer may deliver a written request to Pierce Transit with respect to the termination of this Agreement, which is to be evidenced by a written termination of the Memorandum. Provided that (i) there is no material default or breach by Developer of any term or condition of this Agreement, Sale Agreement or the Restrictive Covenant at the time of Pierce Transit’s review of such request by Developer and (ii) final completion of the Project shall have been achieved in accordance with the requirements set forth herein as of the date of the Developer’s request, Pierce Transit promptly shall execute and deliver a written termination of the Memorandum in Pierce Transit’s standard form, which may be recorded against the Property by Developer at Developer’s cost. The issuance by Pierce Transit of such written termination of Memorandum shall terminate this Agreement and each of its provisions except for the provisions herein that expressly survive termination of this Agreement.

14.14 Conflict of Interest. No member, official, or employee of Pierce Transit shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his personal interests or the interest of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of Pierce Transit shall be personally liable to Developer or any successor in interest upon the occurrence of any default or breach by Pierce Transit or for any amount which may become due to Developer or its successor or on any obligations under the terms of this Agreement.

14.15 Non-Discrimination. Developer, for itself and its successors and assigns, agrees that during the construction of the Project, Developer will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, marital status, handicap or national origin. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, and as all laws may be amended from time to time, Developer agrees that it will not discriminate against any employee or applicant for tenancy at the Project because of race, color, creed, national origin, sex, age, or disability. In addition, Developer agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

14.16 Attorneys' Fees. If any legal action or other proceeding is brought for the enforcement of this Agreement (including, without limitation, enforcement of any obligation to indemnify, defend or hold harmless), or because of an alleged dispute or default in connection with any of the provisions of this Agreement, the substantially prevailing party shall be entitled to recover the reasonable attorneys' fees (including those in any bankruptcy or insolvency proceeding), accountants' and other experts' fees and all other fees, expenses and costs incurred in connection with that action or proceeding, in addition to any other relief to which it may be entitled.

14.17 Captions; Exhibits. The headings and captions of this Agreement and the Table of Contents preceding the body of this Agreement are for convenience of reference only and shall be disregarded in constructing or interpreting any part of the Agreement. All exhibits and appendices annexed hereto at the time of execution of this Agreement or in the future as contemplated herein are hereby incorporated by reference as though fully set forth herein.

14.18 Force Majeure. Whenever a period of time for performance of an action to be performed by either party is prescribed in this Agreement, the period of time for performance shall be extended by the number of days that the performance is actually delayed due to war, acts of terrorism, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine

restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation (including suits filed by third parties concerning or arising out of this Agreement), weather or soils conditions which necessitate delays, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplier, acts of the other party, acts or failure to act or delay in acting of any public or governmental entity, including to issue permits or approvals for the Project (provided that all submissions by Developer are timely, substantially complete and in accordance with applicable submittal requirements) or any other causes beyond the control or without the fault of the party claiming an extension of time to perform; provided that the lack of funds or financing of Developer is not independently a cause beyond the control or without the fault of Developer ("Force Majeure"). For any Force Majeure delay that will cause substantial completion of the Project to be delayed more than ten (10) days, Developer will keep Pierce Transit informed about the cause and nature of such delay and the progress in achieving such substantial completion. Times of performance under this Agreement may also be extended in writing by Pierce Transit and Developer.

14.19 Fair Construction; Severability. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the context may require. The parties hereby acknowledge and agree that each was properly represented by counsel and this Agreement was negotiated and drafted at arms' length so that the judicial rule of construction to the effect that any ambiguities are to be construed against the drafting party shall be inapplicable in the interpretation of this Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning and consistent with the other provisions contained herein in order to achieve the objectives and purposes of this Agreement. If any term, provision, covenant, clause, sentence or any other portion of the terms and conditions of this Agreement or the application thereof to any person or circumstances shall apply, to any extent, become invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect, unless rights and obligations of the parties have been materially altered or abridged by such invalidation or unenforceability.

14.20 Time of the Essence. In all matters under this Agreement, the parties agree that time is of the essence.

14.21 Computation of Time. In the computation of any period of time hereunder, the day of the act or event from which the period of time runs shall be excluded and the last day of such period shall be included. If any deadline hereunder falls on a day that is not a Business Day, then the deadline will be deemed extended to the next following Business Day.

[Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date noted above.

DEVELOPER:

DMG CAPITAL GROUP LLC, a
Washington limited liability company

By: _____

Name: _____

Its: _____

PIERCE TRANSIT:

PIERCE COUNTY PUBLIC
TRANSPORTATION BENEFIT
AREA CORPORATION, a
Washington municipal corporation

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENTS

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that _____ 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 _____ of PIERCE COUNTY PUBLIC TRANSPORTATION BENEFIT AREA CORPORATION to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Signature)
_____(Print Name)
Notary Public in and for the State
of Washington
Residing at _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ 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 _____ of DMG CAPITAL GROUP LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Signature)
_____(Print Name)
Notary Public in and for the State
of Washington
Residing at _____
My appointment expires: _____

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Lot(s) 6 through 12, inclusive, Block 7521, The Tacoma Land Company's First Addition to Tacoma, W.T., according to the plat thereof, recorded July 7, 1884, records of Pierce county Auditor;

Together with that portion of vacated "E" Street, abutting thereon and attached thereto by Operation of Law, as vacated by City of Tacoma Ordinance No. 26418 and recorded under recording number 200010030311.

Situate in the City of Tacoma, County of Pierce, State of Washington.

EXHIBIT B
FORM OF MEMORANDUM OF DEVELOPMENT AGREEMENT

[see attached]

**Recording requested by and
when recorded return to:**

Pierce County Public Transportation
Benefit Area Corporation
3701 96th Street SW
Lakewood, Washington 98499
Attention: General Counsel

APNs: 2075210034

Space above line for Recorder's use only

MEMORANDUM OF DEVELOPMENT AGREEMENT

THIS MEMORANDUM OF DEVELOPMENT AGREEMENT (this "Memorandum") is entered into as of the _____ day of _____, 201_, by and between the PIERCE COUNTY PUBLIC TRANSPORTATION BENEFIT AREA CORPORATION, a Washington municipal corporation (collectively, "Seller"), and DMG CAPITAL GROUP LLC, a Washington limited liability company ("Buyer").

RECITALS

A. Pursuant to that certain Purchase and Sale Agreement of even date herewith by and between Seller and Buyer (the "Sale Agreement"), Developer has agreed to purchase that certain real property commonly known as 425 East 25th Street, Tacoma, WA, Pierce County Parcel No. 2075210034, legally described in Exhibit A attached hereto and made a part hereof (the "Property").

B. In connection with the Sale Agreement, Seller and Buyer also entered into a Development Agreement of even date herewith affecting the Property (the "Development Agreement"). Buyer and Seller desire to enter into this Memorandum to give record notice of the existence of the Development Agreement between Buyer and Seller.

MEMORANDUM

1. In consideration of the mutual promises contained in the Development Agreement, and for other good and valuable consideration, Seller and Buyer hereby acknowledge that they entered into Development Agreement, which, among other things, contains certain obligations, covenants, limitations and restrictions with respect to the demolition of any existing building, structure and improvement at, the excavation, construction and

development of any building and other improvements on, and the use and occupancy of the Property.

2. The Development Agreement provides that, under certain circumstances, Seller has the option to repurchase the Property from Buyer, on terms and conditions more fully set forth in the Development Agreement.

3. This Memorandum may not be modified or amended except by an instrument in writing signed by Seller and Buyer. Notwithstanding the foregoing, in the event that the Sale Agreement and the Development Agreement shall terminate for any reason, Seller shall have the right, in its sole discretion, to record a termination of this Memorandum with the official records of Pierce County, Washington.

4. All of the terms, conditions, and agreements contained within the Development Agreement are fully incorporated herein by reference as if fully set forth herein

5. This Memorandum shall be recorded and indexed against the Property in the official records of Pierce County, Washington.

6. This Memorandum may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature page(s) follow]

IN WITNESS WHEREOF, the parties have executed this Memorandum on the day and year first above written.

BUYER:

DMG CAPITAL GROUP LLC, a
Washington limited liability company

By: _____
Name: _____
Its: _____

SELLER:

PIERCE COUNTY PUBLIC
TRANSPORTATION BENEFIT AREA
CORPORATION, a Washington
municipal corporation

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENTS

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that _____ 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 _____ of PIERCE COUNTY PUBLIC TRANSPORTATION BENEFIT AREA CORPORATION to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Signature)

_____(Print Name)

Notary Public in and for the State
of Washington

Residing at _____

My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ 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 _____ of DMG CAPITAL GROUP LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Signature)

_____(Print Name)

Notary Public in and for the State
of Washington

Residing at _____

My appointment expires: _____

EXHIBIT A TO MEMORANDUM OF DEVELOPMENT AGREEMENT

LEGAL DESCRIPTION

Lot(s) 6 through 12, inclusive, Block 7521, The Tacoma Land Company's First Addition to Tacoma, W.T., according to the plat thereof, recorded July 7, 1884, records of Pierce county Auditor;

Together with that portion of vacated "E" Street, abutting thereon and attached thereto by Operation of Law, as vacated by City of Tacoma Ordinance No. 26418 and recorded under recording number 200010030311.

Situate in the City of Tacoma, County of Pierce, State of Washington.

After Recording Return To:

Pierce County Public Transportation Benefit Area Corporation
3701 96th Street SW
Lakewood, Washington 98499
Attention: General Counsel

RESTRICTIVE COVENANT

GRANTOR: [_____]

GRANTEE: Pierce County Public Transportation Benefit Area Corporation,
a Washington municipal corporation

Legal Description (Burdened Parcel):

Abbreviated form: TACOMA LAND COS 1ST : LOTS 6 THRU 12 BLK 7521

Additional legal on Exhibit A

Legal Description (Benefitted Parcel):

Abbreviated form: TACOMA LAND COS 1ST COMB FOR TAX PURPOSES
ONLY L 1 THRU 12 B 7424, L 1 THRU 12 B 7426, L 1 THRU
12 B 7523, L 1 THRU 12 B 7525

Additional legal on Exhibit B

Assessor's Property Tax Parcel Account Number(s):

Burdened Parcel: 2075210034

Benefitted Parcel: 2074240011

RESTRICTIVE COVENANT

THIS RESTRICTIVE COVENANT (this “Covenant”) is dated as of _____, 201__ (the “Effective Date”), by and between PIERCE COUNTY PUBLIC TRANSPORTATION BENEFIT AREA CORPORATION, a municipal corporation of the State of Washington (together with any successor owner of the Transit Center Property (as defined below), “Pierce Transit”), and _____, a/an _____ (together with any successor owner of the Property (as defined below), “Developer”).

RECITALS

A. Contemporaneously herewith, Developer acquired from Pierce Transit the real property legally described on Exhibit A attached hereto (the “Property”). As part of the acquisition, Developer is required to build a mixed use residential project with retail use (the “Project”) on the Property.

B. Pierce Transit also owns the real property legally described on Exhibit B attached hereto (the “Transit Center Property”), on which Pierce Transit operates a transit center. In addition to the transit center operated by Pierce Transit on the Transit Center Property, the Property is adjacent to public transit facilities operated by other agencies, including, without limitation, Sound Transit and the Washington State Department of Transportation (such facilities, whether now existing or hereafter established, and regardless of the agency operating the same, the “Transit Facilities”).

C. It is consistent with Pierce Transit’s mission to facilitate transit-oriented development near its transit centers, and Developer’s commitment to develop the Property as a transit oriented development in accordance with this Covenant was a material inducement for Pierce Transit’s agreement to sell the Property to Developer.

D. Pursuant to the Purchase and Sale Agreement dated _____, 2016, between Pierce Transit and Developer (the “Purchase Agreement”), and the Development Agreement dated _____, 2016, between Pierce Transit and Developer (the “Development Agreement”), a memorandum of which was recorded on _____, 2016, in the official public records of Pierce County, Washington (the “Official Records”), as instrument number _____, Pierce Transit required that Developer enter into this covenant to run with the land in perpetuity (except as otherwise provided herein), burdening the Property for the benefit of the Transit Center Property, all as more fully set forth in this Covenant.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing recitals and for good and valuable consideration, the adequacy and sufficiency of which is hereby agreed, the parties agree as follows:

1. Required Uses.

a. The Project, upon Substantial Completion (as defined in the Development Agreement) and at all times thereafter (subject to Section 5), shall include the following uses: (i) one level of parking containing approximately [REDACTED] vehicular parking spaces (including approximately [REDACTED] spaces designated for car sharing services) and bicycle parking/storage for approximately [REDACTED] bicycles (the “Garage”; such use being hereinafter referred to as the “Garage Use”); (ii) one level of commercial retail space containing approximately [REDACTED] square feet, with (a) [REDACTED] square feet of indoor farmer’s market and merchant plaza and (b) the remaining [REDACTED] square feet to be rented for retail uses that support transit riders (the “Retail Portion”; such use being hereinafter referred to as the “Retail Use”); and (iii) five levels of for-rent residential space containing a minimum of 100 residential units, each of which shall contain complete and separate facilities for living, sleeping, eating, cooking (equipped with a cooking range or microwave oven, refrigerator and sink) and sanitation for a single person or a household), and including the following amenities: (a) fitness center for residents on-site; (b) resident lounge and game area; (c) dog and bicycle wash areas; and (d) rooftop deck and community room with a barbeque area (the “Residential Portion”; such use being hereinafter referred to as the “Residential Use” and together with the Garage Use and Retail Use, the “Required Uses”). The Garage Portion shall be accessory to and available for and used exclusively by the residents, occupants, tenants, visitors and invitees of the Residential Portion and the Retail Portion (including customers and invitees of the Retail Portion).

b. In the event that (i) Developer, despite commercially reasonable good faith efforts, is unable to obtain any permit or approval from any applicable governmental authority required in connection with the construction of the Project in compliance with the Required Uses, or (ii) at any time from and after January 1, 2022, Developer demonstrates to the reasonable satisfaction of Pierce Transit that continued compliance with any specific element of the Required Uses is economically unviable, Developer may request in writing a change or deviation from the Required Uses for Pierce Transit’s review and approval in Pierce Transit’s sole discretion. Notwithstanding the foregoing, with respect to any such requested change or deviation that is limited to the retail use and floor area requirement under Section 1(a)(ii)(a) or (b) hereof or the residential amenities required under Section 1(a)(iii)(a) - (d) hereof, Pierce Transit shall not unreasonably withhold, condition or delay its approval of such proposed change(s) or deviation(s). Any such request granted by Pierce Transit may, in Pierce Transit’s reasonable discretion, be granted on a one-time or temporary basis with regard to uses but not permanent improvements, in which case such deviation shall be effective upon written confirmation from Pierce Transit, or may be granted on a permanent basis as a change in the Required Uses hereunder, in which case this Covenant shall be amended to reflect such change.

2. Transportation Management Plan.

a. Developer shall develop a transportation management plan that encourages the use of commuting alternatives by residents and tenants of the Project

other than passenger car trips, which shall include components such as (i) transit/ride share information kiosk in common area(s) within the Project, which shall include, at a minimum, detailed information about the Transit Card Program (hereinafter defined); (ii) installation of bicycle racks or secure lockers in the Garage Portion and other common areas as required by the City of Tacoma; (iii) participation in the ORCA Multi-Family Passport Program, as generally described in that certain memo re: ORCA Multi-family Passport Pricing dated October 5, 2016 to Janine Robinson from Sharon Stockwell, a copy of which has been provided to Developer and is available upon request from Pierce Transit, or in the event that such program shall cease to exist, a substantially similar public transportation/transit program offering public transportation/transit passes or equivalent approved in advance by Pierce Transit ("Transit Card"), which shall be offered to the residents and occupants of the Residential Portion ("Transit Card Program"); (iv) provision of parking spaces within the Garage designated for use by car sharing services, as described in the Required Uses; and (v) other terms and conditions as required by Pierce Transit that relate to public transportation, transit and alternative transportation goals of Pierce Transit (collectively, the "Transportation Management Plan"). It is acknowledged that Developer shall not be obligated to provide full-time staff to manage the Transportation Plan, but that it shall be managed by the on site leasing agent or the owner's representative as part of their job description. The Transportation Management Plan shall be subject to Pierce Transit's approval, and annually thereafter, Developer shall update and submit the Transportation Management Plan to Pierce Transit for Pierce Transit's approval.

b. Commencing upon issuance of a certificate of occupancy for any portion of the Residential Portion and for a period of 5 years thereafter, Developer shall offer a minimum of one Transit Card for every unit in the Residential Portion, which, subject to the limitations set forth below, shall be offered at a discount of at least one-half of the then actual cost of a Transit Card. Developer shall be responsible for the remaining portion (at least one-half) of the then actual cost of a Transit Card. Notwithstanding the foregoing, Developer shall not be required to contribute more than (i) \$10,000 toward the cost of Transit Cards for the first year following the issuance of a certificate of occupancy for the Residential Portion, and (ii) \$250,000 in the aggregate for the first 5 years following the issuance of a certificate of occupancy for the Residential Portion. The Transit Card Program shall be offered to all new residents, with informational brochures provided to all potential residents. All marketing materials for the Residential Portion, including any websites relating thereto, shall contain clearly marked sections/pages containing detailed information on the Transit Card Program. For purposes of clarification, residents of the Residential Portion shall not in any event be required to purchase a Transit Card and may opt out of the Transit Card Program at any time without any fee or penalty. Notwithstanding anything to the contrary herein, Developer's obligation to provide Transit Cards in accordance with this Section 2 shall expire and be of no force and effect on the date that is 5 years from the issuance of a certificate of occupancy for any portion of the Residential Portion. A temporary or permanent certificate of occupancy for any portion of the Project shall not be issued, and Developer shall not accept any such certificate of occupancy, unless and until the Transportation Management Plan shall have been submitted to and approved by Pierce Transit.

3. Prohibited Uses. Developer shall not use any portion of the Project for any purpose that would be incompatible with, or interfere in any material respect with, the use of the Transit Facilities for transit purposes. If Pierce Transit determines at any time that any use of the Project is incompatible with, or interferes in any material respect with, the use of the Transit Facilities, Pierce Transit may require, by notice to Developer, that such use be discontinued. If Developer fails to cause such use to be discontinued within five days (or immediately, if Pierce Transit reasonably determines that such use poses an imminent threat to health and safety or an imminent threat of material damage to the Transit Facilities, to the property of Pierce Transit or other users of the Transit Facilities), then such failure shall, at Pierce Transit's option, constitute an event of default hereunder, and Pierce Transit shall have all rights and remedies set forth herein or otherwise available at law and equity, including, without limitation, the right to seek injunctive relief.

Without limiting the foregoing, Developer covenants that it will not use or permit the use of any portion of the Project for: (a) any dumping, disposing, incineration or reduction of garbage (exclusive of appropriately screened dumpsters); (b) any gas station; (c) any central laundry or dry cleaning plant or laundromat (except any dry cleaning service provider that only provides for drop-off and pick-up of clothing, linen, bedding and other items without any dry cleaning or laundering facilities on-site); (d) any casino, card house or other gambling facility; (e) any establishment selling lottery tickets, pull tabs or similar items if sales of such items constitute more than 10% of the gross sales of the establishment in any 12 month period; (f) any establishment selling tobacco or related products, including e-cigarettes, if sales of such items constitute more than 10% of the gross sales of the establishment in any 12 month period; (g) any establishment selling or exhibiting drug or pornographic materials (or other adult oriented uses); (h) any illegal use; or (i) any noxious use, as reasonably determined by Pierce Transit. Each lease of retail space at the Property shall include the foregoing use restrictions and Pierce Transit shall be an intended third party beneficiary of such provision with the right to pursue injunctive relief in the event of a breach thereof.

Notwithstanding the foregoing, Pierce Transit acknowledges that the Required Uses shall not be prohibited pursuant to this Section 3; provided that, no merchant, tenant, occupant, licensee, manager or operator at the Project shall offer for sale or consumption, or display or exhibit, any goods, products, items or materials that are prohibited by this Section 3, except for those and in the amounts that are expressly permitted hereunder.

4. Transit Facilities.

a. Developer acknowledges that the Project is adjacent and/or proximate to certain existing Transit Facilities, including Pierce Transit's Tacoma Dome Station located on the Transit Center Property and Sound Transit's Tacoma Dome Link Light Rail Station located at 424 East 25th Street. In addition, the Property is proximate to the Amtrak Cascades Station currently under construction at Freighthouse Square located at 2501 East. D Street. From time to time, Pierce Transit, Sound Transit, the City of Tacoma, the Washington Department of Transportation or any other transportation, transit or other governmental or quasi-governmental agency may commence the construction and operation of one or more new Transit Facilities adjacent or proximate to

the Property, including new buildings, equipment, fixtures, machinery and/or other improvement, and/or replace, renovate or remodel any existing Transit Facilities. The operation of any or all of the Transit Facilities may be discontinued at any time.

b. Developer acknowledges that the construction of any new or the on-going operation of the existing Transit Facilities, including any repair and maintenance thereof, and any work relating to the Transit Facilities, may cause or result in certain impacts, including, without limitation, with respect to air quality, noise, dust, vibration, lighting, traffic, parking and other impacts that may be associated with such work. Moreover, the general operation of Transit Facilities may have other impacts and consequences, including, without limitation, an increased number of people generally around the Transit Facilities, an increase in traffic, waste and noise, public disturbance or demonstrations and first amendment activities (the impacts described in this Section 4.b shall be referred to as “Potential Impacts”).

c. Developer has fully analyzed all impacts from the Transit Facilities, including, without limitation, the Potential Impacts, and understands the potential for adverse and/or negative impacts and implications to the Project and to any future tenants, residents, occupants, licensees, managers, operators, visitors and invitees of the Project. Developer shall design, construct, use and operate the Project subject to and taking into consideration all Potential Impacts. Developer, for itself, its affiliates, successors and assigns, including, without limitation, any tenants, residents, occupants, licensees, managers, operators of all or any portion of the Property or the Project, agrees that: (a) none of the foregoing will sue or commence any action, claim, counterclaim or cross-claim, or otherwise seek affirmative relief against any of the Released Parties (as defined below) arising out of any of the Potential Impacts; and (b) each does hereby release the Released Parties from any claim, demand, lawsuit or cause of action in law or equity arising out of any of or related to any of the Potential Impacts; provided, however, that no Released Party shall be released from any claim to the extent resulting from the gross negligence or willful misconduct of such Released Party. For purposes hereof, “Released Parties” means Pierce Transit, its commissioners, officers, directors, employees, agents and contractors, and their respective successors and assigns. Each lease or other agreement permitting occupancy of any portion of the Property or the Project shall include, for the express benefit of the Released Parties, a release of claims against the Released Parties substantially similar to the foregoing.

d. Developer shall include all of the disclosures contained in this Section 4 in any and all leases, licenses, occupancy agreements and operation/management agreements for any part of the Property or the Project, and shall require that each such tenant, resident, occupant, licensee, manager and operator expressly agree in writing to the waiver and release as set forth in Section 4.c.

e. This Section 4 shall survive the termination or expiration of this Covenant.

5. Casualty/Condemnation. In the event that the Project is damaged by any casualty or any portion of the Property is permanently taken by eminent domain or conveyed by Developer under threat thereof (in either case, a “Taking”), then, in any such case,

Developer shall promptly notify Pierce Transit thereof (such notice, a “Casualty/Taking Notice”). If, as a result of a casualty or Taking, Developer determines in its reasonable discretion that it is economically viable to restore the Project (or the remaining portion thereof) for operation for the Required Uses, and if insurance proceeds (after payment of any applicable deductible), condemnation awards or sales proceeds, as applicable, are sufficient to pay the cost of restoration, subject to any rights of Developer’s secured lender(s) as provided under Section 7 hereof, Developer shall promptly restore the Project in accordance with the requirements of this Covenant and resume operation of the Project for the Required Uses. If the Project is damaged by any casualty or there is a Taking of any portion of the Property and, in any such case, Developer determines in its reasonable discretion that it is not economically viable to restore the Project (or the remaining portion thereof) for operation for the Required Uses, or if insurance proceeds (after payment of any applicable deductible), condemnation awards or sales proceeds, as applicable, are not sufficient to pay the cost of restoration, including as a result of the same being applied to any indebtedness secured by a lien upon the Property, then Developer shall not be required to restore the Project for the Required Uses, but shall, if required by Pierce Transit, remove any damaged improvements, raze and grade the Property, restore the same to a sightly and safe condition, and secure the Property against vandalism and vagrancy. In such event where Developer is permitted to not restore the Project pursuant to the terms of this Section 5, Developer shall be relieved of the obligation to operate the Property for the Required Uses, but any future development, redevelopment or reuse of the Property shall be subject to the terms of this Covenant, including the Required Uses. If Developer elects not to restore the Property pursuant to this Section 5, Pierce Transit shall have the right to purchase the Property from Developer for its Fair Market Value in accordance with Section 6 below. In the event that any portion of the Property is temporarily taken by eminent domain, or if a right to the temporary use of the Property is granted by Developer under threat thereof, then Developer shall be relieved of the obligation to operate the Property for the Required Uses to the extent and only for the duration necessary to accommodate such temporary taking or use.

6. Repurchase Option.

a. Repurchase Option. Subject to Section 7 below, if Developer (i) fails to Commence Construction (as defined in the Development Agreement) of the Project on or prior to [REDACTED] (the “Construction Commencement Date”), subject to Force Majeure (as defined below) delays, (ii) fails to achieve Substantial Completion of the Project on or prior to December 31, 2018 (the “Substantial Completion Date”), subject to Force Majeure delays, or (iii) if Developer elects not to rebuild or restore, or continue operation of the Project for the Required Uses following a casualty or Taking as permitted under Section 5, then Pierce Transit shall have the right (the “Repurchase Right”), to be exercised in Pierce Transit’s sole and absolute discretion, to repurchase the Property, together with any and all improvements thereon, appurtenances and entitlements associated therewith, by delivery of written notice to Developer (a “Repurchase Notice”) within 180 days after the Construction Commencement Date, the Substantial Completion Date or the date of receipt of a Casualty/Taking Notice, as applicable. Notwithstanding the foregoing, in the case of clauses (i) or (ii) above, Pierce

Transit may not deliver a Repurchase Notice at any time following the actual Commencement of Construction or Substantial Completion, respectively. Pierce Transit's Repurchase Right pursuant to clauses (i) and (ii) above shall terminate upon the final completion of the Project and the termination of the Development Agreement in accordance with the terms and conditions thereof, and Pierce Transit shall acknowledge such termination in writing in recordable form, which Developer may record as a modification of this Covenant.

b. Repurchase Price. The purchase price for the Property in connection with the exercise of the Repurchase Right (the "Repurchase Price") shall be: (i) in the case of a Repurchase Right exercised under clause (i) of Section 6.a, the purchase price paid by Developer to Pierce Transit for the Property pursuant to the Purchase Agreement (i.e. \$710,000); (ii) in the case of a Repurchase Right exercised under clause (ii) of Section 6.a, the sum of (A) the purchase price paid by Developer to Pierce Transit pursuant to the Purchase Agreement (i.e. \$710,000) plus (B) the total design and construction costs (i.e., hard and soft costs) actually incurred or paid by Developer to third parties, not to an affiliate of Developer, in connection with the Project; and (iii) in the case of a Repurchase Right exercised under clause (iii) of Section 6.a, the Fair Market Value (as defined below) of the Property, but in no event less than the outstanding balance of any bona-fide, third party financing (excluding any prepayment premiums or breakage fees associated therewith) secured by a lien on the Property, and only the Property. For purposes of this Section 6.b, the "Fair Market Value" of the Property shall be the fair market value of the Property in its then current state (taking into account any cost to complete the removal of any damaged improvement and otherwise prepare the Property for development), as mutually agreed by Developer and Pierce Transit, or, if Developer and Pierce Transit are unable to reach an agreement thereon within 30 days following the delivery of the Repurchase Notice, as determined by an independent Appraiser (as defined below), selected by Pierce Transit and reasonably acceptable to Developer. Developer and Pierce Transit shall each be responsible for one-half of the cost of such Appraiser. If either Developer or Pierce Transit shall disagree on the Fair Market Value determined by such Appraiser (the "Original FMV"), then the disagreeing party shall, within ten days from the Appraiser's determination, notify the other party of such disagreement. Unless Developer or Pierce Transit shall deliver such notice to the other party, the Original FMV shall be final and binding on the parties. If either party timely delivers such notice regarding disagreement to the Original FMV to the other party, then, within ten days thereafter, the parties shall each, at its sole cost and expense (except as provided below), select and engage an Appraiser (each, a "Second Appraiser") to determine the Fair Market Value of the Property, which Appraiser shall be required to produce an appraisal report on the Fair Market Value of the Property within 30 days from engagement. Developer and Pierce Transit hereby agree that the median of the three Fair Market Values as determined by the three Appraisers shall be the Fair Market Value of the Property and such determination shall be final and binding on the parties. Notwithstanding anything to the contrary in this Section 6.b, in the event that the median of the three Fair Market Values of the Property shall be within five percent of the Original FMV, then the party that disagreed to the Original FMV shall be responsible for all out-of-pocket costs incurred by the other party with respect to the Second Appraiser. "Appraiser" shall mean a Washington State Certified General Real Estate Appraiser with

an MAI-certification or a comparable credentialed appraiser if MAI is no longer in existence or no longer certifies appraisers, with not less than 10 years of experience in the appraisal of vacant commercial or industrial real estate in the South Puget Sound area, or a licensed commercial real estate broker with not less than 15 years experience representing buyers and sellers of vacant commercial or industrial land in the South Puget Sound area, devoting substantially all of his/her time to professional appraisal or brokerage work, as applicable, at the time of appointment and be in all respects impartial and disinterested.

c. Repurchase Closing. The closing of the repurchase shall occur within 90 days following Pierce Transit's delivery of the Repurchase Notice to Developer, or, in the case of an exercise of the Repurchase Right pursuant to clause (iii) of Section 6.a above, within 90 days following the determination of Fair Market Value of the Property. Developer shall pay all transfer and excise taxes (to the extent not exempt under WAC 458-61A-209) in connection with the Repurchase, and all other costs and expenses shall be allocated, and all property-level income and expenses shall be prorated, consistent with the custom for commercial real estate closings in the South Puget Sound area. The transfer of the Property from Developer to Pierce Transit will be in the same form as used to convey the Property to Developer (*i.e.*, a bargain and sale deed). Upon such transfer of the Property to the Pierce Transit, no liens or encumbrances shall exist on title other than those that existed when title transferred to Developer, those consented to by Pierce Transit in writing (except any Mortgage, and other monetary liens and encumbrances, which shall not be a permitted encumbrance) and those that were recorded as part of the closing of the acquisition of the Property by Developer named herein. Developer shall be responsible for obtaining the release of any Mortgage on the Property. If Pierce Transit exercises the Repurchase Right, upon closing of the repurchase, Developer shall be released from further obligations under this Agreement, except those that by their terms expressly survive termination.

d. Liquidated Damages. If Developer fails to convey the Property to Pierce Transit at closing of the repurchase as provided in this Section 6.c, without legal excuse, then Developer shall pay to Pierce Transit liquidated damages in the amount of \$2,000 per day until the Property is conveyed to Pierce Transit as provided Section 6.c. The parties agree that Pierce Transit's damages in the event of such failure are difficult to measure and such liquidated damages are a reasonable estimate of the damages that Pierce Transit will suffer for Developer's failure to convey the Property as provided herein.

e. Assignment. Pierce Transit's may assign the Repurchase right to any other party in Pierce Transit's sole and absolute discretion, regardless of whether such party is a successor owner of Transit Center Property. Any such assignment shall be effective upon recording of a notice of such assignment in the Official Records. No assignee shall be obligated to assume any obligations of Pierce Transit under this Covenant other than those set forth in this Section 6 and Section 7 below, and no such assignment shall affect the other rights of Pierce Transit under this Covenant.

7. Lender Rights.

a. Definitions. For purposes hereof, “Mortgage” means a first mortgage or deed of trust encumbering Developer’s interest in any portion of the Property, the proceeds of which are used to finance or refinance the acquisition of the Property and/or construction of the Project. The mortgagee or beneficiary of a Mortgage is the “Mortgagee.”

b. Notice to Mortgagee. Concurrently with the delivery of a Repurchase Notice to Developer, Pierce Transit shall notify (a “Mortgagee Repurchase Notice”) any Mortgagee of whom Pierce Transit has been provided notice of Pierce Transit’s intent to exercise the Repurchase Right. Upon receipt of a Mortgagee Repurchase Notice, a Mortgagee shall notify Pierce Transit, within 30 days of receipt of the Mortgagee Repurchase Notice, if such Mortgagee intends to exercise any right to foreclose upon the Property or obtain the appointment of a receiver to complete the construction of the Project, as applicable (such notice, a “Mortgagee Cure Notice”). If the Repurchase Right is exercised by Pierce Transit under clauses (i) or (ii) of Section 6.a and Mortgagee delivers a Mortgagee Cure Notice, then the exercise of the Repurchase Right by Pierce Transit shall be suspended and Mortgagee shall have the right to complete the Project in accordance with, and subject to the terms of, Article 11 of the Development Agreement. If the Repurchase Right is exercised by Pierce Transit under clause (iii) of Section 6.a, and Mortgagee delivers a Mortgagee Cure Notice, the exercise of the Repurchase Right by Pierce Transit shall be suspended, and the time periods set forth in Section 6 shall be tolled, so long as the Mortgagee commences an action to foreclose or seek the appointment of a receiver for the Property within 90 days of receipt of the Mortgagee Repurchase Notice, and thereafter diligently pursues such action to completion. Following acquisition of title to or control of the Property, Mortgagee (or any other purchaser at a foreclosure sale of the Property) shall, within two years following the date that such Mortgagee (or other purchaser) acquires title to or control of the Property, commence construction of a project that complies with the requirements of this Covenant and the Development Agreement, and, within four years of such date, complete such construction and commence operation thereof. If Mortgagee (or other purchaser) fails to commence or complete such construction as required hereunder, Pierce Transit may exercise the Repurchase Right in accordance with Section 6, with the Purchase Price to be the Fair Market Value of the Property.

8. Force Majeure. Whenever a period of time for performance of an action to be performed by either party is prescribed in this Covenant, the period of time for performance shall be extended by the number of days that the performance is actually delayed due to any Force Majeure event. For any Force Majeure delay that is reasonably anticipated by Developer to cause substantial completion of the Project to be delayed by more than 30 days, Developer will keep Pierce Transit informed about the cause and nature of such delay and the progress in achieving such substantial completion. For purposes of this Covenant, “Force Majeure” shall include war, acts of terrorism, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation (including suits filed by third parties concerning or arising out of this Agreement), weather or soils conditions which necessitate delays, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplier, acts of the other party, acts or failure to act or delay in acting of

any public or governmental entity, including to issue permits or approvals for the Project (provided that all submissions by Developer are timely, substantially complete and in accordance with applicable submittal requirements) or any other causes beyond the control or without the fault of the party claiming an extension of time to perform; provided that the lack of funds or financing of Developer is not independently a cause beyond the control or without the fault of Developer.

9. Successors and Assigns. The rights and obligations set forth in this Covenant touch and concern the land, are perpetual and run with the land. This Covenant shall be a burden on the Property and shall be appurtenant and benefit the Transit Center Property. The benefits and burdens hereof shall be binding upon Developer, its successors and assigns, and shall inure to the benefit of Pierce County and its successors and assigns. In the event that Pierce Transit shall permanently discontinue the use or operation of Transit Facilities at the Transit Center Property, and does not elect to use or occupy any portion of the Transit Center Property for any other public transit/transportation or related purposes, this Covenant shall terminate and be of no force and effect, except those that are expressly stated herein to survive termination or expiration of this Covenant.
10. No Modification; Integration. This Covenant, Development Agreement and the Purchase Agreement and any exhibits thereto contain the entire agreement between the parties as to the subject matter hereof and supersedes all prior discussions and understandings between them with reference to such subject matter. This Covenant may not be modified or amended except by a subsequent agreement in writing signed by the parties.
11. Enforcement; Attorneys' Fees. In the event of any dispute arising from or relating to this Covenant, the prevailing party in any such proceeding shall be entitled to recover its costs and reasonable attorneys' fees. This Section 11 shall survive the termination or expiration of this Covenant.
12. Non-Waiver. Pierce Transit' failure to provide notice of Developer's default hereunder, or any delay in providing any such notice of default, shall not be deemed a waiver by Pierce Transit of Developer's default. No waiver by Pierce Transit of any provision of this Covenant or any breach thereof shall be of any force or effect unless in writing by Pierce Transit; and no such waiver shall be construed to be a continuing waiver. The waiver by Pierce Transit of the performance of any covenant, condition, or promise shall not invalidate this Covenant nor shall it be considered a waiver by Pierce Transit of any other covenant, condition, or promise hereunder. The waiver by Pierce Transit of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time.
13. Land Use/Building/Construction Permit. Developer shall submit and file a recorded copy of this Covenant as part of an application or filing for any land use, zoning, building, construction or other permit, license, consent or approval necessary for the Project, and include a clearly visible reference to this Covenant in any plan or specification submitted in connection therewith.

14. Time of the Essence. In all matters under this Covenant, the parties agree that time is of the essence.

[Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned have executed this Covenant as of the date noted above.

DEVELOPER:

[_____] ,
a/an [_____]

By: _____

Name: _____

Its: _____

PIERCE TRANSIT:

PIERCE COUNTY PUBLIC
TRANSPORTATION BENEFIT AREA
CORPORATION,
a Washington municipal corporation

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENTS

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that _____ 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 _____ of PIERCE COUNTY PUBLIC TRANSPORTATION BENEFIT AREA CORPORATION to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Signature)

_____(Print Name)

Notary Public in and for the State
of Washington

Residing at _____

My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ 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 _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Signature)

_____(Print Name)

Notary Public in and for the State
of Washington

Residing at _____

My appointment expires: _____

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Lot(s) 6 through 12, inclusive, Block 7521, The Tacoma Land Company's First Addition to Tacoma, W.T., according to the plat thereof, recorded July 7, 1884, records of Pierce county Auditor;

Together with that portion of vacated "E" Street, abutting thereon and attached thereto by Operation of Law, as vacated by City of Tacoma Ordinance No. 26418 and recorded under recording number 200010030311.

Situate in the City of Tacoma, County of Pierce, State of Washington.

EXHIBIT B
LEGAL DESCRIPTION OF THE TRANSIT CENTER PROPERTY

Lots 1 through 6, inclusive, Block 7424, THE TACOMA LAND COMPANY'S FIRST ADDITION TO TACOMA, W.T., according to plat filed for record July 7, 1884 in the office of the County Auditor, in Pierce County, Washington.

Lots 7 through 12, inclusive, Block 7424, THE TACOMA LAND COMPANY'S FIRST ADDITION TO TACOMA, W.T., according to plat filed for record July 7, 1884 in the office of the County Auditor, in Pierce County, Washington.

Lots 1, 2 and 3, inclusive, Block 7426, THE TACOMA LAND COMPANY'S FIRST ADDITION TO TACOMA, W.T., according to plat filed for record July 7, 1884 in the office of the County Auditor, in Pierce County, Washington.

Lots 4 through 12, inclusive, Block 7426, THE TACOMA LAND COMPANY'S FIRST ADDITION TO TACOMA, W.T., according to plat filed for record July 7, 1884 in the office of the County Auditor, in Pierce County, Washington.

Lots 9 and 10, Block 7523, THE TACOMA LAND COMPANY'S FIRST ADDITION TO TACOMA, W.T., according to plat filed for record July 7, 1884 in the office of the County Auditor, in Pierce County, Washington.

Lots 11 and 12, inclusive, Block 7523, THE TACOMA LAND COMPANY'S FIRST ADDITION TO TACOMA, W.T., according to plat filed for record July 7, 1884 in the office of the County Auditor, in Pierce County, Washington.

Lots 1 to 6, inclusive Block 7525, THE TACOMA LAND COMPANY'S FIRST ADDITION TO TACOMA, W.T., according to plat filed for record July 7, 1884 in the office of the County Auditor, in Pierce County, Washington.

Lots 10, 11 and 12, Block 7525, THE TACOMA LAND COMPANY'S FIRST ADDITION TO TACOMA, W.T., according to plat filed for record July 7, 1884 in the office of the County Auditor, in Pierce County, Washington.