



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

May 9, 2006

Ordinance 15450

Proposed No. 2006-0161.1

Sponsors Constantine

1 AN ORDINANCE authorizing the King County executive
 2 to execute a thirty-year use agreement with the Technology
 3 Access Foundation for the design, construction, use,
 4 development, programming, and supplemental maintenance
 5 of a new community center on a portion of land at
 6 Lakewood park.

7
8

PREAMBLE:

9
 10 In accordance with K.C.C. 4.56.150.E, the King County council may
 11 adopt an ordinance permitting the county to enter into agreements for the
 12 use of county property with bona fide nonprofit organizations if the
 13 property is to be used by the nonprofit organization to make improvements
 14 to the county property or to provide services that will benefit the public.
 15 The agreements are exempt from the requirements of fair market value,
 16 appraisal and notice.

17 **BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:**

18 SECTION 1. The King County executive is hereby authorized to sign a use
19 agreement, substantially in the form attached, with the Technology Access Foundation
20 ("TAF") for thirty years for a parcel of ground totaling approximately ten thousand
21 square feet at King County's Lakewood park.

22 SECTION 2. TAF will invest at least four million dollars and whatever additional
23 funds are needed to develop and construct a community center and parking lot.

24 SECTION 3. It is intended that TAF will use the community center to provide
25 youth and family enrichment programs to the public and house TAF programs and
26 administration. Because TAF will be providing services that will benefit the public, the
27 rent will be at the rate of one dollar per year.

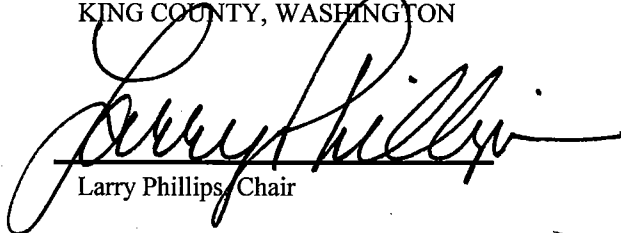
28 SECTION 4. Ordinance 15311, adopted on October 31, 2005, approved a
29 supplemental appropriation for the construction of a community center in Lakewood
30 park. A proviso in that ordinance encumbers the appropriation until the King County
31 executive transmits, and the council approves by ordinance, an agreement between the
32 county and TAF relating to the construction, ownership, use and operation of the facility.

33 With the adoption of this proposed ordinance, the encumbrance approved in Ordinance
34 15311 is hereby released.
35

Ordinance 15450 was introduced on 4/10/2006 and passed by the Metropolitan King
County Council on 5/8/2006, by the following vote:

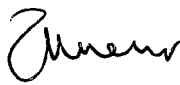
Yes: 7 - Mr. Phillips, Ms. Lambert, Mr. Ferguson, Mr. Gossett, Ms. Hague,
Ms. Patterson and Mr. Constantine
No: 0
Excused: 2 - Mr. von Reichbauer and Mr. Dunn

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON




Larry Phillips, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 11 day of May, 2006.



Ron Sims, County Executive

RECEIVED
2008 MAY 15 AM 9:08
KING COUNTY COUNCIL
CLERK

Attachments A. Use Agreement Between King County, by and through the Parks and Recreation
Division of its Department of Natural Resources and Parks, and Technology Access
Foundation (TAF) for the Community Center for 21st Century Skills at Lakewood
Park

15450

USE AGREEMENT

between

Attachment A
2006-161

King County, by and through the Parks and Recreation Division of its Department of Natural Resources and Parks,

and

Technology Access Foundation (TAF)

for the

Community Center for 21st Century Skills

at

Lakewood Park

This Use Agreement ("Agreement") is dated for reference purposes _____, 2006 (the "Effective Date"), and is entered into by and between King County, through the Parks and Recreation Division of its Department of Natural Resources and Parks (the "County"), and the Technology Access Foundation ("TAF") (collectively, the "Parties"), for the design, construction, use, development, programming, and supplemental maintenance of a new community center ("the Center") on a portion of land ("the Site") at Lakewood Park (hereinafter the "Park").

In consideration of the promises, covenants, and other provisions set forth in this Agreement, the Parties agree as follows.

1. BACKGROUND

- 1.1 The County, a home rule charter county and political subdivision of the State of Washington, is the owner of the Park, located at SW 108th St and 10th Ave SW, Seattle, WA 98146, and described and depicted with greater particularity in **Attachment A** to this Agreement.
- 1.2 TAF is a not-for-profit Washington corporation that is tax-exempt under section 501(c)(3) of the Internal Revenue Code. TAF's mission is to provide underprivileged children the life skills and training to be leaders in technology who secure positions in the highest levels of corporate America, and to create their own successful businesses using technology as an effective tool to be the best innovators, thinkers, and leaders of their generation. TAF's purpose is to dent the inequities that exist in the economic landscape of the United States and make that landscape more robust through the inherent strengths of cultural diversity.
- 1.3 Improved recreational facilities and after-school activities are sorely needed in the White Center and Highline areas of King County. TAF has the experience, ability, and resources to develop and operate the Center and to provide or coordinate educational, recreational, and other programs at the Center and in the Park. TAF intends to design, construct, operate, and maintain a multipurpose facility for recreational and educational uses, and to provide training, experience, and skills to underprivileged youth in King County.

- 1.4 The County has determined that building a new community center in the Park will have significant and unique regional and local public recreation value.
- 1.5 King County Ordinance 14509 authorized the Department of Natural Resources and Parks to create new public recreation opportunities by empowering user groups, sports associations, and community organizations to operate, maintain, and program mutually agreed upon capital improvements for public recreation facilities on County land, and thereby address regional and/or rural recreation needs without encumbering new tax funded operations and maintenance costs.
- 1.6 Allowing TAF to develop and operate certain mutually agreed upon capital improvements, including the Center and its appurtenant facilities, and allowing TAF to provide certain mutually agreed upon supplemental maintenance for the Center will serve to implement the authority provided in Ordinance 14509, and to achieve the goals set forth there and in Section 1.5 above.
- 1.7 King County Code 4.56.150(E) authorizes the Department of Natural Resources and Parks to enter into agreements for the use of the County land by non-profit organizations that provide a service to the public or make improvements to the land. In this case TAF intends to do both.
- 1.8 The County is willing to contribute towards the capital construction costs of the Center, and to allow TAF to design, construct, develop, program, and provide supplemental maintenance for the Center at the Park under the terms and conditions set forth in this Agreement. TAF may spend the funds for costs as it deems appropriate, such costs to include but not be limited to design fees and costs, furniture costs and landscaping fees and costs.
- 1.9 Contracting with TAF to build, operate and maintain the Center in the Park and to provide recreational and educational services at the Center will help to revitalize White Center and the quality of life for residents there, and is consistent with and will further the purpose of the broader White Center Community Enhancement Initiative endorsed by the King County Council in Motion 2005-0406.
- 1.10. By and through Ordinance 15311, the King County Council appropriated \$2 million dollars from Real Estate Excise Tax (REET) funds for the express purpose of contributing towards the cost to design and construct the Center and improvements to the Site. The total estimated cost to build the Center and improvements to the Site is \$6 to \$8 million dollars.

2. CONSIDERATION

- 2.1 TAF agrees to design and construct the Center on the Site consistent with the terms and conditions set forth in this Agreement and the Site, as well as the design and use parameters set forth in **Attachment B** to this Agreement. TAF accepts the relationship of trust and confidence established with the County by this Agreement and agrees that in providing the services set forth in this Agreement, TAF will use its diligent efforts and will furnish its best skill and judgment and will cooperate with, coordinate, manage, direct and oversee all contractors, architects, engineers, consultants, managers, and other persons and entities retained in connection with the design, permitting, development, and construction of the Center so as to complete the Center in an expeditious and economic manner consistent with the best interests of the County, and otherwise in a good and workmanlike manner and in substantial accordance with **Attachment B** to this Agreement, free and clear of any liens. TAF will perform its services in accordance with the terms of this Agreement, including, without limitation, all services to be provided as described in Section 4 herein.
- 2.2 TAF agrees to assume responsibility for all operations and maintenance for the Center and the Site consistent with the terms and conditions set forth in this Agreement. TAF acknowledges and agrees that this Use Agreement is, in effect, an absolute net lease, such that from and after the Effective Date of this Agreement, TAF will (i) provide for and pay costs of maintenance and operation of the Center; (ii) pay all applicable taxes assessed against the Site; (iii) pay all utilities serving the Center; and (iv) pay rent, all as provided herein. The County will be responsible for all costs of maintenance and operation, taxes, and utilities prior to the Effective Date of this Agreement.
- 2.3. TAF has inspected and knows the condition of the Site and agrees to accept the Site in its as is condition, and to assume full and complete responsibility for all operations, maintenance, repairs, improvements, and provision of recreational services at the Site.
- 2.4 The County represents and warrants that the Site may be used for TAF's intended purposes. The County also agrees to cooperate with the issuance of permits for the construction of the Site and the Center.
- 2.5 TAF acknowledges and agrees that, except as indicated in Section 5.18, the County shall have no liability for, and that TAF shall release and have no recourse against the County for any defect or deficiency of any kind whatsoever in the Site without regard to whether such defect or deficiency was known or discoverable by TAF, except to the extent such defect or deficiency was known by the County and not disclosed to TAF.
- 2.6 The County will provide a total of \$2 million dollars towards the capital cost to construct the Center at the Site to be spent as TAF deems appropriate, consistent with the terms and conditions set forth in this Agreement, and as set forth in **Attachment C**. TAF will be

solely responsible to secure and to provide all other funding needed to design, construct, maintain, operate and repair the Center and the Site during the Term (as defined below) of this Agreement. The County will be under no obligation directly or indirectly to pay for any labor, material, or improvement associated with the Site or the Center in excess of the Two Million dollar (\$2,000,000) capital grant outlined above. TAF will, upon request, inform any inquiring person or entity that the County has no further financial obligations associated with the construction, maintenance, repairs or subsequent improvements to the Site or the Center. If TAF is unable to secure all necessary funding within two (2) years from the Effective Date of this Agreement, then the County may terminate this Agreement as provided in Article 5, and TAF shall promptly return all unspent County grant funds as may have been disbursed by the County to TAF.

- 2.7 For the Term of this Agreement, TAF will have priority of use of the Center pursuant to the terms and conditions set forth in this Agreement and **Attachment B**; however, TAF hereby acknowledges and agrees that substantial public access to and use of the Center is a material consideration for the County's execution of this Agreement.
- 2.8 TAF will have all rights to Site and Center naming and advertising, and the right to keep and retain all donations or other funds derived from naming or advertising agreements; provided that the County reserves the right to veto potential naming agreements, which right will not be unreasonably exercised; and provided further that any and all advertising at the Center or the Site is consistent with Sections 4.15 and 5.4 of this Agreement.
- 2.9 For and in consideration of TAF's promises, commitments, obligations and duties herein, and the services that TAF will provide to the public during the Term of this Agreement, the County will charge TAF annual rent of \$1.00 per year for the Site for the duration of the Term, except as otherwise provided under Section 5.24.2.
- 2.10 TAF will own the Center and all appurtenant structures and facilities in fee simple for the duration of the Term of this Agreement. Upon expiration or earlier termination of this Agreement, and consistent with Sections 4.26 and 5.24 of this Agreement, TAF will convey all right, title, and interest in the Center and its appurtenant structures and facilities to the County, free of any and all liens and monetary encumbrances.
- 2.11 In light of TAF's substantial investment in the Center, as well as TAF's ongoing operation and maintenance responsibilities under this Agreement, the term of this Agreement will be thirty (30) years (the "Term"), subject to the renewal provisions in Section 4.25. The rights and obligations of TAF and the County hereunder will commence on the Effective Date and will continue, subject to termination as provided in Section 5, until expiration of the Term, except with respect to those specific obligations of TAF which may survive the expiration or earlier termination of this Agreement.
- 2.12 Upon completion of construction of the Center and TAF's other improvements to the Site, control and custody of the parking lot serving the Center and the Park will revert to the County. The parking lot and its appurtenant structures and facilities will constitute a common area ("the Common Area") for use by TAF, its authorized representatives and

invitees, as well as the County, park users, and other members of the public. The County will own, operate, maintain, repair and manage the Common Area for benefit of the Center, the Park, and the public. **Attachment A** may be revised to depict the approximate boundaries of the Common Area.

- 2.13 If, at any time prior to completion of the Center and TAF's other improvements to the Site, TAF determines that it cannot or will not meet its obligations under this Agreement, or TAF otherwise determines not to pursue the purpose of this Agreement, then TAF shall immediately notify the County and shall promptly return to the County all unspent County grant funds, together with a detailed accounting of all County grant funds expended by TAF.

3. CONSTRUCTION OF CENTER

- 3.0 CAPITAL IMPROVEMENTS. TAF will raise and invest at least \$4 million dollars and whatever additional funds are needed to develop and construct the Center on the Site, together with all necessary and ancillary appurtenances and structures. TAF will supervise the development and construction of the Center on the Site. TAF shall design, develop, and construct the Center and all of its facilities, features, and amenities in accordance with all applicable design(s), timelines, restrictions, environmental considerations, permitting determinations, neighborhood impact mitigations, and all other requirements in coordination with the County project management staff. The County will be responsible for subdividing or short platting the Site at its sole cost, if such is required.
- 3.1 DESIGN.
- 3.1.1 PREPARATION. TAF will retain a licensed architect or licensed professional engineer, registered in the State of Washington, to prepare a design for the Site and the Center and exterior landscaping, which will visually blend with the setting. TAF will confer with the County to establish a community input process for residents and existing youth and family service providers, including the Greenbridge Community Services Council, during the Center design preparation. The County will have the right to approve the final design of the Site and the Center, consistent with established County zoning, design code, or both.
- 3.1.2. ADA AND WLADA COMPLIANCE. TAF will ensure that each design contract includes a provision requiring that upon substantial completion (as defined in the County's standard 0700 contract terms, a copy of which is attached to this Agreement as **Attachment D**) of that portion of the Center or the Site covered by that design contract, the work and the portion of the Center or the Site so constructed will comply with the applicable requirements of the Americans with Disabilities Act and the Washington State Law Against Discrimination, RCW ch. 49.60, as well as any regulations adopted thereunder.

- 3.1.3 APPRENTICESHIP. TAF will ensure that the contract to construct the Center incorporates by reference King County Code 12.16.150-.180 for the use of apprentices; see Section 3.7.1. TAF will establish a minimum apprenticeship requirement of fifteen percent (15%) for construction of the Center. Apprentices shall work fifteen percent (15%) of the labor hours actually performed to construct the Center.
- 3.2 BUILDING AND SITE PLANS.
- 3.2.1. PREPARATION. TAF will retain a licensed architect or licensed professional engineer, registered in the State of Washington, to prepare building and site plans for the Site and the Center, which will reference structures, utilities generally, and landscape plans, and which meets all requirements of state, local and federal law and is otherwise consistent with this Agreement and its concern for building quality. The County will have the right to approve the final building and site plans; such approvals to not be unreasonably withheld.
- 3.2.2 FACTORY MUTUAL REVIEW. TAF will submit to Factory Mutual Engineering Association ("Factory Mutual"), for its review, plans of all elements of the building design and construction, including but not limited to: seismic and wind loading, roofing and HVAC systems, fire protection and alarm systems, and boiler systems (if any). TAF will submit plans for review at the ninety percent (90%) design phase. TAF will immediately share all Factory Mutual recommendations with the County, and TAF and the County will work together with Factory Mutual to incorporate those recommendations into the Center and the Site. TAF is required under this Agreement to design and cause to construct the Center in compliance with all applicable requirements of law. However, TAF and the County acknowledge that the cost to incorporate Factory Mutual's recommendations, if any, may exceed TAF's established budget to construct the Center. If the County elects to incorporate Factory Mutual recommendations into the Center at a cost in excess of TAF's established budget, then the County shall pay the additional cost to incorporate those recommendations into the Center. Such cost shall be in addition to and not paid out of the County's \$2 million dollar capital grant to TAF.
- 3.2.3 AS-BUILT PLANS AND SPECIFICATIONS; MANUALS, WARRANTIES; PERMITS AND LICENSES; AND SURVEY. On or before TAF's final acceptance (as defined in **Attachment D**) of the Center and Site improvements, TAF will provide the County with a complete and detailed set of "as-built" plans and specifications for the Site and the Center, together with copies of all other materials received by TAF, including manuals, warranties, permits and licenses and an as-built survey of the Site and the Center.
- 3.3 CONSTRUCTION/SITE WORK/FENCING. TAF will be solely responsible for all development and construction of the Site and the Center and will be responsible for all work and all required permits and grading. TAF will ensure that work areas are properly barricaded, and will ensure that signage is installed, directing unauthorized persons not to enter onto the construction site during any phase of development or construction. Unless otherwise agreed by the Parties in writing, fencing will be placed around work areas. In addition, construction sites will be kept clean and organized during development periods.

TAF will be responsible for site security, traffic and pedestrian warnings at the Site during the development and construction phases. TAF shall not fence the Site or otherwise restrict public access to or use of the Site until TAF has secured all necessary permits to proceed with clearing and grading of the Site; provided that TAF may restrict public access to or use of the Site for limited periods or in limited areas as needed to perform preliminary site analysis or testing (e.g. surveying, test bore holes, soils and drainage analysis, etc.). TAF shall provide the County with proof of insurance consistent with **Attachment E** before TAF does or performs any preliminary work on the property.

3.4 RELOCATION OF UTILITY LINES. TAF will be responsible for relocating storm drains, sewers, water lines, and other utilities as required to complete development and construction of the Site and the Center in accordance with the final building and site plans.

3.5 CHANGES IN WORK; ALTERATION OF SITE OR CENTER AFTER CONSTRUCTION.

3.5.1 CHANGES IN WORK. It is anticipated that there will be field orders and change orders that result in changes to the development and construction of the Center or the Site. TAF will use its reasonable efforts to apprise the County of proposed changes in such work and its recommendations regarding them prior to any action being taken. It is anticipated that it may not always be possible to receive the County's prior approval to these changes in a timely manner. Therefore, field orders and change orders may be approved by TAF, without prior approval from the County, but only if the changes authorized by such field orders or change orders do not materially alter the Center. As soon as practical, but no later than the last business day of the next calendar month, TAF will provide the County's FMD project administrator with all field orders, change orders, or both that were approved by TAF. For the purposes of this Section 3.5.1, a material alteration is one that would reduce the intended quality of the Center, result in an increase of Center operational costs over time, or result in a substitution of any of the systems in the Center (including, but not limited to, HVAC, plumbing, electrical, elevators, roofing, fire and life safety, or infrastructure components). TAF may not approve a material alteration or other like change, without the County's prior written approval. TAF will request material alterations in writing. The County (via the Facility Management Division of its Department of Executive Services, or its successor agency) will approve or deny TAF's request for a proposed material alteration within fourteen (14) days of the County's receipt of such request.

3.5.2 ALTERATION OF SITE OR CENTER AFTER CONSTRUCTION. After the Center is completed and temporary certificates of occupancy issued, TAF will not make any material alteration to the Site or to the Center, including any changes to the landscaping, without the County's prior written consent, which consent will not be unreasonably withheld, conditioned or delayed. Within ten (10) days of receiving TAF's written request for approval of a material alteration, the County will respond with a timeline and process to evaluate and decide upon TAF's request. The County will, upon reasonable notice,

have access to all plans and specifications relating to alterations or modifications made by TAF to the Site, the Center, or both of them.

- 3.6 DEVELOPMENT AND CONSTRUCTION FEES AND EXPENSES. Except as otherwise expressly provided herein, TAF will be responsible to obtain and pay for all necessary permits, fees and expenses associated with the development and construction of the Site and the Center. In addition, TAF will be responsible for any additional costs billed to the County by any government agency. The County will be responsible to pay for any required subdivision or short plat of the Site.
- 3.7 PUBLIC WORKS LAWS.
- 3.7.1 IN GENERAL. To the extent applicable, TAF will comply with all public works laws, regulations, and ordinances, including but not limited to those related to prevailing wages (see RCW 39.12), retainage (see RCW 60.28), bonding (see RCW 39.08), use of licensed contractors (see RCW 39.06), competitive bidding (see RCW 36.32 and RCW 35.21.278), and apprenticeship (see K.C.C. 12.16.150). TAF will indemnify and defend the County if the County is sued or made the subject of an administrative investigation or hearing for a violation of such laws, regulations, or ordinances in connection with the Center and related improvements to the Site; except to the extent of the County's negligence.
- 3.7.2. PREVAILING WAGE. TAF agrees and covenants with the County that TAF will require contractors and subcontractors in connection with such contracts as may be let regarding the construction of the Center or the Site to pay prevailing wage, as defined in RCW 39.12, to the workmen, laborers, and mechanics as may then be determined by the Washington State Department of Labor and Industries for the particular craft in the particular geographic area.
- 3.8 CONTRACTOR INDEMNIFICATION AND HOLD HARMLESS. TAF will require its design consultants and construction contractors and subcontractors to defend, indemnify and hold the County, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney's fees and costs, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the negligence or willful misconduct of the County, its officers, officials, employees, and contractors. On a case-by-case basis, TAF may seek and the County may grant an exception to this Section 3.8, but only for TAF's contracts with design consultants; and TAF understands, acknowledges, and agrees that if the County grants such an exception, then TAF itself will defend, indemnify, and hold the County harmless for the work of such consultants, consistent with this Section 3.8.
- 3.9 CONTRACTOR INSURANCE. TAF will require its design consultants and construction contractors to procure and maintain, for the duration of construction of the Site and the Center, insurance against claims which may arise from or in connection with the performance of the work hereunder. All said policies will be consistent with the minimum contractor insurance requirements set forth in **Attachment F** to this

Agreement, which Attachment is hereby incorporated by this reference as if fully set forth herein.

- 3.10 WAIVER OF SUBROGATION. TAF will cause its contractors and subcontractors and their insurance carriers to release and waive all rights of subrogation against the County to the extent a loss is covered by property insurance in force. TAF hereby releases from liability and waives all right of recovery against the County for any loss from perils insured against or under the respective fire insurance policies of its contractors, subcontractors, or any of them, including any extended coverage endorsements thereto; provided, that this provision shall be inapplicable if it would have the effect of invalidating any insurance coverage of TAF or the County.
- 3.11 INSURANCE PROVISIONS ARE MATERIAL TERMS. Failure by TAF, its agents, employees, officers, and/or subcontractors to comply with these insurance requirements or those set forth in **Attachment F** shall constitute a material breach of this Agreement.

4. USE, MAINTENANCE, AND OPERATION OF CENTER

- 4.0 USE OF PREMISES. The Premises may be used for the operation of the Center to provide youth and family enrichment programs to the public and to house TAF programs and administration. For-profit commercial or industrial uses are prohibited.
- 4.1 NON-EXCLUSIVE LICENSE. In recognition that TAF shall invest substantial funds to develop, program, and provide supplemental maintenance for the Center at the Site, TAF is granted a non-exclusive license to use the Center by the County on a first priority basis on terms and conditions as set forth more fully in this Agreement and **Attachment B**.
- 4.2 STEWARDSHIP. TAF must be a good steward of the Center and Site. All activities and use by TAF shall be considerate of the capital, programmatic, and environmental value of the Center and Site to the greatest extent possible. All construction, maintenance, and other modifications by TAF shall strictly adhere to all applicable environmental laws and regulations at all times.
- 4.3 GOOD NEIGHBOR/FACILITY USE POLICY. The County and TAF shall mutually develop and implement a Good Neighbor/Center Use Policy (hereinafter "Use Policy") to ensure positive relations with the surrounding community, as well as other current or future Site or Park users. The Use Policy shall be posted in clear view at the Center and/or integrated into posted or otherwise distributed use rules for the Site. Mitigation efforts for traffic, noise, parking, or other neighborhood impacts shall be thorough, ongoing, and in good faith. The parties may update or revise the Good Neighbor/Facility Use Policy from time to time by mutual agreement.
- 4.4 FACILITY REVENUE AND BUDGET. TAF shall develop a Center Revenue Plan for County review and approval. Revenue associated with the programming, scheduling, renting, or other programmatic uses will be managed according to the terms set forth in

the Center Revenue Plan . All fees charged for the use of the Center by the public shall be reviewed and approved by the County's Contract Administrator in consultation with TAF prior to being implemented; provided, however, that any membership fees in TAF's organization need not be approved by the County. The County's approval will not be unreasonably withheld. The parties may update or revise the Center Revenue Plan from time to time by mutual agreement.

- 4.5 **CENTER PROGRAMMING.** TAF shall develop, for County review and approval, a Master Use Schedule for the Center. Center programming will be consistent with the process and principles set forth in **Attachment B** and the TAF Master Use Schedule. The County's approval will not be unreasonably withheld. The parties may update or revise the Master Use Schedule from time to time by mutual agreement.
- 4.6 **OPERATING HOURS.** The availability of recreational opportunities for County residents is a material consideration for this Agreement. Accordingly and during the full Term of this Agreement, TAF will continuously conduct and carry on TAF's permitted uses and will keep the Site and the Center open for business during the usual business hours of each and every business day and such other days as may be mutually agreed upon. This requirement will not apply if the Site or the Center should be closed on account of force majeure under Section 5.7, or for maintenance, remodeling, repair, or renovation as approved by the County in writing (including approval of any construction schedules.) Hours of operations shall be limited to 6 a.m. to 10 p.m. All use other than TAF's shall be approved by the County in consultation with TAF, pursuant to the process set forth in **Attachment B**. TAF covenants and agrees to provide sufficient personnel to keep its operational commitments in accordance with sound business practice.
- 4.7 **INCIDENTAL USES.** TAF may provide or authorize concessions, to include but not be limited to food and beverages; sale of incidental items directly related to the use of the Center, including, but not limited to equipment, clothing, and related merchandise; and fitness or training activities. TAF may also conduct tax-exempt fundraising activities to support the Site, the Center, and TAF's own beneficial or charitable mission as a not-for-profit Washington corporation, provided that such fundraising activities shall not displace public use of the Site or the Center. TAF may not use the Center or the Site or allow either of them to be used for any purpose that would result in substantial unrelated business taxable income to TAF, or income that would be substantial unrelated business taxable income if earned by TAF. For purposes of this section, "unrelated business taxable income" means unrelated business taxable income as defined in section 512 of the Internal Revenue Code as now codified or hereafter amended, and "substantial" means more than \$10,000 dollars in any given calendar year.
- 4.8 **EDUCATION—SCHOLARSHIPS.** TAF will provide skills, educational and development programs at the Center. TAF will also provide fee scholarships for disadvantaged youths from the County, County Parks programs, and cities within the County. TAF, as part of its community involvement program, will provide other scholarships, grants, awards, and other benefits to the underprivileged. TAF shall provide the County with an annual report summarizing its scholarship and other community

involvement activities, and summarizing TAF volunteer hours at or on the Site and the Center.

- 4.9 SECURITY AND NUISANCE. TAF will take reasonable precautions to secure the Site and the Center during the full Term of this Agreement. TAF will use the Site and the Center for no unlawful purposes and will not use or occupy the Site in any manner which would constitute a public nuisance or otherwise violate federal, state or local laws.
- 4.10 SITE MAINTENANCE PLAN. During the project design phase, TAF shall provide for County approval a site plan showing boundary lines that clearly define the limits of the Site to be maintained by TAF following TAF's beneficial occupancy of the Site. Once capital improvements are completed, a 21st Century Community Center Maintenance Plan ("Center Maintenance Plan") shall be developed and agreed to by the County and TAF, and reviewed by the King County Parks Division's Labor Management Committee ("LMC"). The Center Maintenance Plan shall be developed in a manner as to ensure the County does not incur any new aggregate Operation & Maintenance costs requiring additional public funds (except as may be otherwise provided in this Agreement).
- 4.11 MINIMUM MAINTENANCE REQUIREMENTS.
- 4.11.1 MAINTENANCE. TAF will, at its sole cost and expense, clean and maintain the Site and the Center, and make repairs, restorations, and replacements to the Site and the Center, including, without limitation, heating, cooling, ventilating, mechanical, electrical, and plumbing systems, structural roof, walls, and foundations, roof coverings, sprinkling and irrigation systems, landscaping and the fixtures and appurtenances to the Site and the Center as and when needed to preserve them in good and workmanlike condition and repair and in material compliance with all applicable codes throughout the full Term of this Agreement. TAF will further keep in repair and maintain as necessary all machinery, equipment and facility appurtenances. TAF will paint the exterior of any buildings (except metal) with such frequency as may be required to maintain their good, clean appearance. All such repairs, restorations, and replacements will be in quality and workmanship at least equal to the original work or installations. If TAF fails to make such repairs, restorations or replacements within ninety (90) days of written notice from the County, then the County may make them at the expense of TAF and such expense will be paid by TAF within fifteen (15) days after delivery of a statement or invoice for such expense.
- 4.11.2 JANITORIAL AND LANDSCAPING. At its sole cost and expense, TAF will keep the Site and the Center neat and clean, and will provide sufficient janitorial, gardening, landscaping, and related services to maintain a tidy appearance on and about the Site and the Center. TAF will provide landscaping maintenance services such that landscaping on the Site and the Center remains healthy, attractive, and well maintained. TAF will be responsible to pay all costs and expenses, licenses, permits, and inspection fees, as well as supplies, materials, equipment, and tools used in connection with the maintenance, operation, or repair of the Center and the Site, or any of them.

- 4.11.3 REPAIR OF DAMAGE. If damage occurs to the Site or the Center of any kind whatsoever, TAF will promptly cause the damage to be fully repaired at TAF's expense. If TAF fails to make such repairs within ninety (90) days of written notice from the County, then the County may, but is not required to, enter the Site or the Center and accomplish such repairs and bill TAF; and such expense will be paid by TAF within fifteen (15) days after delivery of a statement or invoice for such expense.
- 4.12 UTILITIES. TAF will pay for all water, gas, garbage, sewage, electricity, telephone, and other utilities and communications services used by TAF on the Site or the Center, whether or not such services are billed directly to TAF. TAF will make any necessary arrangements to have all such utilities billed directly to and paid for directly by TAF. TAF shall have all utilities and services separately metered so that their costs can be appropriately billed to TAF. TAF will also procure, or cause to be procured, without cost to the County, any and all necessary permits, licenses or other authorizations required for the lawful and proper installation and maintenance upon the Site and the Center of utility appurtenances and appliances for use in supplying such utilities and services to and upon the Site and the Center. The County, upon request of TAF, at the sole expense and liability of TAF, will join with TAF in any application required to obtain or continue any such services, provided that such services do not violate any other applicable provision of this Agreement. The County will not be held liable for any injury, loss, or damage caused by or resulting from any interruption or failure of utility services due to any cause whatsoever, except the County's negligence or willful misconduct. TAF will not be entitled to any offset, reduction, or return of consideration, rent, or use fees, or credit towards lost use time, as a result of any interruption or failure of services.
- 4.13 PERFORMANCE REPORT. At the end of each twelve month period during the Term of the Agreement, TAF shall furnish the Parks Director with a summary of the prior year's use of the Center and the Site by TAF and any other groups or entities for approved activities, maintenance, and the condition of the Center. .
- 4.14 LIMITED USE. TAF shall use the Center for no other business or purpose other than as explicitly provided in this Agreement or as otherwise generally permitted to members of the public without the prior written approval of the County, which shall not be unreasonably withheld, conditioned or delayed.
- 4.15 SIGNS. No sign, advertisement, notice, or other lettering will be exhibited, inscribed, painted, or affixed by TAF nor allowed by TAF to be exhibited, inscribed, painted, or affixed on any part of the Center or the Site without the prior written approval of the County, which shall not be unreasonably withheld. All new Center and/or Site signs shall follow the King County Sign System Guide and shall be manufactured and installed by the County, unless TAF receives prior written approval of the County to do otherwise. Written approval shall be requested through the County's Contract Administrator. If TAF violates this provision, the County may remove the sign without any liability and may charge the expense incurred by such removal to TAF. All signs erected or installed pursuant to the County's prior written approval shall also comply with any applicable federal, state or local statutes, ordinances or regulations.

- 4.16 RIGHT TO INSPECT. The County at its discretion reserves the right to review and approve TAF's use of the Center and the Site and compliance with this Agreement. If the County does not approve of TAF's use and compliance, the County will timely notify TAF in writing of the specific items that the County deems objectionable. TAF agrees to undertake reasonable corrective action within a time period agreed to by the Parties, or if no time period is agreed, within sixty (60) days.
- 4.17 MINIMUM SCOPE AND LIMITS OF INSURANCE FOR TAF. During the Term of this Agreement, TAF will at a minimum maintain:
- 4.17.1 Commercial General Liability insurance (Insurance Services Office form number (CG00 001)), covering Commercial General Liability with a limit of not less than \$1,000,000 combined single limit per occurrence; \$2,000,000 aggregate.
- 4.17.2 Automobile Liability. Insurance Services Office form number (CA 00 01 Ed.12 90) Covering Business Automobile Coverage, symbol 1 "any auto"; or the combination of symbols 2, 8 & 9 for a limit of not less than \$1,000,000 combined single limit per occurrence.
- 4.17.3 Workers' Compensation. Statutory requirements of the State of residency. Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.
- 4.17.4 Employer's Liability or "Stop Gap." Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.
- 4.17.5 Property Insurance. TAF shall provide "All Risk" property insurance to include Earthquake and Flood for the Replacement Cost of the facility. King County shall be listed as a Loss Payee as its interests may appear.
- 4.17.6. Personal Property Insurance. TAF shall provide sufficient personal property insurance to cover the replacement cost of TAF's personal property within the facility.
- 4.18 DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to and approved by the County. The deductible and/or self-insured retention of the policies will not limit or apply to the County and will be the sole responsibility of TAF.
- 4.19 OTHER INSURANCE PROVISIONS. The insurance policies required by this Agreement are also to contain or be endorsed to contain the following provisions where applicable:

4.19.1 LIABILITY POLICIES.

- 4.19.1.1 The County, its officers, officials, employees and agents are to be covered as additional insureds with respect to liability arising out of activities performed by or on behalf of TAF in connection with this Agreement.
- 4.19.1.2 TAF's insurance coverage will be primary insurance for the County, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees or agents will not contribute with TAF's insurance or benefit TAF in any way.
- 4.19.1.3 TAF's insurance will apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's policy.

4.19.2 ALL POLICIES. Coverage will not be suspended, voided, canceled, reduced in coverage or in limits except by the reduction of the applicable aggregate limits by claims paid, until after thirty (30) days' prior written notice has been given to TAF and the County.

4.19.3 ACCEPTABILITY OF INSURERS. Unless otherwise approved by the County:

- 4.19.3.1 Insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated by Best's, with a rating in one of the two highest categories maintained by Standard & Poor's Rating Group and Moody's Investor Service.
- 4.19.3.2 If at any time any of the foregoing policies fail to meet the above minimum standards, then TAF will, upon notice to that effect from the County, promptly obtain a new policy, and submit the same to the County with certificates and endorsements, for approvals.

4.20 OTHER INSURANCE MATTERS.

- 4.20.1 At all times from and after the Effective Date of this Agreement, TAF agrees to procure and maintain in full force and effect for the duration of the Term of this Agreement insurance, as specified herein, against claims for injuries to persons or property damage which may arise from or in connection with this Agreement.
- 4.20.2 Each insurance policy will be written on an "occurrence" form.
- 4.20.3 By requiring such minimum insurance as specified herein, neither party is deemed to, or construed to, have assessed the risks that may be applicable to the other party to this Agreement. TAF will assess its own risks and, if it deems appropriate or prudent, or both, maintain greater limits or broader coverage.
- 4.20.4 Nothing contained in these insurance requirements will be deemed to limit the scope, application, and/or limits of coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy or policies. Nothing

contained within this provision will affect or alter the application of any other provision contained within this Agreement.

- 4.20.5 Each insurance policy required to be carried by TAF hereunder will comply with the provisions of Section 4.17 of this Agreement.
- 4.20.6 TAF will furnish the County with certificates of insurance and endorsements as required by this Agreement. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for TAF's insurance are to be on forms approved by the County and are to be received and approved by the County prior to the Effective Date of this Agreement and be kept current for the duration of this Agreement. The County reserves the right to require complete certified copies of all required policies at any time.
- 4.20.7 TAF will not do, bring, or keep anything in or about the Center or the Site that will cause a cancellation of any insurance covering the Center, the Site, or either or both of them.
- 4.21 COUNTY INSURANCE. TAF acknowledges, agrees, and understands that the County is self-insured for all of its liability exposures. The County agrees, at its own expense, to maintain through its self-insurance program coverage for its liability exposures for the duration of this Agreement, or, in the County's sole discretion, to purchase equivalent insurance coverage through an insurance policy or policies, or through a risk sharing pool. The County agrees to provide TAF with at least thirty (30) days prior written notice of any change in the County's self-insured status and will upon request provide TAF with a letter of self-insurance as adequate proof of insurance.
- 4.22 COUNTY WORKERS' COMPENSATION. TAF acknowledges, agrees, and understands that the County is self-insured for all of its workers' compensation liability exposure. The County agrees, at its own expense, to maintain through its self-insurance program coverage for its workers' compensation liability exposure for the duration of this Agreement, or, in the County's sole discretion, to purchase equivalent insurance coverage through an insurance policy or policies, or through a risk sharing pool. The County agrees to provide TAF with at least thirty (30) days prior written notice of any change in the County's self-insured status and will upon request provide TAF with a letter of self-insurance as adequate proof of insurance.
- 4.23 WAIVER OF SUBROGATION. Whether loss or damage is due to the negligence of either TAF or the County, their agents or employees, or any other cause, TAF and the County do each hereby release and relieve the other, their agents or employees, from responsibility for, and waive their entire claim of recovery for, (i) any loss or damage to the real or personal property of either party located anywhere on the Site, including the Center itself, arising out of or incident to the occurrence of any of the perils which are covered, or are required to be covered under this Agreement, by their respective property and related insurance policies, or in the case of the County, would be covered by an insurance policy if the County were not self-insured, and (ii) any loss resulting from business interruption at the Site or loss of rental income from the Site, arising out of or

incident to the occurrence of any of the perils covered by any business interruption insurance policy, or by any loss of rental income insurance policy, which may be held by TAF or the County. Each party shall use best efforts to cause its insurance carriers to consent to the foregoing waiver of rights of subrogation against the other party. Notwithstanding the foregoing, no such release shall be effective unless and to the extent the aforesaid insurance policy or policies shall expressly permit such a release or contain a waiver of the carrier's right to be subrogated.

- 4.24 RENEWAL OF AGREEMENT. Provided that TAF is then in compliance with the terms and conditions of this Agreement, TAF will notify the County in writing at least twelve (12) months prior to the expiration of this Agreement whether TAF desires to negotiate renewal of the Agreement (including any proposed modifications). TAF and the County may renew this Agreement, contingent on TAF's full compliance with the terms and conditions of this Agreement and the County's written commitment to renew. The Parties may modify this Agreement during the Term, as a condition of renewal, or during a renewal term, and consistent with Section 5.22.
- 4.25 SURRENDER. Upon the expiration or earlier termination of the Term of this Agreement, TAF will surrender and deliver up the Site and the Center, including all improvements then located thereon and the appurtenances thereto, into the possession of the County, in good order, condition and repair, free and clear of all lettings and occupancies, and free and clear of all liens and monetary encumbrances. TAF will execute, acknowledge and deliver to the County such instruments of further assurance as in the opinion of the County are necessary or desirable to confirm or perfect the County's right, title and interest in and to all of the above-described property. The provisions of this section will survive the expiration or termination of this Agreement.

5. GENERAL TERMS AND CONDITIONS

- 5.1 NOTICE. All notices under this Agreement shall be in writing and delivered in person or sent by registered or certified mail, postage prepaid, or by facsimile, or by private overnight courier to TAF and to the County at their respective addresses set forth below or such other addresses as may from time to time be designated by any such party in writing. Notices mailed as provided in this Section 5.1 shall be deemed given and received on the date that is three (3) business days following the date of post mark, in the case of mailing, or the date of transmission confirmation by the sender's facsimile machine, in the case of facsimile transmission, or one (1) day after deposit with a private overnight courier.

- 5.1.1. If to the County:

Parks and Recreation Division Director
King County Department of Natural Resources and Parks
201 South Jackson St, Suite 701
Seattle, WA 98104-3855

Email:
Phone: (206) 296-8687
Fax:

5.1.2 If to TAF:

Trish Millines Dziko, Executive Director
3803 S. Edmunds St. Suite A
Seattle, WA 98118
Main Phone: (206)725-9095
Fax: (206)725-9097
Email:Trishmi@techaccess.org

- 5.2 NONDISCRIMINATION. TAF will comply with King County Code Chapter 12.16 regarding nondiscrimination in employment, K.C.C. Chapter 12.17 regarding nondiscrimination in contracting, and K.C.C. Chapter 12.18 regarding fair employment practices.
- 5.2.1. EMPLOYMENT. TAF may hire one or more employees in connection with the design, construction, or operation and maintenance of Center, or all of them, or otherwise to perform its obligations under this Agreement. If TAF should elect to do so, TAF agrees not to discriminate against any employee or applicant for employment because of sex, age, race, color, creed, national origin, sexual orientation, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bonafide occupational qualification. This requirement shall apply without limitation to all aspects of employment (including lay-offs or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship) and advertisement.
- 5.2.2 SERVICES AND ACTIVITIES. No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, sexual orientation, age (except minimum age and retirement provisions), marital status, or the presence of any sensory, mental, or physical handicap. Any violation of this provision shall be considered a violation of a material provision of this Agreement and shall be grounds for termination or suspension in whole or in part of this Agreement by the County and may result in ineligibility for further County agreements.
- 5.2.3 OTHER NONDISCRIMINATION LAWS. TAF shall also comply with all applicable anti-discrimination laws or requirements of any and all jurisdictions having authority.
- 5.3 ASSIGNMENT. TAF will not assign any of its rights under this Agreement without the prior written consent of the County, which consent will not be unreasonably withheld. The County will have the right to sell or otherwise transfer or dispose of the Site or the Center, or to assign this Agreement or any interest of the County hereunder, provided that in the event of sale or transfer of the Site or the Center, the County will arrange for the purchaser or transferee to assume the Agreement and the County's obligations hereunder.

The County will not otherwise assign this Agreement or any interest of the County hereunder unless the assignee or purchaser agrees to assume the County's obligations hereunder.

- 5.4 **ADVERTISING RESTRICTIONS.** TAF understands that the advertising of tobacco products as defined in King County Ordinance No. 10615 and spirits as defined in King County Ordinance No. 14509 is strictly prohibited. TAF further understands that pursuant to Ordinance No. 14509, additional subject-matter restrictions on advertising may be imposed by the Director of the County Parks and Recreations Department ("Director"). If the Director imposes additional restrictions, a copy of the restrictions will be included in an attachment hereto. Therefore, TAF expressly covenants that neither it nor any of its sponsors or concessionaires will at any time display, promote or advertise any tobacco products, spirits or other subject matter expressly prohibited by the Director. TAF further agrees that any violation of this Section by it or its sponsors, concessionaires, or other users of the Center or the Site will be a breach of its contractual obligations to the County pursuant to this Agreement.
- 5.5 **SOLICITING.** Except as otherwise provided in this Agreement, canvassing, soliciting and distribution of handbills or any other written material, or peddling on the Site, in the Center or in adjacent areas are each prohibited without the prior written approval from the County.
- 5.6 **POWERS OF THE COUNTY.** Nothing contained in this Agreement will be considered to diminish the governmental or police powers of the County.
- 5.7 **FORCE MAJEURE.** The performance of this Agreement by either party is subject to acts of God, war, government regulation or advisory, disasters, fire, accidents or other casualty, strikes or threat of strikes, civil disorder, acts and/or threats of terrorism, or curtailment of transportation services or facilities, cost or availability of power, or similar causes beyond the control of either party making it illegal, impossible or impracticable to perform as set forth herein. Either party may terminate or suspend its obligations under this Agreement if such obligations are prevented by any of the above events to the extent such events are beyond the reasonable control of the party whose reasonable performance is prevented.
- 5.8 **AGREEMENT IS PUBLIC DOCUMENT.** This Agreement will be considered a public document and will be available for inspection and copying by the public.
- 5.9 **TAXES.**
- 5.9.1 **TAF TO PAY TAXES.** TAF agrees to pay all taxes or assessments levied on its activities and property, the Site, or the Center, if any, during the Term of the Agreement, including, without limitation, any leasehold excise tax due under RCW Chapter 82.29A; PROVIDED, however, that nothing contained herein will modify TAF's right to contest any such tax, and TAF will not be deemed to be in default as long as it will, in good faith, be contesting the validity or amount of any such taxes.

- 5.9.2 REAL PROPERTY TAX STATEMENTS. TAF will make arrangements to receive directly from the applicable government agency assessment notices and real property tax statements for the current year and TAF will provide a copy thereof promptly to the County.
- 5.9.3 TAX COVENANTS. At all times from and after the effective date of this Agreement, TAF (a) will maintain its purposes and engage only in activities which are in furtherance of its purposes and which are permitted by the Washington State Nonprofit Act, RCW 24.03, or as hereafter amended ("the Act"); (b) will maintain its status as a nonprofit corporation under the Act and as an organization described in Section 501(c)(3) of the U.S. Internal Revenue Code ("the Code") whose income does not inure to the benefit of any private person; (c) will not encumber, pledge, hypothecate or grant a security interest in all or any part of the Center, the Site, or both of them; (d) will not engage in any activities related to the Center or the Site which would cause the transaction contemplated under this Agreement to constitute an unrelated trade or business determined by applying section 513(a) of the Code; and (e) will not take any action or omit to take any action which, if taken or omitted, would adversely affect TAF's nonprofit status or otherwise cause a tax lien to attach to the Site, the Center, or both of them.
- 5.10 NO TAF LIENS. TAF acknowledges and agrees that it has no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of the County in the fee interest in the Site or in the Center, or to charge fees for any claim in favor of any person or entity dealing with TAF, including those who may furnish materials or perform labor for any construction, operation, repairs, or maintenance. If any such liens are filed, the County may, without waiving its rights and remedies for breach, and without releasing TAF from its obligations under this Agreement, require TAF to post security in form and amount reasonably satisfactory to the County or to cause such liens to be released by any means the County deems proper, including payment upon satisfaction of the claim giving rise to the lien. TAF will pay to the County upon demand any sum paid by the County to remove the liens.

Further, TAF agrees that it will save and hold the County harmless from any and all loss, costs, or expenses based on or arising out of the asserted claims or liens, against this Agreement or against the right, title and interest of the County in the Site and the Center or under the terms of this Agreement, including reasonable attorney's fees and costs incurred by the County to remove such liens, and in enforcing this paragraph. TAF covenants and agrees that, from and after the effective date of this Agreement, it will not during the Term of this Agreement suffer or permit any liens to attach to, upon or against the Center or the Site, or any portion thereof for any reason, including, without limitation, liens arising out of the possession, use, occupancy, acquisition, maintenance, operation, repair, or rebuilding of the Center or the Site or by reason of furnishing of labor, services, materials, or equipment to the Center, the Site, or to TAF. TAF acknowledges and agrees that its obligations under this Section 5.10 will survive the expiration or earlier termination of this Agreement.

- 5.11. NEUTRAL AUTHORSHIP. Each party has been represented by counsel in connection with the negotiation, execution and delivery of this Agreement and its Attachments. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of both parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same will apply in connection with the construction or interpretation of any of the provisions of this Agreement or its Attachments.
- 5.12. ACCOUNTING, RECORDS, AUDITS AND INSPECTIONS.
- 5.12.1 ACCOUNTS. TAF will keep such full and detailed accounts as may be reasonably necessary for proper financial management under this Agreement.
- 5.12.2 INSPECTION AND AUDIT. The County may, at its sole discretion, from time to time whether before or after construction of the Center or termination of this Agreement, inspect all books and records and other materials related to any matters covered by this Agreement and not otherwise privileged, that are in TAF's possession or control, or to elect to have an audit conducted to verify Center-related costs through the date of the inspection, or both. Such books, records and other materials shall be made available for inspection by the County during regular business hours within a reasonable time of the request. If the County elects to conduct such an audit, it will give notice to TAF, and such audit will be conducted as soon as is reasonably feasible thereafter, but County payments to TAF (if any) will not be delayed pending the outcome of the audit. Such audit will be conducted by an auditor selected by the County, and the County will, except as provided herein, pay the cost of such audit. TAF agrees to cooperate with the auditor and to make available for examination at its principal office all of its books, records, correspondence and other documents deemed necessary to conduct the audit by the auditor. If the audit reveals a variation equal to three percent (3%) or more of the Center cost up to the date of the audit, then TAF will pay the cost of the audit, not to exceed \$10,000.
- 5.12.3 PRESERVATION OF RECORDS. TAF will preserve all records for a period of six (6) years after the County's final capital grant payment under this Agreement; provided, however, that if at any time prior to the expiration of seven (7) years after such final payment, TAF proposes to dispose of any documents materially related to the design, development, or construction of the Center, then TAF will deliver the same to the County for disposition by the County.
- 5.13 ENTRY BY COUNTY. The County may enter the Site or the Center at all times after reasonable notice to TAF to inspect the Site or the Center; provide services required hereunder; or post notices of TAF's noncompliance with the terms and conditions of this Agreement, all without being deemed a constructive eviction. Any person or persons who may have an interest in the purposes of the County's visit may accompany the County. The County has the right to use any and all means that the County deems proper to open doors and gates in an emergency in order to obtain entry to the Site or to the Center.

- 5.14 **COMPLIANCE WITH ALL LAWS AND REGULATIONS.** In using the Center, TAF and its members shall comply with all applicable laws, ordinances and regulations from any and all authorities having jurisdiction and, specifically, the requirements of the Washington Industrial Safety and Health Act (WISHA). TAF specifically agrees to comply and pay all costs associated with achieving such compliance without notice from the County, and further agrees that the County does not waive this provision by giving notice of demand for compliance in any instance.
- 5.15 **INTERPRETATION OF COUNTY RULES. INTENTIONALLY DELETED.**
- 5.16 **PERMITS AND LICENSES; COPYRIGHT AND TRADEMARK.**
- 5.16.1 TAF will obtain and maintain, at its own costs and expense, all necessary permits, licenses and approvals required for the activities contemplated under this Agreement.
- 5.16.2 TAF agrees to obtain all necessary licenses and take all other necessary steps to insure that all use of copyrighted and trademarked materials on the Site or the Center will comply with United States and any other applicable copyright and trademark law.
- 5.17 **RISK OF LOSS.** All personal property of any kind or description whatsoever on the Site or the Center shall be at TAF's sole risk. The County will not be liable for any damage done to, or loss of, such personal property
- 5.18 **ENVIRONMENTAL LIABILITY.**
- 5.18.1 "Hazardous Materials" as used herein shall mean any hazardous, dangerous or toxic wastes, materials, or substances as defined in state or federal statutes or regulations as currently adopted or hereafter amended.
- 5.18.2 The County represents and warrants to TAF that, to the best of the County's knowledge, there are no Hazardous Materials on, in, or under the Site or the Park as of the Effective Date, except as otherwise disclosed to TAF in writing before the execution of this Agreement.
- 5.18.3 TAF shall not, without first obtaining the County's written approval, apply, store, deposit, transport, release or dispose of any Hazardous Materials on the Center. All approved application, storage, deposit, transportation, release and disposal of Hazardous Materials shall be done safely and in compliance with applicable laws.
- 5.18.4 Nothing in this Agreement shall be deemed to waive any statutory claim for contribution that TAF might have against the County under federal or state environmental statutes that arises from Hazardous Materials deposited or released on the Site by the County. TAF may not, however, assert such a claim to the extent that TAF creates the need for or exacerbates the cost of remediation upon which a statutory claim for contribution is based as a result of TAF performing construction activities on the Site, changing the configuration of the Site, or changing the use of the Site.

- 5.18.5 If TAF discovers the presence of Hazardous Materials at levels that could give rise to a statutory claim for contribution against the County it shall immediately notify the County in writing. Such notice shall in no event be provided more than ten (10) days after discovery. The parties shall make their best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement prior to undertaking any remediation.
- 5.18.6 In no event shall the County be responsible for any costs of remediation that exceed the minimum necessary to satisfy the state or federal agency with jurisdiction over the remediation.
- 5.19 NO EMPLOYMENT RELATIONSHIP. In providing services under this Agreement, TAF is an independent Contractor, and neither it nor its officers, agents, employees, or subcontractors are employees of the County for any purpose. TAF shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law. The County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by, or on behalf of TAF, its employees, subcontractors and/or others by reason of this Agreement.
- 5.20 INDEMNIFICATION AND HOLD HARMLESS.
- 5.20.1 TAF shall protect, indemnify, and save harmless the County, its officers, agents, and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) TAF's failure to pay any such compensation, wages, benefits, or taxes as set forth in Section 5.19 above; and/or (2) work, services, materials, or supplies to TAF employees or other TAF suppliers in connection with or support of the performance of this Agreement.
- 5.20.2 TAF further agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception which occurs due to the negligence, intentional act, and/or failure for any reason to comply with the terms of this Agreement by TAF, its officers, employees, agents, representatives, or subcontractors. This duty to repay the County shall not be diminished or extinguished by the prior termination of the Agreement.
- 5.20.3 TAF expressly agrees to protect, defend, indemnify and hold harmless the County, its elected and appointed officials, officers, employees, and agents from and against liability for any claims (including all demands, suits, and judgments) for damages arising out of injury to persons or damage to property where such injury or damage is caused by, arises out of, or is incident to TAF's use of the Center or the Site under this Agreement, except to the extent caused by the County's negligence or willful misconduct. TAF's obligations under this section shall include, but not be limited to:

- 5.20.3.1 The duty to promptly accept tender of defense and provide defense to the County at TAF's expense for claims that fall within this section;
- 5.20.3.2 Indemnification of claims, including those made by TAF's own employees and/or agents for this purpose, for claims that fall within this section;
- 5.20.3.3 In the event the County incurs any judgment, award and/or cost arising from claims that fall within this section, including attorney's fees to successfully enforce the section, all such fees, expenses, and costs shall be recoverable from TAF.
- 5.20.3.4 TAF shall protect, defend, indemnify, and hold harmless King County, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages arising out of, or in any way resulting from the performance or non-performance of the obligations under this Agreement by TAF's subcontractor(s), its officers, employees, and/or agents in connection with or in support of this Agreement.
- 5.20.3.5 TAF expressly and specifically agrees that its obligations under this paragraph extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents. For this purpose, TAF, hereby expressly and specifically waives, with respect to the County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify the County.
- 5.20.3.6 TAF agrees to indemnify and defend, at its own expense, the County, its officials, agents and employees from any and all liability arising from copyright or trademark infringement and/or consequential damages that others may suffer as a result of use of copyrighted or trademarked materials at or in connection with the Site, the Center, or both of them during the Term of this Agreement.
- 5.20.3.7 A hold harmless provision to protect the County similar to this Section 5.20 shall be included in all Contractor Agreements entered into by TAF in conjunction with this Agreement.
- 5.21 **WAIVER OF BREACH.** Waiver of any breach 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 the Agreement unless stated to be such through written approval by the County, which shall be attached to the original Agreement.
- 5.22 **ADDITIONAL TERMS.** The Parties reserve the right to modify this Agreement as necessary to equitably address unforeseen circumstances that may arise. The Parties agree to cooperate in good faith and in the spirit of this Agreement with respect to any such requested modifications. Any such amendments or addendums to this Agreement shall be in writing and executed with equal formality as this Agreement.
- 5.23 **DISPUTE RESOLUTION.** The Parties agree to use their best efforts to resolve disputes regarding this Agreement in an economic and time efficient manner to advance the

purposes of this Agreement. In the event that a dispute arises between TAF and the County, they shall attempt to resolve such dispute as expeditiously as possible and will cooperate so that the express purposes of this Agreement are not frustrated, and so that any design, planning, construction, or use of the Center on the Site is not delayed or interrupted. Provided, that nothing in this Agreement shall otherwise limit the Parties' legal, equitable, or other rights or remedies.

5.24 TERMINATION/NOTICE/CURE. In recognition that TAF shall invest substantial funds to develop, program, and provide supplementary maintenance for the Center at the Site and in appreciation that the County has fiduciary responsibilities to its residents and taxpayers that may change over time, the Parties agree that this Agreement may be terminated as follows:

5.24.1 TERMINATION FOR DEFAULT.

5.24.1.1 TERMINATION FOR COUNTY DEFAULT. The County will not be in default unless the County fails to perform an obligation within sixty (60) days after notice by TAF, which notice must specify the alleged breach; provided that if the nature of the County's breach is such that more than sixty (60) days are reasonably required for cure, then the County will not be in default if the County commences to cure within sixty (60) days of TAF's notice and thereafter diligently pursues completion and completes performance within a reasonable time. If the County defaults as defined herein, TAF may terminate this Agreement and surrender the Center and the Site to the County without further consequence or liability.

5.24.1.2 TERMINATION FOR TAF DEFAULT. The occurrence of any one or more of the following events constitutes a default by TAF under this Agreement:

(1) TAF will be in default of the performance of any covenants, conditions, or provisions of this Agreement, other than the covenants for the payment of rent or use fees required by this Agreement, where such failure continues for a period of sixty (60) days after written notice is given by the County; provided that if the nature of TAF's breach is such that more than sixty (60) days are reasonably required for cure, then TAF will not be in default if TAF commences to cure within sixty (60) days of the County's notice and thereafter diligently pursues completion and completes performance within a reasonable time; or

(2) TAF will be adjudged a bankrupt, make a general assignment for the benefit of creditors, or take the benefit of any insolvency act, or if a permanent receiver and trustee in bankruptcy is appointed for TAF's estate and such appointment is not vacated within sixty (60) days; or

(3) the Site or the Center become vacant or deserted for a period of sixty (60) days; or

(4) if this Agreement is assigned or the Site or the Center scheduled other than in accordance with the terms of this Agreement, and such default is not cured within thirty (30) days after written notice from the County to TAF; or

(5) TAF fails to make any payment when due, or fails to make any other payment required hereunder when due, when that failure is not cured within thirty (30) days after mailing of written notice thereof by the County; or

(6) TAF fails to raise all necessary funding to design, construct, and complete the Center and the Site improvements within two years from the Effective Date of this Agreement.

If TAF defaults as defined herein, the County may terminate this Agreement and repossess the Center and the Site without further consequence or liability.

- 5.24.2 **TERMINATION AND FAIR MARKET VALUE RENT FOR CHANGE IN TAF STATUS.** The County may terminate this Agreement and charge TAF fair market value rent for TAF's further use of the Center and the Site, without penalty or liability, if, at any time during the Term of this Agreement, TAF loses or changes its status: (1) as an active Washington not-for-profit corporation; or (2) as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code as now or hereafter codified. Provided, that the County will not terminate the Agreement under this section if TAF reasonably cures such loss or change of status.
- 5.24.3 **DEFAULT FOR OTHER CAUSE.** This Agreement may be immediately terminated for other cause by a party if the other party substantially fails to perform its obligations under this Agreement, through no fault of the terminating party, and the non-performing party does not commence correction of the failure of performance within sixty (60) days of the terminating party's sending notice to the non-performing party.
- 5.24.4 **OTHER TAF TERMINATION.** TAF may terminate this Agreement for any reason upon twelve (12) months notice in writing to the County. If TAF terminates this Agreement under this section, then TAF shall not be entitled to any compensation from the County for capital improvements made by TAF to the Center or the Site.
- 5.24.5 **OTHER COUNTY TERMINATION.** The County may terminate this Agreement without cause upon twelve (12) months notice in writing to TAF. In this event TAF shall be entitled to reasonable compensation from the County for capital improvements made by TAF to the Site with due regard for the funds invested by TAF, TAF debts remaining to be paid relating to the Center, the fair market value of the Center at the time of termination, and the length of time TAF has had use of the Center.
- 5.24.6 **DUTIES UPON TERMINATION.** Upon termination of this Agreement, and unless otherwise arranged, TAF will remove from the Site and the Center all its personal property, goods, and effects. If TAF fails to perform this duty at termination, the County may cause such removal to be made and TAF's personal property, goods and effects to be

stored, the cost and expense to be paid by TAF. It is understood and agreed that the real property constituting the Site is the real property of the County and that all improvements to that real property, including the Center, will belong to the County upon termination of this Agreement.

5.24.7 REMEDIES ARE CUMULATIVE. Remedies under this Agreement are cumulative; the failure to exercise any right on any occasion will not operate to forfeit such remedy.

5.25. DESTRUCTION OF CENTER AND USE OF INSURANCE PROCEEDS.

5.25.1 Unless otherwise mutually agreed by the Parties, if the Site or the Center are destroyed or injured by fire, earthquake, or other casualty, then TAF will proceed to rebuild and restore the Site and the Center, or such part thereof as may be injured or destroyed to the extent such loss is covered by the insurance policies described and required under this Agreement. Notwithstanding the foregoing, if such damage or destruction occurs within the last three (3) years of the Term of the Agreement, TAF may elect to not restore or rebuild the Center, and instead give the County seventy-five percent (75%) of the Site or Center building insurance proceeds and terminate this Agreement without any further obligations except as may be provided herein.

5.25.2 Notwithstanding the foregoing, if the Site or the Center are destroyed by fire, earthquake or other casualty, then TAF may elect to restore the Site and the Center as set forth above, and terminate the Agreement without further obligation except as may be provided herein.

5.26 EMINENT DOMAIN. The following rules will govern the rights and duties of the Parties in the event of interference with TAF's design, construction, or use of the Site or the Center as a result of the exercise of eminent domain or private purchase in lieu thereof.

5.26.1 RIGHT OF TERMINATION. If the whole of the Site or the Center is taken for any public or quasi-public use under any statute or by right of eminent domain, or by private purchase in lieu thereof, then this Agreement will automatically terminate as of the date that title is taken. If more than twenty-five percent (25%) of the Site or the Center is so taken and if the taking renders the remainder thereof unusable for the purposes contemplated under this Agreement, then TAF and the County will each have the right to terminate this Agreement on thirty (30) days notice to the other, given within ninety (90) days after the date of such taking. Provided, however, that if the County is exercising its right of eminent domain, a fair value will be placed on this Agreement and the Center with the compensation thereof awarded solely to TAF.

5.26.2 NON-TERMINATION. If any part of the Site or the Center is so taken and this Agreement is not terminated, then the County will, at its own cost and expense, restore the remaining portion of the Site and the Center to the extent necessary to render it reasonably suitable for the purposes contemplated under this Agreement.

- 5.26.3 COMPENSATION. The compensation awarded or paid upon a total or partial taking of the Site or the Center, or this Agreement, or any of them, will belong to and be apportioned between TAF and the County in accordance with their respective interests under this Agreement as determined between them or by a court. Additionally, TAF may prosecute any claim directly against the condemning authority for the costs of removal of the goodwill, stock, trade fixtures, furniture and other personal property belonging to TAF. The County will have no claim to condemnation proceeds attributable to TAF's interest in the Center, nor will TAF have any interest in the County's condemnation proceeds, if any.
- 5.27 HEADINGS NOT PART OF AGREEMENT. The headings in this Agreement are for convenience only and shall not be deemed to expand, limit, or otherwise affect the substantive terms of this Agreement.
- 5.28 GOVERNING LAW. This Agreement shall be governed by the laws of the State of Washington.
- 5.29 JURISDICTION AND VENUE. The exclusive jurisdiction and venue for any disputes arising under this Agreement, including matters of construction, validity and performance, shall be in the Superior Court for King County in Seattle, Washington.
- 5.30 RIGHT TO PARTICIPATE IN LITIGATION. TAF will have the right to participate in any litigation, arbitration or dispute directly affecting the Site, the Center or interest of TAF therein, including, without limitation, any suit, action, arbitration proceeding, condemnation proceeding or insurance claim. The County, upon instituting or receiving notice of any such litigation, arbitration or dispute will promptly notify TAF of the same.
- 5.31 ATTACHMENTS.
- A. Description and Map of Site and Facility
 - B. Narrative Description of Facility Proposal and Center Programming
 - C. Capital Improvement Grant Award Contract
 - D. Standard County Contract Section 0700 Terms and Conditions
 - E. CPG Insurance Requirements
 - F. Minimum Contractor and Subcontractor Insurance Requirements and Documentation
 - G. Memorandum of Use Agreement
- 5.32. EMPLOYEES OF TAF. TAF is acting under this Agreement as an independent contractor and nothing contained herein, or any acts of TAF or the County, nor any other circumstances, will be construed to establish TAF as an agent of the County. TAF will be responsible for each of TAF's employees hereunder and for determining the manner and time of performance of all acts to be performed by TAF hereunder. TAF will maintain all required industrial and worker's compensation insurance for all employees of TAF and will cause all contractors, architect and other design professionals and other persons, firms and corporations employed to perform services in connection with the Center or the Site to provide worker's compensation and similar insurance for their respective employees.

- 5.33. ENTIRE AGREEMENT. This Agreement and any and all exhibits expressly incorporated herein by reference and attached hereto shall constitute the whole agreement between the County and TAF. There are no terms, obligations, allowances, covenants, or conditions other than those contained herein.
- 5.34 SEVERABILITY. Should any provision of this Agreement be found to be invalid, illegal or unenforceable by any court of competent jurisdiction, such provision shall be stricken and the remainder of this Agreement shall nonetheless remain in full force and effect unless striking such provision shall materially alter the intention of the Parties.
- 5.35 RECORDING. This Agreement will not be recorded without the written consent of both parties; but at any time on or after the effective date of this Agreement, the County may record a Memorandum of this Agreement consistent with **Attachment G** to this Agreement and by this reference incorporated herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the first date written.

Technology Access Foundation

King County

By _____

By _____

TITLE _____

TITLE _____

Date _____

Date _____

K:\53595\00001\MMHMMH_A21JV

COUNTY ACKNOWLEDGEMENT AND NOTARY BLOCK

On this _____ day of _____, 200__, I certify that _____ signed this instrument, on oath stated that s/he was authorized by the King County Executive to execute the instrument, and acknowledged it as the _____ of King County, Washington to be the free and voluntary act of said County for the uses and purposes mentioned in the instrument.

Dated _____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2006.

Printed Name: _____
NOTARY PUBLIC in and for the State
of Washington, residing at _____
My commission expires _____

TAF ACKNOWLEDGEMENT AND NOTARY BLOCK

On this _____ day of _____, 200__, I certify that _____ signed this instrument, on oath stated that s/he was authorized by the Technology Access Foundation (TAF) to execute the instrument, and acknowledged it as the _____ of TAF to be the free and voluntary act of TAF for the uses and purposes mentioned in the instrument.

Dated _____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2006.

Printed Name: _____
NOTARY PUBLIC in and for the State
of Washington, residing at _____
My commission expires _____

Attachment A

Description and Map of Property; Facility Proposal; Center Programming

SITE DESCRIPTION

A portion of King County's Lakewood Park in the North Highline area in unincorporated King County, Washington, consisting of a portion of that certain parcel of land identified by King County tax parcel No. 0623049237, and described more fully below.

1. Initial Site Delineation.

For purposes of constructing the Center, the Site consists of a portion of King County's Lakewood Park in the North Highline area in unincorporated King County, Washington. TAF and the County agree that except as noted below, the Site is contained within and limited to the roughly rectangular area delineated by the following four GPS (global position system) points, located according to the Washington North Zone state plane coordinate system and depicted in the **photo overlay diagram attached hereto**:

Reference Point 1 (NW corner):	E-W 1,267, 461;	N-S 188,398
Reference Point 2 (NE corner):	E-W 1,267, 576;	N-S 188, 398
Reference Point 3 (SE corner):	E-W 1,267, 586;	N-S 187,460
Reference Point 4 (SW corner):	E-W 1,267,431;	N-S 187,434

TAF and the County acknowledge and agree that in designing and constructing the Center, TAF may need to place certain facilities or appurtenance structures (e.g., lighting, stormwater facilities, fencing, etc.) in the Park and outside of the Site. Such use of additional Park land will require the County's prior written approval, which approval will not be unreasonably withheld.

2. Subsequent Site Survey and Legal Description.

TAF and the County agree that after the Center is constructed, together with its appurtenant structures and facilities, TAF will, at its sole expense, conduct or cause to be conducted a professional survey of the Site, the Center, and the Center's appurtenant structures and facilities. TAF will provide the County with a concise and accurate legal description of the Site based on such survey. TAF and the County agree that under no circumstances will the final square footage of the Site substantially exceed the total square footage of the initial Site delineation. TAF and the County anticipate that the final Site may be significantly smaller than the initial Site delineation.



E-W - 1,267,461
N-S - 188,398

E-W - 1,267,576
N-S - 188,398

Lakewood Park
T.A.F. footprint

E-W - 1,267,431
N-S - 187,434

E-W - 1,267,586
N-S - 187,460

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Attachment B

Narrative Description of Facility Proposal and Center Programming

FACILITY CONCEPT

The Center is envisioned to be a 20,000sf community center in Lakewood Park. Subject to budget considerations, TAF intends the Center to be a flagship for green building and conservation education. The facility is envisioned to be a LEED certified building constructed in part with recycled materials obtained from the community.

The LEED™ Green Building Rating System™ is a voluntary, consensus-based national standard for developing high-performance, sustainable buildings.

LEED™ was created to:

- Define green building by establishing a common standard of measurement
- Promote integrated, whole-building design practices
- Recognize environmental leadership in the building industry
- Stimulate green competition
- Raise consumer awareness of green building benefits to transform the building market

The 20,000 square foot building is proposed to include one ground floor, one upper floor and one half basement. Approximate space allocation includes:

Front lobby and hallway (total area to be determined). This area will not only be functional space but also display permanent art installations and be a gallery for community art exhibits. Exhibits and showings will be coordinated through the building operations manager hired by TAF.

Three to four 600 sq. ft “labs” (total 1800-2400 sq ft.) These rooms will be side by side and have moveable walls and moveable furniture so that they may be easily re-arranged and re-sized for different purposes depending on need. TAF’s use of these rooms will be as computer labs. Other uses will include scheduled community meetings, events, workshops, chess club, fairs, screenings, adult education classes, ESL classes, UAC meetings, neighborhood clubs, etc.

One 2,000 sq. ft. basement level kitchen and multi-purpose commons. This room will open to the south slope, which descends to Lakewood Park proper. The proposed kitchen will be commercial grade and adequate for catering community events. The multi-purpose room/commons will serve as a down-time and eating area for TAF or organized program participants. The commons and kitchen will also be available to be scheduled for community projects, workshops, cultural fairs, screenings, pageants and a multitude of other events.

One 600 sq. ft room available for the installation of the White Center community’s live-stream youth radio station. This room will be managed and scheduled by Media Institute staff.

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One 600 sq. ft. "homework center". This area will be broken into smaller private rooms available for one on one tutoring or small group meetings.

Upper level board room. This room will be for mid sized—approximately 1,000 square feet or otherwise sized as needed to accommodate 40 people in a board meeting format—and used for regular meetings of TAF staff and board. The room will also be available to be scheduled for County, non-profit or UAC board meetings needing this type of private space.

One 1,000 sq. ft library. Public use of the library area will be limited in order to preserve the materials kept there. TAF or other Center Staff must be present when this room is in use.

1800-2400 sq ft TAF & Community Center administrative offices. This area will be on the upper floor. Offices will mostly be open cubicles and not open for public use.

CENTER PROGRAMMING

The Center will serve as an after school community center and daytime center for families. **As currently envisioned, the Center would provide roughly 7000-7600 square feet of space for scheduled public use.** That figure does not include the lobby, hallways, or restrooms. As such, **nearly half of the building will consist of usable space available to the community** during the hours TAF is not conducting programs. The County, other non-profit or community groups or services organizations, or private individuals or groups may reserve space for use on a first-come, first-served scheduling basis. As with other County facilities, drop-in hours will be limited to those scheduled by TAF, the County, or other users of the Center, and the Center may be locked when not scheduled for use.

Only 1800-2400 square feet of the Center (TAF's administrative offices) will be entirely off-limits to the general public. **TAF will use the rest of the Center for its technology training programs from 3:00 pm to 7:00 pm Monday-Friday, and periodically on weekends.** TAF plans to expand its programming to include family & community programs such as technology classes, a parents' guild, summer camp, skill building workshops by corporate & community partners, volunteer program, college prep program and recreational activities. Activities offered will be geared to be both fun and enhance critical thinking, problem solving, technology fluency, and communication skills.

CENTER SCHEDULING

TAF will have first priority to use the Center. All non-TAF use of the Center will be scheduled by and through TAF, at TAF's sole cost and responsibility. The County will have second priority to schedule use, and will have up to 208 hours of free meeting time at the Center in each calendar year during the term of this Agreement, PROVIDED THAT such use will not result in any additional maintenance or operations cost to TAF. All other groups will have third priority, including non-profit groups, community groups, and service organizations. Such third-priority groups shall have the opportunity to use the Center not less than thirty (30) hours per calendar

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month or three hundred sixty (360) hours per calendar year. By January 15 of each year, TAF will provide the County with a master schedule (hereinafter "TAF Master Schedule;" see **Attachment K**) of its anticipated use for that calendar year (e.g., hours and days of use). The Parties recognize that the TAF Master Schedule may require periodic supplementation to accommodate TAF's changing needs and schedules. At the beginning of each month (or earlier, if the need for schedule changes is known), TAF will timely provide King County's Contract Administrator with a revised monthly schedule if TAF's anticipated use of the Site or the Center will deviate from the TAF Master Schedule. Any requested modifications to the TAF Master Schedule will be approved by King County's Contract Administrator unless (i) the request is unreasonable or (ii) the time requested by TAF is already scheduled by King County for non-TAF use and cannot be reasonably re-scheduled. The Parties agree to coordinate in good faith with respect to all scheduling of the Center.

TAF will make scheduling and rental information available to the community through a variety of methods including, but not limited to, the TAF website, printed information, and the neighborhood centers. The community will be able to reserve space via email, the TAF website, and telephone.

HOURS OF OPERATION

The Center will be open for business not longer than from 6 am to 10 pm, seven days a week, major holidays excepted. The Center will be available for non-TAF use from 6 am to 3 pm on weekdays, from 7 pm to 10 pm or close (whichever is earlier) on weekdays, and generally from 6 am to 10 pm on weekends, consistent with the TAF Master Schedule as set forth above.

CENTER USE FEES AND COSTS

All costs associated with the programming and use of the Center by TAF, including but not limited to the cost to hire and compensate staff, and to operate and maintain the Center and the Site, will be the responsibility of TAF. TAF may charge a fee to use the Center or the Site, but the fee will be limited to recoup TAF's cost to operate the Center and the Site during the use (e.g. utilities, janitorial service, security, and so forth). TAF and the County agree that TAF may not profit from community use. Therefore, TAF's use fee will not include any markup or other revenue-generating component. To the extent that TAF expands its own programming, TAF will endeavor to cover the cost to operate the Center during such programming through fundraising, grants, and other subsidies, rather than through user fees or charges.

Attachment C

Capital Improvement Grant Contract

The County has determined to award TAF \$2 million for the construction of a community center on County property in Lakewood Park. The King County Council appropriated the funds for this grant from Real Estate Excise Tax (REET) proceeds in ordinance No. 15311. TAF may spend the funds for costs as it deems appropriate, such costs to include but not be limited to design fees and costs, furniture costs and landscaping fees and costs. The funds may be used only for costs incurred to plan, design and construct the Center and the Site as described in the Use Agreement to which this grant contract is attached. The County will distribute the grant funds to TAF upon the following milestones and conditions.

Stage	Invoice needs % of total grant	TAF est. cost milestones	KC Grant Payment	Strings
Pre-Design	2.5%	(\$50,000)	100,000	<ul style="list-style-type: none"> √ Fundraising Plan √ Use agreement √ Insurance (At minimum, equivalent to CPG requirements) See Note 1
Schematic Design	5%	(\$100,000)		<ul style="list-style-type: none"> √ FMD Review √ Parks Review
Design Development	7.5%	(\$150,000)		<ul style="list-style-type: none"> √ FMD Review √ Parks Review
90% construction documents	10%	(\$200,000)	400,000	<ul style="list-style-type: none"> √ TAF must have \$2M raised and on hand. √ FMD Review √ Parks Review
Ground broken on Center	25%	>(\$500,000)	500,000	<ul style="list-style-type: none"> √ Remaining fundraising needs pledged. √ FMD Review √ Parks Review √ All Use Agreement insurance requirements met; copies provided to County
Center substantially completed	25%	>(\$500,000)	500,000	<ul style="list-style-type: none"> √ FMD Review √ Parks Review See Note 2
Project complete and ready for occupancy; final written acceptance issued	25%	>(\$500,000)	500,000	See Note 3
GRANT TOTAL	100%		\$2,000,000	

DISTRIBUTION OF COUNTY CAPITAL GRANT FUNDS

- NOTE [1] See Attachment L for CPG insurance requirements.
 NOTE [2] "Substantially completed" as defined in King County 0700 contract terms; See Attachment D.
 NOTE [3] "Final written acceptance" as defined in King County 0700 contract terms; See Attachment D.

Attachment D

STANDARD COUNTY CONTRACT SECTION 0700 TERMS

**SECTION 00700
GENERAL TERMS AND CONDITIONS
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ARTICLE 1: GENERAL PROVISIONS

1.0 DEFINITIONS

- A. **"Addendum"** or **"Addenda"** means alteration or clarification of the plans or specifications provided to bidders by the County prior to bid time, which becomes part of the Contract Documents when the Contract is executed.
- B. **"Claim"** means a written demand by the Contractor seeking (1) a change to Contract Price; (2) a change of Contract Time; (3) a payment of money or damages; and/or, (4) any other relief arising out of or relating to this Contract.
- C. **"Change Order"** means a written instrument designated to be a Change Order which alters the Contract, and identifies the following: (1) a change in the Work; (2) a change in Contract Price; and/or (3) a change in Contract Time.
- D. **"Change Proposal"** means a document prepared by the Contractor at the request of the County, which proposes changes to the Work and/or changes to the Contract Price and/or Contract Time. County initiates all requests for Change Proposals.
- E. The **"Contract"** or **"Contract Documents"** constitute the entire integrated agreement between King County and the Contractor for the performance of the Work. The Contract Documents are the following:
1. The signed Agreement between King County and Contractor (the "Agreement Form");
 2. Division 0, and all documents required therein;
 3. Technical Specifications (Divisions 1 through 17);
 4. Drawings;
 5. Addenda; and
 6. Any Change Orders.
- F. **"Contract Execution"** occurs when the County Executive or its designee signs the Contract, which shall only occur after the Contractor signs the Contract.
- G. **"Contract Price"** means the total amount payable by the County to the Contractor for performance of the Work in accordance with the Contract.
- H. **"Contractor's Representative"** is the individual who has authority to obligate the Contractor and is identified in the Agreement (§ 00500).
- I. **"Contract Time"** means the number of days or the specific date set forth in the Contract to achieve Substantial Completion of the Work.
- J. **"Contract Work"** or **"Work"** refers to the labor, materials, equipment, supplies, services, other items, and requirements of the Contract necessary for the execution, completion and performance of all work within the Contract by the Contractor to the satisfaction of King County.
- K. **"Contractor"** means the individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with King County to do the Contract Work.
- L. **"Critical Path"** is the longest, continuous sequence of interrelated activities that begins at the start of the Project (Notice to Proceed) and extends to Substantial

Completion of the Project. These activities are critical because delay to an activity on this path will extend Contract Time.

- M. **"Day"** means calendar day, unless otherwise specified.
- N. **"Differing Site Conditions"** are defined as: (1) Subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract Documents (Type I), or (2) Unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in the construction activities of the character provided for in the Contract (Type II).
- O. **"Field Directive"** is a document, titled Field Directive, prepared by the County directing the Contractor to proceed promptly with specific work and shall not, in and of itself, constitute a Change Order or entitlement to an adjustment in Contract Time and/or Contract Price.
- P. **"Final Acceptance"** and/or **"Completion"** is written acceptance of the Project by the County.
- Q. **"Force Majeure"** means an event that is unforeseeable at the time of Contract Execution and that is beyond the reasonable control of the Contractor and County and is limited to:
1. Natural Disaster declared by Governor of Washington or President of the United States, including but not limited to earthquakes;
 2. Acts or omissions of any government entity acting within its governmental capacity;
 3. Fire and/or flood for which the Contractor or its Subcontractors is not responsible;
 4. Quarantine or epidemic;
 5. Strike or defensive lockout; and,
 6. Unusually Severe Weather Conditions.
- R. **"Hand and Other Small Tools"** means any tool, piece of communication equipment, or piece of equipment with a wholesale value of less than \$500.
- S. **"Hazardous Material"** means any pollutant, contaminant, toxic or hazardous waste, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable material, explosive material, radioactive material, urea formaldehyde foam insulation, asbestos, PCBs, or any other substances the removal of which is required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling, or shipment of which is restricted, prohibited, regulated, or penalized by any and all federal, state, county, or municipal statutes or laws and regulations promulgated thereunder, now or at any time hereafter in effect, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U. S. C. §§ 9601, *et seq.*), the Hazardous Materials Transportation Act (49 U. S. C. §§ 1801, *et seq.*), the Resource Conservation and Recovery Act (42 U. S. C. §§ 6901, *et seq.*), the Federal Water Pollution Control Act (33 U. S. C. §§ 1251, *et seq.*), the Clean Air Act (42 U. S. C. §§ 7401, *et seq.*), the Toxic Substances Control Act, as amended (15 U. S. C. §§ 2601, *et seq.*), the Occupational Safety and Health Act (29 U. S. C. §§ 651, *et seq.*, and the Model Toxics Control Act (RCW 70.105), or similar state or local statute or code), as the laws have been amended and supplemented.

- T. **"King County"** or **"County"** or **"Owner"** may be used interchangeably and refers to the County of King, a municipal corporation and a home rule charter county of the state of Washington.
- U. **"Notice"** means a written document issued by the Project Representative or Contractor's Representative which is submitted to the other party and delivered by:
1. Depositing in the U. S. Mail (or other method of commercial express mail), which notice shall be effective on the date of receipt;
 2. Service on the Parties' representative or at the Contractor's home office or field office, which notice shall be effective on the date of service; or,
 3. Facsimile to the Parties' representative or Contractor's home office or field office, which notice shall be effective upon receipt.
- V. **"Notice To Proceed"** is a written directive issued by the County authorizing the Contractor to perform some or all of the Work.
- W. **"Overhead"** shall mean charges that may be incurred or allocated in support of the Contract but are not part of the cost of directly performing the physical Contract construction activity. Overhead includes Site or Field Overhead and Home Office Overhead.
1. **Site or Field Office Overhead**
 Site or Field Overhead costs are typically those costs that are related to, but are not limited to supervision, including general foremen and their supervisors, planners, schedulers, engineers, managers, etc. and the direct payroll costs of their project-related service, clerical salaries and their direct payroll costs, the costs of all vehicles, travel, meal and lodging costs associated with those personnel, Site or Field office and utility expense, expenses associated with all regulatory compliance, Hand and Other Small Tools provided by the Contractor for the use of its forces, all expendable supplies, and all other items incidental to or integral in supporting the physical completion of the Work.
 2. **Home Office Overhead**
 Home office Overhead costs are typically those that include all general office expenses. Such costs include, but are not limited to those associated with officer and office salaries and related payroll taxes and benefits, costs of office occupancy and maintenance, all supporting services (such as utilities, office machines computers, and related items and support) related to the home office function, business taxes and licenses, and all such other costs necessary to operate the business entity. Home office overhead includes unabsorbed home office overhead.
 3. In addition to the above, whether treated as Site or Field Overhead or as Home Office Overhead, costs of any and all bonds, insurance(s), and taxes associated with this Contract are to be considered as Overhead. All items as those identified above are to be treated as Overhead for this purpose regardless of how the Contractor chooses to account for them in its books of account.
 4. Under no circumstances shall the County pay the Contractor for direct or allocated costs or charges for officer bonus and profit sharing, project personnel bonuses, charitable contributions, income taxes, or any costs relating to illegal activity.

- X. **"Parties"** refers to the Contractor and King County.
- Y. **"Project"** refers to all activity relative to this Contract including activity of the Contractor, its Subcontractors, and the County.
- Z. **"Request for Change Order"** means a document, designated as a Request For A Change Order, prepared by the Contractor requesting either (1) a change in Contract Price; (2) a change in Contract Time; (3) a change in Contract Work; (4) a payment of money or damages; and/or, (5) any other relief arising out of or relating to this Contract.
- AA. **"Request for Information"** is a request from the Contractor to the County seeking an interpretation or a clarification of some requirement of the Contract Documents.
- BB. **"Site"** or **"Project Site"** shall be understood to refer to the location at which construction, equipment or services furnished by the Contractor under the Contract will be performed, completed and/or delivered.
- CC. **"Subcontractor"** shall mean an individual, firm, partnership, or corporation having a contract, purchase order, or agreement with the Contractor, or with any Subcontractor of any tier for the performance of any part of the Contract. When the County refers to Subcontractor(s) in this document, for purposes of this document and unless otherwise stated herein, the term Subcontractor(s) includes, at every level and/or tier, all subcontractors and subconsultants.
- DD. **"Supplier(s)"** The term Supplier(s) shall mean any person or firm who is not performing work or supplying labor on Site and is engaged in the business of supplying a manufactured product or resource to the County, Contractor, or Subcontractors. The term Suppliers includes materialmen, manufacturers, and fabricators.
- EE. **"Substantial Completion"** means that stage in the progress of the Work where:
1. The County has full and unrestricted use and benefit of the Project for the purpose intended;
 2. All the systems and parts of the Contract Work are functional;
 3. Utilities are connected and operate normally;
 4. Only minor incidental work or correction or repair remains to complete all Contract requirements; and,
 5. At the County's option, the Contractor has provided all occupancy permits and easement releases.
- FF. **"Unusually Severe Weather Conditions"** shall be defined and calculated as follows:
1. Daily rainfall equal to, or greater than, 0.50 inch during a month when the monthly rainfall exceeds the normal monthly average by 15 to 100 percent.
 2. Daily rainfall equal to, or greater than, 0.20 inches during a month when the monthly rainfall exceeds the normal monthly average by more than 100 percent.
 3. Daily rainfall equal to, or greater than, 1.0 inch at any time.
 4. Daily maximum temperature equal to, or less than, 20 degrees F during a week when the maximum daily temperature never exceeds 35 degrees F.

5. Daily maximum temperature equal to, or less than, 25 degrees F during a week when the maximum daily temperature never exceeds 30 degrees F.
6. Daily maximum temperature equal to, or less than, 15 degrees F at any time.
7. Daily maximum wind velocity equal to or greater than 50 mph at any time.

Ice, snow and other weather conditions, not described above, may be considered as unusually severe at the sole discretion of the County upon written request by the Contractor. Such written request shall describe in detail the weather conditions, identify the specific impacts resulting from the weather condition, and be submitted to the County within five (5) days of the onset of the unusually severe weather condition.

To preclude the difficulties of actual measurement, the parties hereto agree that weather data at the Site of the Work shall be expressly deemed to be the same as that measured at the Seattle-Tacoma International Airport by the Environmental Data and Information Service of the National Oceanic and Atmospheric Administration ("NOAA") of the U. S. Department of Commerce, unless otherwise specified in the Contract Document's technical specifications.

Precipitation (such as rain, hail or snow), low temperature, windstorms, ice, and other conditions which could reasonably have been anticipated from the National Weather Service historical records for the general locality of the Work shall not be construed as unusually severe weather.

For the purposes of this provision, a "month" shall mean a calendar month and a "week" shall mean a calendar week of Sunday through Saturday.

1.1 INTENT AND INTERPRETATION OF THE DOCUMENTS

- A. The Contract Documents constitute the entire and integrated agreement between the parties hereto and supersede all prior negotiations, representations, or agreements, either written or oral.
- B. The Contract Documents shall not be construed to create a contractual relationship between any parties other than the County and the Contractor. No contract between the County and a third party shall be construed to create any duty on the part of the County or such third party to the Contractor. The Contractor is not an intended or incidental beneficiary of any promises made in the County's contract with a third party, if any.
- C. The Contract Documents are intended to be complementary. What is required by one part of the Contract shall be as binding as if required by all. Should any conflict or inconsistency be found in the Contract Documents, the County shall resolve any such conflict or inconsistency in accordance with provision 1.2, *Order of Precedence*.
- D. Where the words "similar," "typical" (or their equivalents) are used in the Contract, they shall mean nearly corresponding or having a likeness. Such words shall not be construed to mean that all parts of the Work referred to are identical or substantially identical, or that such elements of the Work are connected identically or substantially identically to the rest of the Work. The Contractor has the responsibility to determine all details of the Work in relation to their location and connection to other parts of the Work. Words importing the singular number may also be applied to the plural of persons and things; words importing the plural may be applied to the singular; and words importing the male gender may be extended to females also.

- E. The organization of the specifications into divisions, provisions and articles and the organization of the drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.2 ORDER OF PRECEDENCE

- A. Any conflict or inconsistency between the terms or conditions of the Contract Document shall be resolved by the following descending order of precedence (with 1 taking precedence over 2, 3, 4, 5, 6 and 7; 2 taking precedence over 3, 4, 5, 6 and 7; and so forth):
 - 1. The signed Agreement (§00500);
 - 2. The Supplemental Terms and Conditions (§00800);
 - 3. The General Terms and Conditions (§00700);
 - 4. The Technical Specifications ("Specifications") as modified by Addenda or Change Orders, Divisions 1-17: provisions in Division 1 shall take precedence over provisions of any other Division;
 - 5. Detail drawings, as modified by Change Orders;
 - 6. Drawings, as modified by Change Orders;
 - 7. All other sections in Division 0 not specifically identified herein by Section; and
 - 8. Affidavits, Certifications and bonds (§00410; §00420).

1.3 CLARIFICATION OF DRAWINGS AND DETAIL DRAWINGS

- A. Where on any drawing a portion of the Work is drawn out and the remainder is indicated in outline, the drawn out parts shall apply also to other similar portions of the Work. Where ornament or other detail is indicated by starting only, such detail shall be continued throughout the courses or parts in which it occurs and shall apply to all other similar parts of the Work, unless otherwise indicated.
- B. With regard to drawings the following shall apply:
 - 1. Written dimensions shall be followed; drawings may not be to scale.
 - 2. Figure dimensions on drawings shall govern over scale dimensions; and detail drawings shall govern over general drawings.

ARTICLE 2: COUNTY

2.0 AUTHORITY

- A. Unless the County, in writing, indicates otherwise, the authority to (1) commit to or bind the County to any Change Orders or change in Contract Work, Contract Price and/or Contract Time; or (2) sign the Contract or Change Orders rests solely in the King County Executive or its designee.
- B. The County shall identify the Project Representative in the Contract prior to Contract Execution.
 - 1. The Project Representative shall provide the Contractor with a written Notice of delegation of authority, which identifies the person who has authority to sign Change Orders and/or bind the County to changes in Contract Work, Contract Price, and Contract Time.

2. In the event the Project Representative is no longer assigned to the Contract, the County shall notify the Contractor in writing of the change providing the name of the new Project Representative and effective date of the change.
- C. The Project Representative shall have the authority to administer the Contract. Administration of the Contract by the Project Representative includes but is not limited to:
1. Receiving all correspondence and information from the Contractor;
 2. Issuing Field Directives;
 3. Issuing request for Change Proposals;
 4. Responding to Requests For Information;
 5. Reviewing the schedule of values, project schedules, submittals, testing and inspection reports, substitution requests, and other documentation submitted by the Contractor;
 6. Negotiating Change Proposals and Change Orders;
 7. Recommending Change Orders for approval by the King County Executive or its designee;
 8. Issuing decisions with respect to Requests for Change Orders and Claims;
 9. Processing payment requests submitted by the Contractor, and recommending payment;
 10. Monitoring the quality of the work, rejecting noncompliant work, and recommending acceptance of the work;
 11. Transmitting executed Change Orders, amendments, and other Contract correspondence to the Contractor, and
 12. Performing all other contract administrative functions.
- D. All correspondence, questions, and/or documentation shall be submitted to the Project Representative.
- E. The Project Representative may designate Technical Representatives to perform functions under the Contract, such as review and/or inspection and acceptance of supplies, services, including construction, and other functions of a technical or administrative nature.
1. The Project Representative will provide a written Notice of its designation to the Contractor. The designation letter will set forth the authority of the Technical Representatives under the Contract.
 2. The Project Representative may add to or modify in writing these designations from time to time.
 3. The Project Representative cannot grant a Technical Representative greater authority than the authority of the Project Representative.

2.1 INFORMATION SUPPLIED BY COUNTY

- A. Unless otherwise specifically provided in the Contract, surveys and site information provided by the County are intended to describe the general physical characteristics

of the Site. The County does not represent that this information is complete or sufficient for the Contractor's performance of the Work.

- B. The County shall furnish to the Contractor five copies of the Contract Documents (including half-size copies of the Contract drawings), one full-size set of Contract drawings, and one copy of any permits obtained by the County. The Contractor shall pay the County for any additional copies of Contract Documents.
- C. All drawings, models, and specifications furnished by the County are solely for use on this Contract and are not to be used by the Contractor on any other work or project.

2.2 WORK BY COUNTY OR SEPARATE CONTRACTORS

The County reserves the right to perform work not included in the Contract or to let other contracts in connection with this Project.

ARTICLE 3: CONTRACTOR

3.0 CONTRACTOR REPRESENTATIONS

The Contractor makes the following representations to the County:

- A. Before submission of its bid, the Contractor has:
 - 1. Carefully reviewed the Contract Documents, and visited and examined the Site;
 - 2. Become familiar with the general and local conditions in which the Work is to be performed, and satisfied itself as to the nature, location, character, quality and quantity of Contract Work, the labor, materials, equipment, goods, supplies, work, services and other items to be furnished and all other requirements of the Contract Documents, as well as the surface and reasonably ascertainable subsurface conditions and other matters that may be encountered at the Site or affect performance of the Contract Work or the cost or difficulty thereof;
 - 3. Become familiar with and satisfied itself as to the conditions bearing upon transportation, disposal, handling, and storage of materials; and
 - 4. Become familiar with and satisfied itself as to the availability of labor, water, electric power, and roads; and the uncertainties of traffic, weather, river stages, tides, or similar physical conditions at the site. Any failure of the Contractor to take the action described in this provision or elsewhere in the Contract Documents will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to the County;
- B. The Contract Price is reasonable compensation for the Work and the Contract Time is adequate for the performance of the Work as represented by the Contract, site visit, and the general conditions (including but not limited to weather, site, soil) known or reasonably anticipated for the Site;
- C. The Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Work and perform the Contractor's obligations required by the Contract;

- D. The Contractor is able to furnish plant, tools, material, supplies, equipment, and labor required to complete the Work and perform the obligations required by the Contract and has sufficient experience and competence to do so; and
- E. The Contractor shall perform at the Site, and with its own forces, work equivalent to at least twenty-five percent (25%) of the Contract Price.

3.1 GENERAL DUTIES

- A. The Contractor shall give sufficient supervision to the Work, using its best skill and attention. The Contractor is hereby given notice that the County will be relying on the accuracy, competence and completeness of the Contractor's work. The Contractor shall supervise and be solely responsible for the proper performance of the Work in accordance with the Contract, including the construction means, methods, techniques, sequences, procedures, and for coordination of all portions of the Work.
- B. Unless specified elsewhere in the Contract, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction machinery, utilities, transportation, and other facilities and services (including federal and state tax, industrial insurance, social security liability and all other applicable taxes) necessary for the proper execution and completion of the Work.
- C. The Contractor shall also provide sufficient staffing and supervision to process Requests for Information, Change Proposals, Submittals, Change Orders, close out documentation, and to perform all other requirements of the Contract and all Work.
- D. The Contractor shall lay out its Work from baselines and benchmarks indicated in the Contract and shall be responsible for the accuracy of all field measurements used in the lay out.

3.2 DUTY TO INSPECT CONTRACT DOCUMENTS

- A. The Contractor shall carefully study and compare all Contract Documents and check the conditions, dimensions, and instructions as stated therein. Contractor will not be required to provide professional services which constitute the practice of architecture and engineering except to the extent provided for in the technical specifications and drawings.
- B. The Contractor shall immediately notify in writing the County of any:
 - 1. Error, inconsistency, or omission in the Contract Documents that a reasonable contractor knew or through the exercise of reasonable diligence should have discovered under the same and similar circumstances;
 - 2. Requirement in the Contract Documents that conflict with any local, state, and federal laws, regulations and/or permits, licenses, and easement conditions that a reasonable contractor knew or through the exercise of reasonable diligence should have discovered under the same and similar circumstances.
- C. The Contractor should not proceed with the work in question until the Contractor receives written direction from the Project Representative.
- D. If the Contractor proceeds with the work in question without written direction from the Project Representative, the Contractor shall be responsible for any costs or damages associated with:
 - 1. Fines or penalties;

2. Demolition, tear out, removal, cleanup, remediation, or fixing the work in question; and
 3. Delay, disruption, and loss of productivity.
- E. The Contractor's failure to timely discover and immediately report such reasonably ascertainable errors, inconsistencies, or omissions and conflicts in regulatory requirements, permits, license or easements to the County shall preclude the Contractor's recovery of costs and time resulting from the Contractor's failure to timely discover and/or immediately notify the County of such errors, inconsistencies, or omissions.

3.3 COMMUNICATIONS

- A. The Contractor must designate, in writing, its Contractor's Representative who is responsible for administering the Contract and has the authority to bind and obligate the Contractor in the performance of the Work. The Contractor's Representative shall be identified in the Contract.
- B. Communication with the Contractor shall be through the Contractor's Representative.
- C. The Contractor shall notify the County immediately if the Contractor's Representative is changed and identify the name of the new Contractor's Representative and effective date of the change.

3.4 CONTRACTOR'S SUPERVISION AND EMPLOYEES

- A. Contractor has an obligation to provide qualified and competent people to administer the contract and perform all the Work.
- B. During performance of the Work the Contractor shall have supervisory personnel on-site and available to administer, manage and coordinate the Work. The County shall not be responsible for the acts or omissions of the supervisory personnel or their assistants.
- C. The Contractor shall at all times enforce good order among all persons furnishing labor or materials on-site and shall only employ workers skilled in the work assigned. If requested by the Project Representative, Contractor shall provide the Project Representative with copies of licenses, registrations, and certifications.
 1. The County shall have the right to require the Contractor to remove personnel from the Site that do not have the appropriate qualifications and experience to meet or uphold the requirements of the Contract. The County shall also have the right to order the Contractor to replace personnel who demonstrate unprofessional behavior.
 2. Failure by the County to require removal of any Contractor personnel shall not be deemed an admission that any such personnel are satisfactory, nor shall such failure relieve the Contractor from any contractual responsibility.

3.5 CONTRACTOR'S DUTY WHEN COUNTY PERFORMS WORK ON-SITE

- A. The Contractor shall coordinate its Work with the County and other County contractors and, at the County's request, participate in meetings for the purpose of coordinating the Contractor's construction schedule with those of other contractors at no additional cost to the County. To the extent a direct conflict exists with regard to access to the Site, if the contractors cannot work out a resolution that has no impact

on Contract Price, Contract Time, and any milestones in the Contract Documents, the Project Representative shall issue written direction to resolve the conflict.

- B. The Contractor shall not cut, excavate, alter, impair, or otherwise engage in work activity that inhibits the work of any other contractors without the prior written consent of the County.
- C. If any part of the Contractor's Work depends, for proper execution or results, upon the prior work of the County or any other contractor, the Contractor shall, before performing the affected Work, inspect and give prompt written Notice of any apparent discrepancies or defects in the prior work that renders it unsuitable for the reception of Contractor's Work. Contractor's failure to so inspect and to give such prompt Notice shall constitute acceptance of the prior work as fit for reception of its Work, except as to defects not then reasonably discovered.

3.6 MATERIALS AND EQUIPMENT FURNISHED BY COUNTY

- A. Unless otherwise specifically provided in the Contract Documents, if the Contract requires that the Contractor install materials and equipment provided by the County, in the absence of a reasonably apparent defect, such materials and equipment shall be considered compliant with the Contract Documents.
 - 1. If the Contractor discovers defects in the County-furnished material or equipment the Contractor shall immediately notify the County in writing.
 - 2. After such discovery, the Contractor shall not proceed with Work involving such County materials and equipment unless otherwise authorized in writing by the County.
 - 3. Contractor's failure to provide immediate written Notice of any defects in material or equipment shall constitute acceptance of such materials and equipment as fit for incorporation into the Work.
 - 4. Contractor shall be responsible for any damages or delays resulting from Contractor's failure to provide timely written Notice or Contractor's improper incorporation of such defective materials or equipment into the Work.
- B. Unless otherwise specifically provided in the Contract Documents, materials and equipment furnished by the County, which are not of local origin, are considered to be Free On Board "FOB" to the point of destination which is the railroad, truck or port terminal nearest to the Site.
 - 1. The County shall inspect the equipment at the point of destination and notify the Contractor that the County-furnished material and equipment is available for immediate receipt, possession, and inspection at the point of destination.
 - 2. Upon such notice, the Contractor shall, within seven (7) days, inspect such County-furnished material and equipment at point of destination and provide immediate written Notice of rejection of said material and equipment if it is defective or does not meet the requirements of the Contract.
 - a. The Contractor shall identify the causes for its rejection, including but not limited to the specific defect or nonconformance with the Contract.
 - b. Failure to provide such written rejection shall result in a presumption that the Contractor accepts the County-furnished material and equipment, except as to defects not then reasonably discovered.

3. After receipt by the Contractor at the point of destination all risk of loss and damage to such materials and equipment shall be borne by the Contractor. The Contractor shall promptly unload, transport, store and/or protect such material and equipment from damage.

3.7 SUBCONTRACTORS AND SUPPLIERS

A. This Contract is between King County and the Contractor.

1. The Contractor's subcontracting shall create no contract between King County and the Subcontractor and Suppliers. Subcontractors and Suppliers are not intended or incidental third party beneficiaries to the Contract. The Subcontractor and Suppliers shall have no rights against King County by reason of its subcontract with the Contractor.
2. The Contractor will be responsible for performing all Work as required by the Contract. The Contract has not been written with the intent of, and King County shall not be a party to, defining the division of work between the Contractor and its Subcontractors and Suppliers.
3. The Contractor shall be responsible for all Work and material furnished, and no subcontract shall in any case release the Contractor of its obligations or liability under this Contract and the Performance and Payment Bond.

B. Selection of Subcontractors and Suppliers

1. Subcontractors and Suppliers shall be properly licensed, registered or certified, as applicable, and capable to perform the assigned work.
2. If requested by the County, the Contractor shall provide documentation that the proposed Subcontractors and Suppliers are experienced and equipped to do the Work.
3. The Contractor shall require each Subcontractor and Supplier to comply with all provisions of this Contract. At the request of Subcontractors or Suppliers, Contractor shall make available for copying all Contract Documents.

C. Responsibility for Work of Subcontractors and Suppliers

The Contractor shall be responsible for the acts and omissions of Subcontractors and Suppliers. The Contractor shall also be responsible for the suitability of any materials, components, equipment or supplies furnished by a Subcontractor and/or Supplier irrespective of whether such were designated or approved by the County.

3.8 SCHEDULE OF WORKING HOURS

- A. As specified in the Contract, the Contractor shall submit a schedule of working hours, including overtime and shift work, to the County for acceptance. This schedule shall comply with RCW 49.28 and all other Contract requirements.
- B. The schedule of working hours accepted by the County shall be the only schedule used by the Contractor during performance of Work in the Contract, unless amended to maintain Work progress.
- C. The Contractor shall provide 48 hours advance written Notice of any intent to work outside of regular working hours as defined in the Contract Documents or on Sundays or legal holidays. Any Work performed after regular working hours, or on

Sundays or legal holidays, shall be performed without additional expense to the County, except as otherwise provided in the Contract Documents.

3.9 RECORD DOCUMENTS

- A. The Contractor shall keep a copy of the Contract Documents on the Site.
- B. The Contractor shall keep at the Site an accurate, readable, and orderly set of drawings and specifications, updated as the job progresses to show all approved changes, options, alternates, and all actual deviations from the original Contract Documents. This set of drawings and specifications shall be the Record Documents.
 1. The Record Documents shall be maintained in hard copy and at the County's option, in electronic format meeting the County's requirements. The technical specifications shall state the electronic format.
 2. In addition to all approved changes, options, alternates, and all actual deviations from the original Contract Documents, the Record Documents shall be marked as follows:
 - a. Record all materials used where options, alternates and/or change orders were indicated, specified and/or authorized;
 - b. Accurate measurements referenced to two permanent structures shall be recorded to show the exact location and changes in direction of all underground services and utilities, as well as their approximate depth below finished grade;
 - c. Update the Record Documents with information about each item of capital equipment or other fixed asset installed, including type of equipment, make, model, serial number, and acquisition cost;
 - d. Update the Record Documents identifying each item of capital equipment or other fixed asset removed from the Project, including type of equipment or fixed asset, make, model, serial number and description of location from which it was removed; and
 - e. Record all other requirements as specified in the Technical Specifications.
- C. The Record Documents shall be kept up-to-date and be available for review by the County at all times, including but not limited to at each job progress meeting. Failure to have the record set up-to-date shall be sufficient reason for the County to withhold payment in accordance with provision 7.2, *Payments Withheld*, until all such information is recorded.
- D. Record Documents may be used to assist the County to verify the appropriate progress payment.

3.10 COST RECORDS

- A. The Contractor, Subcontractors, and Suppliers shall maintain Project cost records by cost codes and shall segregate and separately record at the time incurred all costs (1) directly associated with each work activity and (2) directly or indirectly resulting from any event or condition for which the Contractor seeks an adjustment in the Contract Price, Contract Time, and/or damages.
 1. Any costs claimed to result from any such event or condition, including, but not limited to, delay and impact costs, acceleration costs, loss of productivity or

efficiency, and increased or extended overhead shall be recorded at the time incurred and be fairly and reasonably allocated to each such event or condition and to other causes of such costs.

2. The County shall be provided with a detailed description of all such costs and the basis of allocation. The Contractor, Subcontractors, and Suppliers shall maintain a monthly summary of all costs and shall make all underlying cost records and monthly summary of costs available for review, inspection, and copying by the County upon request.
 3. Any work performed for which the Contractor intends to seek an adjustment in Contract Price and/or Contract Time shall be recorded on the same day the work is performed and kept separate so as to distinguish it from Contract Work.
- B. In addition to the requirements set forth in Articles 5, *Changes to the Contract*, and 6, *Time and Price Adjustments*, the Contractor shall be entitled to extra compensation for an event or condition and/or the recovery of damages only to the extent that the Project cost records are kept in full compliance with all Contract requirements and the cost allocations support entitlement to such compensation.

3.11 MAINTENANCE AND INSPECTIONS OF DOCUMENTS

- A. All Contractor's, Subcontractors', and Suppliers' documents and records relating to the Contract shall be open to inspection, audit, and/or copying by the County or its designee:
1. During the Contract Time; and
 2. For a period of not less than six years after the date of Final Acceptance of the Contract ("Preservation Period"); or if any Claim, audit or litigation arising out of, in connection with, or related to this Contract is initiated, all documents shall be retained until such Claim, audit or litigation involving the records is resolved or completed, whichever occurs later.
- B. The Contractor shall also guarantee that all Subcontractor and Supplier documents shall be retained and open to similar inspection, audit and/or copying during the Contract Time and also the Preservation Period. The Contractor, Subcontractor, and Supplier shall use its best efforts to cooperate with the inspection, auditing, and/or copying.
- C. Inspection, audit, and/or copying of all documents described herein, may be performed by the County or its designee at any time with not less than seven (7) days Notice. Provided however, if an audit or inspection is to be commenced more than sixty (60) days after the Final Acceptance date of the Contract, the Contractor will be given twenty (20) days Notice of the time when the audit or inspection is to begin.
- D. The Contractor, Subcontractors, and Suppliers shall provide adequate facilities, acceptable to the County, for inspection, auditing, and/or copying during normal business hours.
- E. If the Contractor is formally dissolved, assigns or otherwise divests itself of its legal capacity under this Contract, then it shall immediately notify the County and preserve such records, at its expense, as directed by the County.
- F. The Contractor, Subcontractor, and Supplier, shall be subject to audit at any time with respect to this Contract. Failure to maintain and retain sufficient records to allow

the County to verify all costs or damages or failure to permit the County access to the books and records shall constitute a waiver of the rights of the Contractor Subcontractor and Supplier to Claim or be compensated for any damages, additional time or money under this Contract.

- G. At a minimum, the following documents, including the machine readable electronic versions, shall be available for inspection, audits, and/or copying:
1. Daily time sheets and all daily reports, Supervisor's reports, and inspection reports;
 2. Collective bargaining agreements;
 3. Insurance, welfare, and benefits records;
 4. Payroll registers;
 5. Earnings records;
 6. All tax forms, including payroll taxes;
 7. Material invoices and requisitions;
 8. Material cost distribution worksheet;
 9. Equipment records (list of Contractor's, Subcontractors', and Suppliers' equipment, rates, etc.);
 10. Contracts, purchase orders and agreements between the Contractor and each Subcontractor and Supplier;
 11. Subcontractors' and Suppliers' payment certificates;
 12. Correspondence, including email, with Subcontractors and/or Suppliers;
 13. All meeting notes by and between Contractor, Subcontractors, Suppliers and/or any third parties related to the Project;
 14. Canceled checks (payroll and vendors);
 15. Job cost reports, including monthly totals;
 16. Job payroll ledger;
 17. Certified payrolls;
 18. General ledger;
 19. Cash disbursements journal;
 20. Escrow bid documents, take off sheets, and calculations used to prepare the bid and/or quotes;
 21. Take off sheets, calculations, quotes, other financial data to support change proposals, request for change order and/or claims;
 22. Financial statements for all years during the Contract Time. In addition, the County may require, if it deems appropriate, additional financial statements for 3 years preceding execution of the Contract and 6 years following Final Acceptance of the Contract;
 23. Depreciation records on all Contractor's, Subcontractor's, and Supplier's equipment, whether these records are maintained by the Contractor, Subcontractors, and Suppliers involved, its accountant, or others;

24. If a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents;
 25. All documents which relate to each and every Claim together with all documents which support the amount of damages as to each Claim;
 26. Worksheets or software used to prepare the Claim establishing the cost components for items of the Claim including but not limited to labor, benefits and insurance, materials, equipment, Subcontractors, Suppliers, all documents which establish time periods, individuals involved, the hours for the individuals, and the rates for the individuals;
 27. Worksheets, software, and all other documents used (a) by the Contractor to prepare its bid and schedule(s) and/or (b) to prepare quotes and bids to the Contractor;
 28. All schedule documents, including electronic versions, planned resource codes, or schedules and summaries;
 29. All submittals; and,
 30. All other documents, including email, related to the Project, Claims, or Change Orders.
- H. The Contractor shall mark any documentation it considers proprietary or confidential accordingly. Such information will be treated as such by King County; however, the County cannot ensure that this information will not be subject to release pursuant to a public disclosure request. In the event the County receives a request for such information, the County will immediately advise the Contractor and will not release the requested information for a period of not less than ten (10) days in order to give the Contractor an opportunity to obtain a court order prohibiting the release of the information in response to the public disclosure request.

3.12 MAINTENANCE AND SITE CLEANUP

- A. The Contractor shall at all times keep the Site, access points, and public rights-of-way free from accumulation of dirt, mud, waste materials or rubbish caused by the Contractor or Subcontractors. At the completion of the Contract Work, the Contractor shall remove and lawfully dispose of all its dirt, mud, waste materials, rubbish, tools, scaffolding and surplus or partly used materials from the Site and shall leave the Site broom clean unless some stricter standard is specified in the Contract.
- B. The Contractor shall obey all applicable laws and regulations relating to the storage, use, and disposal of Hazardous Materials. The Contractor shall promptly notify the County of all Contractor or Subcontractor caused spills or releases of Hazardous Materials, and pay the cost to promptly clean up all such spills or releases and any associated fines or penalties. The Contractor shall maintain documentation of the clean up and disposal all Contractor or Subcontractor caused spills or releases of Hazardous Materials.
- C. In case of a dispute over clean up, the County may, after written Notice to the Contractor, sweep surfaces or remove the dirt, mud, waste materials, rubbish, or hazardous materials and charge all reasonable costs of such work to the Contractor. The County may charge the Contractor or deduct such costs from payments otherwise due the Contractor pending a resolution of the dispute or exercise its rights under the Performance and Payment Bond. In the event there are insufficient funds

remaining, excluding retention, the Contractor shall pay the County for the costs associated with maintenance and site cleaning.

3.13 PROTECTION OF EXISTING STRUCTURES, EQUIPMENT, VEGETATION, UTILITIES, AND IMPROVEMENTS

- A. Contractor shall protect from damage all existing structures, curbs, gutters, sidewalks, equipment, improvements, utilities, trees, and vegetation not shown in the Contract Documents to be removed or modified at or near the Site. Contractor shall repair, at no cost to the County, any such damage resulting from failure to comply with the requirements of the Contract or failure to exercise reasonable care in performing the Work. If Contractor fails or refuses to repair the damage promptly, the County may have the necessary work performed and deduct or charge the cost to Contractor or exercise its rights under the Performance and Payment Bond. In the event there are insufficient funds remaining, excluding retention, the Contractor shall pay the County for the costs associated with protection and repairing the damages.

3.14 PERMITS, LAWS AND REGULATIONS

- A. Except those permits, easements, and variances specified in the Contract as having been previously obtained by the County, all permits, licenses, easements and variances necessary for the execution of the Work shall be secured and paid for by the Contractor. The Contractor shall identify and apply for such permits and licenses at the earliest possible time so as to avoid any delay to the Contract Work arising from the permitting and/or licensing process. No actions taken by the County to aid the Contractor in securing any permit or license shall relieve the Contractor of any obligations to secure any such permit or license.
- B. The Contractor shall maintain all stamped permit sets of documents at the Site during construction, in good condition and as required by local ordinances.
- C. The Contractor shall perform all work hereunder in full compliance with local, state and federal laws, ordinances, resolutions and regulations, and with permit, license, easement, and variance conditions pertaining to the conduct of the Work. The Contractor shall defend, indemnify, and hold the County harmless from any assessment of fines, penalties, or damages arising from violations of the same by the Contractor or Subcontractors. The Contractor shall pay and provide proof of payment for any assessments of fines, penalties or damages. The Contractor shall cooperate with all governmental entities regarding inspection of the Work and compliance with such requirements.
- D. Taxes. The Contractor is required to pay all applicable taxes. No adjustment will be made in the amount to be paid by the County under the Contract because of any change in law or regulations covering any applicable taxes, or because of any misunderstanding by the Contractor as to its liability for or the amount of any taxes.

3.15 PATENTS AND ROYALTIES

- A. The costs or fees relating to royalties or claims for any patented invention, article, process or method that may be used upon or in a manner connected with the Work under this Contract or with the use of completed Work by the County shall be paid by the Contractor. The Contractor and its sureties shall protect and hold King County, and its officers, agents and employees, harmless against any and all demands made for such fees or claims brought or made by or on behalf of the holder of any

invention or patent. Before final payment is made on the account of this Contract, the Contractor shall, if requested by the County, furnish acceptable proof of a proper release from all such fees or claims.

- B. Should the Contractor, its agent, representatives or employees, or any of them, be enjoined from furnishing or using any invention, article, material or appliances supplied or required to be supplied or used under the Contract, the Contractor shall promptly notify the County of the Contractor's intent to substitute other articles, materials or appliances in lieu thereof which are of equal efficiency, quality, finish, suitability, and market value, and satisfactory in all respects to the County. In the event the County elects, in lieu of such substitution, to have supplied and to retain and use any such invention, article, material or appliances as may be required to be supplied by the Contract, the Contractor shall pay all royalties and secure such valid licenses as may be requisite and necessary for the County, its officers, agents, representatives and employees, or any of them to use such invention, article, material or appliance without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof. Should the Contractor neglect or refuse to make the substitution promptly or to pay such royalties and secure such licenses as may be necessary, then in that event the County shall have the right to make such substitution or the County may pay such royalties and secure such licenses and charge the Contractor, even though final payment under the Contract may have been made.

3.16 CONTRACTOR'S CERTIFICATION

A. Conflict of Interest

Consistent with the King County Code of Ethics, Chapter 3.04, the Contractor certifies (and shall require each Subcontractor to certify) that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, which conflicts in any manner or degree with the work, services or materials required to be performed and/or provided under this Contract and that it shall not employ any person or agent having any such interest. In the event that the Contractor or its agents, employees or representatives acquires such a conflict of interest, the Contractor shall immediately disclose such interest to King County and take action immediately to eliminate the conflict or to withdraw from this Contract, as King County may require.

B. Contingent Fees and Gratuities

The Contractor, by entering into this Contract with the County to perform or provide work, services or materials, has thereby covenanted:

1. That no person or selling agency except bona fide employees or designated agents or representatives of the Contractor has been or will be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee may be paid; and,
2. That no gratuities, in the form of entertainment, gifts or otherwise, have been or will be offered or given by the Contractor or any of its agents, employees or representatives, to any official member or employee of King County or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending thereof, or the making of any determination with respect to the performance of this Contract. The Contractor certifies that it has not made any contributions to any person or

entity as a condition of doing business with the County and it has disclosed to the County all attempts by any person to solicit such payments.

C. Penalties

Contractors are advised that KCC 3.04.060 authorizes criminal liability, and civil penalties, including the cancellation of current contracts and disqualification from bidding for a two-year period, for any person who violates Chapter 3.04 KCC.

3.17 DEVIATION FROM CONTRACT

- A. The Contractor shall not make an alteration, variation, addition, deviation, or omission from the requirements of the Contract without the written consent of the Project Representative.
- B. Any such alteration, variation, addition, deviation, or omission by the Contractor shall not result in any extra compensation or extension of time.
- C. The County shall have the right to treat any alteration, variation, addition, deviation, or omission from the requirements of the Contract as a contract breach if prior written consent is not obtained from the Project Representative, which may be justification for the County to withhold payment, stop work, or terminate the Contract for default.

3.18 OPERATIONS, MATERIAL HANDLING, AND STORAGE AREAS

A. Operating Area

Contractor shall confine all operations, including storage of materials on the Site, to County-approved areas.

B. Temporary Buildings and Utilities

Temporary buildings (including storage sheds, shops, and offices) and utilities may be erected by Contractor on the Site only with the consent of the County and without expense to the County. The temporary buildings and utilities shall remain the property of Contractor and shall be removed by the Contractor at its expense upon completion of the Work.

C. Use of Roadways

The Contractor shall use only established roadways or temporary roadways authorized by the County. When materials are transported during prosecution of the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by federal, state, or local law or regulation.

D. Disposal/Removal of Materials

The Contractor shall be responsible for compliance with all laws governing the storage and ultimate disposal of all such materials and components. The Contractor shall provide the County with a copy of all manifests and receipts evidencing proper disposal when required by the County or applicable law.

E. Protection and Care of Contractor's Materials and Equipment

The Contractor shall be responsible for the proper care and protection of its materials and equipment delivered to the Site. Materials and equipment may be stored on the Site at the Contractor's own risk and with prior written approval from the County. When the Contractor uses any portion of the Site as a shop, the

Contractor shall be responsible for any repairs, patching, or cleaning arising from such use and for obtaining any necessary permits to establish such shop or temporary storage facilities.

3.19 CONTRACTOR'S OVERALL RESPONSIBILITY FOR PROTECTION OF WORK, PROPERTY, AND PERSONS

- A. The Contractor shall be responsible for conditions of the Site, including safety of all persons and property, during performance of the Work. The Contractor shall maintain the Site and perform the Work in a manner which meets all statutory and common law requirements or other specific contractual requirements for the provision of a safe place to work and which adequately protects the safety of all persons and property on or near the Site. This obligation shall apply continuously and shall not be limited to normal working hours. The County's inspection of the Work or presence at the Site does not and shall not be construed to include review of the adequacy of the Contractor's safety measures in, on or near the site of the Work.
- B. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including adequate safety training, in connection with the Work. The Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.
- C. Unless otherwise required in the Contract Documents the Contractor shall protect and be responsible for any damage or loss to the Work or to the materials and equipment associated with the Work until the date of Substantial Completion. The Contractor remains responsible for any damage or loss caused directly or indirectly by the acts or omissions of the Contractor, Subcontractors, Suppliers, or third parties authorized or allowed on the Site by the Contractor until Final Acceptance.
- D. The Contractor shall also be solely and completely responsible for damages arising from the Work that affect property adjacent to the Site.
- E. The Contractor shall repair or replace without cost to the County any damage or loss that may occur, except damages or loss caused by the acts or omissions of the County.
- F. The Contractor shall erect and maintain adequate signs, fencing, barricades, lights or security measures and persons to protect the Work until the Project Representative authorizes in writing the removal of signs, fencing, barricades, lights or security measures.

3.20 PROTECTION OF PERSONS

- A. The Contractor shall take all reasonable precautions for the safety of all employees working on this Contract and all other persons who may be affected by such Work. The Contractor shall designate a responsible member of its organization at the Site whose duty shall be to manage and coordinate the safety programs and to prevent accidents of the Contractor and Subcontractors.
- B. Except as otherwise stated in the Contract, if the Contractor encounters, on the Site, material reasonably believed to be Hazardous Material including but not limited to asbestos, lead, or polychlorinated biphenyl (PCB), that Contractor shall immediately stop work in the area affected and give Notice of the condition to the County. Work in the affected area shall not be resumed without written direction by the County.

- C. The Contractor shall maintain in a reasonable number of conspicuous and accessible places at the Site all materials necessary for giving first aid to the injured. The Contractor shall establish, publish and make known to all employees procedures for ensuring immediate removal to a hospital or a doctor's care, of persons who may have been injured on the Site. Employees shall not be permitted to work on the Site before the Contractor has: (1) provided all materials necessary for giving first aid at the Site; and, (2) established and made known procedures for removal of injured persons to a hospital or doctor's care. The Contractor shall ensure that at least one of its employees on site has adequate training in first aid.
- D. In order to protect the lives and health of persons performing work under this Contract, the Contractor shall comply with the Federal Occupational Safety and Health Act of 1970 (OSHA), including all revisions, amendments and regulations issued thereunder, and the provisions of the Washington Industrial Safety Act of 1973 (WISHA), including all revisions, amendments and regulations issued thereunder by the Washington State Department of Labor and Industries. The WISHA regulations shall apply, without limitation, to all excavation, tunneling, trenching and ditching operations. In case of conflict between any such requirements, the more stringent regulation or requirement shall apply. There is no acceptable deviation from these safety requirements, regardless of practice in the construction industry. Any violation of OSHA, WISHA or other safety requirements applicable to the work may be considered a breach of this Contract.

3.21 SAFETY PROGRAM

- A. The Contractor shall prepare and provide to the County a written site specific "Safety Program" demonstrating the methods by which all applicable safety requirements of this Contract will be met. The Contractor shall ensure its Subcontractors and Suppliers have a written "Safety Program" or formally adopt the Contractor's site specific "Safety Program." The Contractor shall designate a Safety Officer who shall be responsible for proper implementation of the "Safety Program." The Contractor shall submit a copy of its "Safety Program" and the Subcontractor's "Safety Program" to the County within fourteen (14) days after the Contractor signs the Contract. The County's review of such programs shall not be deemed to constitute approval or acceptance thereof and shall not relieve or diminish the Contractor's sole responsibility for Site safety.
- B. The Contractor shall conduct a weekly safety meeting with all Subcontractors and others on the Site performing Work hereunder to discuss general and specific safety matters. The Contractor shall provide upon request, notice of each meeting to the County. At the County's request the Contractor shall provide the County with a record of each meeting, including a sheet on which each attendee signed in and a list of the matters discussed.

3.22 STORAGE OF CONTRACTOR'S PROPERTY

The Contractor's tools and equipment and building materials to be incorporated into the Project may be stored on the Site but all such storage shall be subject to the requirements of the Contract. Any repairs, patching or cleaning of the Site that may be necessary to restore the Site to its previous condition due to storage of the Contractor's materials, tools or equipment, or other aspects of the Contractor's Work, shall be the responsibility of the Contractor.

3.23 ARCHAEOLOGICAL AND HISTORICAL PRESERVATION

The Contractor shall comply fully with the requirements set forth in Chapter 27.53 RCW entitled Archaeological Sites and Resources. The Contractor shall immediately notify the Project Representative if any artifacts, skeletal remains or other archaeological resources (as defined under RCW 27.53.040 now and as hereinafter amended) are unearthed during excavation or otherwise discovered on the site of the work. If directed by the Project Representative, the Contractor shall immediately suspend any construction activity, which, in the opinion of the Project Representative, would be in violation of Chapter 27.53 RCW. The suspension of Work shall remain in effect until permission to proceed has been obtained by the Project Representative from the State Historic Preservation Officer or private landowner, as applicable.

3.24 WATER POLLUTION CONTROL REQUIREMENTS

The Contractor shall comply with and be liable for all penalties, damages and violations under Chapter 90.48 RCW in the performance of this work. By submitting a bid for and entering into this Contract, the Contractor has thereby assured King County that the Contractor has knowledge of, understands, and will comply with the provisions and requirements of Chapter 90.48 RCW, including any regulations issued pursuant thereto. The Contractor shall also perform its work in compliance with water pollution control requirements as may be set forth in this Contract and as may be a part of any permit or other authorization issued or obtained for this Contract.

3.25 RIGHTS OF WAY

- A. All rights of way to be provided by King County for use by the Contractor and for the completed work shall be set forth in the Specifications and may be shown on the Drawings. The Contractor's construction activities shall be confined within the identified rights of way, unless the Contractor makes arrangements for use of additional public and/or private property and complies with the requirements of this provision. The Contractor shall comply with all requirements set forth in such rights of way documents and in the Contract applicable to the performance of work hereunder. The Contractor shall provide written Notice to the Project Representative of the dates of commencement and completion of work on each right of way provided by King County. If the Contractor fails to diligently prosecute and complete the work on each such right of way and, as a result of such failure, King County becomes obligated to pay additional amounts for the use of such right of way, the Contractor shall be charged such additional costs which shall be set off against any amounts owing to the Contractor or entitle the County to a reimbursement from the Contractor. Upon completion of use of each right of way, the Contractor shall provide the Project Representative with a written release signed by the landowner, or authorized agent therefor, stating that the landowner has no claims whatsoever against King County on account of the Contractor's use of such right of way. Such release shall be on the form set forth in the Specifications.
- B. If the Contractor makes arrangements for use of such additional public and/or private property, the Contractor, prior to using such property, shall provide the Project Representative with written permission of the landowner, or duly authorized agent of such landowner, for such use. Upon completion of use of such property, the Contractor shall provide the Project Representative with a written release signed by such landowner or authorized agent therefor stating that the owner has no claims whatsoever against King County on account of the Contractor's use of such property. Such release shall be on the form set forth in the Specifications.

- C. The Contractor shall save King County harmless from all suits and legal proceedings of every kind and description that might result from use of or damage to rights of way and public and/or private property by the Contractor. The Contractor shall comply with all laws, rules, regulations, ordinances, resolutions or directives relating to its use of public rights of way, streets or highways; and its use of same shall not disturb the rights and property of adjacent landowners.

3.26 ENVIRONMENTAL MITIGATION PLAN

If required elsewhere in the Contract Documents, the Contractor shall prepare and submit to the Project Representative a plan by which the Contractor and its Subcontractors and Suppliers shall ensure all environmental mitigation requirements shall be complied with during performance of the Work under this Contract. The plan shall specifically address each such requirement. Failure to submit a complete environmental mitigation plan may result in suspension of work; delays, if any, resulting therefrom shall be considered caused by the acts of the Contractor, and any time delays or additional costs resulting therefrom shall be borne by the Contractor. Preparation of such a plan and compliance with all environmental mitigation requirements shall be deemed incidental to the work under this Contract and all costs therefor shall be included in the Contract Price.

ARTICLE 4: ADMINISTRATION OF THE CONTRACT

4.0 TIME OF ESSENCE

All time requirements set forth in the Contract Documents are of the essence.

4.1 WORK PROGRESS

A. The Contractor shall be required to:

1. Prosecute the Work diligently with adequate forces;
2. Plan, coordinate, and layout the Work in advance so as to avoid delay;
3. Achieve Substantial Completion of the Work and Final Acceptance in accordance with the requirements of Contract Documents; and,
4. Complete all Contract close out requirements in accordance with all applicable Contract requirements within the time period established by the County in the Certificate of Substantial Completion.

4.2 SCHEDULE OF VALUES

- A. Unless otherwise specified, within fourteen (14) days after the date of Contract Execution, the Contractor shall submit to the County a detailed Schedule of Values that identifies the various activities of the Contract Work and their values and quantities, including the overhead and profit for each activity. The Contractor warrants that the values identified in its Schedule of Values accurately reflect the value of each work activity. The Schedule of Values shall be used as a basis for calculating all Progress Payments. Payment for Contract Work shall be made only for and in accordance with those activities identified in the Schedule of Values.
- B. The Contractor shall not be entitled to, nor shall the County be required to make, payment for any Contract Work until the Schedule of Values has been accepted by the County. Such acceptance shall not be unreasonably withheld.

- C. The County shall review and accept the Schedule of Values or provide the Contractor with a written explanation of why the Schedule of Values was not acceptable. The County shall use reasonable efforts to review the Schedule of Values within thirty (30) days of the County's receipt of the Contractor's submittal of its Schedule of Values. The County's acceptance of the Schedule of Values shall not relieve the Contractor from its sole responsibility for the accuracy of the Schedule of Values and its compliance with all Contract requirements. The Contractor shall revise the Schedule of Values as necessary to accurately reflect Change Orders.
- D. Each Application For Payment shall include a current status of the Schedule of Values. No Application For Payment will be considered until the current status of the Schedule of Values has been submitted and accepted.
- E. The activities, which the Contractor identifies within its Schedule of Values, shall be specifically referenced within, and conform and be consistent with the activities set forth within the Project Schedule.

4.3 PROJECT SCHEDULE

- A. Unless otherwise specified, within fourteen (14) days after the date of Contract Execution, the Contractor shall submit to the County a Project Schedule. The Project Schedule shall show the sequence in which the Contractor proposes to perform the Work, indicate the Critical Path, identify the dates on which the Contractor proposes to start and finish the scheduled activities of the Contract Work, indicate Substantial Completion within the Contract Time, indicate a date for Final Acceptance, and meet all the requirements as maybe set forth more particularly in the Technical Specifications on Project Schedule.
- B. The Project Schedule shall be prepared in the format as specified in the Technical Specifications.
- C. Within thirty (30) days of the County's receipt of the Contractor's submittal of its Project Schedule or unless stated elsewhere in the Contract, the County shall review the Project Schedule and provide the Contractor with written comments. The County will review the Project Schedule only to determine whether the Project Schedule meets the requirements in the Technical Specifications on Project Schedule. To the extent the Project Schedule does not meet such Technical Specifications, the Contractor shall revise the Project Schedule to make it compliant.
- D. By reviewing the Project Schedule and providing written comments, the County is not approving or adopting the Contractor's plan, schedule, means, methods, techniques, sequences, or procedures required to perform the Work. Review and comment by the County of the Project Schedule shall not relieve the Contractor from the sole responsibility for the accuracy of a Project Schedule, and its compliance with all Contract requirements, and its responsibility to meet all required Contract completion dates. Failure by the County to indicate items on the Project Schedule that do not conform with the Contract requirements shall not alter or waive the Contract requirements or relieve the Contractor from complying with all Contract requirements.
- E. The Contractor shall not be entitled to, nor shall the County be required to make payment for any Contract Work until the Project Schedule complies with all Contract requirements.

- F. The Contractor shall schedule the Contract Work so that the Contract Work is completed within the Contract Time. Float in the project Schedule shall be defined as the period of time measured by the number of days each non-critical path activity may be delayed before it and its succeeding activities become part of the Critical Path. Contractor and Owner may both utilize float to offset delays to the Project Work.
- G. The Contractor shall regularly enter the actual progress of the Work and Contract Time extensions approved by the County on the Project Schedule. Updated Project Schedules shall reflect actual progress and completion within the Contract Time and shall be provided to the County with each Application for Payment in format(s) as required by the Contract. Applications for Progress Payments will not be considered by the County and the Contractor will not be paid until the Contractor complies with these requirements. The updated Project Schedule shall be used to assist the County in verifying the appropriate payment.
- H. If, in the opinion of the County, the Contractor falls behind in its progress of the Work due to acts or omissions of the Contractor, Subcontractors, and Suppliers, the Contractor shall take all necessary steps to improve its progress and bring its progress back in-line with the accepted Project Schedule, without additional cost to the County. In this circumstance the Contractor shall, as necessary, increase the number of shifts, overtime operations, and/or days of work, both on and off the Site, and submit for acceptance any supplementary schedule or schedules as the County deems necessary to demonstrate how the accepted rate of progress will be regained. Failure of the Contractor to comply with the requirements under these provisions shall be grounds for a determination by the County that the Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the County may pursue any right it has under the law or the Contract, including but not limited to default termination.

4.4 SUBMITTALS

- A. Submittals include shop drawings, setting and erection drawings, schedules of materials, product data, samples, certificates and other information prepared for the Work by the Contractor or a Subcontractor as set forth in the Technical Specifications ("Submittals"). The Contractor shall perform no portion of the Work requiring Submittals until the Submittals have been reviewed and returned by the County with one of the following annotations: (1) no exceptions taken or (2) note markings.
- B. Prior to furnishing the Submittals to the County, the Contractor shall: (1) review all Contractor and Subcontractor Submittals for accuracy, completeness, and compliance with the Contract; (2) coordinate all Submittals with all Contract Work by other trades and with field measurements; and (3) indicate approval on the Submittals as a representation that it has complied with its obligation to review and coordinate Submittals. Where required by law or by the Contract, Submittals shall be stamped by an appropriate licensed professional. Submittals lacking required stamps or evidence of Contractor review and approval will be returned without review by the County for resubmission. Submittals shall be sequentially numbered.
- C. When submitting information, the Contractor shall identify and state reasons for any alteration, variation, addition, deviation, or omission from the Contract. The

Contractor shall not perform work that alters, varies, adds, deviates, or omits Work without prior specific written acceptance by the County.

- D. The Contractor shall provide Submittals with reasonable promptness and in such sequence as to facilitate the timely completion of the Contract. The Contractor shall prepare and keep current, for review by the County, a schedule of Submittals which is coordinated with the Contractor's Project Schedule and allows the County reasonable time for review.
- E. The County shall review the Contractor's Submittals and respond in writing with reasonable promptness so as not to unreasonably delay the progress of the Work. Unless otherwise agreed, no delay to the Contractor's Work shall be attributable to the failure by the County to respond to a Submittal until thirty (30) days after the Submittal is received by the County, and then only if failure by the County to respond is unreasonable and affects the Contract completion date.
- F. If the Contractor is required to resubmit a Submittal, any revisions on resubmittals shall be specifically identified in writing and the resubmitted Submittal shall be sequentially alpha denoted and note revisions in numerical order. The cost of the review of the initial Submittal and the first revised submittal shall be borne by the County. The costs of all additional revised Submittals shall be charged to the Contractor. The cost of review shall include, without limitation, administrative, design, and engineering activities directly related to review of Submittals. The County may deduct these costs from any amounts due the Contractor.
- G. The County shall review the Contractor's Submittals only for conformance with the design of the Work and compliance with the Contract. Review of the Submittals are not conducted to verify the accuracy of dimensions, quantities, or calculations, the performance of materials, systems, or equipment, or construction means, methods, techniques, sequences, or procedures, all of which remain the Contractor's responsibility. Failure by the County to take exception to a Submittal shall not relieve the Contractor from any duty, including its responsibility for errors or omissions in Submittals, its duty to make Submittals and duty to perform the Work according to the requirements of the Contract. The County's review of a Submittal shall not alter or waive the requirements of the Contract unless the County has issued prior written approval of such change or alteration of the Contract requirements.
- H. The Contractor's failure to identify any error, deviation, or omission and subsequent acceptance of the Submittal by the County shall not relieve the Contractor from complying with the Contract requirements.

4.5 REQUESTS FOR INFORMATION

- A. If the Contractor determines that some portion of the drawings, specifications or other Contract Documents require clarification or interpretation by the County because of an apparent error, inconsistency, omission, or lack of clarity in the Contract, the Contractor shall promptly submit a Request For Information ("RFI") and, unless otherwise directed, shall not proceed with the affected Work until the County has responded to the RFI. The Contractor shall plan its work in an efficient manner so as to allow for timely responses to RFIs.
- B. RFIs shall only be submitted by the Contractor on a RFI Form provided by the County or in a form acceptable to the County. The Contractor shall clearly and concisely set forth the issue for which clarification or interpretation is sought and why a response is needed by the County. In the RFI the Contractor shall set forth its own

interpretation or understanding of the requirement along with reasons why it reached such an understanding.

- C. The County will review RFIs to determine whether they meet the requirements identified above in paragraph B to qualify as an RFI. If the County determines that the document is not an RFI it will be returned to the Contractor unreviewed as to content. When appropriate the Contractor may resubmit the RFI on the proper form, with all required information and in the proper manner.
- D. The County shall respond in writing with reasonable promptness to Contractor's RFI.
 - 1. At the request of the Project Representative, the Contractor shall prioritize its RFIs, identify a date by which the Contractor prefers the RFI be answered, and reasons for such priority.
 - 2. If the Contractor submits a RFI on an activity less than thirty (30) days prior to the commencement of that activity, the Contractor shall not be entitled to any time extension or adjustment in Contract Price due to the time it takes the County to respond to the RFI provided that the County responds within thirty 30 days. No delay to the Contractor's work or damages to the Contractor shall be attributable to the failure by the County to respond to the RFI until thirty (30) days after the County's receipt of the RFI, and then only if the failure by the County to respond is unreasonable and affects the Contract completion date.
- E. The County's response to a RFI shall not be considered a change to the Contract requirements. To the extent the Contractor believes that the County's response to the RFI constitutes changed work impacting Contract Price or Contract Time, the Contractor shall submit a Contractor's Request For Change Order to the County in accordance with Articles 5, *Changes to the Contract*.

4.6 TESTS, INSPECTIONS, AND ACCESS TO THE WORK

- A. The Contractor shall document and maintain an adequate testing and inspection program and perform such tests and inspections as are necessary or required to ensure that the Work conforms to the requirements of the Contract. The Contractor shall maintain all documentation related to testing and inspection and make such documentation available to the County at its request. Contractor shall be responsible for inspection and quality assurance of all its Work and all Work performed by any Subcontractor. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the County, or with the appropriate public authority. If any governmental, regulatory, or permitting authority requires any portion of the Work to be inspected, tested, or approved, the Contractor shall make all arrangements for and cooperate with such inspections, tests, and approvals so as not to delay completion of the Contract Work. The Contractor shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the County at least three (3) days Notice of: (1) when the work is ready to be tested and inspected and (2) when and where tests and inspections are to be made. Contractor shall maintain complete inspection records and make them available to the County upon request.
- B. The Contractor shall cooperate with the County in the performance of any tests and inspections of the Work. The Contractor has the duty to coordinate all tests and inspections in a manner, which does not negatively impact Contractor's compliance with the Contract.

- C. If any Work required to be inspected, tested, or approved is covered without such inspection, testing or approval being obtained, it must, if requested by the County, be uncovered for observation, and such uncovering shall be at Contractor's expense.
- D. Upon request by the County any Work, not otherwise required to be inspected or tested, shall be uncovered by the Contractor. If the Work is found to comply with the Contract or if any non-compliance was not caused by the Contractor, Subcontractor, or Supplier, the County will (1) pay the costs of testing and inspection; (2) pay the costs associated with the uncovering and recovering of the Work; and, (3) adjust the Contract Time to the extent the inspection and repair impacted the Project Schedule and delayed completion of the Work, otherwise the Contractor shall bear such costs as well as all costs of correction and the Contractor shall not be entitled to an adjustment in Contract Time.
- E. The County may, at any reasonable time and at its own cost, conduct inspections and tests as it deems necessary to ensure that the Work is in accordance with the Contract. The County shall promptly notify Contractor if an inspection or test reveals that the Work is not in accordance with the Contract. The County inspection and tests are for the sole benefit of the County and do not:
 - 1. Constitute or imply acceptance;
 - 2. Relieve Contractor of responsibility for providing adequate quality control measures;
 - 3. Relieve Contractor of responsibility for risk of loss or damage to the Work, materials, or equipment;
 - 4. Relieve Contractor of its responsibility to comply with the requirements of the Contract; or,
 - 5. Impair the County's right to reject defective or nonconforming items, or to avail itself of any other remedy to which it may be entitled.
- F. Neither observations by an inspector retained by the County, the presence or absence of such inspector on the Site, nor inspections, tests, or approvals by others, shall relieve Contractor from any requirement of the Contract. Inspectors are not authorized to change any term or condition of the Contract.
- G. Contractor shall promptly furnish, without additional charge, all facilities, labor, material and equipment reasonably needed for performing such safe and convenient inspections and tests as may be required by the County. The County may charge Contractor any additional cost of inspection or testing when Work is not ready at the time specified by Contractor for inspection or testing, or when prior rejection makes reinspection or retest necessary. The County shall perform its inspections and tests in a manner that will cause no undue delay in the Work.

4.7 CORRECTION OF WORK OR DAMAGED PROPERTY

- A. If material, equipment, workmanship, or Work proposed for, or incorporated into the Work, does not meet the Contract requirements or fails to perform satisfactorily, the County shall have the right to reject such Work by giving the Contractor written Notice that such Work is either defective or non-conforming.
 - 1. The County, at its option, shall require the Contractor, within a designated time period as set forth by the County, to either

- a. Promptly repair, replace or correct all Work not performed in accordance with the Contract at no cost to the County; or
 - b. Provide a suitable corrective action plan at no cost to the County.
2. Once the corrective action plan is reviewed and returned by the County with the annotation "no exception taken" or "note markings" by the County, the Contractor shall implement the corrective action plan.
 - a. Review and providing comments on the corrective action plan is not an acknowledgement by the County that such plan is adequate to remedy the defective or non-conforming work.
 - b. If the corrective action plan does not remedy the defective or non-conforming Work, the Contractor shall remain responsible for remedying of the defective or non-conforming Work to the County's satisfaction.
 3. The Contractor shall also be responsible for all repairs to any property and work damaged by the Contractor.
 4. Under no circumstances shall the Contractor be entitled to additional time or money for the correction of defective or non-conforming work or for the repair of damaged property. The County shall not be responsible for any costs to prepare corrective action plans, correct work or repair damaged property.
- B. If the Contractor does not repair, replace or correct and/or remove defective or non-conforming Work or repair damaged property as required by the County, the County or County's designee may repair, replace or correct and/or remove it and deduct the cost of such effort from any payment due the Contractor.
1. Under this provision, the County reserves the right to make use of the Contractor's plant and equipment for this repair, replacement, correction or removed Work. If the remaining payments due the Contractor are not sufficient to cover the County's cost of remedying the defective or non-conforming Work, the Contractor shall pay the difference to the County.
- C. The County may elect to retain work if the County determines that such defective or non-conforming work is not of sufficient magnitude or importance to make the work dangerous or undesirable or that removal of such work is impractical or will create conditions, which are dangerous or undesirable.
1. Just and reasonable value for such defective or non-conforming work will be determined by the County and appropriate deductions will be made in the payments due or to become due to the Contractor.
 2. The County's exercise of the rights under this provision shall be without prejudice to any other remedy the County may have, and shall not constitute a termination of the Contract.
- D. The Contractor shall be liable for all damages and costs incurred by the County caused by the Contractor's or its Subcontractors' and Suppliers' defective or non-conforming work or workmanship, including but not limited to all special, incidental, or consequential damages incurred by the County. The Contractor agrees to indemnify and hold the County harmless from any personal injury or property damage caused by the Contractor or its Subcontractors defective or non-conforming Work or workmanship.

4.8 SUBSTITUTION OF PRODUCTS & PROCESSES

- A. Substitutions requested by the Contractor will be subject to the County's prior written acceptance and at the County's sole discretion.
- B. Requests for substitution must specifically identify:
 - 1. Material, equipment, and labor costs included in the Contractor's bid associated with the original item to be substituted;
 - 2. All costs for material, equipment, labor associated with the proposed substitution, including any impact costs;
 - 3. Proposed change to the Contract Price and/or Contract Time; and,
 - 4. Compatibility with or modification to other systems, parts, equipment or components of the Project and Contract Work.
- C. Contractor shall provide all documentation supporting its request as requested by the County.
- D. All costs of any redesign or modification to other systems, parts, equipment or components of the Project or Contract Work, which result from the substitution, shall be borne by the Contractor.
- E. When the County approves a substitution proposed by the Contractor, the Contractor shall guarantee the substituted article or materials to be equal to, or better than, those originally specified and shall be compatible with all other systems, parts, equipment or components of the Project and Contract Work. The County has the right to order an unaccepted, substituted article removed and replaced without additional cost to the County.
- F. The County has a right to a deductive Change Order if the substituted product or process is less costly than the contractually required product or process.
- G. If the County does not accept the substitution proposal the Contractor shall proceed, without delay or cost to the County, with the Contract Work as originally specified.

ARTICLE 5: CHANGES TO THE CONTRACT

5.0 GENERAL

- A. All changes to the Contract must be made in writing and signed by the King County Executive or its designees. No oral statement by any person shall change or modify the Contract. All changes to the Contract shall be made in accordance with the provisions of this Article.
- B. All Change Order work shall be performed in accordance with the original Contract requirements unless modified in writing by the County.
- C. Any written Field Directive, response to Request For Information, or other directive, direction, instruction, interpretation, or determination (hereinafter referred to as "Direction" for the purposes of Article 5), provided by the County is not considered a Change Order, a change to Contract requirements, and shall not constitute, in and of itself, entitlement to an adjustment in Contract Price and/or Contract Time.
- D. To the extent the Contractor believes it is entitled to any additional money or time for any reason the Contractor shall submit a Request For Change Order to the County as more fully described in Article 5, *Changes to the Contract*.

1. If the Contractor believes any of the following events entitles the Contractor or its Subcontractors or Suppliers to additional money or time, the Contractor must file a Request for Change Order in accordance with the requirements set forth in the Contract.
 - a. Written Field Directive
 - b. Response to a request for information
 - c. Comments on a submittal
 - d. Differing Site Condition
 - e. Acceleration or constructive acceleration
 - f. Suspension of the Work
 - g. Delay, inconvenience, disruption of schedule, loss of efficiency or productivity
 - h. County caused Stand-by
 - i. Force Majeure
 - j. Conflicts, ambiguities, inconsistencies, and/or problems arising from the Contract Documents
 - k. Any other directive or Direction, written or oral, from the County
 - l. Any other reason for which the Contractor believes it is entitled to additional money or time
- E. The Contractor shall not be entitled to any change in the Contract Price and/or Contract Time under the following conditions or events:
 1. They were foreseeable at the time the Contractor submitted its bid;
 2. They were caused by the acts of the Contractor, Subcontractor and/or Supplier, including but not limited to the choice of means, methods, techniques, sequences, or procedures for the Work, failure to provide labor, materials or equipment in a timely manner, and failure to take reasonable steps to mitigate delays, disruptions, or conditions encountered.
- F. The Contract requirements for time and price impacts related to Change Orders are set forth in Article 6, *Time and Price Adjustments*.

5.1 CONTRACTOR'S REQUEST FOR A CHANGE ORDER

A. Notice of Intent to Submit a Request for Change Order.

1. The Contractor shall provide the Project Representative with the written Notice that the Contractor intends to submit a Request For Change Order no later than seven (7) days, except as specified below for Differing Site Conditions, after any direction, instruction, interpretation, determination by the County and/or the onset of any event or impact to the Project.
2. The Contractor shall include the following information in the Notice of intent to Request a Change Order:
 - a. The date, circumstances, and source of the direction, instruction, interpretation, determination by the County and/or the event or impact to the Project.

- b. Reasonable order of magnitude estimate of the change to the Contract Price;
- c. Reasonable order of magnitude estimate of the time impact to the Contract Time; and
- d. Contractual provisions and substantive basis to support the Request.

B. Request for Change Order.

- 1. Within twenty-one (21) days after the Direction and/or the onset of the event or impact to the Project, the Contractor may request an extension of time for filing its Request for Change Order. The Contractor shall state the reasons for the request and identify a date certain when the Contractor shall provide all documentation required in its Request for Change Order.
- 2. Unless the Project Representative issues written Notice authorizing the Contractor additional time to submit the Request for Change Order, the Contractor shall provide, in writing, a detailed Request for Change Order to the Project Representative no later than thirty-five (35) days after the Direction and/or the onset of the event or impact to the Project.
- 3. The Request for a Change Order shall include:
 - a. Specific dollar amount covering all costs associated calculated in accordance with Article 6, *Time and Price Adjustments*;
 - b. Specific request for time extension (number of days);
 - c. A copy of the written Notice of intent, including all attachments; and
 - d. All documentation supporting the Request for a Change Order, including but not limited to all cost records, schedule analysis, and the documents identified in §00700, ¶ 3.11, *Maintenance and Inspection of Documents*, that are in any way relevant to the Contractor's Request for Change Order.

C. County's Response to Contractor's Request for Change Order.

- 1. The County will make a written determination with respect to the Contractor's Request For Change Order within thirty (30) days of receipt of said Request, unless one of the following activities occurs.
 - a. The County may request additional information and specify a time period for receipt of the information. The Contractor shall comply with the County's request for additional information.
 - b. The County may inform the Contractor that additional time is needed to review the Contractor's Request for Change Order and identify a date certain when a decision will be rendered.
- 2. If the County requests additional information, the County will make a written determination within thirty (30) days receipt of Contractor's additional information.
- 3. If the County does not make a determination within the applicable time period, the Request For Change Order is deemed denied.

D. Approval of Request for Change Order and Execution of Change Order. If the County determines that a Change Order is necessary, the parties may negotiate acceptable terms and conditions and execute a Bilateral Change Order or the County may issue a Unilateral Change Order.

- E. Contractor Procedure upon Denial or Deemed Denial of a Request for a Change Order. If the Contractor disagrees with the denial, the Contractor's sole remedy shall be to file a fully documented Claim within thirty (30) days of deemed denial or the Contractor's receipt of the denial in accordance with Article 9, *Claims and Litigation*.
- F. Contractor's Obligation to Continue to Work. Pending resolution of the Contractor's Request for a Change Order, the Contractor shall continue to perform all Work including, at the written request of the County that work associated with the pending Request for Change Order. The Contractor shall maintain its progress with the Work.
- G. Waiver. Failure to follow the provisions set forth herein shall constitute a waiver of the Contractor's right to receive any additional time or money as a result of any alleged direction, instruction, interpretation, determination by the County and/or the event or impact to the Project.

5.2 DIFFERING SITE CONDITIONS

- A. Immediate Written Notice to the County. If the Contractor encounters a Differing Site Condition the Contractor shall immediately, and before the conditions are disturbed, give written Notice to the County of Differing Site Conditions.
- B. Request for Change Order based on Differing Site Condition. Unless otherwise agreed upon in writing by the Project Representative, within forty-five (45) days of the Contractor's initial written notification of the Differing Site Condition to the County, the Contractor shall provide a Request for Change Order that includes all elements required for such a request and:
 - 1. A detailed description of the Differing Site Condition; and
 - 2. Substantive, contractual, and technical basis supporting the existence of the Differing Site Condition and its impacts.
- C. Waiver.
 - 1. If the Contractor's actions disturb the Site such that the County or County's designee cannot adequately and fully investigate the alleged differing site condition, the Contractor waives its right to receive any additional time or money as a result of the Differing Site Condition.
 - 2. Failure by the Contractor to provide either (a) immediate Notice or (b) Request for Change Order shall constitute a waiver of the Contractor's right to receive any additional time or money as a result of the Differing Site Condition.
 - 3. The Contractor shall be responsible for any and all costs or damages incurred by the County resulting from the Contractor's failure to provide appropriate notice and/or the Detailed Description and Request for Change Order.
- D. County's Response to the Differing Site Condition Request for Change Order. The County shall investigate the alleged Differing Site Conditions and respond to the Differing Site Condition in accordance with the Request for Change Order procedures set forth above.
- E. Contractor's Obligation to Continue to Work. The Contractor shall not disturb the condition until receipt of written authorization from the Project Representative that work can resume at the location of the alleged Differing Site Condition. The Contractor shall continue with performance of all other Work.

5.3 ACCELERATION

A. Acceleration Directive.

1. The County reserves the right to direct the Contractor to accelerate Contract Work. In the event that the County directs acceleration, such directive will be in writing and specifically designated as "Acceleration Directive."
2. The Contractor shall keep cost and other project records related to the Acceleration Directive separately from normal project costs and records and shall provide a written record of acceleration to the County on a daily basis.

B. Constructive Acceleration.

1. In the event that the Contractor believes that some action or inaction on the part of the County constitutes acceleration, the Contractor shall immediately notify the County in writing that the Contractor considers the actions an acceleration. This written notification shall detail the circumstances of the acceleration.
 2. The Contractor shall not accelerate the Work until the Project Representative responds in writing issuing an Acceleration Directive or denying the constructive acceleration.
 3. The Contractor shall keep cost and other project records related to the constructive acceleration separately from normal project costs and records and shall provide a written record of acceleration to the County on a daily basis.
- C. To the extent the Contractor believes an acceleration directive or constructive acceleration constitutes a change in the Work impacting Contract Price and/or Contract Time, the Contractor shall submit a Request for a Change Order to the County pursuant to Article 5, *Changes to the Contract*.
- D. Labor costs recoverable will be overtime or shift premium costs. Equipment costs recoverable will be only the rental cost of additional equipment or Contractor-owned additional equipment mobilized to the Site to accomplish the accelerated Work effort. Actual damages resulting from inefficiencies or loss of productivity may be recoverable to the extent the Contractor provides verifiable cost records and contemporaneous project documentation.

5.4 SUSPENSION OF WORK

A. County Issues Directive Suspending Work

1. The County may order the Contractor, in writing, to suspend all or any part of the Work of this Contract for the period of time that the County determines appropriate for the convenience of the County. The Contractor shall not suspend the Work without written direction from the County specifically authorizing the Suspension of Work.
2. Upon receipt of a written Notice suspending the Work, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize costs attributable to such suspension. Within a period up to 120 days after the suspension notice is received by the Contractor, or within any extension of that period which the County requires, the County shall either:
 - a. Cancel the written notice suspending the Work; or,
 - b. Terminate the Work for either default or convenience.

3. If a written notice suspending the Work is canceled or the period of the Suspension or any extension thereof expires, the Contractor shall resume Work as required by the County.
4. If the performance of all or any part of the Work is, for an unreasonable period of time, suspended by the written direction of the County, the Contractor may be entitled to an adjustment in the Contract Time, or Contract Price, or both, for increases in the time or cost of performance directly attributable to the suspension and provided that the Contractor sufficiently documents all costs and time impacts attributable to the suspension. No adjustments to Contract Price and/or Contract Time shall be allowed unless the Contractor can demonstrate that the period of suspension caused by the County impacted Critical Path and delayed the Contractor from completing the Contract Work on time.

B. Constructive Suspension of Work

1. In the event that the Contractor believes that some action or omission on the part of the County constitutes constructive suspension of Work, the Contractor shall immediately notify the County in writing that the Contractor considers the actions or omission a constructive suspension of Work. This written notification shall detail the circumstances of the constructive suspension of Work.
 2. The Contractor shall keep cost and other project records related to the constructive suspension separately from normal project costs.
- C. To the extent the Contractor believes it is entitled to any additional money or time as a result of the suspension of Work or constructive suspension, Contractor shall submit a Request For Change Order to the County as more fully described in Article 5, *Changes to the Contract*. The Contractor shall provide a Request for Change Order within thirty-five (35) days of (1) the County's Notice canceling the suspension or (2) termination of the Work.
1. The Contractor is compensated for Overhead, including unabsorbed home office overhead, through the Overhead and Profit markup described in provision 6.2, *Methods to Calculate Adjustments to Contract Price*. If the Contractor can demonstrate through verifiable cost records that the Overhead and Profit markup is insufficient to cover the Contractor's costs for unabsorbed home office overhead, the Contractor may be entitled to additional compensation for unabsorbed home office overhead provided the Contractor demonstrates full compliance with all of the following:
 - a. The Contractor shall demonstrate that the work was suspended solely by actions for which the County is entirely responsible.
 - b. The Contractor shall demonstrate that the Project's cash flow has been or will be substantially adversely impacted as a direct and sole result of such suspension.
 - c. The suspension was of an indefinite duration at the time the suspension arose;
 - d. The County required the Contractor to remain on standby during the suspension period;
 - e. The Contractor was unable to resequence or reorganize the Work in order to continue working and maintain cash flow for the Project;

- f. The Contractor was ready, capable, and willing to perform Contract Work during the suspension;
 - g. The Contractor was unable to take on other work as a direct result of the suspension and the only reason the Contractor was unable to take on other work was because of the suspension; and
 - h. That the suspension to the Project's completion date did not simply result from additional work caused by Change Orders which did not result in a substantial impact to the Project's cash flow.
2. The Contractor's recovery is limited to actual unabsorbed home office overhead minus the Overhead and Profit markup calculated in accordance with provision 6.2, *Methods to Calculate Adjustments to Contract Price*.
- D. Failure to comply with these requirements shall constitute a waiver of Contractor rights to any adjustment in Contract Time and/or Contract Price.
 - E. No adjustment shall be made under this provision for any suspension to the extent that Contractor's performance would have been suspended, delayed, or interrupted as a result of actions, omissions, fault or negligence caused, in whole or in part, by the Contractor or any of its Subcontractors.

5.5 FORCE MAJEURE

- A. To the extent the Contractor believes it is entitled to any additional time as a result of Force Majeure, Contractor shall submit a Request For Change Order to the County as more fully described in Article 5, *Changes to the Contract*.
- B. Contractor shall not be entitled to a change in Contract Price resulting from an act of Force Majeure.
- C. Contractor is not entitled to an adjustment in Contract Time if the act of Force Majeure did not impact progress of the Work on the Critical Path and delay the Contractor from completing Contract Work within Contract Time.
- D. When a Contractor experiences concurrent delay caused by either the County or Contractor and an act of Force Majeure, the Contractor shall only be entitled to an change in Contract Time. No change to the Contract Price shall be allowed as a result of such concurrent delay.

5.6 CHANGE ORDERS

- A. Bilateral Change Orders
 - 1. If the County and Contractor reach agreement on the terms and conditions of any change in the Work, including any adjustment in the Contract Price and Contract Time, such agreement shall be incorporated into a Change Order and signed by both Parties. Such Bilateral Change Orders shall represent full and complete payment and final settlement of all changes, Claims, damages or costs for all (a) time; (b) direct, indirect, and overhead costs; (c) profit; and (d) any and all costs or damages associated with delay, inconvenience, disruption of schedule, impact, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, stand-by, and any other costs or damages related to any work either covered or affected by the Change Order, or related to the events giving rise to the Bilateral Change Order.
- B. Unilateral Change Order

1. County's Right to Issue Unilateral Change Order.
 - a. The County may unilaterally issue a Change Order at any time, without invalidating the Contract and without notice to the sureties, making changes within the general scope of this Contract.
 - b. If any such Change Order causes an increase or decrease in the cost of, or time required for, performance of any part of the Contract Work, the County may make an adjustment in the Contract Price, Contract Time, or both, in accordance with Articles 5, *Changes to the Contract*, and 6, *Time and Price Adjustments*.
2. Contractor Disagreement with Unilateral Change Order. If the Contractor disagrees with the adjustment to the Contract Price and/or Time as indicated in the Unilateral Change Order, the Contractor's only remedy shall be to file a fully documented Claim in accordance with Article 9, *Claims and Litigation*.
3. Contractor's Obligation to Continue to Work. The Contractor is required to continue with performance of all Work, including work associated with the Unilateral Change Order.

5.7 COUNTY REQUEST FOR A CHANGE PROPOSAL

- A. Request. The County may request a written Change Proposal from the Contractor for a change in the Contract Work.
- B. Contractor's Proposal. Contractor shall submit its written Change Proposal within the time specified in the County's request. The Change Proposal shall represent the Contractor's offer to perform the requested work, and the pricing set forth within the proposal shall represent full, complete, and final compensation for the proposed change and any impacts to any other Contract Work, including any adjustments in the Contract Time.
- C. County's Acceptance of Contractor Proposal.
 1. If the County accepts the Change Proposal as submitted by the Contractor or as negotiated by the parties, the County shall notify the Contractor in writing of its acceptance of the Proposal and direct that the change in the Work be performed.
 2. Contractor shall not perform the work identified in the Change Proposal until receipt of written authorization from the Project Representative.
 3. Both parties shall acknowledge acceptance of the terms of a negotiated Change Proposal in writing.
 4. Once the County and Contractor have agreed on the terms of a negotiated Change Proposal, the negotiated Change Proposal shall represent full and complete compensation and final settlement of all Claims for all (1) time; (2) direct, indirect, and overhead costs; (3) profit; and (4) costs or damages associated with delay, inconvenience, disruption of schedule, impact, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, and/or any other costs or damages related to any work either covered or affected by the Change Proposal, or related to the events giving rise to the Change Proposal.
- D. Execution of a Bilateral Change Order. After acceptance of the Change Proposal or acceptance of the negotiated Change Proposal, the County shall direct the Contractor to perform the work in accordance with the agreed upon terms; thereafter,

the Parties shall execute a bilateral Change Order in accordance with the terms of the Change Proposal or negotiated Change Proposal.

- E. Execution of Unilateral Change Order. If the County does not accept the Change Proposal or the Parties cannot agree upon the appropriate price or terms for the Change Proposal, the County may issue a unilateral Change Order.

ARTICLE 6: TIME AND PRICE ADJUSTMENTS

6.0 CHANGE IN THE CONTRACT TIME

- A. The Contract Time shall only be changed by a Change Order.
- B. Contractor shall include any request for a change in the Contract Time in its Notice of intent to submit a Request for Change Order, Request for Change Order, Change Proposal and Claim.
- C. No change in the Contract Time shall be allowed to the extent the time of performance is changed due to the fault, act, or omission of Contractor, or anyone for whose acts or omissions the Contractor is responsible.
- D. Contractor is not entitled to a change in Contract Time unless the progress of the Work on the Critical Path is delayed and completion of the Contract Work within Contract Time is delayed.
- E. When a Contractor experiences concurrent delays which impact the Critical Path and are caused by (1) the County and the Contractor; (2) the County and an act of Force Majeure; or, (3) the Contractor and an act of Force Majeure; the Contractor shall only be entitled to an change in Contract Time. No change to the Contract Price shall be allowed as a result of such concurrent delay.
- F. A Request for Change Order that includes a request for an adjustment in the Contract Time shall:
1. Be in writing and delivered to the County within the appropriate time period specified in Article 5, *Changes in the Contract*.
 2. Include a clear explanation of how the event or conditions specifically impacted the Critical Path and overall Project Schedule and the amount of the adjustment in Contract Time requested.
 3. Be limited to the change in the Critical Path of a Contractor's Project Schedule, and any updates, attributable to the event or conditions, which caused the request for adjustment. No extension of time or compensation for damages resulting from delay will be granted unless the delay affects the timely completion of all Work under the Contract or timely completion of a portion of the Work for which time of completion is specific. Contractor shall be responsible for showing clearly on the Project Schedule, and any updates, that the event or conditions:
 - a. Had a specific impact on the Critical Path and was the sole cause of such impact;
 - b. Could not have been avoided by resequencing of the Work or other reasonable alternatives; and
 - c. Will prevent the Contractor from completing the Project within the current Contract completion date.

- G. Contractor shall make all reasonable efforts to prevent and mitigate the effects of any delay, whether occasioned by an act of Force Majeure or otherwise.

6.1 CHANGE IN THE CONTRACT PRICE

- A. The Contract Price shall only be changed by a Change Order.
- B. Contractor shall include any request for a change in the Contract Price in its:
 - 1. Change Proposal;
 - 2. Notice of intent to submit a Request for Change Order;
 - 3. Request For A Change Order; and
 - 4. Claim, provided the related Request for Change Order and/or Change Proposal included a request to adjust the Contract Price.
- C. No change in the Contract Price shall be allowed when:
 - 1. Contractor's changed cost of performance is due to the fault, acts, or omissions of Contractor, or anyone for whose acts or omissions Contractor is responsible;
 - 2. The change is concurrently caused by Contractor and County; or
 - 3. The change is caused by an act of Force Majeure.
- D. The County shall not be responsible for, and the Contractor shall not be entitled to any compensation for unallowable costs. Unallowable costs include, but are not limited to:
 - 1. Interest or attorney's fees of any type other than those mandated by Washington state statute;
 - 2. Claim preparation or filing costs;
 - 3. The cost of preparing or reviewing Change Proposals or Requests for Change Orders;
 - 4. Lost profits, lost income or earnings;
 - 5. Costs for idle equipment when such equipment is not at the Site, has not been employed in the Work, or is not scheduled to be used at the Site;
 - 6. Lost earnings or interest on unpaid retainage;
 - 7. Claims consulting costs;
 - 8. The costs of corporate officers or staff visiting the Site or participating in meetings with the County;
 - 9. Any compensation due to the fluctuation of foreign currency conversions or exchange rates;
 - 10. Loss of other business; and/or
 - 11. Any other special, consequential, or incidental damages incurred by the Contractor, Subcontractor, or Suppliers.
- E. A Request for Change Order that includes a request for an adjustment in Contract Price shall:
 - 1. Be in writing and delivered to the County within the applicable time period specified in Article 5, *Changes to the Contract*.

2. Identify the following information:
 - a. The event or condition which caused the Contractor to submit its request for an adjustment in the Contract Price;
 - b. The nature of the impacts to Contractor and its Subcontractors, if any; and,
 - c. The amount of the adjustment in Contract Price requested.
3. Any requests by Contractor for an adjustment in the Contract Price and in the Contract Time that arise out of the same event or conditions shall be submitted together.
- F. The adjustments to the Contract Price provided for in this Article represent full, final, and complete compensation for all work done in connection with the request for an adjustment in Contract Price and all costs related to, resulting from, or affected by such change in Work including, but not limited to, all direct and indirect costs, overhead, profit, and all costs or damages associated with delay, inconvenience, disruption of schedule, impact, dilution of supervision, inefficiency, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, and any other costs or damages related to any work either covered or affected by the change in the Work, or related to the events giving rise to the change.

6.2 METHOD TO CALCULATE ADJUSTMENTS TO CONTRACT PRICE

- A. One of the following methods shall be used to calculate damages and/or adjustments to the Contract Price that result from or relate to Change Proposal, Request for Change Order, and/or Claim.
- B. Determination of the method to be used to calculate adjustments in the Contract Price shall be at the sole discretion of the County.
- C. One of the following methods shall be used:
 1. Unit Price Method;
 2. Firm Fixed Price Method (also known as Lump Sum); or,
 3. Time and Materials Method.
- D. **Unit Price Method**
 1. Whenever the County authorizes Contractor to perform Work on a Unit Price basis, the County's authorization shall clearly state the:
 - a. Scope of work to be performed;
 - b. Applicable Unit Price; and,
 - c. Not to exceed amount of reimbursement as established by the County.
 2. The applicable unit price shall include reimbursement for all direct and indirect costs of the Work, including Overhead and profit.
 3. Contractor shall only be paid under this method for the actual quantity of materials incorporated in or removed from the Work and such quantities must be supported by field measurement statements verified by the County.
- E. **Firm Fixed Price Method**
 1. The Contractor and County may mutually agree on a fixed amount as the total compensation for the performance of changed work.

2. The Contractor shall provide a detailed cost breakdown supporting the Contractor's requested adjustment to Contract Price and any other financial documentation requested by the Project Representative.
3. Any adjustments to the Contract Price using the Firm Fixed Price Method shall include, when appropriate all reasonable costs for labor, equipment, material, Overhead and profit. Such Overhead and profit shall be calculated in accordance with §00700 ¶ 6.2 F 4 e, *Overhead and Profit*.
4. Whenever the County authorizes Contractor to perform changed work on a Firm Fixed Price Method, the County's authorization shall clearly state:
 - a. Scope of Work to be performed; and,
 - b. Total Fixed Price payment for performing such work.

F. Time and Materials Method

1. Whenever the County authorizes the Contractor to perform Work on a Time and Material basis, County's authorization shall clearly state:
 - a. Scope of Work to be performed; and,
 - b. A not to exceed amount of reimbursement as established by the County.
2. Contractor shall:
 - a. Cooperate with the County and assist in monitoring the Work being performed;
 - b. Substantiate the labor hours, materials and equipment charged to work under the Time and Materials Method by detailed time cards or logs completed on a daily basis before the close of business each working day;
 - c. Present the time card and/or log at the close of business each day to the Project Representative so that the County may review and initial each time card/log;
 - d. Perform all Work in accordance with this provision as efficiently as possible;
 - e. Not exceed any cost limit(s) without the County's prior written approval; and
 - f. Maintain all records of the work, including all records of the Subcontractor, Supplier, and Materialmen, and make such records available for inspection as required in provisions 3.9, *Record Documents*, 3.10, *Cost Records*, and 3.11, *Maintenance and Inspection of Document*.
3. Contractor shall submit costs and any additional information requested by the County to support Contractor's requested price adjustment.
4. The Contractor shall only be entitled to be paid for reasonable costs actually incurred by the Contractor. The Contractor has a duty to control costs. If the County determines that the Contractor's costs are excessive or unreasonable, the County, at its discretion, shall determine the reasonable amount for payment. Any adjustments to the Contract Price using the Time and Materials method shall be based on the following categories and shall incorporate markups for Overhead and profit as provided herein.
 - a. **Labor.** For all labor, including foreman supervision but excluding superintendents, the Contractor shall be reimbursed for labor costs provided

herein. The labor cost of an event or condition shall be calculated as the sum of the following:

- i. **Labor Rate.** The Labor Rate is the actual reasonable wage paid to the individual plus the actual reasonable costs incurred by the Contractor to cover costs associated with Federal Insurance Compensation Act (FICA), Federal Unemployment Tax Act (FUTA), State Unemployment Tax Act (SUCA), industrial insurance, fringe benefits, and benefits paid on behalf of labor by the Contractor. The applicable Labor Rates shall be multiplied by the number of hours reasonably expended in each labor classification because of the event or condition to arrive at a total cost of labor.
 - ii. **Travel Allowance and/or Subsistence.** The labor calculation shall include the actual costs of travel and/or subsistence paid to the Contractor's employees engaged upon the Work when said payments are required by a labor agreement.
- b. **Materials.** The cost of materials resulting from an event or condition shall be calculated in one or more of the following methods, at the County's election:
- i. **Invoice Cost.** The Contractor may be paid the actual invoice cost of materials including actual freight and express charges and applicable taxes less all available discounts, rebates, and back-charges, notwithstanding the fact that they may not have been taken by the Contractor. This method shall be considered only to the extent the Contractor's invoice costs are reasonable and the Contractor provides copies of vendor invoices, freight and express bills, and other evidence of cost accounting and payment satisfactory to the County. As to materials furnished from the Contractor's stocks for which an invoice is not available, the Contractor shall furnish an affidavit certifying its actual cost of such materials and such other information as the County may reasonably require;
 - ii. **Wholesale Price.** The Contractor may be paid the lowest current wholesale price for which the materials are available in the quantities required, including customary costs of delivery and all applicable taxes less all available discounts, rebates, and back-charges; or,
 - iii. **County Furnished Material.** The County reserves the right to furnish such materials as it deems advisable, and the Contractor shall have no Claim for any costs, Overhead or profit on such materials.
- c. **Equipment.** The additional cost, if any, of machine-power tools and equipment usage shall be calculated in accordance with the following rules:
- i. **Equipment Rates.** The Contractor's own charge rates may be used if verified and approved by the County and based on the Contractor's actual ownership and operating cost experience. Rental rates contained in published rate guides may be used if their cost formulas and rate factors are identifiable, reflect the Contractor's historical acquisition costs, utilization, and useful life, and do not include replacement cost, escalation contingency reserves, general and administrative expense, or profit. Rates shall be based on the Contractor's actual allowable costs incurred or the rates established according to the Rental Rate Blue Book for Construction Equipment, published by Equipment Watch, PRIMEDIA,

whichever is less. The Rental Rate Blue Book established equipment rate shall be the monthly rental rate for the equipment plus the monthly rental rate for required attachments, divided by 176, multiplied by the appropriate regional adjustment factor, plus the hourly operating cost. The established equipment rate shall apply for actual equipment usage up to eight hours per day. For all hours in excess of eight hours per day or 176 hours per month, the established equipment rate shall be the monthly rental rate plus the monthly rental rate for required attachments, divided by 352, multiplied by the regional adjustment factor, plus the hourly operating cost.

- ii. **Transportation.** If the necessary equipment is not already at the Site and it is not anticipated that it would be required for the performance of other work under the terms of the Contract, the calculation shall include a reasonable amount for the costs of the necessary transportation of such equipment.
 - iii. **Standby.** The Contractor shall only be entitled to standby equipment costs if (a) the equipment is ready, able, and available to do the Work at a moment's notice; (b) Contractor is required to have equipment standby because of an event or condition solely caused by the County and (c) the Contractor can demonstrate that it could have and intended to use the equipment on other projects/jobs. The Contractor shall be compensated at 50% of the monthly rental rate for the equipment, divided by 176, and multiplied by the appropriate regional adjustment factor, as identified in the Rental Rate Blue Book for Construction Equipment, published by Machinery Information Division of PRIMEDIA Information Inc. Standby shall not be paid during periods of Contractor-caused delay, concurrent delay, Force Majeure, during any seasonal shutdown, routine maintenance, down-time or broken equipment, late delivery of equipment or supplies, or other anticipated occurrence specified in the Contract Documents. No payment shall be made for standby on any piece of equipment, which has been used on the Project in any 24 hour period. Standby costs shall not be paid for weekends, holidays, and any time the equipment was not intended to be used on the Project as demonstrated by the Project Schedule.
- d. **Subcontractor & Supplier.** Direct costs associated with Subcontractors and Suppliers shall exclude Overhead and Profit markups and shall be calculated and itemized in the same manner as prescribed herein for Contractor. Contractor shall provide detailed breakdown of Subcontractor and Supplier invoices.
 - e. **Overhead and Profit Markup.**
 - i. On a change to the Contract Price or any other claim for money by the Contractor, the County will only pay Overhead, including Home Office Overhead, Site or Field Office Overhead, and unabsorbed home office overhead, and Profit pursuant to the Overhead and Profit Markups set forth herein. The Overhead and Profit Markups cover all overhead regardless of how the Contractor chooses to account for various costs in its books of account.

- ii. Overhead and Profit markups shall not be applied to Freight, delivery charges, express charges, and sales tax.
- iii. The allowed Overhead and Profit markup shall not exceed the following:
 - 1. If the Contractor is self performing work: 18% combined Overhead and Profit markup on the Contractor's Direct Costs; or
 - 2. If a Subcontractor or Supplier is performing work: 18% for the Subcontractor's Direct Cost for performing the work and 7% on the Direct Costs of the Subcontractors' or Suppliers'; provided that the 7% is to be divided among upper tier Subcontractors and the Contractor when a Subcontractor or Supplier is performing the work.
 - 3. If the value of material and equipment is greater than 50% of the total value of the change, the Overhead and Profit Markup shall only be 10% for material and equipment.
 - 4. In no event shall the total combined Overhead and Profit markup for the Contractor and all Subcontractors and Suppliers of any tier exceed 25% of the Direct Cost to perform the Change Order work.
- iv. Direct Costs shall include Labor (as defined in §00700 ¶ 6.2 F4a), Materials (as defined in §00700 ¶ 6.2 F4b), Equipment (as defined in §00700 ¶ 6.2 F4c), and Subcontractor and Supplier Costs (as defined in §00700 ¶ 6.2 CFd).

G. Deductive Changes to the Contract Price

- 1. A deductive change to the Contract Price may be determined by taking into account:
 - a. Costs incurred and saved by the Contractor as a result of the change, if any;
 - b. The costs of labor, material, equipment, overhead and profit saved by the change. These costs shall be calculated following as closely as possible with the provisions identified in Article 6, *Time and Price Adjustments*; and/or,
 - c. At the discretion of the County, costs set forth in the documents used by the Contractor to develop its bid.
- 2. Where the County has elected not to correct incomplete or defective Work, the adjustment in the Contract Price shall take into account:
 - a. The decreased value to the County resulting from the incomplete or defective Work; and,
 - b. The increased future costs which the County may incur by reason of the incomplete or defective Work.

H. Full Compensation

An adjustment calculated in accordance with the provisions of this Article shall be full and complete payment and final settlement of all changes; claims, damages and costs for all (a) time; (b) direct, indirect, and overhead costs; (c) profit; and (d) any and all costs or damages associated with delay, inconvenience, disruption of schedule, impact, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, standby, and/or any other costs or damages related to any Work either

covered or affected by the changed work, or related to the events giving rise to the change.

ARTICLE 7: PAYMENT AND COMPLETION

7.0 APPLICATIONS FOR PAYMENT

- A. On or about the first day of each month, the Contractor shall submit to the County an Application for Payment. Each application shall be on a form acceptable to the County and designated as an "Application For Payment." The Contractor shall include with each Application For Payment:
 - 1. Current status Schedule of Values;
 - 2. Project Schedule and the most current updates; and
 - 3. Affidavits signed by all Subcontractors performing Work to date, stating that each of them has been paid, less earned retainage, as their interests appeared in the last preceding Application For Payment.
- B. Inclusion of the required documentation is a condition precedent to payment. The Contractor is not entitled to payment for any work unless the Application For Payment includes all required documentation. The County reserves the right to withhold payment pursuant to provision 7.2, *Payments Withheld* if it is subsequently determined that all required documentation was not provided by the Contractor.
- C. The application shall correlate the amount requested with the Schedule of Values and with the state of completion of the Work, as measured by the current Project Schedule. In addition to Work performed by the Contractor, applications may include (1) the invoiced cost of major materials or equipment (major material or equipment to be identified on the Schedule of Values) suitably stored on the Site, and (2) with the County's consent, up to 75% of the invoiced cost of major materials or equipment suitably stored off the Site if the County's interest in those major materials or equipment is protected through insurance and the Contractor provides documentation of such insurance.

7.1 PAYMENTS

- A. The County shall comply with RCW 39.76, as amended, and promptly review each Application For Payment and identify in writing any cause for disapproval within 8 working days. In addition to withholding payment for unsatisfactory performance or failure to comply with Contract requirements, if the Contractor's Application for Payment fails to recognize any back-charges, off-sets, credits, change orders, or deductions in payment made in accordance with provision 7.2, *Payments Withheld*, the County shall have the right to revise or disapprove Contractor's Application For Payment because the Application For Payment is not considered a properly completed invoice.
- B. If an Application For Payment is accepted by the County, it shall be paid within thirty (30) days of the County's receipt of the properly prepared invoice (Application For Payment).

7.2 PAYMENT WITHHELD

- A. In addition to moneys retained pursuant to RCW 60.28 and without waiver of any other available remedies, the County has the right to withhold, nullify, or back-charge, in whole or in part, any payment or payments due or that have been paid to

the Contractor as may be necessary to cover the County's costs or to protect the County from loss or damage for reasons including but not limited to:

1. Failure of the Contractor to submit or obtain acceptance of a Progress Schedule, Schedule of Values, and any updated Schedules;
 2. Defective or non-conforming Work;
 3. Costs incurred by the County to correct, repair or replace defective or non-conforming Work, or to complete the Work;
 4. A reasonable doubt that the Contract can be completed for the balance then unpaid;
 5. A reasonable concern by the County that the materials, equipment or component parts are not in proper operating condition;
 6. Assessment of Liquidated Damages;
 7. Failure to perform in accordance with the Contract;
 8. Cost or liability that may occur to the County as the result of the Contractor's or Subcontractor's acts, omissions, fault, or negligence;
 9. Deduction in Contract Work;
 10. Failure of Contractor to repair damaged materials, equipment, property, or Work;
 11. Failure of the Contractor to provide or obtain review of Submittals;
 12. Failure to pay Subcontractors or Suppliers;
 13. Failure to keep Record Documents up to date;
 14. Failure to comply with all applicable federal, state, and local laws, statutes, regulations, codes, licenses, easements, and permits;
 15. Failure to obtain and maintain applicable permits, insurance, and bonds;
 16. Failure to provide Statement of intent to Pay Prevailing Wage and/or Affidavits of Wages Paid; and
 17. Failure to comply with the Contract safety requirements.
- B. The withholding, nullification, or back-charge of any payment(s) by the County shall in no way relieve the Contractor of any of its obligations under this Contract.

7.3 TITLE

Title to all Work and materials covered by an accepted and paid Application For Payment shall pass to the County at the time of such payment, free and clear of all liens, claims, security interest, and encumbrances. Passage of title shall not, however, (1) relieve Contractor from any of its duties and responsibilities for the Work or materials, (2) waive any rights of the County to insist on full compliance by Contractor with the Contract requirements, or (3) constitute acceptance of the Work or materials.

7.4 SUBSTANTIAL COMPLETION PROCEDURE

A. When the Contractor considers that all Work or Work associated with Contract milestones is substantially complete, the Contractor shall give written Notice to the County.

1. The County shall promptly inspect the Work and, if the County does not agree that the Work is substantially complete, the County will prepare a Punch List (list of items to be completed or corrected).
 - a. The County reserves the right to add to, modify, or change the Substantial Completion Punch List as circumstances dictate.
 - b. Failure by the County to include any items on such list does not alter the responsibility of the Contractor to complete or correct the Work in accordance with the Contract.
- B. At the Contractor's request, the County may identify those Punch List items that must be completed or corrected in order for the Contractor to achieve Substantial Completion.
 1. When the County determines that those Punch List items have been completed or corrected by the Contractor, the County shall make a determination that the Work is Substantially Complete.
 2. A Certificate of Substantial Completion will be issued by the County, which shall establish the date of Substantial Completion.
 3. This Certificate of Substantial Completion shall state the responsibilities of the County and the Contractor for security, maintenance, heat, utilities, damage to the Work, insurance, and the time to complete remaining Punch List work before liquidated damages begin to accrue for the Contractor's failure to achieve Completion/Final Acceptance in a timely manner.
 4. The County shall assess liquidated damages for the Contractor's failure to complete or correct the required Punch List items for Substantial Completion within the Contract Time.
- C. As provided in the Contract, the County may grant Substantial Completion to specific subsystems or portions of the Work. The dates of Substantial Completion shall be determined, in writing, by the County

7.5 FINAL INSPECTION AND FINAL PUNCH LIST

- A. All remaining Punch List items that were not corrected prior to Substantial Completion shall be successfully completed by the Contractor prior to the Contractor's request for Final Acceptance. When the Contractor considers that all Contract Work is ready for final inspection and Final Acceptance, the Contractor shall give written Notice to the County.
- B. County shall promptly perform a final inspection of the Work and, if necessary, prepare a Final Punch List (a list of items to be completed or corrected by the Contractor prior to the County granting Final Acceptance).
- C. Punchlist items may include but are not limited to: Copies of the warranties and guarantees required by the Contract; Permit approvals and Certificates of Occupancy; Operation and Maintenance Manuals; Record Set of Drawings and Specifications; and Stamped permit set of documents; Right of Way, Easements and Property Releases, and any other documents called for elsewhere in the Contract;
- D. The Contractor shall complete or correct the items identified in the Final Punch List within the time period as required in the Certificate of Substantial Completion. Should the Contractor fail to complete or correct all remaining Final Punch List items within

the required time, the County may assess liquidated damages against the Contractor for failure to achieve Final Acceptance in a timely manner.

- E. After the Contractor completes all items identified in the Final Punch List(s), the Contractor shall notify the County in writing that the Final Punch List items have been successfully completed. After verification by the County that such completion was satisfactory, the Contractor shall submit a Final Application for Payment.

7.6 REQUIREMENTS FOR FINAL APPLICATION FOR PAYMENT

- A. In addition to any other requirement identified in the Contract Documents, the Final Application for Payment shall include the following documents:
 - 1. Affidavit of Wages Paid for Contractor and all Subcontractors in accordance with state law;
 - 2. Contractor's release of claims against the County, except for Claims specifically described in the release document and submitted in accordance with Article 9, *Claims and Litigation*;
 - 3. Contractor certification that all Subcontractors and Suppliers have been paid and there are no outstanding liens;
 - 4. Right of Way, Easements and Property Releases; and,
 - 5. All reports identified in the Affidavit and Certificate of Compliance with the King County Code 12.16, including but not limited to, Personal Inventory Reports and Subcontractor Monthly Utilization reports, as appropriate.

7.7 COMPLETION/FINAL ACCEPTANCE

- A. Completion/Final Acceptance shall be achieved when all the obligations of the Contract have been successfully performed by the Contractor in accordance with the Contract and accepted by the County.
- B. Neither Final Acceptance, nor Final Payment, shall release Contractor or its sureties from any obligations under this Contract or the Performance and Payment Bonds, or constitute a waiver of any claims by the County arising from or related to Contractor's performance or failure to perform the Work and to meet all Contractual obligations in accordance with the Contract, including but not limited to:
 - 1. Unsettled liens, security interests or encumbrances;
 - 2. Damaged, non-conforming, or defective Work discovered by the County;
 - 3. Terms of any warranties or guarantees required by the Contract; and,
 - 4. Payments made in error.
- C. Except for any Claims properly submitted in accordance with Article 9, *Claims and Litigation*, acceptance of Payment on the Final Application for Payment by the Contractor shall, on behalf of itself and its Subcontractors or Sureties, forever and unconditionally release and discharge the County, its officers, agents, employees, from:
 - 1. Any and all disputes or claims, including but not limited to claims for damages, fines, interest, taxes, attorney fees, or costs, demands, rights, actions or causes of actions, known or unknown, arising out of or in any way related to the parties' performance under the Contract and/or Project; and

2. Any and all known and/or unknown liabilities, obligations, demands, actions, suits, debts, charges, causes of action, requests for money and/or payment under the Contract, outstanding invoices, or claims directly or indirectly arising out of or related to the Contract and/or Project.

7.8 RETAINAGE.

- A. RCW chapter 60.28, concerning the rights and responsibilities of Contractor and County with regard to retainage are made a part of the contract by reference as though fully set forth herein.
- B. Pursuant to RCW 60.28.011 and RCW 39.08.030, claims or "liens" by Subcontractors and Suppliers against the retained fund or the retainage bond must be in writing and submitted to the Project Representative at the address given for notices in this Contract, for filing with the Project documents. The Project Representative will maintain a copy of all claims "liens" against the retainage in the Project document files.

7.9 WARRANTY AND GUARANTY

- A. In addition to any special warranties provided elsewhere in the Contract, Contractor warrants that all Work conforms to the requirements of the Contract and is free from any defect in equipment, material, design, or workmanship performed by Contractor or its Subcontractors and Suppliers.
- B. The warranty period shall be for the longer period of: one year from the date of Substantial Completion of the entire Project or the duration of any special extended warranty offered by a supplier or common to the trade.
- C. With respect to all warranties, express or implied, for Work performed or materials furnished according to the Contract, Contractor shall:
 1. Obtain all warranties that would be given in normal commercial practice from the supplier and/or manufacturer;
 2. Prior to Final Acceptance require all warranties be executed, in writing, for the benefit of the County;
 3. Enforce all warranties for the benefit of the County; and,
 4. Be responsible to enforce any warranty of a Subcontractor, manufacturer, or Supplier, should they extend beyond the period specified in the Contract.
- D. If, within an applicable warranty period, any part of the Work is found not to conform to the Contract, the Contractor shall correct it promptly after receipt of written Notice from the County to do so. In the event the County determines that Contractor corrective action is not satisfactory and/or timely performed, then the County has the right to either correct the problem itself or procure the necessary services, recommendations, or guidance from a third party. All damages incurred by the County and all costs for the County's remedy shall be reimbursed by the Contractor.
- E. The warranty provided in this provision shall be in addition to any other rights or remedies provided elsewhere in the Contract or by applicable law.

7.10 PRIOR OCCUPATION

County shall have the right to occupy such part or parts of the Project in or upon which the Work is being done, as it may see fit, before the Final Acceptance, and such

occupation shall not be construed as acceptance by the County of the Work or constitute Substantial Completion of the Work.

ARTICLE 8: TERMINATION

8.0 COUNTY'S RIGHT TO TERMINATE CONTRACT

A. Termination for Default

1. County may terminate, without prejudice to any right or remedy of the County the Work, or any part of it, for cause upon the occurrence of any one or more of the following events:
 - a. Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure Substantial Completion of the Work within the Contract Time;
 - b. Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure Final Acceptance of the Work in a timely manner;
 - c. Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency;
 - d. Contractor fails in a material way to repair, replace or correct Work not in conformance with the Contract;
 - e. Contractor repeatedly fails to supply skilled workers or proper materials or equipment;
 - f. Contractor repeatedly fails to make prompt payment to its employees or Subcontractors;
 - g. Contractor materially disregards or fails to comply with laws, ordinances, rules, regulations, permits, easements or orders of any public authority having jurisdiction;
 - h. Contractor fails to comply with all Contract safety requirements; or,
 - i. Contractor is otherwise in material breach of any provision of the Contract.
2. If the County reasonably believes that one of the aforementioned events has occurred, the County will provide the Contractor with written Notice of its intent to terminate the Contractor for default, specifying within such notice the ground(s) for such termination. The County, at its option, shall require the Contractor to either promptly correct the deficiencies noted in the County's intent to terminate or provide the County with a corrective action plan as to how such deficiencies will be remedied or cured in a timely fashion. However, if after receipt of the proposed remedy, the County has a reasonable basis for concluding that the Contractor has (a) failed or is unwilling to repair, replace or correct the deficiencies, or (b) failed or is unwilling to provide a reasonable and satisfactory corrective action plan, the County shall thereafter have the right to terminate this Contract for default.
3. Upon termination, the County may at its option:
 - a. Take possession of the Site and possession of or use of all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor; and/or,

- b. Finish the Work by whatever other reasonable method it deems expedient; or,
 - c. Call upon the surety to perform its obligations under the performance and payment bonds, if applicable.
4. The Contractor and its sureties shall be liable for all damages and costs, including but not limited to: (1) compensation for architect and engineering services and expenses made necessary thereby; (2) any other costs or damages incurred by the County in completing and/or correcting the Work; and (3) any other special, incidental or consequential damages incurred by the County which results or arises from the breach or termination for default.
 5. In the event of termination for default the County shall only pay the Contractor for Work successfully completed and accepted by the County prior to the date of termination. The County shall not be responsible for any other Contractor costs, expenses, or damages including any consequential, special, or incidental damages or lost profits associated with this Contract. In no event shall the County reimburse the Contractor for any costs directly or indirectly related to the cause of this termination for default.
 6. If, after termination for default, it is determined that the Contractor was not in default, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the County.
 7. The rights and remedies of the County in this provision are in addition to any other rights and remedies provided by law or under this contract.

B. Termination for Convenience

1. Upon written Notice the County may terminate the Work, or any part of it, without prejudice to any right or remedy of the County, for the convenience of the County.
2. If the County terminates the Work or any portion thereof for convenience, Contractor may make a request for adjustment for:
 - a. Reasonable direct costs for all Work completed prior to the effective date of the termination and not previously paid for by the County;
 - b. A reasonable allowance for Overhead and profit for Work actually performed and accepted by the County prior to the date of termination, at a rate not to exceed the percentage amount set forth in the Contract and in provision 6.2, *Method to Calculate Adjustments to Contract Price*, subparagraph F4e, *Overhead and Profit*; and,
 - c. Actually incurred reasonable administrative costs for "settlement of the Work", i.e., costs directly caused by the termination for convenience, at a rate not to exceed 5% of what the Contractor has been actually paid prior to the date of termination.
3. The Contractor shall not be entitled to any other costs or damages, whatsoever. The total sum payable upon termination shall not exceed the Contract Price reduced by prior payments. Contractor shall be required to make its request for adjustment in accordance with Article 5, *Changes to the Contract*, and Article 6, *Time and Price Adjustments*.

4. If it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the County shall not reimburse Contractor any profit for the Work completed and shall reduce the settlement to reflect the indicated rate of loss.

C. Contractor's Obligations During Termination

Unless the County directs otherwise, after receipt of a written Notice of termination for default or termination for convenience, Contractor shall promptly:

1. Stop performing Work on the date and as specified in the Notice of termination;
2. Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work not terminated;
3. Cancel all orders and subcontracts, upon terms acceptable to the County, to the extent that they relate to the performance of Work terminated;
4. Assign as specifically requested by the County all of the rights, title, and interest of Contractor in all orders and subcontracts;
5. Take such action as may be necessary or as directed by the County to preserve and protect the Work, Site, and any other property related to this Project in the possession of Contractor in which the County has an interest;
6. Continue performance of Work only to the extent not terminated; and,
7. Take any other steps required by the County with respect to this Project.

8.1 THE COUNTY'S RIGHT TO STOP THE WORK FOR CAUSE

- A. If Contractor fails or refuses to perform its obligations in accordance with the Contract, the County may order Contractor, in writing, to stop the Work, or any portion thereof, until satisfactory corrective action has been taken.
- B. Contractor shall not be entitled to any adjustment in the Contract Time and/or Contract Price for any increased cost or time of performance attributable to Contractor's failure or refusal to perform its obligations under the Contract.

ARTICLE 9: CLAIMS AND LITIGATION

9.0 CONTRACTOR CLAIMS

A. Condition Precedent to Filing a Claim.

1. The following actions are a condition precedent to filing a Claim:
 - a. A Request for Change Order is denied or deemed denied by the County; or
 - b. A Unilateral Change Order is issued by the County.

B. Failure to file a Timely Claim.

1. At least seven (7) days prior to appropriate time to file a Claim, the Contractor may request an extension of time for filing its Claim. The Contractor shall state the reasons for the request and identify a date certain when the Contractor shall provide a fully documented Claim. Unless otherwise agreed to in writing by the Project Representative, a fully documented Claim shall be received by the Project Representative within thirty (30) days after:

- a. Denial or deemed denial of a Request for Change Order; or
 - b. Contractor's receipt of an Executed Unilateral Change Order.
2. Failure to comply with the time requirements set for filing a Claim shall constitute acceptance by the Contractor, on behalf of itself and its Subcontractors and Suppliers, of the Unilateral Change Order and/or the County's denial or deemed denial of a Request for Change Order. Such acceptance shall be considered complete, full, and final settlement of all costs, damages, and Claims related to or arising from the Request for Change Order and/or Unilateral Change Order.
- C. Contractor's Obligation to Continue to Work. Pending final decision of a Claim hereunder, the Contractor shall proceed diligently with the performance of the Contract Work, including that work associated with the Claim, and maintain its progress with the Work.
- D. Information required in a Fully Documented Claim. Every Claim must be submitted by the Contractor, in writing and clearly designated by the Contractor as a fully documented Claim. At a minimum, a fully documented Claim must contain the following information:
- 1. A detailed factual statement of the Claim providing all necessary details, locations, and items of Contract Work affected;
 - 2. The date on which facts arose that gave rise to the Claim;
 - 3. The name of each person employed or associated with the Contractor, Subcontractor, Supplier, and/or the County with knowledge about the event or condition which gave rise to the Claim;
 - 4. Copies of documents and a written description of the substance of any oral communications that concern or relate to the Claim;
 - 5. The specific provisions of the Contract Documents on which the Claim is based;
 - 6. If an adjustment in the Contract Price is sought, the exact amount sought, calculated in accordance with the Contract and accompanied by (a) all records supporting the Claim and (b) all records meeting the requirements of provision 3.10, *Cost Records*;
 - 7. If an adjustment in the Contract Time is sought, the specific days and dates for which it is sought; the specific reason the Contractor believes an adjustment in the Contract Time should be granted; and the Contractor's analyses of its Progress Schedule, any specific Schedule analysis as required by the Contract Documents, and all updates to demonstrate the reason for the adjustment in Contract Time; and,
 - 8. A statement certifying, under penalty of perjury, that after the exercise or reasonable diligence and investigation the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of the Contractor's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Price or Contract Time for which the Contractor believes the County is liable.
- E. Contractor's Duty to Cooperate. The Contractor shall cooperate with the County or its designee in the evaluation of its Claim and provide all information and documentation requested by the County or its designee.

F. The County's Evaluation of the Claim.

1. To assist the County in the review of the Contractor's Claim, the County or its designee may visit the Site, request additional information and/or documentation in order to fully evaluate the issues raised in the Claim and/or audit the Claim.
2. After the Contractor has submitted a fully documented Claim that complies with this provision, the County shall respond, in writing, to the Contractor within sixty (60) days from the date the fully documented Claim is received with either:
 - a. A decision regarding the Claim;
 - b. Written Notice extending for another thirty (30) days the County's time to respond to the Claim.
3. Absent a thirty (30) day extension, the Claim shall be deemed denied upon the sixty-first (61st) day following receipt of the Claim by the County. If the County had a thirty (30) day extension, the Claim shall be deemed denied upon the ninety-first (91st) day following receipt of the Claim by the County.
4. The County will identify the Appeal Officer for each Claim within fifteen (15) days of the County's receipt of a Claim.

G. Appeal Process of a Denial or Deemed Denial of the Claim.

1. Contractor shall notify the County of its disagreement with the denial or deemed denial of the Contractor's Claim and file a fully documented Appeal to the Appeal Officer within twenty-one (21) days after the deemed denial or receipt of the denial.
2. Failure to notify the County and file a fully documented Appeal constitutes acceptance of the denial or deemed denial and the Contractor waives any right to any adjustment in Contract Price and/or Contract Time with respect to the Claim.
3. A fully documented Appeal shall contain the following information:
 - a. All documentation and information previously provided to the County in support of the Contractor's Claim including but not limited to the documentation identified in provision 9.0, *Contractor Claims*, paragraph D;
 - b. A copy of the County's denial of the Claim;
 - c. A detailed explanation why the Contractor believes the County's decision is incorrect and why the Claim should be granted; and
 - d. Any technical data or additional documentation supporting the Contractor's position.
4. At the discretion of the Appeal Officer, the Appeal Officer may request additional information or a meeting with the Contractor.
5. After the Contractor has submitted a fully documented Appeal that complies with this provision, the Appeal Officer shall respond, in writing, to the Contractor within sixty (60) days from the date the Appeal is received. Absent a written response by the Appeal Officer, the Appeal shall be deemed denied upon the sixty-first (61st) day following receipt of the Appeal by the Appeal Officer.
6. Contractor shall notify the County of its disagreement with the denial or deemed denial of the Contractor's Appeal within twenty-one (21) days after the deemed denial or receipt of the denial. Failure to notify the County constitutes acceptance

of the denial or deemed denial and the Contractor waives any right to any adjustment in Contract Price and/or Contract Time with respect to the Appeal.

9.1 CONTRACTOR'S BURDEN OF PROOF ON CLAIM

- A. The Contractor shall have the burden of proof to demonstrate entitlement and damages.
- B. If the Contractor, on behalf of itself or its Subcontractors and Suppliers seeks an adjustment in the Contract Price or Contract Time not supported by Project cost records meeting the requirements of §00700 ¶3.10, *Cost Records*, the Claim is waived.
- C. Compliance with the record keeping requirements set forth in this Contract is a condition precedent to recovery of any costs or damages related to or arising from performance of the Contract Work. If the County establishes non-compliance of the record-keeping requirement set forth in §00700 ¶ 3.10, *Cost Records*, no adjustment shall be made to the Contract Price and/or Contract Time with respect to that Claim.
- D. No Claim submitted to Alternate Dispute Resolution (ADR) or pursued by the Contractor in litigation shall seek damages greater than those set forth in the Contractor's Claim, except for accrual of any interest owing under applicable law.

9.2 LITIGATION

- A. As a mandatory condition precedent to the initiation of litigation by the Contractor against the County, Contractor shall:
 - 1. Comply with all provisions set forth in this Contract;
 - 2. Enter into an Alternate Dispute Resolution (ADR) process agreeable to both parties at any time during Contract Time but no later than sixty (60) days after issuance of the Certificate of Substantial Completion for the entire Project or Final Acceptance if a Certificate of Substantial Completion for the entire Contract is not issued; and complete the ADR process within 240 days after issuance of Substantial Completion for the entire Project or Final Acceptance if no Certificate of Substantial Completion for the entire Contract is issued; and
 - 3. Receive the Certificate of Substantial Completion for the entire Contract or Final Acceptance if a Certificate of Substantial Completion for the entire Contract is not issued.
- B. Any litigation brought against the County shall be filed and served on the County within 365 days from either the issuance of the Certificate of Substantial Completion for the entire Contract or Final Acceptance if no Certificate of Substantial Completion of the entire Contract is issued. The requirement that the parties participate in ADR does not waive the requirements of this subparagraph.
- C. Venue and jurisdiction shall vest solely in the King the County Superior Court.
- D. Failure to comply with these mandatory condition time requirements shall constitute a waiver of the Contractor's right to pursue judicial relief for any Claim arising from work performed under this Contract.

ARTICLE 10: MISCELLANEOUS

10.0 CONTRACTOR'S PERFORMANCE AND PAYMENT BOND

- A. The Contractor shall execute and deliver to the County a performance and payment bond for 100% of the Contract Price, on a form acceptable to the County with an approved surety company and in compliance with Chapter 39.08 RCW. Contractor shall notify surety of any changes in the work. The Contractor shall promptly furnish additional bond security to protect the County and persons supplying labor or materials required by the Contract if:
1. The County has a reasonable objection to any surety;
 2. Any surety fails to furnish reports on its financial condition pursuant to the County's request; or,
 3. The Contract Price increases beyond the bond amount.

10.1 INDEMNIFICATION/HOLD HARMLESS

- A. The Contractor shall protect, defend, indemnify, and hold harmless the County, its officers, officials, employees, and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever (hereinafter "claims"), arising out of or in any way resulting from the Contractor's officers, employees, agents, and/or subcontractors of all tiers, acts or omissions, performance or failure to perform this Contract, to the maximum extent permitted by law or as defined by RCW 4.24.115, now enacted or as hereinafter amended.
- B. The Contractor's obligations under this section shall include, but not be limited to,
1. The duty to promptly accept tender of defense and provide defense to the County at the Contractor's own expense.
 2. The duty to indemnify and defend the County from any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the Contractor's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the County with a full and complete indemnity and defense of claims made by the Contractor's employees. The parties acknowledge that these provisions were mutually negotiated upon by them.
 3. To the maximum extent permitted by law, the Contractor shall indemnify and defend the County from and be liable for all damages and injury which shall be caused to owners of property on or in the vicinity of the work or which shall occur to any person or persons or property whatsoever arising out of the performance of this Contract, whether or not such injury or damage is caused by negligence of the Contractor or caused by the inherent nature of the work specified.
- C. King the County may, in its sole discretion, (1) withhold amounts sufficient to pay the amount of any claim for injury, and/or (2) pay any claim for injury of which King the County may have knowledge, regardless of the formalities of notice of such claim, arising out of the performance of this Contract.
- D. Any amount withheld will be held until the Contractor secures a written release from the claimant, obtains a court decision that such claim is without merit, or satisfies any judgment on such claim. In addition, the Contractor shall reimburse and otherwise be liable for claims costs incurred by King the County, including, without limitation, costs for claims adjusting services, attorneys, engineering, and administration.

- E. In the event the County incurs any judgment, award, and/or costs arising therefrom, including attorneys' fees, to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the Contractor.

10.2 COMPENSATION, WAGES, BENEFITS AND TAXES

The County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes owed by the Contractor by reason of this Contract. The Contractor shall indemnify and hold the County, its officers, agents, and employees, harmless against all liability and costs resulting from the Contractor's failure to pay any compensation, wages, benefits or taxes.

10.3 SUCCESSORS AND ASSIGNS

The County and the Contractor each binds itself, its partners, successors, assigns and legal representatives to the other with respect to all covenants, agreements and obligations contained in the Contract. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to it hereunder, without the previous written consent of the County.

10.4 THIRD PARTY AGREEMENTS

Except as otherwise may be provided, the Contract shall not be construed to create a contractual relationship of any kind between: any architect, engineer, Subcontractor, Supplier, or any persons other than the County and Contractor.

10.5 NONWAIVER OF BREACH

No action or failure to act by the County shall constitute a waiver of any right or duty afforded to the County under the Contract; nor shall any such action or failure to act by the County constitute an approval of or acquiescence in any breach hereunder, except as may be specifically stated by the County in writing.

10.6 NOTICE TO THE COUNTY OF LABOR DISPUTES

- A. If Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance in accordance with the Contract, Contractor shall immediately give Notice, including all relevant information, to the County.
- B. Contractor agrees to insert a provision in its Subcontracts and to require insertion in all sub-subcontracts, that in the event timely performance of any such contract is delayed or threatened by any actual or potential labor dispute, all Subcontractor or lower-tiered Subcontractor shall immediately notify the next higher tier Subcontractor. Subcontractor or Contractor, as the case may be, of all relevant information concerning the dispute.

10.7 LIQUIDATED DAMAGES AGAINST CONTRACTOR

- A. The liquidated damage amounts, set forth elsewhere in the Contract Documents, will be assessed for Contractor's failure to achieve Substantial Completion within the Contract Time or Final Acceptance. These Liquidated Damages are not a penalty, but will be assessed against the Contractor for failure to achieve these Contract requirements. These Liquidated Damage amounts are fixed and agreed upon by and between the Contractor and the County because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the County would in such events sustain. These amounts shall be construed as the actual amount of damages

sustained by the County, and may be retained by the County and deducted from payments to the Contractor. Assessment of Liquidated Damages shall not release the Contractor from any further obligations or duties pursuant to the Contract Work.

1. Failure to Achieve Substantial Completion

Timely performance and completion of the Work is essential to the County and the time limits stated in the Contract are of the essence. The County will incur serious and substantial damages if Substantial Completion of the Work does not occur within the Contract Time.

2. Failure to Achieve Final Acceptance

Final Acceptance of the Work is essential to the County and the time limits as identified by the County are of the essence. The County will incur serious and substantial damages if Final Acceptance of the Work does not occur as the County requires.

10.8 HEADINGS

The headings used in the Contract are for convenience only and shall not be considered a part of or affect the construction or interpretation of any contractual provision therein.

10.9 CHOICE OF LAW

In the event that either party shall bring a lawsuit or action related to or arising out of this Contract, such lawsuit or action shall be brought in the Superior Court, King the County, Washington. This Contract shall be governed by, and construed and enforced in accordance with the laws of the State of Washington.

10.10 SEVERABILITY

The provisions of this Contract shall be effective in all cases unless otherwise prohibited by Washington State Law or applicable Federal Law. The provisions of this Contract are separate and severable. The invalidity of any sentence, paragraph, provision, section, Article, or portion of this Contract shall not affect the validity of the remainder of this Contract.

END OF SECTION

ATTACHMENT E CPG INSURANCE REQUIREMENTS

- A. **FOR ALL COVERAGES.** Each insurance policy shall be written on an "occurrence" form; except that insurance on a "claims made" form may be acceptable with prior County approval. If coverage is approved and purchased on a "claims made" basis, the Agency warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of Contract termination, and/or conversion from a "claims made" form to an "occurrence" coverage form. By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Agency under this Contract.

The Agency shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded by said policies, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Contract.

B. **MINIMUM SCOPE AND LIMITS OF INSURANCE**

Pursuant to the terms of this Contract, for the operations and maintenance of the facility the Agency shall maintain coverage and limits for no less than:

1. **General Liability:**
Insurance Services Office form number (CG 00 01) covering COMMERCIAL GENERAL LIABILITY \$1 Million combined single limit per occurrence by bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a \$2 Million aggregate limit.
2. **Automobile Liability: If operations require vehicle usage.**
Insurance Services Office form number (CA 00 01 Ed. 12-90) covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the appropriate coverage provided by symbols 2, 7, 8, or 9. \$1 Million combined single limit per accident for bodily injury and property damage.
3. **Workers' Compensation: If Agency or Sub-contractor has employees**
Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable federal or "Other States" state law. Statutory requirements of the state of residency.
4. **Stop Gap/Employers Liability: If Agency or sub-contractor has employees**
Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy. Limit: \$1 Million

C. **DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not apply to the Agency's liability to the County and shall be the sole responsibility of the Agency.

D. **OTHER INSURANCE PROVISIONS**

The insurance policies required in this Contract are to contain, or be endorsed to contain, the following provisions:

1. **Liability Policies Except Professional and Workers' Compensation**
 - a. The County, its officers, officials, employees, and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Agency in connection with this Contract. Such endorsement shall include Products-Completed Operations.
 - b. The Agency's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees, or agents shall not contribute with the Agency's insurance or benefit the Agency in any way.
 - c. The Agency's insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
2. **All Policies**
Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice has been given to the County.

- E. **ACCEPTABILITY OF INSURERS.** Unless otherwise approved by the County, Insurance is to be placed with insurers with Bests rating of no less than A:VIII, or, if not rated with Bests, with minimum surpluses the equivalent of Bests' surplus size VIII. Professional Liability, Errors, and Omissions insurance may be placed with insurers with a Bests' rating of B+VII. Any exception must be approved by King County. If, at any time, the foregoing policies shall fail to meet all requirements noted herein, or if a company issuing any such policy shall be or become unsatisfactory to the County, the Agency shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with appropriate certificates and endorsements, for approval.

- F. **VERIFICATION OF COVERAGE.** The Agency shall furnish the County with certificates of insurance and endorsements required by this Contract. Such certificates and endorsements, and renewals thereof, shall be attached as exhibits to the Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by the County prior to the commencement of activities associated with the Contract. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

- G. **SUBCONTRACTORS.** The Agency shall include all subcontractors as insureds under its policies or shall furnish separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages provided by subcontractors as evidence of compliance with the insurance requirements of this Contract shall be subject to all of the requirements stated herein.

DRAFT -- WORK IN PROGRESS
ATTACHMENT F

MINIMUM INSURANCE REQUIREMENTS AND DOCUMENTATION FOR TAF
CONTRACTORS AND SUBCONTRACTORS

This Attachment sets forth the minimum insurance and documentation requirements for TAF contractors and subcontractors in connection with contracts let for work on the Center or the Site.

A. **General Liability.** Coverage shall be at least as broad as Insurance Services Office form number CG 00 01 covering **COMMERCIAL GENERAL LIABILITY**. \$ 1,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a \$2,000,000 aggregate limit.

B. **Automobile Liability.** Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9. \$1,000,000 combined single limit per accident.

C. **Workers' Compensation. Statutory requirements of the State of residency.** Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.

D. **Employer's Liability or "Stop Gap".** Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.

E. **Professional Liability Errors and Omissions.** \$ 1,000,000 per claim/aggregate. In the event that services delivered pursuant to this Contract either directly or indirectly involve or require Professional services, **Professional Liability Errors and Omissions shall be provided.**

F. **Builders Risk Insurance.** TAF will require its construction contractors to procure and maintain, for the duration of construction of the Site and the Center, Builders Risk insurance covering interests of the County, TAF and the construction contractor in the work. Builders Risk insurance will be on an all-risk policy form and will insure against the perils of fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible no larger than \$5,000 for each occurrence, which will be the responsibility of the construction contractor. Higher deductibles for flood and earthquake perils may be accepted by the County upon written request by TAF and written acceptance by the County. Any increased deductibles accepted by the County will remain the responsibility of the construction contractor. The Builders Risk insurance will be maintained until final acceptance of the work by TAF. TAF will require its construction contractors to maintain Builders Risk insurance in the amount of the completed value of the Center with no coinsurance provisions.

DRAFT -- WORK IN PROGRESS

G. Subcontractors. TAF will require its construction contractors to include all subcontractors as insured under its policies or will furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors will be subject to all of the same insurance requirements as stated herein for the construction contractor.

H. Verification of Coverage. TAF will furnish the County with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the Commercial General Liability insurance of the construction contractor before commencement of the work. Before any exposure to loss may occur, TAF will file with the County a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to work under this Agreement.

I. Acceptability of Insurers. Unless otherwise approved by the County:

1. Insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated by Best's, with a rating in one of the two highest categories maintained by Standard & Poor's Rating Group and Moody's Investor Service.
2. If at any time any of the foregoing policies fail to meet the above minimum standards, then TAF will, upon notice to that effect from the County, promptly obtain a new policy, and submit the same to the County with certificates and endorsements, for approvals.

ATTACHMENT G

MEMORANDUM OF USE AGREEMENT

THIS MEMORANDUM OF USE AGREEMENT ("Memorandum") is executed this _____ day of _____, 2005, by and between KING COUNTY, a home rule charter county and political subdivision of the State of Washington, and TECHNOLOGY ACCESS FOUNDATION, a not-for-profit Washington corporation and tax-exempt entity under 501(c)(3) of the Internal Revenue Code.

1. **Use Agreement.** TAF will use the Premises described in Exhibit A attached hereto and by this reference incorporated herein for a use fee and on the terms and conditions set forth in that certain Use Agreement dated _____, 2006 by and between the County and TAF. The Agreement is for a term expiring in 2036 unless sooner terminated pursuant to the terms of the Agreement. The County Council approved ordinance no. XXXXX, authorizing the Agreement under King County Code sections 4.56.150E and 4.56.180.

2. **Definitions.** All terms not otherwise defined herein will have the same meaning as set forth in the Agreement.

3. **Purpose.** This Memorandum is prepared for the purposes of recordation only and does not set forth all of the terms and conditions set forth in the Agreement. If there is any conflict between the terms and conditions of the Agreement and this Memorandum, then the Agreement will control.

DATED this _____ day of _____, 2006.

Technology Access Foundation

King County

By _____

By _____

TITLE _____

TITLE _____

Date _____

Date _____

APPROVED AS TO FORM:

For TAF

For King County

By _____

By _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____