



**King County**  
**Metropolitan King County Council**  
**Committee of the Whole**

**STAFF REPORT**

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<b>Agenda Item No.:</b> 6	<b>Date:</b> 13 Oct 2008
<b>Ordinance No.:</b> 2008-0520	<b>Prepared by:</b> Nick Wagner

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**SUMMARY**

Proposed Ordinance 2008-0520 would authorize the County Executive, on behalf of King County, to enter into a 20-year lease with the City of Kent that is designed to accommodate additional space needs of both King County District Court and Kent Municipal Court. Those courts are currently sharing courtrooms and related space in the Aukeen District Court Facility (“the Facility”).

The proposed lease provides for expansion of the Facility, which would be funded by the City of Kent as a city public work. King County would retain ownership of the Facility and control over the design of the expansion. A portion of the Facility would be leased back to the city for a term of up to 20 years. Upon termination or expiration of the proposed lease, the city would be entitled to compensation to the extent that the expansion had added to the fair market value of the Facility.

The expansion project has the strong support of the District Court, whose leadership has been extensively involved in the discussions leading to the proposed ordinance and lease.

Legal review of the proposed ordinance and lease is not yet complete; therefore, *Proposed Ordinance 2008-0520 is not yet ready for committee action*. Today’s briefing is intended to provide councilmembers with an overview of the lease and the legislation. Once legal review has been completed, the legislation will be brought back to the committee for further consideration and action.

**BACKGROUND**

The county-owned Aukeen District Court Facility in Kent, Washington, is currently the location of both the King County District Court’s South Division<sup>1</sup> and the Kent Municipal Court. There are four courtrooms in the Facility. Two courtrooms are used by the District Court, and two are used by the Kent Municipal Court pursuant to a lease between King County and the City of Kent (“the current lease”). The fixed term of the current lease expired in June of this year, and the lease is continuing month-to-month.

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<sup>1</sup> The South Division also has a facility in Burien.

The Council stated in Ordinance 15328 (adopting the 2005 County Space Plan in November of 2005) that the Council’s intent was that “the space plan shall provide additional space needs for the district court at the Regional Justice Center in Kent through the conversion of vacated criminal investigation space into courtrooms, jury room, and associated support space”<sup>2</sup>; however, the District Court Facility Master Plan (adopted by the Council in September of 2007 by Ordinance 15899) acknowledges that “there is an immediate need for two additional Courtrooms in this electoral district.” The Kent Municipal Court also needs additional courtroom space.<sup>3</sup>

Although King County owns the Aukeen District Court Facility, the county is not currently in a position to fund an expansion of the Facility. The City of Kent, on the other hand, is able and willing to fund and conduct such an expansion as a city public work and has approved the issuance of \$7.5 million in Limited Tax General Obligation bonds for that purpose. The city estimates that the construction cost of the Facility expansion will be about \$4.2 million and that, including related site expansion and improvements, such as parking lot expansion and streetscape improvements, the project will cost the city about \$7 million.

According to the County Executive, the City of Kent is willing to fund the expansion of a county-owned building because the city has determined that this is the least expensive option available to it to secure the additional municipal court space that it needs. In addition, the proposed lease provides for the city to receive compensation, upon termination or expiration of the lease or sale of the Facility, in the amount of the value added to the Facility by the city-funded improvements (*see* pp. 77-80 of these materials).

In order to meet the additional space needs of both the District Court and the Kent Municipal Court, county and city officials have negotiated a lease—including an agreement for expansion of the Facility at the city’s expense—that would be approved by Proposed Ordinance 2008-0520. The proposed lease would replace the current, month-to-month lease between the city and the county.

## THE PROPOSED LEASE

The central terms of the proposed lease are:

1. **Courtrooms.** Three new courtrooms will be built, bringing the total at the Aukeen Facility to seven. Four of these will be available to the District Court, the other three to the Kent Municipal Court.<sup>4</sup>
2. **Related Space.** The project also includes construction of three additional judicial chambers, expanded staff space for both the city and the county, expanded public space, and expanded parking.

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<sup>2</sup> *See* Ordinance 15328 § 1.R.

<sup>3</sup> According to the City of Kent’s chief administrative officer, the city’s need for additional space arises primarily from a planned annexation that will take effect in January of 2010 if it is approved by the voters in May of 2009.

<sup>4</sup> In addition, the lease allows for the District Court and the Kent Municipal Court each to use one of the courtrooms usually used by the other court when a courtroom is available.

3. **Design of Facility Expansion.** The preliminary design drawing that is attached to the proposed lease as Attachment 1 to Exhibit C (*see* p. 75 of these materials) represents the 30 percent development stage of the design process. That drawing has been reviewed and approved by both the staff of the Facilities Management Division and the judges and staff of the District Court. Upon approval and execution of the proposed lease, the city will continue development of the design documents, which will remain subject to review and approval by the county.
4. **Construction “Work Letter Addendum.”** The terms of the agreement for construction of the expansion of the Facility are set forth in a “work letter addendum” attached to the proposed lease as Exhibit C (pp. 55-76 of these materials).<sup>5</sup>
5. **Ownership.** The county will retain ownership of, and control over, the Facility. *See* lease section 15 (pp. 36-38 of these materials).
6. **Base Rent:**
  - a. Commencement Date through Substantial Completion of the Facility expansion: \$6,774.50 per month (\$17.00 per square foot per year). *See* Section 4.A of lease (p. 27 of these materials). This is an increase from the current rate of \$6,575.00 per month.
  - b. First five years after Substantial Completion: Post-Construction Appraised Rent Value (as per lease section 26.C, p. 43 of these materials).
  - c. Each five years thereafter: rent to be adjusted based on Seattle-Tacoma-Bremerton All Urban Consumer Price Index (calculated by the U.S. Bureau of Labor Statistics).
7. **Additional Rent for Operating Expenses.** The city is required to pay a pro rata share (based on square footage, excluding common areas) of the following expenses: public utilities, maintenance and repair, assessments, insurance premiums, and janitorial service. *See* lease section 4.B (p. 28 of these materials).
8. **Security.** The city and county agree to “work cooperatively to maintain security for Court operations, and to the extent necessary, develop a joint operating plan for the provision of Court operational security.” *See* lease section 5.B (p. 28 of these materials).
9. **Term of Lease.** The lease will have a term of 20 years and may be terminated for convenience by the county. *See* lease sections 1.B.5 (p. 22 of these materials) and 19 (p. 40 of these materials).
10. **Value Sharing.** Upon expiration or termination of the lease, the value of the expanded facility will be shared between the city and the county on the basis of a formula that is

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<sup>5</sup> In his transmittal letter, the Executive compares this arrangement to the upgrades of the downtown transit tunnel, in which Sound Transit made capital improvements to the tunnel owned by King County Metro.

intended to compensate the City of Kent for the value added to the Facility by the expansion. (See lease Exhibit D, pp. 77-80 of these materials.)

11. **City's Right of First Offer.** The lease grants the city a right of first offer to purchase the Facility as expanded, with application of the formula for sharing the value of the Facility as described in the lease, if the county decides to sell it. See Rider One (pp. 90-98 of these materials).
12. **County's Right of First Offer.** The lease also grants the county a right of first offer to purchase the city's municipal jail and associated property, which are adjacent to the Facility, if the city decides to sell them. See Rider Two (pp. 99-107 of these materials).
13. **Parking.** The existing reciprocal parking easement is amended to accommodate the county's need for additional parking at the expanded facility. See pp. 81-89 of these materials.

## **CONSTRUCTION SCHEDULE**

The City of Kent expects to complete design documents within six months after approval and execution of the proposed lease. According to the Executive, the city will then bid out the work through standard city public work procedures. Construction is expected to begin late in the spring of 2009 and to be completed within 11 months.

The courts will remain open throughout the construction project, but their calendars will end at 3:00 p.m. each day to accommodate the city's off-shift construction hours.

## **SUMMARY OF THE PROPOSED LEGISLATION**

Proposed Ordinance 2008-0520 contains three operative provisions:

- Section 1 authorizes the County Executive to execute the proposed lease.
- Section 2 authorizes county personnel to implement the lease and ratifies all actions taken to date by county personnel that are "consistent with the terms and purposes of the lease agreement."
- Section 3 provides that if part of the lease is held legally invalid, that will not affect the validity of the rest of the lease.

## **LEGAL REVIEW**

Legal review of the proposed legislation and lease is ongoing, but is not expected to be completed before the committee's October 13th meeting. When legal review has been completed, the proposed legislation will be brought back to the committee for further consideration and action.

## **FISCAL IMPACT**

### **1. Costs**

The county is expected to incur about \$271,000 in costs associated with the proposed lease, including:

- Project management staff to represent the county during construction;
- Shared appraisal costs before and after construction;
- Costs for interim relocation of some staff during construction; and
- Shared parking lot maintenance costs over time (to be deducted from rent otherwise payable by the city to the county).

According to the transmittal letter, these costs will be included in the Executive's proposed 2009 budget.

### **2. Revenue**

During the period from execution of the lease until substantial completion of the Facility expansion, the rent payable by the city would be slightly higher than the current rent (\$6,774.50/month vs. \$6,675.00/month). After substantial completion, the revenue impact will depend on the appraised rent value pursuant to section 26.C of the lease.

## **INVITEES**

1. Barbara Linde, Presiding Judge, King County District Court
2. John Hodgson, Chief Administrative Officer, City of Kent
3. Kathy Brown, Director, Facilities Management Division, DES

## **ATTACHMENTS**

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**Signature Report**

**October 10, 2008**

**Ordinance**

**Proposed No.** 2008-0520.1

**Sponsors** Phillips

1                   AN ORDINANCE authorizing the county executive to  
2                   enter into a twenty year lease with the city of Kent for  
3                   space in the Aukeen district court facility.  
4

5                   STATEMENT OF FACTS:

6                   1. The county's Aukeen district court facility ("the facility") located in the  
7                   city of Kent ("the city") has four courtrooms.

8                   2. Two of these four courtrooms, together with associated space for  
9                   municipal court staff and the municipal court judge, have been rented for  
10                  several years to the city, and the most recent lease for such space expired  
11                  June 30, 2008.

12                 3. The city is currently leasing space in the facility on a month to month  
13                 holdover arrangement.

14                 4. The District Court Facilities Master Plan ("FMP"), approved by the  
15                 King County council in 2007, identified an immediate need for two  
16                 additional court rooms in the south division of the district court.

- 17           5. The county has no current funding plan to accomplish the construction  
18 of these additional district court rooms in the near term.
- 19           6. The city has identified a need for at least one additional municipal  
20 courtroom.
- 21           7. The city has proposed to fund an expansion of the facility as a city  
22 public work, which project would include construction of three additional  
23 courtrooms, three additional judicial chambers, expanded staff space for  
24 both the city and county, expanded public space and expanded parking  
25 (the "court project").
- 26           8. The city and county have negotiated terms of a lease agreement and  
27 construction work letter to accomplish the court project at the city's  
28 expense and risk as a city public work, under which agreement the county  
29 will retain ownership to the building at all times.
- 30           9. The lease agreement provides that after the court project is completed,  
31 four courtrooms will be available for the use of the district court as called  
32 for by the FMP, and three courtrooms will be available to the city  
33 municipal court.
- 34           10. The lease term is for a term of twenty years and may be terminated for  
35 convenience by the county.
- 36           11. The lease further provides that upon the expiration or termination of  
37 the lease, the value of the expanded facility will be shared between the  
38 parties based on a formula that considers the value added to the building  
39 by the court project.



40 12. The city currently has a right of first offer to purchase the facility if  
41 the county determines in the future to sell it.

42 13. The lease provides an amendment to said right of first offer to the city  
43 to purchase the facility as expanded, with application of the formula for  
44 sharing the value of the facility as described in the lease.

45 14. The facility is located adjacent to the city's municipal jail.

46 15. The lease grants the county a right of first offer to purchase the city's  
47 municipal jail and associated property should the city determine in the  
48 future to sell it.

49 16. The lease further provides for an amendment to the existing reciprocal  
50 parking easement that addresses parking needs at the facility, which  
51 amendment expands the county's rights to parking in order to  
52 accommodate needs at the expanded facility.

53 17. In accordance with K.C.C. 4.56.150, 4.56.160 and 4.56.180, the King  
54 County council may adopt an ordinance permitting the county to lease its  
55 property for a term of years not to exceed thirty five years for property  
56 used for commercial purposes requiring extensive improvements and  
57 which extend the lease term by more than five years.

58 18. The lease agreement is consistent with these requirements of the  
59 county code.

60 19. The city is an important regional partner for the county in the  
61 provision of criminal justice services.

62 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

63            SECTION 1. The King County executive is hereby authorized to execute a  
64            twenty year lease under the terms and conditions described substantially in the form of  
65            Attachment A to this ordinance, which contains a right of first offer to the city to  
66            purchase certain property, as well as a right of first offer to the county to purchase certain  
67            property.

68            SECTION 2. The appropriate county officials, agents and employees are hereby  
69            authorized to take all actions necessary to implement the lease and all actions up to now  
70            taken by county officials, agent and employees consistent with the terms and purposes of  
71            the lease agreement are hereby ratified, confirmed and approved.

72            SECTION 3. If any one or more of the covenants or agreements provided in this  
73            ordinance to be performed on the part of the county is declared by any court of competent  
74            jurisdiction to be contrary to law, then such covenant or covenants, agreement or  
75            agreements are null and void and shall be deemed separable from the remaining

**Ordinance**

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76 covenants and agreements of this ordinance and in no way affect the validity of the other  
77 provisions of this ordinance or of the lease.

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KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

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ATTEST:

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APPROVED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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**Attachments**      A. Lease Agreement Between King County "Landlord" and the City of Kent "Tenant",  
Building: Aukeen District Court, 1210 C. Central Avenue, Kent, WA 98032--Final  
Draft

September 25, 2008

The Honorable Julia Patterson  
Chair, King County Council  
Room 1200  
C O U R T H O U S E

Dear Councilmember Patterson:

I am pleased to transmit to you today an agreement that will facilitate an important partnership with the city of Kent to accommodate additional space needs of both King County District Court and Kent Municipal Court. The enclosed ordinance and lease agreement provide for the expansion of the county's Aukeen Court building, at the expense of the city of Kent. The expansion will be funded and conducted by Kent as a city public work. King County will retain control over the design of the facility and will retain ownership of the building after the project is completed, leasing a portion of the facility back to the city for a term of up to twenty years.

The Aukeen expansion project as proposed is supported by the District Court. Judges Linde and Harn, and District Court staff leadership, have been extensively involved in the discussions leading to this agreement.

The physical improvements proposed to the Aukeen Court building will involve construction of three new courtrooms, in addition to the existing four courtrooms. The city has rented two of these four courtrooms from the county for many years. After the expansion, the District Court will have access to four courtrooms, and the city will lease three courtrooms from the county. The project also includes construction of additional judicial chambers, expanded staff space for both the city and county, expanded public space, and expanded parking.

The District Court Facilities Master Plan (FMP), approved by the County Council in 2007, identified an immediate need for two additional court rooms in the South Division of the District Court. The enclosed agreement is designed to address this need, while also addressing needs of the city of Kent, an important partner to the county in criminal justice issues. The FMP calls for the eventual consolidation of South Division facilities at either the Norm Maleng Regional Justice Center (MRJC) or another property adjacent to the MRJC.

The city is currently on a month-to-month holdover lease at Aukeen, the most recent five year lease having expired in June of this year. If the King County Council approves the enclosed lease agreement, this new lease will replace the holdover arrangement.

Upon approval and execution of the proposed lease agreement, the city will continue its work on final design documents. The city has previously contracted with an architect to develop preliminary design documents for the project. That preliminary design diagram is appended to the lease and has been reviewed and approved by both Facilities Management Division staff and District Court judges and staff to ensure that it meets District Court's needs.

The proposed lease ensures the county retains ultimate control over the Aukeen building, which is important given the need for additional court space and the lack of funding at this time for construction of new county court facilities. Because of this strong interest in retaining title to the building, the agreement is fairly complex. The 20-year lease agreement has a "work letter" attached to it, describing in detail the construction terms and conditions that the city's construction contractor must meet. A similar type of contractual arrangement was entered into by the county in connection with the upgrades of the downtown transit tunnel, in which Sound Transit made capital improvements to the tunnel owned by King County Metro.

The city estimates that the construction cost for the building expansion proposed will be approximately \$4.2 million. Together with related site expansion and improvements, including parking lot expansion and streetscape improvements, the project will cost the city an estimated \$7 million. The city will pay rent for the space it is leasing before, during and after the construction project.

The city is willing to fund the improvements of the county-owned building because the city has determined that this is the least-cost alternative available to it to secure needed additional municipal court space in the near term.

The city expects to complete design documents within six months of the lease commencing. It will then bid out for the work through standard city public work procedures. Construction is planned to begin late next spring and last not more than 11 months. Court will remain open during the entirety of the construction project, however, to accommodate the city's off-shift construction hours, the District Court and Municipal Court calendars will end at 3:00 p.m. during construction.

At expiration of the lease, or upon a default termination, the county can choose to sell or retain the building. The city has a right of first offer to acquire the building in event the county chooses to sell the building, or in the event the county terminates the lease for convenience.

The lease contemplates that the county, as owner of the building, and the city funding of improvements to the building, should both receive value for their respective investments upon the termination or expiration of the lease. Upon termination or expiration of the lease, the city and county will share the value of the building based on a formula set forth in the lease. The formula in essence fixes the ratio by which the parties will share in the appraised value of the building by determining the value added to the building by the city public work project based

The Honorable Julia Patterson  
September 25, 2008  
Page 3

on the work of an independent appraiser conducted both before and after the construction project.

The county will incur approximately \$271,000 in costs associated with this lease, including project management staff to serve as the county's representative during construction, shared appraisal costs before and after the construction project, costs for interim relocation of some staff during the project, and a share of parking lot maintenance costs over time (this latter item will be deducted from rent otherwise payable by the city to the county). The Executive's proposed 2009 budget will include funding for these costs.

City and county staff have worked to develop this agreement over the past year. It is a creative response to challenging and immediate court space needs of both jurisdictions. I thank you for your positive consideration and approval of this agreement. If there are questions regarding the lease, please contact Noel Treat, Deputy Director of the Facilities Management Division, at 206-296-0564.

Sincerely,

Ron Sims  
King County Executive

Enclosures

cc: King County Councilmembers  
ATTN: Ross Baker, Chief of Staff  
Saroja Reddy, Policy Staff Director  
Anne Noris, Clerk of the Council  
Frank Abe, Communications Director  
Bob Cowan, Director, Office of Management and Budget (OMB)  
Sid Bender, Capital Projects Supervisor, OMB  
James J. Buck, County Administrative Officer, Department of Executive Services (DES)  
Kathy Brown, Director, Facilities Management Division, DES  
Noel Treat, Deputy Director, FMD  
Nick Carnevali, Finance and Administrative Services Manager, FMD, DES  
The Honorable Barbara Linde, Presiding Judge, District Court  
The Honorable Corinna Harn, District Court  
Tricia Crozier, Chief Administrative Officer, District Court  
Patricia Kohler, Director, South Division, District Court  
The Honorable Suzette Cooke, Mayor, City of Kent  
John Hodgson, Chief Administrative Officer, City of Kent  
The Honorable Glenn Phillips, Kent Municipal Court, City of Kent  
Timothy Barnes, Deputy Prosecuting Attorney, Prosecuting Attorney's Office  
Karen Reed, Consultant

**FISCAL NOTE**

Ordinance/Motion No. 2008-XXXX	
Title: Supplemental Appropriation - Aukeen District Court South Consolidation	
Affected Agency and/or Agencies: Facilities Management Division	
Note Prepared By:	Bobbie Faucette
Note Reviewed By:	Sid Bender

Impact of the above legislation on the fiscal affairs of King County is estimated to be:

**Revenue:**

Fund/Agency/Projects	Fund Code/Appro	Revenue Source	2008	2009	2010	2011
Building Repair & Replacement	3951					
<i>Projects:</i>						
395845 - District Court South Consolidation		General Fund	270,648			
GRAND TOTAL			<b>270,648</b>			

**Expenditures:**

Fund/Agency	Fund Code/Appro	Department Code	2008	2009	2010	2011
Building Repair & Replacement	3951	0605	270,648			
TOTAL			<b>270,648</b>			

**Expenditures by Category**

	2008	2009	2010	2011
Salaries & Benefits				
Supplies and Services				
Capital Outlay	270,648			
<b>TOTAL</b>	<b>270,648</b>			

Assumptions:





2008-520

LEASE AGREEMENT

between

KING COUNTY

“LANDLORD”

and

THE CITY OF KENT

“TENANT”

**BUILDING:** Aukeen District Court  
1210 C. Central Avenue  
Kent, WA 98032

**PREMISES:** 4,782 Square Feet of Office Space,  
and certain additional space to be constructed by Tenant

**FINAL DRAFT**

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## LEASE

THIS LEASE ("Lease") is made and entered into by and between KING COUNTY, a political subdivision of the State of Washington ("Landlord"), and the CITY OF KENT, a municipal corporation of the State of Washington ("Tenant") (collectively "the Parties"). In consideration of this Lease, Landlord and Tenant covenant and agree as follows:

### SECTION 1: RECITALS AND BASIC PROVISIONS

#### A. RECITALS

WHEREAS, the County owns the Aukeen District Court Facility ("Building") located in the city of Kent; and

WHEREAS, since 1998 the County has leased two of the four courtrooms in the Building to the City, together with certain ancillary space, for City municipal court ("Municipal Court") operations and has a continuing and growing need for Municipal Court facility space; and

WHEREAS, the County has identified in its District Court Facility Master Plan, dated March 2007, an immediate need for an additional two (2) courtrooms in the Southeast Division of the District Court; and

WHEREAS, the County's District Court Facility Master Plan further identifies that the preferred long-term facility plan for the Southeast Division is to consolidate operations to a single location at, or adjacent to, the Maleng Regional Justice Center ("RJC") located in Kent, but there is currently no commitment of funding to accomplish this; and

WHEREAS, the City has a present need for at least one (1) additional municipal court courtroom; and

WHEREAS, the near-term facility needs for both Kent Municipal Court and Southeast Division of District Court can be addressed by expanding the number of courtrooms at the Building from four (4) to seven (7), together with an expansion of ancillary space (collectively, the "Tenant Improvements"); and

WHEREAS, the Parties have agreed upon a preliminary scope of work, timeline and preliminary budget for the Tenant Improvements, and have further agreed that the Tenant Improvements will be funded and managed by the City as a City public work and at no time will any cost of the Tenant Improvements become an obligation of the County; and

WHEREAS, it is integral to the willingness of both Parties to pursue the Tenant Improvements that the Building be open during regular business hours for both Municipal Court and District Court operations, including but not limited to the use of four (4) courtrooms, during the entirety of the construction of the Tenant Improvements; and

WHEREAS, the City currently has a right of first offer to purchase the Building; and

WHEREAS, in recognition of the substantial investment to be made by the City in the Building, which is and shall remain for the duration of this Lease a County-owned facility, the Parties agree that the City should receive consideration for its investment upon the eventual termination or expiration of this Lease, whether the Building is retained by the County, sold to the City, or sold to a third party; and

WHEREAS, the Parties agree that the formula included in this Lease for the calculation of the City's and County allocation of value for the Building upon termination or expiration of the Lease represents full and fair value for same;

WHEREAS, the Parties desire to continue to work collaboratively to ensure that the jointly occupied Building and adjacent parking lots will be operated to the mutual benefit of both the Parties and the public; and

WHEREAS, the addition of courtrooms to address growing caseload of both the District Court and Municipal Court will be of benefit to the citizens served by these courts;

NOW THEREFORE, in consideration of the promises and agreements contained in this agreement and subject to the terms and conditions set forth, it is mutually understood and agreed by the parties as follows:

## **B. BASIC PROVISIONS**

1. **Building.** Aukeen District Court Facility, 1210 S. Central Avenue, Kent, WA, the floorplan and use of which is generally depicted in **Exhibit A** before Tenant's Work, and in **Exhibit A-1** following Tenant's Work.

2. **Property.** The parcel of real property owned by the County on which the Building is located, legally described in **Exhibit B**. In order to meet permitting requirements for the Tenant's Work, prior to commencement of any Tenant Improvements, the boundaries of the Property shall be expanded by lot line adjustment (LLA) completed at the expense of Tenant. The LLA will add to the Property from an adjacent parcel for purposes sufficient for the setback and zoning requirements of the City of Kent, which addition, upon the approval of the LLA Tenant shall convey to Landlord by bargain and sale deed, subject to the terms in Section 2.B below. Upon final approval of the LLA by the City of Kent, **Exhibit B** shall be replaced with an updated legal description, which shall become **Exhibit B-1**. Upon execution of the Lease, Landlord and Tenant agree to cooperate and use commercially reasonable efforts to obtain the City of Kent's approval of the LLA.

3. **Premises.** That portion of the Building leased to Tenant, initially depicted in **Exhibit A**, constituting approximately 4,782 square feet, excluding Common Areas. The Premises will be expanded by the Tenant Improvements to constitute approximately 6,904 square feet of space leased to Tenant as shown on **Exhibit A-1**.

4. **Commencement Date.** The date of full execution of this Lease.

5. **Expiration Date.** Two hundred and forty (240) full calendar months (20 years) following the Commencement Date.

6. **Base Rent.** The amount of annual base rental payments ("Rent") calculated as set forth in Section 4.A.

7. **Additional Rent.** A pro-rated share of Utilities, payable quarterly in arrears per Section 4.B.

8. **Permitted Use.** Tenant shall utilize the Premises for the purpose of operating a municipal court and for no other purpose without the advance written consent of Landlord. Landlord agrees to utilize its portion of the Building for District Court, prosecuting attorneys, probation offices, public defenders and other ancillary court functions, but excluding community corrections and other detention uses.

9. **Parking.** Vehicle parking available to Landlord and Tenant as described in that certain **Amended Reciprocal Parking Easement** to be recorded and set forth at **Exhibit E**, and pursuant to the **Agreement to Execute Parking Lot Lease Between City of Kent and King County**, attached as **Exhibit F**. Tenant intends to develop additional parking, depicted on Exhibit 3 of Exhibit E as Phase V, which shall be available for public parking use accessory to the Building, as well as City-owned facilities, during the term of this Lease and as provided in Section 28.

10. **Riders/Exhibits.** In addition to **Rider One** (Tenant's Right of First Offer), **Rider Two** (Landlord's Right of First Offer), this Lease contains **Exhibit A** (Diagram of Property, Building and Premises), **Exhibit A-1** (Diagram Property, Building and Premises after Tenant Improvements), **Exhibit B** (Legal Description Before LLA), **Exhibit B-1** (Legal Description After LLA ), **Exhibit C** (Work Letter), **Exhibit D** (Rent Formula), **Exhibit E** (Amended Reciprocal Parking Easement), Agreement to Execute Parking Lot Lease Between City of Kent and King County (**Exhibit F**), and a legal description of Lot B (**Exhibit G**).

11. **Landlord's Notice Address (subject to Section 24):**

King County Real Estate Services Section  
Attn: Leasing Supervisor  
King County Administration Building  
500 Fourth Avenue, Room 500  
Seattle, WA 98104

12. **Tenant's Notice Address:**

City of Kent  
Attn: Facilities Manager  
220 Fourth Avenue South  
Kent, WA 98032

13. **Rent Payments.** Rent is to be paid monthly and shall be adjusted based on Tenant performing Tenant's Work in accordance with Section 4.A.

## **SECTION 2: PREMISES AND CONSTRUCTION OF TENANT IMPROVEMENTS**

### **A. PREMISES**

1. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises subject to the provisions contained herein. Prior to completion of the Tenant Improvements defined in **Exhibit C** ("Tenant's Work"), the Premises is comprised of approximately 4782 square feet, as generally depicted in **Exhibit A**. Upon Substantial Completion of Tenant's Work, the Premises shall be expanded to approximately 6,904.10 square feet, as generally depicted on **Exhibit A-1**.

2. In addition to the Premises depicted in Exhibit A-1, the Parties agree to continue to cooperate and coordinate courtroom use so that while Tenant is assigned the three (3) court rooms depicted in Exhibit A-1 (2 court rooms with jury rooms, one court room without a jury room), Tenant will also be allowed use of a fourth court room with a jury room subject to the priority use by district court. Landlord shall not unreasonably withhold consent to Tenant's use of a fourth court room with a jury room. Likewise, while Landlord is assigned four court rooms depicted in Exhibit A-1 (3 court rooms with jury rooms, one court room without a jury room), Landlord will be allowed use of a fifth court room with a jury room subject to priority use by municipal court. Tenant shall not unreasonably withhold consent to Landlord's use of a fifth court room with a jury room.

3. Tenant shall also have non exclusive access to Common Areas at all times during the Lease (subject to any restrictions necessary to accomplish Tenant's Work). Tenant shall be authorized to commence construction of "Tenant's Work" upon meeting the conditions described in Section 2.B below.

4. Five (5) years from the Commencement Date, the parties shall execute an addendum to this Lease that removes the file room in the east corner of the Building from Common Areas and includes the file room within the Premises for the exclusive use of the Tenant. Rent shall also be adjusted consistent with Section 4.

### **B. TENANT'S WORK**

1. **Commencement.** "Commencement of Tenant's Work" shall mean the date on which Tenant begins construction of Tenant's Work. Tenant shall be authorized to proceed to construct the Tenant's Work described in **Exhibit C** only upon delivering written notice to the Landlord that the following conditions have been met and the Landlord agreeing in writing that the conditions have been satisfied (which agreement shall not be unreasonably withheld or delayed):

a) Tenant has obtained and provided to Landlord copies of all permits, franchises, authorizations, approvals and property interests necessary for Tenant and its

contractors to perform Tenant's Work, including but not limited to completion of the required LLA and recording of Rider 1 and Rider 2 as provided in Section 27.

b) Tenant and Landlord have agreed in writing to the Final Approved Design, pursuant to the process described in **Exhibit C**.

c) Tenant has issued Limited Tax General Obligations bonds in the amount of at least \$7,500,000.00 for expenditure on the Aukeen Court expansion as described in **Exhibit C** and adjacent City owned real property, the funds from which shall in all instances be pledged for the purpose of completing Tenant's Work as described herein and as set forth in Kent Ordinance No. \_\_\_\_\_.

**2. Authority and Permitting.** The Tenant has examined the recorded deeds, easements, agreements, leases, licenses, permits and other authorizations related to the Building, Property, and adjacent real property. Tenant shall at no expense to the Landlord acquire or obtain any further rights, titles, interests, notices or permissions required to perform Tenant's Work. As owner of the Building and Property, the Landlord shall not create, amend, modify or change any easement, agreements, leases, license, permits, or right of entry affecting the Building or Property without Tenant's written consent having been first obtained, which consent shall not be unreasonably withheld.

**3. Tenant Responsibility for Design of Tenant's Work.** Tenant shall be responsible for the preparation and procurement of all designs, specifications and preliminary cost estimates, preparation of as-built plans and any other design work necessary to construct Tenant's Work. Tenant expressly acknowledges and agrees that Landlord's participation in the assessment and design work under this Lease, including but not limited to, providing information and reviewing, commenting on, and disapproving and/or accepting designs, plans, field change orders, and specifications (i) is solely for the benefit and protection of the Landlord, (ii) does not create or impose upon the Landlord any standard or duty of care towards Tenant, all of which are hereby disclaimed, (iii) may not be relied upon by Tenant in determining requirements, and (iv) may not be asserted, nor may the Landlord's exercise or failure to exercise any such rights be asserted, against the Landlord by Tenant as a defense, legal or equitable to Tenant's obligation to fulfill such standards and requirements and regardless of any acceptance of work by Landlord.

**4. Building Assessment.** Tenant has had the opportunity to conduct all due diligence, studies, testing and investigations of the Building and is not relying on any statement or representation of Landlord as to the condition of the Building. The Landlord makes no warranties as to the condition of the Building or its fitness for modifications. Tenant acknowledges that the Building is made available for purposes of the Tenant's Work on an "as is" and "with all faults" basis.

**5. Completion of Tenant's Work -- Timeline.** Tenant shall substantially complete "Tenant's Work" in accordance with the Final Approved Design and the terms of **Exhibit C** within eleven (11) months of Commencement of Tenant's Work. The obligations of Tenant to perform work and supply materials and labor shall be as set forth in **Exhibit C**. Tenant shall submit for Landlord's approval the Preliminary Approved Design for 100 percent stage review



within six (6) months of the Commencement Date. Tenant shall take all necessary steps to hire a contractor within five (5) months of Landlord's approval of 100% Preliminary Approved Design. Tenant shall further satisfy the conditions contained in Section 2.B.1 within eleven (11) months of the Commencement Date.

**6. Tenant's Financial Obligations.** Tenant's Work shall be completed at Tenant's sole cost and expense. No part of the cost of construction of the Tenant Improvements shall ever be or become an obligation of Landlord, including the cost of any Field Change Order, regardless of whether it is initiated by Tenant or Landlord, except as provided in **Exhibit C**, Section 3.

**7. Tenancy During Construction of Tenant Improvements.** The Parties acknowledge that the Building is occupied by Landlord and Tenant and shall remain occupied and fully operational as a functioning courthouse, with four (4) operational courtrooms and attendant spaces necessary for clerical, security and judicial staff working in the Building as of the Commencement Date (but excluding King County probation staff), during all phases of Tenant's Work, as provided in **Exhibit C**

### **SECTION 3: TERM AND COMMENCEMENT**

#### **A. TERM AND CONFIRMATION**

This Lease shall be fully effective and enforceable in accordance with its terms on the date this Lease is fully executed, acknowledged and delivered by both Landlord and Tenant. The term ("Term") of this Lease shall commence on the Commencement Date and end on the Expiration Date as specified in Section 1 above, unless sooner terminated as provided herein, subject to adjustment as provided below and the other provisions hereof.

#### **B. ACCEPTANCE OF PREMISES**

Occupancy of the Premises by Tenant prior to the initiation of Tenant's Work shall be conclusive evidence the Premises were in good, clean and tenantable condition and delivered in accordance with this Lease. Following Substantial Completion of Tenant's Work, as defined in **Exhibit C**, Tenant shall have no right to object to Landlord as to the condition of the Premises, subject to Section 7.

#### **C. SCHEDULE FOR TENANT IMPROVEMENTS**

The Commencement Date shall precede the date of Commencement of Tenant's Work. Tenant shall complete or cause to be completed all of Tenant's Work, subject to punch list items, according to the scheduling provisions herein and terms contained in **Exhibit C**.

**1. Substantial Completion.** As used herein, "substantially completed" or "Substantial Completion" shall mean that each of the following have occurred subject only to completion of customary "punch list" items: (a) Tenant's contractor shall have notified Tenant in writing that Tenant's Work is substantially complete in accordance with the Approved Design; (b) Tenant's contractor shall have issued its Certificate of Substantial Completion (AIA

Document G704) (the "Certificate of Completion") stating Tenant's Work is sufficiently complete in accordance with the Final Approved Design, including Approved Field Change Orders, to permit Landlord and Tenant to occupy and utilize the portion of the Building included in the Tenant's Work for the permitted use; (c) the City of Kent has issued a certificate of occupancy or temporary certificate of occupancy such that Landlord and Tenant are legally entitled to occupy the portion of the Building included in the Tenant's Work for its permitted use; and (d) Landlord shall have accepted in writing, with Tenant's concurrence, Tenant's Work as substantially complete, *provided*, Landlord shall not unreasonably withhold, delay or condition its concurrence if each of the items (a) through (c) have occurred, and *provided further*, it shall be deemed unreasonable hereunder for Landlord to withhold its concurrence unless the Certificate of Completion is incorrect in any material respect.

2. Tenant agrees to provide Landlord no less than seven (7) business days advance notice of Substantial Completion, along with all supporting documentation (including but not limited to third party commissioning reports), and for the sole purpose of determining Substantial Completion hereunder, Landlord shall be deemed to have conclusively concurred with Tenant's acceptance of Tenant's Work unless Landlord provides Tenant notice that the Certificate of Completion is incorrect in any material respect prior to expiration of said seven (7) business day period.

3. Landlord and Tenant may alter any of the deadlines contained in Sections 3.C and D of the Lease by mutual written amendment to this Lease. Neither party's approval shall be unreasonably withheld. Landlord's and Tenant's respective facilities directors shall submit any such dispute to the King County Chief Administrative Officer who shall, in consultation with Kent's Chief Administrative Officer, render a decision within two (2) business days of submittal to him which decision shall be final and binding.

#### **D. TENANT DELAY**

Other than as provided in this Section 3, Tenant shall have no liability for loss or damage to Landlord resulting in any delay in the Substantial Completion of Tenant's Work, as defined in **Exhibit C**, except as follows:

1. Notwithstanding the foregoing, in the event Tenant fails to both a) submit the Preliminary Approved Design to Landlord for 100 percent stage review and approval within six (6) months of the Commencement Date, or b) remove all contingencies and initiate Tenant's Work within nine (9) months following the Commencement Date of this Lease, and is not diligently and demonstrably pursuing compliance, Landlord may terminate this Lease upon sixty (60) days written advance notice of such termination to Tenant, and neither Landlord nor Tenant shall have any further rights or obligations hereunder, except as provided in Section 24. Provided, Tenant may exercise a one time opportunity to cure its failure to commence Tenant's Work by initiating it within the 60 day notice period referenced above. In the event of termination of this Lease pursuant to this Section 3.D.1, Tenant shall have sixteen (16) months to vacate the Premises.

2. In the event Tenant initiates Tenant's Work within the time period required in Section 3.D.1 but fails to Substantially Complete Tenant's Work within eleven (11) months of the Commencement of Tenant's Work, Landlord may terminate this Lease upon ninety (90) days advance written notice, at which time Tenant agrees to vacate the Premises as provided in Section 3.D.1, and Landlord shall have the option of completing Tenant's Work. Should Landlord elect to complete Tenant's Work in accordance with the Final Approved Design and **Exhibit C**, upon Landlord's completion of the work Tenant shall be entitled to compensation as calculated by applying the formula in **Exhibit D**, minus Landlord's legal costs incurred as a result of Tenant's failure to complete Tenant's Work.

#### **E. LANDLORD DELAY**

As used in this Lease the term "Landlord Delay" shall mean any of the following events which result in delay to Tenant's performance of Tenant's Work (and provided such events are not caused by Tenant's default or an event of Force Majeure): (i) delay resulting from Landlord's failure to act or perform within the applicable time frame required by this Lease for such Landlord action or performance; (ii) delay resulting from Landlord-initiated Field Change Orders pursuant to **Exhibit C**; and (iii) delay resulting from Landlord's default of any term or condition of this Lease. Following Tenant's discovery of any such Landlord Delay, Tenant agrees to provide Landlord's project manager reasonably prompt notice of such Landlord Delay. Notwithstanding the foregoing, in any instance where this Lease expressly provides that if Landlord fails to act within a specified time period Landlord shall be conclusively deemed to have acted in a particular manner, the passage of such specified time period without Landlord action shall not be considered Landlord Delay hereunder.

### **SECTION 4: BASE RENT AND ADDITIONAL RENT**

**A. BASE RENT.** Tenant shall pay the sum of \$6,774.50 per month (based on an annual rent of \$17.00 per square foot), due and payable on the first day of each calendar month in advance, for the period from the Commencement Date through the month of Substantial Completion. For the five year period from and immediately after Substantial Completion, Tenant shall pay Base Rent equal to the Post-Construction Appraised Rent Value (as provided in Section 26.C), calculated as a monthly amount, for the Premises (as expanded by Tenant's Work), which Base Rent shall be due and payable on the first day of each calendar month in advance. Base Rent shall thereafter be adjusted every five (5) years (counting forward from the end of the initial five year period immediately following Substantial Completion) ("Subsequent Base Rent Adjustment") based on the Seattle Tacoma Bremerton All Urban Consumers' Price Index year ending rate (December).

**B. ADDITIONAL RENT FOR OPERATING EXPENSES**

Additional Rent shall be payable quarterly in arrears within 30 days of invoicing. From and after Substantial Completion Tenant shall pay as Additional Rent a pro-rata share of public utilities (electricity, water, sewer, garbage removal), grounds and/or Building maintenance and repair, assessments, insurance premiums, and janitorial service based on the ratio of square footage of the Building leased to Tenant versus square footage dedicated to the use by Landlord (i.e., excluding the square footage of Common Areas from the calculation.) Landlord shall provide Tenant quarterly with a written statement showing the calculation of said Additional Rent.

**SECTION 5: QUIET ENJOYMENT AND TENANT SECURITY**

**A. QUIET ENJOYMENT**

Landlord agrees that if Tenant performs the terms and provisions hereunder, Tenant shall hold the Premises during the Term, free of lawful claims by any party acting by or through Landlord, subject to all other terms and provisions of this Lease.

**B. TENANT SECURITY**

Landlord and Tenant acknowledge that the Building will be used for criminal justice services, including courtrooms and judges' chambers. Landlord and Tenant agree to work cooperatively to maintain security for Court operations, and to the extent necessary, develop a joint operating plan for the provision of Court operational security. In the event Landlord and Tenant cannot agree upon a mutually acceptable security agreement, they shall form a committee of equal representation ("Security Committee"), who shall then agree on the final odd numbered member, to draft a security plan which will remain in effect for the term of this Lease, unless modified by the procedure contained in this Section 5.B.

**SECTION 6: UTILITIES AND SERVICES**

**A. STANDARD UTILITIES**

Landlord shall make available to the Premises public utilities generally available to the Building.

**B. INTERRUPTIONS AND EMERGENCY MEASURES**

Landlord shall use reasonable diligence to remedy an interruption in the furnishing of such services and utilities. If, however, any governmental authority imposes regulations, controls or other restrictions upon Landlord or the Building which would require a change in the services provided by Landlord under this Lease (collectively "Government Regulations"), or if Landlord reasonably determines an interruption or other change in utilities, services or Building access is required due to an emergency or other similar concern for the safety of Building

occupants (collectively "Emergency Measures"), Landlord may proceed with such Emergency Measures and may comply with such Government Regulations, including without limitation, curtailment, rationing or restrictions on Building or Premises access, the use of electricity or any other form of utilities or services serving the Premises. Tenant will cooperate and do such things as are reasonably necessary to comply with Landlord's Emergency Measures and to enable Landlord to comply with such Government Regulations and Landlord shall have no liability to Tenant for any loss, damage or expense Tenant may sustain due to such Emergency Measures or Government Regulations. Additionally, and notwithstanding anything in this Lease to the contrary, Landlord does not warrant that any of the services and utilities referred to above will be free from interruption. Interruption of services and utilities shall not be deemed an eviction or disturbance of Tenant's use and possession of the Premises or any part thereof, or render Landlord liable to Tenant for damages or loss of any kind, or relieve Tenant from performance of Tenant's obligations under this Lease.

### **C. COMMON AREAS**

The following areas adjacent to or located in or on the Premises, shall constitute Common Areas available for Tenant's non-exclusive use including without limitation: walkways, hallways, stairways, driveways, lavatories, janitorial rooms, mechanical rooms, electrical rooms, landscaped areas and grounds, and all other areas used in common by Landlord and invitees and employees of the Tenant. All Common Areas shall be subject to Landlord's management and control and shall be operated and maintained in such a manner as Landlord, in its reasonable discretion, shall determine. Landlord may, from time to time in Landlord's reasonable discretion, alter, modify or change the dimensions and location of the Common Areas; provided, however, that any such alterations, modifications or changes shall not materially interfere with Tenant's use and enjoyment of the Premises as set forth in this Lease, and shall not alter, modify or change the dimensions and location of the Common Area expansion or renovation made by Tenant Improvements, unless otherwise agreed in writing by the parties. Tenant and others entitled or allowed to use the Common Areas shall be subject to and shall comply with the rules and regulations applicable to the Common Areas as may be established by Landlord from time to time. Any damage to the Common Areas occasioned by the act of Tenant or its employees or invitees shall be paid by Tenant upon demand by Landlord. Common Areas are generally depicted on **Exhibits A** and, following Substantial Completion of Tenant Improvements, **Exhibit A-1**.

## **SECTION 7: MAINTENANCE AND REPAIRS**

### **A. NORMAL MAINTENANCE AND REPAIR**

Unless expressly provided otherwise in this Lease or in **Exhibit C**, Landlord shall maintain and repair, suitable for use as the purpose identified in Section 1.B.8, the Building, including the Common Areas. Landlord's maintenance and repair obligations shall include the structural parts of the Building which shall include the foundations, bearing and exterior walls, subflooring, gutters, downspouts, and the roof of the Building and the Building Systems and Equipment, and malfunctioning fixtures; provided, in the event any such replacements, repairs or maintenance are caused by or result from Tenant's excessive or improper use or occupation thereof or which are caused by or result from the negligence or improper conduct of Tenant, its

agents, employees or invitees, the cost of such repairs shall be paid solely by Tenant. Landlord's obligations under this Section 7 shall also include janitorial services.

**B. MAINTENANCE AND REPAIR DURING TENANT'S WORK**

During Tenant's Work, Tenant's contractor shall cooperate with Landlord to allow Landlord necessary access for normal maintenance and repairs. Landlord shall have no duty to perform any maintenance or repairs that will be made obsolete by Tenant's Work, but will continue to perform emergency, or similar repairs, not necessitate or caused by Tenant's Work.

**SECTION 8: ALTERATIONS**

Prior to the Commencement of Tenant's Work and following Substantial Completion, as provided in Section 2, Tenant shall not attach any fixtures, equipment or other items to the Premises, or paint or make any other additions, changes, alterations, repairs or improvements (collectively hereinafter "alterations") to the Premises, Building or Property without Landlord's prior written consent, which with respect to alterations to the Premises will not be unreasonably withheld. Any alterations, excluding Tenant's Work, so made shall remain on and be surrendered with the Premises upon expiration or earlier termination of this Lease, except that Landlord may, within thirty (30) days before or thirty (30) days after expiration or earlier termination hereof elect to require Tenant to remove any or all alterations at Tenant's sole costs and expense; provided, notwithstanding the foregoing, Landlord shall not have the right to require removal of any improvement or alteration constructed by Tenant as part of Tenant's Work. In the event Tenant desires to make any improvements or alterations other than Tenant's Work, at the time Tenant submits plans for requested alterations to Landlord for Landlord's approval, Tenant may request Landlord to identify which alterations Landlord may require Tenant to remove at the termination of or expiration of this Lease, and Landlord shall make such identification simultaneous with its approval (if any) of the alterations and Landlord shall have the right to require removal of any alterations not so marked. If Landlord elects to require removal of alterations, then at its own and sole cost Tenant shall restore the Premises to the condition designated by Landlord in its election, before the last day of the term or within thirty (30) days after notice of its election is given, whichever is later.

**SECTION 9: INSURANCE**

**A. TENANT OBLIGATIONS**

The Tenant agrees, at its own expense, to maintain, through its self-funded Self-Insurance program, coverage for all of its liability exposures under this Lease. The Tenant agrees to provide Landlord with at least thirty (30) days prior written notice of any material change in the City's self-funded Self-Insurance program, and will provide Landlord with a certificate of self-insurance as adequate proof of coverage. Landlord further acknowledges, agrees and understands that the Tenant does not purchase Commercial General Liability insurance and is a self-insured governmental entity; therefore the Tenant does not have the ability to add the Landlord as an additional insured. Should the Tenant elect and cease self-insuring its liability exposures and purchase Commercial General Liability insurance, Tenant agrees to add the Landlord (and Landlord's Lender) as an additional insured.

## **B. LANDLORD OBLIGATIONS**

The Landlord agrees, at its own expense, to maintain, through its self-funded Self-Insurance program, coverage for all of its liability exposures under this Lease. The Landlord agrees to provide Tenant with at least thirty (30) days prior written notice of any material change in the County's self-funded Self-Insurance Program, and will provide Tenant with a certificate of self-insurance as adequate proof of coverage. Tenant further acknowledges, agrees and understands that the Landlord does not purchase Commercial General Liability insurance and is a self-insured governmental entity; therefore the Landlord does not have the ability to add the Tenant as an additional insured. Should the Landlord elect and cease self-insuring its liability exposures and purchase Commercial General Liability insurance, Landlord agrees to add the Tenant as an additional insured.

1. **Buildings/Structures/Facilities.** The Landlord will carry "All Risk" property insurance in an amount equal to the full replacement value of all improvements, structures, and buildings located on the Premises. King County will not carry insurance on Tenant's property.
2. Tenant shall maintain "All Risk" property insurance in an amount equal to the full replacement value of all its personal property located on the Premises.
3. In consideration of the duration of this Lease, the parties agree that the Insurance Requirements Section herein, at the discretion of Landlord, may be reviewed and adjusted with each amendment, within 90 days of the end of the first five (5) year period of the Lease Term, and the end of each successive five (5) year period thereafter, and immediately prior to Substantial Completion. Any adjustments made as determined by Landlord, shall be in accordance with reasonably prudent risk management practices and insurance industry standards and shall be effective upon 90 days written notice by Landlord.

## **C. WAIVER OF SUBROGATION**

Landlord and Tenant release and relieve the other, and waive the entire right of recovery for loss or damage to property located within or constituting a part or all of the Premises, the Building or the Property to the extent that the loss or damage is actually covered (and claim amount recovered) by insurance, or self insurance, carried by either party and in force at the time of such loss or damage. This waiver applies whether or not the loss is due to the negligent acts or omissions of Landlord or Tenant, or their respective officers, directors, employees, agents, contractors, or invitees. Each of Landlord and Tenant shall have their respective property insurers endorse the applicable insurance policies or self insurance program, to reflect the foregoing waiver of claims, provided, however, that the endorsement shall not be required if the applicable policy of insurance, or self insurance program permits the named insured to waive rights of subrogation on a blanket basis, in which case the blanket waiver shall be acceptable.

## **SECTION 10: CASUALTY DAMAGE**

### **A. DAMAGE OR DESTRUCTION**

In the event the Building or Premises shall be destroyed or rendered untenantable, either wholly or in part, by fire or other casualty, Landlord may, at its option, elect to restore the Building or Premises to as near their previous condition as is reasonably possible and in the meantime the Base Rent and Additional Rent shall be abated in the same proportion as the untenantable portion of the Premises bears to the entire Premises, provided, such abatement (i) shall apply only to the extent the Premises are untenantable for the purposes permitted under this Lease and not used by Tenant as a result thereof, and (ii) shall not apply if Tenant or any other occupant of the Premises or any of their agents, employees, invitees, transferees or contractors caused the damage. Unless Landlord, within sixty (60) days after the happening of any such casualty, shall notify Tenant of its election to so restore, this Lease shall thereupon terminate, provided, if in Landlord's estimation the Premises cannot be restored within one hundred twenty (120) days following such destruction, Landlord shall notify Tenant and Tenant may terminate this Lease (regardless of Landlord's intent to restore) by delivery of notice to Landlord within thirty (30) days of Landlord's notice. In the event the Lease is terminated after Substantial Completion of Tenant's Work, Tenant shall be entitled to compensation for Tenant's Work as provided in **Exhibit D**. In the event the Lease is terminated before the commencement of Tenant's Work, **Exhibit D** shall not apply. Tenant agrees that in the event the Building or Premises are destroyed or rendered untenantable, either in whole or in part, its sole remedy shall be as set forth in this Section 10. Tenant further agrees that if it elects not to terminate the Lease, that the abatement of Base Rent and Additional Rent as provided above shall be Tenant's sole and exclusive recourse in the event of such damage, and Tenant waives any other rights Tenant may have under applicable law or this Lease to perform repairs or terminate the Lease by reason of damage to the Building or Premises.

**B. DAMAGE OR DESTRUCTION DURING TENANT IMPROVEMENTS;  
REBUILDING**

In the event the Building or Premises shall be destroyed or rendered untenantable, either wholly or in part, by fire or other casualty during Tenant's Work and prior to Substantial Completion, and Landlord elects to rebuild pursuant to Section 10.A above, Landlord and Tenant shall cooperate to rebuild the Tenant Improvements consistent with the Final Approved Plans attached to Exhibit C and shall rebuild the remainder of the Premises and Building to pre-casualty condition, with Tenant bearing responsibility and cost for the Tenant Improvements and Landlord bearing responsibility and cost for the remainder of the Premises and Building. Landlord and Tenant shall cooperate in the reconstruction, including public work administration, and may agree to different allocations of responsibility, including cost, for the most efficient and expedient arrangement for construction. The formula in **Exhibit D** shall not apply.

**C. DAMAGE OR DESTRUCTION DURING TENANT IMPROVEMENTS; NO  
REBUILDING.**

In the event, during construction of Tenant Improvements, Landlord elects to not rebuild as described in Section 10.A above, the Lease shall terminate, Landlord and Tenant shall have no further rights or obligations pursuant to the Lease and Tenant's recovery shall be in all instances limited to the proceeds from its own insurer. The formula in **Exhibit D** shall not apply.



## **SECTION 11: CONDEMNATION**

### **A. NOTIFICATION**

Landlord and Tenant will immediately notify the other in writing of the receipt of notice of any proceedings with respect to a condemnation or intent of any authority to exercise the power of eminent domain.

### **B. COMPENSATION AND TERMINATION OF LEASE**

Either party may terminate this Lease if the whole or any material part of the Premises shall be taken or condemned for any public or quasi-public purpose through the exercise of eminent domain. Landlord shall also have the right to terminate this Lease in the event of a Taking of any portion of the Building or Property which would leave the remainder of the Building unsuitable for use as a courthouse in a manner comparable to the use prior to the Taking. In order to exercise its right to terminate this Lease, Landlord or Tenant, as the case may be, must provide written notice of termination to the other within 45 days after the terminating party first received notice of Taking. Any such termination shall be effective as of the date the physical taking of the Premises or the portion of the Building or Property occurs. In addition, Base Rent and Additional Rent for any portion of the Premises taken or condemned shall be abated during the unexpired term of this Lease effective when the condemner takes possession. Tenant shall hold harmless Landlord for any and all costs incurred by Tenant as a result of a Taking. Tenant's only recourse for compensation in the event of a Taking shall be against the condemner. Landlord and Tenant agree to cooperate in any condemnation proceeding to determine just compensation. Tenant may file a claim against the condemner at its sole cost and expense, separate from any claim brought against the condemner by Landlord, for just compensation, but only to the extent such claim does not diminish the award which would otherwise be received by Landlord.

### **D. WAIVER**

Tenant agrees that it shall not exercise the power of eminent domain, neither on a total or partial basis, nor on a permanent or temporary basis, with regard to the Property, Building or Premises at any time while this Lease is in effect unless it has obtained Landlord's assent to such condemnation in writing and upon terms acceptable to both Landlord and Tenant. Landlord agrees that it shall not exercise the power of eminent domain, neither on a total or partial basis, nor on a permanent or temporary basis, with regard to the Tenant's leasehold interest in the Premises at any time while this Lease is in effect unless it has obtained Tenant's assent to such condemnation in writing and upon terms acceptable to both Landlord and Tenant.

## **SECTION 12: ASSIGNMENT AND SUBLEASE**

Tenant shall not assign this Lease or any part thereof and shall not let or sublet the whole or any portion of the Premises without the written consent of Landlord, which consent shall not

be unreasonably withheld by Landlord. This Lease shall not be assignable by operation of law. If consent is once given by the Landlord to a sublease of this Lease, or any interest therein, Landlord shall not be barred from afterwards refusing to consent to any further sublease.

### **SECTION 13: PERSONAL PROPERTY AND LEASEHOLD TAXES**

To the extent applicable, Tenant shall pay prior to delinquency all taxes, charges or other governmental impositions assessed against, levied upon or otherwise imposed upon or with respect to all fixtures, furnishings, personal property, systems and equipment located in or exclusively serving the Premises, and any improvements made to the Premises under or pursuant to the provisions of this Lease. Whenever possible, Tenant shall cause all such items to be assessed and billed separately from the other property of Landlord. In the event any such items shall be assessed and billed with the other property of Landlord, Tenant shall pay Landlord its share of such taxes, charges or other governmental impositions within ten (10) days after Landlord delivers a statement and a copy of the assessment or other documentation showing the amount of impositions applicable to Tenant's property. Tenant shall pay any rent tax, sales tax, service tax, transfer tax, value added tax, or any other applicable tax on the Rent, utilities or services herein, the privilege of renting, using or occupying the Premises, or collecting Rent therefrom, or otherwise respecting this Lease or any other document entered in connection herewith.

### **SECTION 14: DEFAULT**

#### **A. TENANT DEFAULT**

1. Excluding Tenant's Work and the deadlines associated with the same, the occurrence of any one or more of the following events shall constitute a "Default" by Tenant and shall give rise to Landlord's remedies set forth in Section 14.B below: (i) failure to observe or perform any term or condition of this Lease other than the payment of Base Rent or Additional Rent (or the other matters expressly described herein), unless such failure is cured within any period of time following notice expressly provided with respect thereto in other Sections hereof, or otherwise within a reasonable time, but in no event more than sixty (60) days following notice from Landlord (provided, if the nature of Tenant's failure is such that more time is reasonably required in order to cure, Tenant shall not be in Default if Tenant commences to cure promptly within such period and thereafter diligently pursues its completion); (ii) failure to cure immediately upon notice thereof any condition which is hazardous, interferes with another tenant or the operation or leasing of the Property, or may cause the imposition of a fine, penalty or other remedy on Landlord or its agents or affiliates; (iii) abandonment and vacation of the Premises (failure to occupy and operate the Premises for ten (10) consecutive days ). In the event of a Tenant default under this Section 14 prior to Commencement of Tenant's Work, the formula provided in **Exhibit D** shall have no application and Tenant shall not be entitled to any compensation whatsoever

2. Defaults related to Tenant's Work and the deadlines associated with the same shall be governed by the notice provisions, cure deadlines, Landlord remedies, deadlines for

Tenant to vacate, and Tenant compensation for Tenant's Work as specifically provide elsewhere in this Lease.

## **B. LANDLORD'S REMEDIES**

If a Default occurs, Landlord shall have the rights and remedies hereinafter set forth to the extent permitted by law, which shall be cumulative with and in addition to any other right or remedy allowed under this Lease. Landlord may terminate this Lease and Tenant's right to possession, at any time following a Default and upon sixty (60) days written notice to Tenant:

1. In the event Tenant's default occurs after Substantial Completion of Tenant's Work, Landlord shall refund to Tenant its share of the value of the Tenant Improvements (Tenant's Work) based upon the formula in **Exhibit D**.

2. In the event Tenant defaults after Commencement of Tenant's Work, but prior to Substantial Completion, and provided the default cannot be reasonably cured pursuant to Section 14.A, Landlord may elect to complete Tenant's Work in accordance with the Final Approved Design and **Exhibit C**. In such event, Tenant agrees to make available to Landlord the unexpended portion of the \$7,500,000 2008 Limited Tax General Obligation bonds issued by Tenant and allocated for the contracted costs for construction and construction management costs of Tenant's Work. In addition, Landlord reserves the right to pursue any and all remedies available at law or in equity against Tenant. Upon completion of Tenant's Work by Landlord, Tenant shall be entitled to a refund equal to the value of the Tenant Improvements as calculated by applying the formula provided in **Exhibit D**, less any legal costs incurred by Landlord as a result of Tenant's default.

3. In the event of any such reentry by Landlord, Landlord may, at Landlord's option, require Tenant to remove from the Premises any of Tenant's property located thereon. If Tenant fails to do so, Landlord shall not be responsible for the care or safekeeping thereof and may remove any of the same from the Premises and place the same elsewhere in the Building or in storage in a public warehouse at the cost, expense and risk of Tenant with authority to the warehouseman to sell the same in the event that Tenant shall fail to pay the cost of transportation and storage, all in accordance with the rules and regulations applicable to the operation of a public warehouseman's business. In any and all such cases of reentry Landlord may make any repairs in, to or upon the Premises which may be necessary, desirable or convenient, and Tenant hereby waives any and all claims for damages which may be caused or occasioned by such reentry or to any property in or about the Premises or any part thereof.

## **C. LANDLORD DEFAULT AND TENANT REMEDIES**

Landlord's failure to perform or observe any of its obligations under this Lease or to correct a breach of any warranty or representation made in this Lease within thirty (30) days after receipt of written notice from Tenant setting forth in reasonable detail the nature and extent of the failure referencing pertinent Lease provisions or if more than thirty (30) days is required to cure the breach, Landlord's failure to begin curing within the thirty (30) day period and diligently prosecute the cure to completion, shall constitute a default.

1. If Landlord commits a default that materially affects Tenant's use of the Premises, and Landlord has failed to commence to cure such default within thirty (30) days (or such shorter time as is commercially reasonable in the case of an emergency threatening imminent harm to persons or property), Tenant may, without waiving any claim for damages for breach of agreement, thereafter cure the default for the account of the Landlord. Such notice shall include notice of Tenant's plans to undertake the cure if Landlord does not do so within thirty (30) days (or less as provided above). The reasonable cost of such cure shall be deemed paid or incurred for the account of Landlord, and Landlord shall reimburse Tenant for these costs. Landlord shall reimbursement Tenant within thirty (30) days after completion of the cure and invoice to Landlord itemizing the costs of cure. If Landlord disputes either the necessity of the cure or the cost thereof, the matter shall be settled by arbitration administered by the American Arbitration Association in accordance with its Rules for the Real Estate Industry before a single neutral arbitrator of the American Arbitration Association sitting in Seattle, Washington. The arbitrator shall be a person having at least ten (10) years' experience and knowledge about commercial leasing and property management. The arbitration shall be held within sixty (60) days of Landlord notifying Tenant it disputes Tenant's cure. The costs of the arbitrator shall be shared equally by the parties. The prevailing party shall be entitled to an award of reasonable attorney's fees. The arbitrator's award shall be final and binding on the parties.

2. If Landlord commits a default that materially affects Tenant's use of the Premises after Substantial Completion, and Landlord has failed to commence to cure such default within thirty (30) days of receipt by Landlord of notice of default (or such shorter time as is commercially reasonable in the case of an emergency threatening imminent harm to persons or property), and the default is not reasonably cured by Tenant performing labor or similar cure, Tenant may elect to a) seek specific performance of the Landlord in court, or b) terminate this Lease. In the event Tenant elects termination, Tenant shall be entitled to a refund as calculated by applying the formula provided in **Exhibit D**. Either election remedy (specific performance or termination) by Tenant shall be Tenant's exclusive remedy. Tenant shall have no right to terminate the Lease prior to Substantial Completion, but shall be limited to specific performance.

## **SECTION 15: RIGHTS RESERVED BY LANDLORD**

Except to the extent expressly limited herein, Landlord reserves full rights to control the Property (which rights may be exercised without subjecting Landlord to claims for constructive eviction, abatement of Rent, damages or other claims of any kind), including more particularly, but without limitation, the following rights:

### **A. GENERAL MATTERS**

To: (i) change the name of the Building or Property or designation of the Premises (subject to restrictions in 15.C. below), (ii) install and maintain signs on the exterior and interior of the Building or Property, and grant any other person the right to do so, (iii) retain at all times, and use in appropriate instances, keys to all doors within and into the Premises, subject to Tenant's security rights under Section 5 above, (iv) grant to any person the right to conduct any business or render any service at the Property, whether or not the same are similar to the use

permitted Tenant by this Lease, but only so long as those uses are not incompatible with Tenant's use of the Premises, (v) grant any person the right to use separate security personnel and systems respecting access to their premises, subject to Section 5, (vi) have access for Landlord and other tenants of the Building to any mail chutes located on the Premises according to the rules of the United States Postal Service (and to install or remove such chutes), and (vii) in case of fire, invasion, insurrection, riot, civil disorder, emergency or other dangerous condition, or threat thereof: (a) limit or prevent access to the Building or Property or Premises, (b) shut down services, and (c) otherwise take such action or preventative measures deemed necessary by Landlord for the safety of tenants of the Building or Property or the protection of the Building or Property and other property located thereon or therein (but this provision shall impose no duty on Landlord to take such actions, and no liability for actions taken in good faith).

## **B. ACCESS TO PREMISES**

To enter the Premises in order to inspect, supply cleaning service or other services to be provided Tenant hereunder, and perform any work or take any other actions under Section 15.C below, or exercise other rights of Landlord under this Lease or applicable Laws, subject to Tenant's security rights under Section 5 above. However, Landlord shall: (a) provide reasonable advance written notice to Tenant's court administrator or other appropriate person for matters which will involve a significant disruption to Tenant's business (except in emergencies), (b) take reasonable steps to minimize any significant disruption to Tenant's business, and following completion of any work, return Tenant's leasehold improvements, fixtures, property and equipment to the original locations and condition to the fullest extent reasonably possible, and (c) take reasonable steps to avoid materially changing the configuration or reducing the square footage of the Premises, unless required by Laws or other causes beyond Landlord's reasonable control (and in the event of any permanent material reduction, the Base Rent and Additional Rent and other rights and obligations of the parties based on the square footage of the Premises shall be proportionately reduced). Tenant shall not place partitions, furniture or other obstructions in the Premises which may prevent or impair Landlord's access to the systems and equipment for the Property or the systems and equipment for the Premises. If Tenant requests that any such access occur before or after Landlord's regular business hours and Landlord approves, Tenant shall pay all overtime and other additional costs in connection therewith.

## **C. CHANGES TO THE PROPERTY**

To: (i) paint and decorate, (ii) perform repairs or maintenance, and (iii) make replacements, restorations, renovations, alterations, additions and improvements, structural or otherwise in and to the Building or Premises or any part thereof, including any adjacent building, structure, facility, land, street or alley, or change the uses thereof (including changes, reductions or additions of corridors, entrances, doors, lobbies, parking facilities and other areas, structural support columns and shear walls, elevators, stairs, escalators, mezzanines, solar tint windows or film, kiosks, planters, sculptures, displays, and other amenities and features therein, and changes relating to the connection with or entrance into or use of the Building or Premises or any other adjoining or adjacent building or buildings, now existing or hereafter constructed). Provided that Landlord shall have no right to reduce the square footage of the Premises or change the designation of the Premises from that built per the Final Approved Design (as amended by Field

Change Orders) unless otherwise agreed in writing by the parties. In connection with such matters, Landlord may among other things erect scaffolding, barricades and other structures, open ceilings, close entry ways, restrooms, elevators, stairways, corridors, parking and other areas and facilities, and take such other actions as Landlord deems appropriate. However, Landlord shall: (a) take reasonable steps to minimize or avoid any denial of access to the Premises except when necessary on a temporary basis, and (b) in connection with entering the Premises shall comply with Section 15.B above.

## **SECTION 16: INTENTIONALLY OMITTED**

## **SECTION 17: RELEASE AND INDEMNITY**

### **A. INDEMNITY**

1. Tenant shall indemnify, defend (using legal counsel reasonably acceptable to Landlord) and save Landlord harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including Landlord's reasonable attorneys fees incurred in connection with claims prior to Tenant's acceptance of its indemnity and defense obligations hereunder, regardless of whether such claims involve litigation) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to any property occurring during the Term of this Lease and arising out of or in connection with (i) Tenant's occupation, use or improvement of the Premises, including Tenant's Work as provided in **Exhibit C** or that of its employees, agents or contractors, (ii) Tenant's breach of its obligations hereunder or (iii) any negligent act or omission of Tenant or any subtenant, licensee, assignee or concessionaire of Tenant, or of any officer, agent, employee, or contractor of Tenant. Nothing in this Section 17.A shall require Tenant to protect, defend and indemnify Landlord to the extent of Landlord's negligence. This indemnity with respect to acts or omissions during the term of this Lease shall survive termination or expiration of this Lease. The foregoing indemnity covers actions brought by Tenant's own employees and it is specifically and expressly intended to constitute a waiver of Tenant's immunity, as respects the Landlord only, under Washington's Industrial Insurance Act, RCW Title 51, only to the extent necessary to provide Landlord with a full and complete indemnity from claims made by Tenant and its employees, to the extent provided herein. Tenant shall promptly notify Landlord of casualties or accidents occurring in or about the Premises. **LANDLORD AND TENANT ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF SECTION 17 AND SECTION 24 WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.**

2. Landlord shall indemnify, defend (using legal counsel reasonably acceptable to Tenant) and save Tenant harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including Tenant's reasonable attorneys fees incurred in connection with claims prior to Landlord's acceptance of its indemnity and defense obligations hereunder, regardless of whether such claims involve litigation) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to any property occurring during the Term of this Lease and arising out of or in connection with (i) Landlord's occupation, use or improvement of the Property, or that of its employees, agents or contractors, (ii) Landlord's breach of its obligations hereunder, or (iii) any negligent act or omission of

Landlord or any subtenant, licensee, assignee or concessionaire of Landlord, or of any officer, agent, employee, or contractor of Landlord. Nothing in this Section 17.A shall require Landlord to protect, defend and indemnify Tenant to the extent of Tenant's negligence. This indemnity with respect to acts or omissions during the term of this Lease shall survive termination or expiration of this Lease. The foregoing indemnity covers actions brought by Landlord's own employees and it is specifically and expressly intended to constitute a waiver of Landlord's immunity, as respects the Tenant only, under Washington's Industrial Insurance Act, RCW Title 51, only to the extent necessary to provide Tenant with a full and complete indemnity from claims made by Landlord and its employees, to the extent provided herein. **LANDLORD AND TENANT ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF SECTION 17 AND SECTION 24 WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.**

#### **B. RELEASE**

Landlord and Tenant hereby fully and completely waives and releases all claims against each other for any losses or other damages sustained by the other party or any person claiming through the other party resulting from any accident or occurrence in or upon the Property, Building, and Premises, or any act, omission or negligence of co-tenants, licensees or any other persons or occupants of the Building; provided only, that the releases contained in this Section 17.B shall not apply to claims for actual damage to persons or property resulting from the negligence or willful misconduct of the party making the claim.

#### **C. LIMITATION ON INDEMNITY**

In compliance with RCW 4.24.115 as in effect on the date of this Lease, all provisions of this Lease pursuant to which Landlord or Tenant (the "Indemnitor") agrees to indemnify the other (the "Indemnitee") against liability for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including the Premises, (i) shall not apply to damages caused by or resulting from the negligence of the Indemnitee, its agents or employees, and (ii) to the extent caused by or resulting from the concurrent negligence of (a) the Indemnitee or the Indemnitee's agents or employees, and (b) the Indemnitor or the Indemnitor's agents or employees shall apply only to the extent of the Indemnitor's negligence.

#### **D. DEFINITIONS**

As used in any Section of this Lease establishing indemnity or release of Landlord, "Landlord" shall include Landlord, its directors, elected officials, agents, employees and contractors, and "Tenant" shall include Tenant and any person or entity claiming through Tenant.

## **SECTION 18: INTENTIONALLY OMITTED**

### **SECTION 19: TERMINATION FOR CONVENIENCE**

This Section 19 is in addition to any other provision of this Lease authorizing or otherwise relating to early termination of this Lease. Landlord shall have no right to terminate for convenience pursuant to this Section 19 in the period prior to Substantial Completion of Tenant's Work.

#### **A. TERMINATION FOR CONVENIENCE – SALE NOTICE**

Landlord may terminate this Lease for convenience following Substantial Completion of Tenant's Work upon providing ninety (90) days advance written notice in the form of a Sale Notice to Tenant, which shall be commensurate with and in the form required in the Right of First Offer contained in **Rider One**.

#### **B. PRE-TERMINATION OBLIGATIONS**

Termination shall not release Tenant from any liability or obligation with respect to any matter occurring prior to such termination. Should Tenant not elect to purchase the Property, Landlord shall refund to Tenant an amount determined by the application of the formula prescribed in **Exhibit D**.

### **SECTION 20: EXPIRATION OF LEASE TERM**

Upon the expiration of the Lease Term, excluding termination pursuant to Section 3.D, unless Landlord has approved the Tenant Holding Over as provided in Section 21, or Landlord has offered, and Tenant has agreed, to exercise its Right of First Offer as provided in Rider One, Tenant shall vacate the Premises leaving them in good condition, ordinary wear and tear excepted.

### **SECTION 21: HOLDING OVER**

If the Tenant shall, with the written consent of Landlord, holdover after the expiration of the term of this Lease, such tenancy shall be for an indefinite period of time on a month to month tenancy, such tenancy may be terminated as provided by the laws of the State of Washington. During such tenancy Tenant agrees to pay to the Landlord the same rate of rental as set forth herein, unless a different rate is agreed upon, and to be bound by all of the terms, covenants, and conditions as herein specified, so far as applicable.

### **SECTION 22: DISPOSITION OF BUILDING UPON TERMINATION OR EXPIRATION OF LEASE**

Upon termination of this Lease, other than termination for convenience pursuant to Section 19, including any default termination, or upon expiration of this Lease, Landlord shall



have the right in its sole discretion to determine whether to sell or retain the Building and Property. If Landlord determines to sell the Building, it agrees to also simultaneously sell the Property to the same purchaser. If Landlord determines to sell the Building, Tenant shall have the right to purchase the Property as provided in Rider One. Except as otherwise provided in this Lease, upon sale of the Property to Tenant or a third party, or upon a decision by Landlord to retain the Property, the price (in event of purchase by Tenant), or allocation of sale proceeds (in event of sale to a third party), or buy-out amount owed to Tenant (upon retention of the building by Landlord) shall be determined in accordance with the application of the formula described in **Exhibit D**.

### **SECTION 23: TELECOMMUNICATION LINES**

Tenant is responsible for all installation, operation and termination charges related to its own independent telecommunications system, including, but not limited to, costs, expenses and charges for telephone equipment and line charges, line installation, inside wiring, re-configuration, and system repairs. Tenant shall install a system compatible with Landlord's system and shall coordinate and schedule with the Landlord all work by communications vendors for installation of such a compatible system. Tenant shall notify the Landlord thirty (30) days in advance of terminating their telephone service or increasing/decreasing the size of their telephone system. Tenant shall be responsible for acquiring and paying for local telephone directories.

### **SECTION 24: HAZARDOUS SUBSTANCES; DISRUPTIVE ACTIVITIES**

#### **A. PRESENCE AND USE OF HAZARDOUS SUBSTANCES**

Tenant shall not, without Landlord's prior written consent of Landlord's sole discretion, keep on or around the Premises, Building or Property, for use, disposal, treatment, generation, storage or sale, any substances designed as, or containing components designated as, a "hazardous substance," "hazardous material," hazardous waste," "regulated substance" or "toxic substance" (collectively referred to as "Hazardous Substances"). With respect to any such Hazardous Substances, Tenant shall: (i) comply promptly, timely and completely with all Laws for reporting, keeping and submitting manifests, and obtaining and keeping current identification numbers; (ii) submit to Landlord true and correct copies of all reports, manifests and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities; (iii) within five (5) days of Landlord's request, submit written reports to Landlord regarding Tenant's use, storage, treatment, transportation, generation, disposal or sale of Hazardous Substances and provide evidence satisfactory to Landlord of Tenant's compliance with all applicable Laws; (iv) allow Landlord or Landlord's agent or representative to come on the Premises at all times to check Tenant's compliance with all applicable Laws; (v) comply with minimum levels, standards or other performance standards or requirements which may be set forth or established for certain Hazardous Substances (if minimum standards or levels are applicable to Hazardous Substances present on the Premises, such levels or standards shall be established by an on-site inspection by the appropriate governmental authorities and shall be set forth in an addendum to this Lease); and (vi) comply with all applicable Laws regarding the proper and lawful use, sale, transportation, generation, treatment and disposal of Hazardous Substances.

**B. MONITORING COSTS**

Any and all costs incurred by Landlord and associated with Landlord's monitoring of Tenant's compliance with this Section 24, shall be due and payable to Landlord immediately upon demand by Landlord.

**C. CLEANUP COSTS, DEFAULT, AND INDEMNIFICATION**

1. Tenant shall be fully and completely liable to Landlord for any and all cleanup costs, and any and all other charges, fees, penalties (civil and criminal) imposed by any governmental authority with respect to Tenant's use, disposal, transportation, generation and/or sale of Hazardous Substances, in or about the Premises, Building or Property. Tenant's obligations pursuant to this Section 24.C.1 shall survive the termination of this Lease.

2. Tenant shall fully indemnify, defend and save Landlord harmless from any and all of the costs, fees, penalties and charges assessed against or imposed upon Landlord as a result of Tenant's use, disposal, transportation, generation and/or sale of Hazardous Substances, in or about the Premises, Building or Property. Tenant's obligations pursuant to this Section 24.C.2 shall survive the termination of this Lease.

**D. LANDLORD'S INDEMNITY**

Landlord shall fully indemnify, defend and save Tenant harmless from any and all of the costs, fees, penalties and charges assessed against or imposed upon Tenant (as well as Tenant's reasonable attorney fees and costs) as a result of Landlord's use, disposal, transportation, generation and/or sale of Hazardous Substances in or about the Building, Premises or Property.

**SECTION 25: DISABILITIES ACTS**

The parties acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) and regulations and guidelines promulgated thereunder ("ADA"), and any similarly motivated state and local Laws, as the same may be amended and supplemented from time to time (collectively referred to herein as the "Disabilities Acts") establish requirements for business operations, accessibility and barrier removal, and that such requirements may apply to the Premises, Building and Property depending on, among other things: (i) whether Tenant's business is deemed a "public accommodation" or "commercial facility", (ii) whether such requirements are "readily achievable", and (iii) whether a given alteration affects a "primary function area" or triggers "path of travel" requirements. The parties hereby agree that: (a) Landlord shall perform any required Disabilities Acts compliance in the common areas, except as provided below, (b) Tenant shall perform any required Disabilities Acts compliance in the Premises, including as part of Tenant's Work relating to Tenant Improvements and (c) Landlord may perform, or require that Tenant perform, and Tenant shall be responsible for the cost of, Disabilities Acts "path of travel" and other requirements triggered by any public accommodation or other use of, or alterations in, the Premises by Tenant. Tenant shall be responsible for Disabilities Acts requirements relating to Tenant's employees, and Landlord shall be responsible for Disabilities Acts requirements relating to Landlord's employees and Disabilities Acts "path

of travel” and other requirements triggered by any public accommodation or other use of, or alterations in, the Building by Landlord.

#### **SECTION 26: APPRAISAL OF BUILDING**

**A.** The parties have selected Darin Shedd of Allen, Brackett, Shedd as the Appraiser to provide the Pre-Construction Appraisal Value, Post-Construction Appraisal Value, and Post-Construction Rental Value (as those terms are defined here in and in **Exhibit D**). In the event he/she is no longer willing or available to serve as appraiser, the parties shall select another appraiser. In the event the parties cannot agree, they shall each select an appraiser and the two appraisers shall in turn select the Appraiser.

**B.** The Appraiser shall conduct an appraisal of the Fair Market Value of the Building as near as practicable to a date immediately prior to the Commence of Tenant’s Work; that value shall be the Pre-Construction Appraisal Value. The parties shall each pay one-half of the Appraiser's fee.

**C.** The Appraiser shall conduct an appraisal of the Fair Market Value of the Building as near as practicable following Substantial Completion of Tenant's Work; that value shall be the Post Construction Appraisal Value. In conjunction with determining the Post Construction Appraisal Value, the Appraiser shall also conduct an appraisal to determine the Post-Construction Appraised Rent Value, which shall constitute the rental value of the Building for purposes of determining Base Rent from and after the Date of Substantial Completion. The parties shall each pay one-half of the Appraiser’s fee.

**D.** The Appraiser shall conduct a final appraisal, upon the request of Landlord, at the time the Lease is terminated or expires, for the purpose of determining the allocation of value in the Building and Land between Landlord and Tenant per Exhibit D, but prior to issuance of the Sale Notice pursuant to, and in conformity with, the provisions of the Right of First Offer (**Rider One**).

#### **SECTION 27: RIGHT OF FIRST OFFER TO PURCHASE PROPERTY**

In further consideration of this Lease and other related transactions set forth in the Recitals contained in Section 1, the Parties covenant to enter into the following agreements:

**A.** Landlord and Tenant shall execute the Right of First Offer to purchase the Property attached as **Rider One** upon completion of the Lot Line Adjustment as provided in Section 1.

**B.** Landlord and Tenant shall execute the Right of First Offer to purchase City real property attached as **Rider Two** simultaneously with the execution of **Rider One**. Landlord and Tenant further agree to execute and record an amendment to **Rider Two** incorporating the real property described in **Exhibit G** (also referred to as Lot B in **Exhibit E**) when Tenant has completed condemnation or otherwise acquired title to the **Exhibit G** property.

#### **SECTION 28: PARKING AND RECIPROCAL PARKING EASEMENT**

A. The Parties have previously executed and recorded the Reciprocal Parking Easement dated, January 22, 2003, King County recording number 20030122002929. That Easement shall be rescinded and replaced with the Reciprocal Parking Easement attached hereto as **Exhibit E**. The replacement Exhibit E shall be executed upon completion of the Phase V parking lot. Phase V shall consist of approximately 71 parking stalls located on Lots A and B as defined in **Exhibit E** and which parking shall be available for public parking uses accessory to this Lease as well as City of Kent owned facilities. Tenant shall invoice Landlord for repair and maintenance expenses of the Phase V parking in the same manner as other parking repair and maintenance expenses as provided in section 7 of **Exhibit E** during the term of this Lease.

B. The Parties agree to work together in the scheduling of court calendars including jury trials so as to minimize parking demand at the Building.

### **SECTION 29: SUBORDINATION, ATTORNMENT AND LENDER PROTECTION**

In the event Tenant fails to exercise its Right of First Offer to purchase the Property and provided Tenant is presented a Subordination, Non-Disturbance and Attornment Agreement in a commercially reasonable form as shall be reasonably acceptable to Tenant and such non-subordinating party (the "SNDA"), this Lease shall be subject and subordinate to all Mortgages now or hereafter placed upon the Property, Building, Premises or any interest of Landlord therein, and all other encumbrances, and matters of public record applicable to the Property, Building or Premises. Tenant agrees upon written request of any purchaser at the time of sale, to attorn and pay Base Rent and Additional Rent to such party, and recognize such party as Landlord (provided such purchaser shall agree not to disturb Tenant's occupancy so long as Tenant does not Default hereunder, on a form customarily used by, or otherwise reasonably acceptable to, such party). However, in the event of attornment, no purchaser or lender shall be: (i) liable for any act or omission of Landlord, or subject to any offsets or defenses which Tenant might have against Landlord (arising prior to such purchaser becoming Landlord under such attornment), and (ii) liable for any security deposit or bound by any prepaid Rent not actually received by such purchaser. Any lender may elect to make this Lease prior to the lien of its mortgage by written notice to Tenant, and if the lender of any prior mortgage shall require, this Lease shall be prior to any subordinate mortgage; such elections shall be effective upon written notice to Tenant, or shall be effective as of a later date set forth in such notice. Tenant agrees to give any lender by certified mail, return receipt requested, a copy of any notice of default served by Tenant upon Landlord, provided that prior to such notice Tenant has been notified in writing (by way of service on Tenant of a copy of an assignment of leases, or otherwise) of the address of such lender.

### **SECTION 30: ESTOPPEL CERTIFICATES**

Tenant shall from time to time, within ten (10) business days after written request from Landlord, execute, acknowledge and deliver a statement certifying: (i) that this Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification and certifying that this Lease as so modified, is in full force and effect (or specifying the ground for claiming that this Lease is not in force and effect); (ii) the dates to which the Rent has been paid, (iii) that Tenant is in possession of the Premises, and the status of any unpaid Base Rent or

Additional Rent; or offsets, defenses or claims, or specifying the same if any are claimed; (iv) that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord or Tenant which are pertinent to the request, or specifying the same if any are claimed; and (v) certifying such other matters as Landlord may reasonably request, or as may be requested by Landlord's prospective purchasers and their lenders, insurance carriers, and auditors. Any such statement may be relied upon by any such parties. If Tenant shall fail to execute and return such statement within the time required herein, Tenant shall be deemed to have agreed with the matters set forth therein, and Landlord acting in good faith shall be authorized as Tenant's agent and attorney-in-fact to execute such statement on behalf of Tenant (which shall not be in limitation of Landlord's other remedies).

### **SECTION 31: NOTICES**

All notices to be given hereunder shall be in writing and shall be personally delivered, mailed, or sent by facsimile and addressed to the party at their respective mailing addresses as follows:

**To Lessor at:**

King County Property Services Division  
Attn: Leasing Supervisor  
King County Administration Building  
500 Fourth Avenue, Room 500  
Seattle, Washington 98104

**To Lessee at:**

City of Kent  
Attn: Facilities Manager  
220 Fourth Avenue South  
Kent, Washington 98032

### **SECTION 32: MISCELLANEOUS**

**A. CAPTIONS AND INTERPRETATION**

The captions of the Sections and Paragraphs of this Lease are for convenience of reference only and shall not be considered or referred to in resolving questions of interpretation. Tenant acknowledges that it has read this Lease and that it has had the opportunity to confer with counsel in negotiating this Lease; accordingly, this Lease shall be construed neither for nor against Landlord or Tenant, but shall be given a fair and reasonable interpretation in accordance with the meaning of its terms. The neuter shall include the masculine and feminine, and the singular shall include the plural. The term "including" shall be interpreted to mean "including, but not limited to."

**B. SURVIVAL OF PROVISIONS**

All obligations (including indemnity, Rent and other payment obligations) or rights of either party arising during or attributable to the period prior to expiration or earlier termination of this Lease shall survive such expiration or earlier termination.

### **C. SEVERABILITY**

If any term or provision of this Lease or portion thereof shall be found invalid, void, illegal, or unenforceable generally or with respect to any particular party, by a court of competent jurisdiction, it shall not affect, impair or invalidate any other terms or provisions or the remaining portion thereof, or its enforceability with respect to any other party.

### **D. FORCE MAJEURE**

(1) Landlord. Landlord shall have no liability whatsoever to Tenant on account of Landlord's inability to perform any of its obligations under this Lease, in whole or part, including the restoration of the Building and the Premises following damage or destruction, as a result of "force majeure," which shall include (a) strike, lockout, other labor trouble, dispute or disturbance; (b) governmental regulation, moratorium, action, preemption or priorities or other controls; (c) shortages of fuel, supplies or labor, other than those which were reasonably foreseeable; (d) any failure or defect in the supply, quantity or character of electricity or water furnished to the Premises by reason of any requirement, act or omission of the public utility or others furnishing the Building with electricity or water; and (e) for any other reason, whether similar or dissimilar to the above, or for Act of God, beyond Landlord's reasonable control and which were not reasonably foreseeable. If this Lease specifies a time period for performance of an obligation of Landlord to complete Landlord's Work, or the restoration of the Building and the Premises following damage or destruction, that time period shall be extended by the period of any delay in Landlord's performance caused by any of the events of force majeure described herein.

(2) Tenant. Tenant shall have no liability whatsoever to Landlord on account of Tenant's inability to timely complete Tenant's Work as a result of "force majeure," which shall include (a) strike lockout, other labor trouble, dispute or disturbance; (b) governmental regulation, moratorium, action, preemption or priorities or other controls; (c) shortages of fuel, supplies or labor; (d) any failure or defect in the supply, quantity or character of electricity or water furnished to the Premises by reason of any requirement, act or omission of the public utility or others furnishing the Building with electricity or water; and (e) for any other reason, whether similar or dissimilar to the above, or for Act of God, beyond Tenant's reasonable control. If this Lease specifies a time period for performance of an obligation of Tenant to complete Tenant's Work, or the restoration of Tenant's Work following damage or destruction, that time period shall be extended by the period of any delay in Tenant's performance caused by any of the events of force majeure described herein. Nothing in this section shall be construed as excusing or delaying the obligation of Tenant to pay in a timely manner when due any Rent or other amounts due under this Lease.

### **E. APPLICABLE LAW AND OTHER MATTERS**

This Lease shall be interpreted and construed under and pursuant to the laws of the State of Washington. Any action regarding or arising from this Lease shall be brought in the Washington State Superior Court located in the county where the Property is located. Time is of the essence of this Lease. In the event an attorney is engaged by either party to enforce the terms of this Lease or in the event suit is brought relating to or arising from this Lease, the prevailing party shall be entitled to recover from the other party its reasonable attorney fees and costs.

**SECTION 33: ENTIRE AGREEMENT**

This Lease, together with the Riders and Exhibits (which collectively are hereby incorporated where referred to herein and made a part hereof as though fully set forth), contain all the terms and provisions between Landlord and Tenant relating to the matters set forth herein and no prior or contemporaneous agreement or understanding pertaining to the same shall be of any force or effect, except any such contemporaneous agreement specifically referring to and modifying this Lease, signed by both parties. Neither this Lease, nor any Riders or Exhibits referred to above may be modified, except in writing signed by both parties; provided, in the event the consent of Landlord's lender (if any) is required as a condition to the effectiveness of any amendment or modification, such modification or amendment shall not be effective until Landlord provides Tenant notice of any such Lender's written consent.

IN WITNESS WHEREOF, the parties have executed this Lease, which shall become effective on the last date entered below.

**LANDLORD: KING COUNTY**

BY: \_\_\_\_\_  
Ronald Sims, King County Executive

**APPROVED AS TO FORM:**

BY: \_\_\_\_\_  
Timothy P. Barnes, Sr. Deputy Prosecuting Attorney

**TENANT: CITY OF KENT**

BY: \_\_\_\_\_  
Suzette Cooke, Mayor

**APPROVED AS TO FORM:**

BY: \_\_\_\_\_  
City Attorney's Office

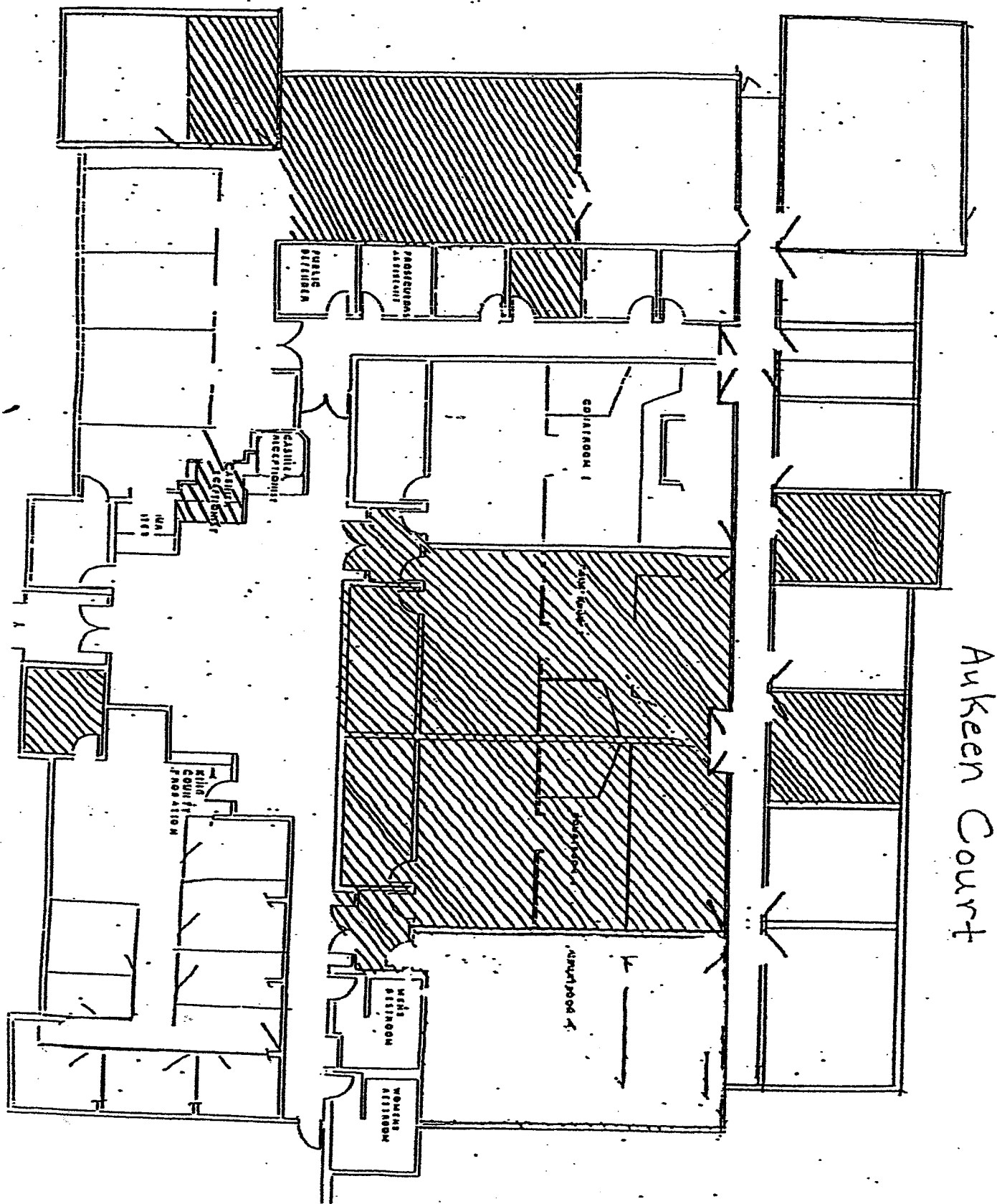






EXHIBIT A

(DIAGRAM OF BUILDING BEFORE TENANT'S WORK)



**EXHIBIT A-1**

**(DIAGRAM OF BUILDING AFTER TENANT'S WORK)**

**[To be inserted after substantial completion]**

**EXHIBIT B**

**(LEGAL DESCRIPTION OF PROPERTY AT EXECUTION OF LEASE)**

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**LOT "D": KING COUNTY**

**TAX ACCOUNT NUMBER: 000660-0043-0**

**LEGAL DESCRIPTION: S W RUSSELL D C #41 POR TRACT 24 HORSESHOE ACRE TRACTS & POR S W RUSSELL DLC IN NW QTR STR 25-22-04 DAF: BEG AT INTSN S BNDRY LN SD DLC WITH E LN SEC 25 TH N 89-44-28 W ALG S BNDRY SD DLC 59.86 FT TO TPOB TH S 00-07-57 W 203.74 FT TH N 89-35-24 W 128.73 FT TH N 00-03-47 E 84.40 FT TH N 45-54-33 W 94.10 FT TH N 00-30-26 E 58.83 FT TO S BNDRY SD DLC TH S 89-44-28 E 68.95 FT TO PT 187.12 FT W OF E LN SEC 25 TH N 00-35-50 E PLL TO SD E LN 366.85 FT M/L TO S MGN S 259TH ST TH E ALG S MGN 102.13 FT M/L TO PT 85.00 FT W OF E LN SEC 25 TH S 00-35-50 W 367.42 FT TO S LN SD DLC TH S 89-44-28 E ALG S LN 25.14 FT TO TPOB.**

**EXHIBIT B-1**

**(LEGAL DESCRIPTION OF PROPERTY AFTER LLA)**

**[To be developed after execution of Lease]**

## EXHIBIT C

### **WORK LETTER ADDENDUM TENANT IMPROVEMENTS AND TENANT'S WORK**

This Work Letter Addendum is part of and incorporated into that certain Lease (the "Lease") between King County, a political subdivision of the State of Washington (hereafter "Landlord") and the City of Kent, a municipal corporation (collectively "Parties"), for the Premises, as defined in Section 1.B of the Lease, located at 1210 S. Central Avenue, Kent, WA 98032. Capitalized terms in this Work Letter Addendum shall have the meanings set forth in the Lease. In case of conflicting definitions or terms, the definitions contained herein shall control.

#### **1.0 GENERAL INTENT**

It is the intent of this Work Letter Addendum ("Work Letter") that Tenant shall construct "Tenant's Work" in accordance with the Final Approved Design (described below) so long as the same is done at the sole cost and risk of Tenant. The Final Approved Design shall contain the detailed design work necessary to achieve the design contained in the Attachment 1 Preliminary Approved Design. Tenant's Work shall include all tenant improvements to the Building (the "Tenant Improvements") required in the Final Approved Design. As more fully set out in the Preliminary Approved Design, and incorporated into the Final Approved Design pursuant to the process contained below, the Building, upon completion of Tenant Improvements shall include at minimum the following:

1.1 A new total of seven (7) courtrooms (four (4) existing and three (3) new), five (5) of which will have a jury room with restroom facilities.

1.2 A new total of seven (7) judge's chambers (four (4) existing and three (3) new),, accessible to courtroom or via secure hallway.

1.3 A new total of five (5) service windows (three (3) existing and two (2) new), to be allocated as three (3) for district court and two (2) for municipal court.

1.4 One private public defender screening room.

1.5 Administrative space to accommodate the district court and municipal court staff as depicted in Attachment 1.

1.6 One (1) private office for the district court administrator and one (1) private office for the municipal court administrator.

1.7 Expanded lobby area to accommodate additional traffic flow, including information area, ATM, public phone, computer kiosk, and other elements included in the Preliminary Approved Design.

1.8 An office for Tenant's Security Officer.

1.9 Administrative space for five (5) probation staff (or Landlord's prosecutorial staff) including not less than three (3) private offices/interview rooms. The space will have security entrance and a lobby phone to contact staff in the secured space.

1.10 One (1) conference room.

1.11 One (1) holding cell.

1.12 File storage space to meet the needs of municipal court and district court.

1.13 One "information technology" closet for Tenant (in addition to existing Landlord "information technology closet").

1.14 All interior signage, including but not limited to court rooms, rest rooms, jury rooms, chambers, professional offices, staff areas and exits.

## **2.0 CONSTRUCTION DOCUMENTS.**

2.1 Tenant will obtain all necessary plans required for the performance of Tenant's Work addressed in this Work Letter, including plans and specifications for the Tenant Improvements (the "Preliminary Approved Design" and "Final Approved Design") which are prepared by Tenant's architect and which present a full and complete accounting of the scope of the Tenant Improvements. Tenant designates Dave Clark as architect ("Architect") for the Preliminary Approved Design. Tenant's designation of an architect may be changed by written notice to Landlord.

2.2 The Preliminary Approved Design shall include construction drawings and specifications for the Tenant Improvements, including but not limited to any alterations, improvements or upgrades to Landlord's existing Building mechanical or electrical systems necessitated by the Tenant Improvements. Tenant shall contract directly with Architect for preparation of all design work. The Preliminary Approved Design at the thirty (30) percent plan development stage is attached to this Work Letter Attachment 1. Tenant shall provide the Preliminary Approved Design consistent with Attachment 1 to Landlord at 60%, 90% and 100% plan development stages for its review and written approval. Landlord approvals, comments or requests for revisions to the Preliminary Approved Design must be identified by Landlord and returned to Tenant within seven (7) business days after Landlord's receipt. For each day beyond the seven (7) business days, one day shall be added to the six (6) month deadline for submission of the Preliminary Approved Design for 100 percent plan development stage provided in Section 2.B.5 of the Lease. Any revisions by Landlord to the Preliminary Approved Design shall similarly be responded to by Tenant within seven (7) business days after Tenant's receipt. The Preliminary Approved Design so approved by Landlord at the 100% complete stage shall become the Final Approved Design for all purposes hereunder, subject only to approved Field Change Orders in accordance with section 3.0 below. The Final Approved Design, once



approved and signed by Landlord, shall be incorporated into this Work Letter as Attachment 2. Tenant shall also obtain the appropriate building permits and other approvals, and shall construct the Tenant Improvements in accordance with the Final Approved Design. At no time will any cost of construction of Tenant's Work become an obligation of Landlord. Tenant shall perform all work necessary to Substantially Complete the Tenant Improvements within the time periods specified in Section 3 of the Lease at Tenant's sole cost, expense and liability.

2.3 Landlord's approval of the Preliminary Approved Design at the 60%, 90% and 100% review stages shall not be unreasonably withheld. Should Landlord and Tenant disagree as to the approval of the Preliminary Approved Design at any stage requiring Landlord approval, the King County director of the facilities management division and the Kent director of parks and community services shall attempt to resolve the dispute within five (5) days, and if not successful, shall submit the dispute in writing with appropriate documentation to the King County chief administrative officer or his designee for a decision, which shall be rendered within three (3) business days and shall be final and binding on both Landlord and Tenant. If the decision of the King County chief administrative officer is not rendered within three (3) business days of written notification of the dispute being submitted to him, Landlord's approval shall be deemed granted. The number of days used to obtain this decision shall be added to the six (6) month deadline to submit plans in Section 2.B.5 of the Lease. If Tenant disagrees with the decision of the King County Chief Administrative Officer, Tenant may provide Landlord written notice within seven (7) days of receiving Landlord's decision of its intention to immediately terminate this Work Letter addendum, in which case Tenant shall simultaneously terminate the Lease upon 16 months advance written notice to Landlord and Landlord and Tenant shall have no further rights or obligations thereunder. In case of such termination, the Lease and all of its terms excluding those pertaining to Tenant's Work shall remain in effect and Tenant shall vacate the Premises promptly after 16 months. In the event this Section 2.3 conflicts with any other provision of the Work Letter or Lease, this Section 2.3 shall control.

2.4 Landlord and Tenant agree that the Final Approved Design, once reviewed by Tenant and Landlord approved in writing by Landlord and Tenant, and any Field Change Orders approved in accordance with Section 3.0 below, shall represent the complete understanding between Landlord and Tenant as to the scope of the Tenant Improvements to be constructed under the Lease and this Work Letter.

### **3.0 FIELD CHANGE ORDERS**

3.1 Revisions to the Final Approved Design, if any, are to be accomplished by Field Change Orders. A "**Field Change Order**" is a document which details the scope of a requested change to any work set forth in the Final Approved Plans and bears the signature of Landlord's and Tenant's project manager, and if required, other representative's of Landlord and Tenant, (as provided below) approving such change. Field Change Orders shall be approved by Landlord and Tenant prior to being executed or acted upon by Tenant's contractor.

3.2 In order to avoid delays in construction, in the event the cost of the work included in a Field Change Order request is Fifty Thousand Dollars (\$50,000) or less, the aggregate amount of Field Change Order requests has not exceeded Three Hundred Thousand Dollars

(\$300,000), and the Field Change Order will not likely result in a delay in the Substantial Completion date, Landlord's project manager shall have authority to provide the necessary approval in writing on Landlord's behalf promptly with proper documentation and cost itemization to follow. In addition, Landlord's project manager may approve Field Change Orders on an emergency basis for those which he/she reasonably believes will result in unreasonable delays in the construction schedule or cost increases which can be avoided by timely approval, but excluding any proposed Field Change Orders which fall within the provision of Section 3.3 below. All other Field Change Orders must be approved in advance on behalf of Landlord by Landlord's director of the facilities management division.

3.3 With the exception of Section 3.5 below, the cost of any Field Change Order shall be the sole responsibility of Tenant. In the event Landlord and Tenant, in the opinion of either facilities director, cannot agree upon the terms or necessity of a proposed Field Change Order which has the potential to cause a material deviation from the Final Approved Design, the King County chief administrative officer, in consultation with the City director of parks and community services, shall within three (3) business days of either party submitting same to the King County chief administrative officer in writing with appropriate documentation, render a decision which shall be communicated to Tenant in writing and shall be final and binding on both Landlord and Tenant. Disputes involving the terms or necessity of proposed Field Change Orders which do not have the potential to cause a material deviation from the Final Approved Design shall be resolved mutually by Landlord and Tenant. The number of days required to render a decision in accord with this section shall be added to the eleven (11) month deadline in Section 2.B.5 of the Lease.

3.4 Landlord and Tenant shall provide each other written notice of the name and contact information of the individual designated as its project manager. Project managers shall be available on not more than one (1) business day notice to be present at the job site to respond to questions and Field Change Order issues. Approved Field Change Orders shall, if necessary, be accompanied by written amendments to the Lease adjusting the date for Substantial Completion and associated provisions in the Lease accordingly.

3.5 Landlord shall have authority to initiate Field Change Orders based upon aesthetics, practical considerations, cost savings, materials, and other discretionary purposes at Landlord's expense. Landlord shall also bear the cost of Tenant-initiated Field Change Orders arising from Maintenance issues which were not reasonably discoverable by Tenant, its agents, contractors or consultants, exercising due diligence prior to Tenant's preparation of its contract with its contractor. For purposes of this Section 3.5, "Maintenance" shall mean repair and replacement of existing Building systems for the purpose of operating such systems as originally intended, for reasonable use and operation of the Building as configured prior to this Lease and excluding alterations, improvements, interconnections, and upgrades to any Building system or structures necessary to achieve the Tenant's Improvements contemplated herein.

3.6 Landlord shall further have authority to initiate Field Change Orders based on commercially reasonable decisions that errors have occurred. The categories of errors subject to this Section 3.6 shall include design errors, construction errors, architecture and engineering discrepancies, design and construction discrepancies, mutual mistake, lack of coordination

between new and existing systems, or any other foreseen or unforeseen error, mistake, condition or discrepancy of any kind, except as provided in Section 3.5.

3.7 Tenant's contract, including all planned specifications therein, shall include provisions which require all work necessary to coordinate existing Building systems (mechanical, electrical, etc.) and structures with newly constructed systems and structures. Tenant shall ensure that all mechanical and other systems installed are compatible with and integrated into the Building control systems.

3.8 Tenant's project manager shall oversee the daily construction activities on the Property. Landlord and Tenant acknowledge that Landlord's project manager shall have the opportunity to inspect construction, attend construction meetings and receive copies of all construction meeting minutes, and in the event Landlord's project manager becomes aware of any error or problem with respect to Tenant's performance or construction of Tenant's Work, or deviation from the Final Approved Design, Landlord's project manager shall provide Tenant notice of the same so that Tenant may take any corrective action it deems appropriate. Landlord's failure to exercise its rights pursuant to this section 3.8 shall not constitute a waiver of rights to enforce any other provision of this Work Letter addendum or the Lease. Landlord shall fully cooperate with Tenant in responding to requests for information from Tenant's contractor. Tenant's project manager shall respond to Landlord's requests for information as expeditiously as possible.

3.9 For purposes of this Work Letter, the term "contractor" shall be a reference to Tenant's prime construction contractor. The term contract shall mean the document issued by the Tenant on which prospective contractors must bid and which shall become the construction agreement between Tenant and its contractor.

#### **4.0 CONSTRUCTION OF TENANT IMPROVEMENTS**

4.1 Tenant acknowledges that it is solely responsible for the Tenant Improvements contained in this Work Letter and that it will enter into a construction contract with a contractor of its choosing.

4.2 The Final Approved Design, and the terms of this Work Letter shall be the basis of Tenant's solicitation of bids from prospective contractors to construct the Tenant Improvements.

4.3 Given that Tenant's Work will include tying into the Building's existing systems, prior to Tenant's submittal of 60 percent design documents, Tenant shall establish the "as is" condition of the Building's mechanical and electrical systems through an agreed upon qualified third party consultant, which shall be incorporated into both the Final Approved Design and the requirements of the Tenant's construction contract. Tenant shall provide Landlord's project manager with a copy of the consultant's findings.

4.4 Prior to Commencement of Tenant's Work, Landlord shall remove from the Property the two outdoor storage containers located near the northeast corner of the Building. These containers are located within the footprint of Tenant's Improvements.

4.5 Prior to Substantial Completion, Tenant shall provide third party commissioning of all mechanical and electrical systems by a mutually agreed upon third party consultant..

4.6 Warranty. Upon Substantial Completion of Tenant's Work, Tenant shall at minimum warrant to Landlord for a period of one (1) year (the "Tenant Warranty Period") each of the following: (i) that Tenant's Work has been substantially completed in accordance with the Final Approved Design (subject to completion of any customary punch list items), and (ii) that Tenant's Work is free from any material defects in workmanship or materials (the foregoing warranties collectively "Tenant's Warranty"). Alternatively, Tenant may, subject to the aforementioned minimum warranty requirements, require Tenant's contractor to provide Tenant a warranty assignable in full to Landlord for the duration of the Tenant Warranty Period. In addition to the foregoing, and upon the substantial completion of Tenant's Work, Tenant shall assign and deliver to Landlord all warranties, guarantees, maintenance contracts, and equipment warranties received by Tenant from Tenant's contractor, and any subcontractor, supplier, materialmen or equipment manufacturer arising from the performance of any part of Tenant's Work, but only if such assignment and delivery will not adversely affect Tenant's ability to independently enforce all such warranties, or warranty claims, against any such contractors, suppliers or materialmen during the Tenant Warranty Period. In the event any contractor, supplier, materialmen or equipment manufacturer provides a warranty that is of longer duration than Tenant's Warranty Period, nothing herein shall be deemed to affect or limit the duration of such third party warranties.

4.7 Tenant agrees to make best efforts to seek the highest LEED certification points that are cost effective, as determined by Tenant, based on the life cycle cost analysis and the limits of available funding for the Tenant Improvements. Landlord and Tenant agree that the Preliminary Approved Design was at the 30 percent development stage as of May 2008.

## **5.0 CONSTRUCTION REQUIREMENTS**

Landlord and Tenant agree that the Building must continue to function as a courthouse during all phases of construction of the Tenant Improvements. Tenant shall be solely responsible for maintaining and safeguarding the construction site, and all related structures, appurtenances, systems and equipment at all times during construction of the Tenant Improvements. Tenant shall be responsible, either directly or indirectly through its contract with its contractor, for the following requirements, which shall be incorporated into the contract between Tenant and its contractor:

### **5.1 Restrictions**

5.1.1 All construction work shall be performed on an off-shift basis, specifically, all construction work must take place between 3 P.M. and 10 P.M. on

weekdays, and between 3 P.M. Fridays and 6 A.M. on Mondays; provided, however, that no access shall be given nor shall any work occur in any portion of the Building accessible to the general public before 3:30 P.M. on weekdays, and no construction work shall be performed that causes disruptive noise until after 3:30 P.M. on weekdays. At no time shall the public be allowed in areas of active construction.

- 5.1.2 Tenant may make use of the existing water supply available at the project site for performance of the construction work as long as it does not overload the existing water supply system or cause any dangerous conditions or a condition which may impact the operation of court operations.
- 5.1.3 Use of the Premises shall be limited to the areas indicated on the contract documents and based upon the Final Approved Design. Keep driveways and entrances serving Building and Premises clear and available at all times during normal district court hours of operation to the public. Do not use these areas for parking or storage of materials. Move any stored products under contractor's control that interfere with the operations of the court.
- 5.1.4 Schedule deliveries to minimize use of driveways and entrances; schedule deliveries to minimize space and time requirements for storage of materials and equipment on the site.
- 5.1.5 Coordinate use of Premises under the direction of Landlord's project manager.
- 5.1.6 Construction Phasing: Given that Tenant's Work includes both expansion of the Building and renovation of the Building while the courts continue to operate, court personnel will need to relocate within the Building during various stages of construction. Tenant's contractor and project manager shall schedule construction and coordinate the construction work with use of existing spaces with the district and municipal court administrators during regularly scheduled meetings. Each party will be responsible for moving its own staff. Tenant shall provide a minimum of four (4) days written advance notice to Landlord of any such requested moves.
- 5.1.7 Interruption of Services: Tenant's contractor and project manager shall schedule interruption of services with district and municipal court administrators during regularly scheduled meetings, but in no case less than four (4) days prior to the scheduled interruption.
- 5.1.8 No signs or advertisements will be allowed to be displayed on the Property without the advance written approval of Landlord.

## **5.2 Safety**

- 5.2.1 Provide and maintain a temporary fence of the appropriate type and dimensions around all construction and materials to secure the work from unwanted visitors and to isolate potential hazards. Provide lockable gates at locations where required for access to the enclosed area.
- 5.2.2 Provide temporary barricades, safety guards, and warning lights at all open excavations and other unsafe areas outside fenced work areas. Barricades shall physically prohibit passage of pedestrians into excavations and other hazards.
- 5.2.3 Provide security/dust barricades around all work areas and maintain these for the entire construction phase. Sound attenuation barriers for applicable areas shall be constructed in areas which may be affected by construction noise.
- 5.2.4 Close joints between sheet materials, and seal edges and intersections with existing surfaces, to prevent penetration of dust or moisture.
- 5.2.5 Take all necessary precautions for the safety of employees, County and City staff, the public, and other persons on the site of the construction work. Comply with all applicable codes and ordinances to prevent accident or injury to persons on or adjacent to the Property where work is being done. Report to the Landlord's project manager immediately and in writing all accidents to persons or property occurring on the construction site or Property.
- 5.2.6 Comply with all governing laws, codes, and regulations to maintain required protection at all times. Include proper and adequate backup protection during any "shut down" of normal protection systems. Conduct operations in a manner that is fire-safe for the construction work area and adjacent areas. Proper fire extinguishers shall be provided, identified, and maintained. The Property shall be maintained clear of rubbish, debris, or other material constituting a potential fire hazard. A proper fire separation shall be maintained between new and existing construction.
- 5.2.7 Where significant or continued non-compliance with fire safety is noted, Landlord reserves the right to stop the construction work at no extra costs or extension of time pending remedial action. Furthermore, Tenant's contractor shall be responsible for, and reimburse Tenant as appropriate, for any fines or penalties levied by the City of Kent.

## **5.3 Security**

- 5.3.1 Prevent damage to all Premises, and all related systems, structures, equipment, art works, and any other elements, to the extent they are not the object of replacement or modification as part of the Tenant's Work.
- 5.3.2 Prevent entry into the Premises, except by authorized personnel and Landlord's employees, through use of barriers and provision of security services as necessary.
- 5.3.3 Prevent the creation in, and emanation from, the construction site, of odors, fumes, noise, dust, debris and any matter in levels that (i) are beyond any applicable statutes and regulations, (ii) give rise to a nuisance, inverse condemnation, trespass, waste, tort or other cause of action against Landlord, or (iii) violate any agreement, license, permit, easement or other obligation of Landlord.
- 5.3.4 Maintain the construction site in a clean and neat appearance at all times. Take all necessary fire prevention measures. Not allow hazardous, dangerous, or unsanitary conditions or nuisances to develop or persist at the site.
- 5.3.5 Initiate and maintain a specific program to prevent accumulation of debris at the construction site, storage and parking areas, and along access roads and haul routes and allow no flammable materials or other hazardous materials to be stored on the site without proper fire protection procedures and methods as approved by authority having jurisdiction.
- 5.3.6 Maintain storm sewers free of debris or extraneous materials; protect existing utilities from any damage or interruption of services. (Tenant shall be responsible for determining the exact location of all existing utilities, whether or not indicated on the drawings.) Coordinate the moving or adjustment of affected utilities. No interruption of service will be allowed without prior approval of Landlord. Interruptions of service will be scheduled per Section 5.1.7.
- 5.3.7 Security on site whenever access into the existing facility is required for work to be completed. Standards for selection of security personnel shall be subject to advance approval of Landlord.
- 5.3.8 Protection of work, stored materials, tools and vehicles from loss, theft and unauthorized entry.
- 5.3.9 Devise and initiate a construction security program in coordination with Landlord for review at the pre-construction conference. Maintain the construction security program throughout the construction period until a final occupancy permit has been issued.

- 5.3.10 Abide by the law which prohibits transport of any alcoholic beverages, drugs, weapons or ammunition of any kind into the courthouse Building.
- 5.3.11 Storage of materials inside the Premises and Building will be coordinated with security personnel, Landlord and Tenant. All tools (ram sets, cartridges), hack saw blades, framing hammers and wire cutters, etc. will be inventoried in and out each day by security personnel.
- 5.3.12 All construction personnel may be subject to search each time they enter or leave the secured perimeter and buildings and shall carry a driver's license or other government issue picture I.D.
- 5.3.13 Entry into the Building shall be in compliance with RCW 9A.76.140/150/160. All persons and items entering and leaving the facility are subject to search by security personnel. Security may deny entry to any personnel not previously cleared or for any suspicious behavior.
- 5.3.14 All of the contractor's supervisory personnel shall be equipped with a mobile telephone for communications with the project managers and security personnel.
- 5.3.15 All of the contractor's and subcontractors' personnel will be required to undergo background checks prior to working on the site; background checks will be conducted by Landlord, and may require two (2) weeks to complete. There will be no compensable delay in the construction schedule for conduct of background checks. The contractor shall designate substitute personnel for background checks at the beginning of the job to avoid delays during the course of the work.
- 5.3.16 Barring of any employees from the site by security shall not be cause for any additional cost to Landlord and shall not be allowed as a reason for delays in the construction schedule.
- 5.3.17 Intoxicants, narcotics, dangerous drugs, firearms, edged weapons, mace, oleo capsicum, electronic weapons, ammunition, explosives, weapons, and/or anything that could be construed as a weapon (excluding construction tools) or illegal substance of any kind will be considered contraband and shall not be brought onto the Property for any reason. It will be confiscated by Security and not returned.
- 5.3.18 The contractor shall maintain control and accounting of all tools, materials, and equipment at all times; any loss of such items shall be reported immediately to Security and the project managers. Tools, materials, and equipment must be stored in locked metal boxes when not in use.



5.3.19 Non-compliance with the requirements of this section 5.0 shall be considered a breach of security. Individuals causing any breach of security will be subject to non-admittance or expulsion from the Property and worksite and may be subject to arrest and prosecution.

#### **5.4 Conduct of Work**

- 5.4.1 Temporary heating and ventilation as required during construction to protect the work from freezing or frost damage, and as necessary to ensure suitable working conditions for the construction operations of all trades. In areas of the Building used for district court purposes during construction, Tenant's Work shall not cause the temperature to be below 60 degrees Fahrenheit or above 80 degrees Fahrenheit.
- 5.4.2 Temporary heat and ventilation required to meet specified minimum conditions for installation of materials and to protect materials and finishes from damage due to temperature or humidity.
- 5.4.3 Adequate forced ventilation of enclosed areas to cure installed materials, disperse humidity, and prevent hazardous accumulations of dust, fumes, vapors, and gases.
- 5.4.4 After permanent systems are sufficiently installed, they may be used in lieu of temporary systems. (The responsibility for full operation remains with Tenant's contractor until Substantial Completion.) Provide air filters on building fan equipment and return duct openings, heat pumps, and the like, used for temporary heat. Replace used filters with clean ones at the completion of the construction work.
- 5.4.5 Use of the existing electricity and lighting available at the project site for performance of the construction work as long as it does not overload the existing electrical circuitry or cause any dangerous conditions or a condition which may impact the operation of court operations.
- 5.4.6 Make all arrangements with the local electric company for temporary electrical service for service which exceeds existing at the site or provide on-site portable electrical generators. Provide all equipment necessary for temporary power and lighting for the safe operation of all construction tools and equipment without overloading the capacity of the existing system on site.
- 5.4.7 Remove all temporary wiring, lighting, and other temporary electrical equipment and devices when construction is completed.
- 5.4.8 Provide and maintain in a sanitary condition, closed weathertight toilets for the use of all construction personnel at a location within the job site,

complete with fixtures, water, and sewer connections and all appurtenances. Install in accordance with all applicable codes and regulations of authorities having jurisdiction. Chemical toilets may be permitted. The number of toilet rooms required shall be in accordance with the ANSI Standard Safety Code for Building Construction or other local authorities. Upon completion of the construction work, toilets and their appurtenances shall be removed.

5.4.9 The contractor's personnel may use existing potable water available at the project site for performance of the construction work and for drinking.

## **5.5 Odor, Noise, and Control of Construction Impacts**

5.5.1 Tenant's contractor shall provide a portable weathertight field office at the job site with a telephone, fax machine, and email capability.

5.5.2 At no time shall the contractor cause disruption to tenants within the existing building as a result of objectionable odor producing activities, such as use of solvent-based paint or adhesive products by contractor personnel. If, in the sole opinion of Landlord, or its designee, if objectionable odor is produced, upon notification, Tenant, through its contractor, shall immediately take remedial action to address the problem.

5.5.3 Noise levels shall not exceed those outlined in King County Code 12.86 – 12.100 and Kent City Code.

5.5.4 Furnish and maintain all pumps or other dewatering devices which may be required by this work.

5.5.5 Provide methods to control surface water and underground water (as applicable). Prevent damage to project work, site, and adjoining properties. Control excavation, grading and ditching to direct surface drainage away from construction areas, and to direct drainage to proper runoff sources.

5.5.6 Dispose of drainage water in a legal manner which prevents flooding, and other damage to any portion of the building, site or adjoining areas.

5.5.7 Apply for and obtain any required NPDES permit from the State.

5.5.8 Remove all temporary construction and facilities from structures and Property following Substantial Completion, and restore existing facilities used during construction to their original condition. Restore permanent facilities used during construction to specified condition.

- 5.5.9 Provide mitigation and clean up of dust within office areas on at least a weekly basis, unless required more often.

## **5.6 Quality Assurance**

- 5.6.1 Provide and maintain an effective quality control program and perform sufficient inspections and tests of all items of work, including those of subcontractors, to ensure compliance with Final Approved Design.
- 5.6.2 Furnish appropriate facilities, instruments, and testing devices required for performance of the quality control program.
- 5.6.3 Quality controls must be adequate to cover construction operations and be keyed to the construction sequence.
- 5.6.4 Tenant's contractor shall provide for procedures to ensure that the Final Approved Design, and latest shop drawings, and instruction by the contract are used for fabrication, testing, and inspection.
- 5.6.5 The Tenant's contractor is responsible for the coordination of the work for all trades under the contract and with other contractors. The Tenant's contractor shall check specifications, addenda, and the drawings covering all trades as the work progresses. The Tenant's contractor shall promptly report to the Landlord's project manager any omissions, conflicts, or points requiring clarification.
- 5.6.6 Equipment and Material: It is the contractor's responsibility to be certain that all equipment and materials selected by him, or for him by his subcontractors or material suppliers, conform exactly to the requirements of the Final Approved Design. The approval of a manufacturer's name by Tenant's project manager does not relieve the contractor of the responsibility for providing materials and equipment which comply with the Final Approved Design.
- 5.6.7 Before the installation of every major unit of work which requires coordination with other work, ensure that the unit of work can be installed and function as intended and required in conjunction with other work which has preceded or will follow. If the installer reports unsatisfactory conditions for installation, do not proceed until these conditions have been corrected.
- 5.6.8 Tenant's contractor warrants that all materials and equipment furnished under this Work Letter Agreement will be new unless otherwise specified, and that all work will be of good quality, free from faults and defects and in conformance with the Final Approved Design. All work not so conforming to these standards may be considered defective. If required by

Landlord, Tenant's contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The warranty provided herein shall be in addition to and not in place of any other warranty or remedy required by law or elsewhere in this Work Letter Agreement or in the Lease. For the purposes of this Work Letter Agreement, "new materials and equipment" means that all such materials and equipment shall be in current production at time of bidding. No discontinued lines, patterns, materials, or colors will be permitted.

## **6.0 LANDLORD ACCESS TO PREMISES**

6.1 During the construction period, Tenant's contractor will need to alter or temporarily restrict the district court's access to areas of the Property, Building and Premises. Such restrictions will accommodate the need to carry on the business of four (4) courtrooms, maintain systems within the Building, and address emergency situations not specifically mentioned. Tenant's contractor and project manager shall schedule access alterations with Landlord's Project Manager, in consultation with the district and municipal court administrators during regularly scheduled meetings.

6.2 Except as specifically provided herein, Landlord shall have "24/7" access to the Property, Building and Premises; provided, however, that except in situations requiring immediate access, Landlord shall reasonably notify Tenant to coordinate such access.

6.3 Landlord shall continue to provide rodent and pest control in the Building during the construction period. Such services will be provided on an "as needed" basis by determination of Landlord's pest control personnel or by specific request of Tenant. Landlord does not make and specifically disclaims any warranties, express or implied, including any warranty of merchantability or fitness for a particular purpose, with respect to such services. Tenant shall reimburse Landlord for all costs of such services required as a result of Tenant's Work. Landlord may invoice Tenant for reimbursement for such costs on a quarterly basis with Additional Rent. Tenant shall fully reimburse Landlord within 30 days of receipt of such an invoice. Total costs to be reimbursed by Tenant shall not exceed ten percent (10%) of the base rent for one month.

## **7.0 INDEMNITY AND HOLD HARMLESS**

Tenant shall indemnify, defend (using legal counsel acceptable to Landlord) and hold Landlord harmless from all claims, damages, costs, judgments and settlements against Landlord from Tenant's contractor or subcontractors arising from the construction covered in this Work Letter. Tenant further agrees to indemnify, defend and hold Landlord harmless for any personal injury or property damage claims arising from the construction of the Tenant Improvements contemplated in this Work Letter. Nothing in this Section 7.0 shall require Tenant to protect, defend and indemnify Landlord to the extent of Landlord's negligence. This indemnity with respect to acts or omissions during the term of construction of tenant improvements shall survive termination and expiration of the Lease. The foregoing indemnity covers actions brought by Tenant's own employees and it is specifically and expressly intended to constitute a waiver of

Tenant's own immunity, as respects the Landlord only, under Washington's Industrial Insurance Act, RCW Title 51, only to the extent necessary to provide Landlord with a full and complete indemnity from claims made by Tenant and its employees, to the extent provided herein. Tenant shall promptly notify Landlord of casualties or accidents occurring during construction. **TENANT AND LANDLORD ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS SECTION 7 WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.**

## **8.0 INSURANCE REQUIREMENTS**

8.1 By the date of execution of this Work Letter Agreement, and in addition to the insurance requirements in the Lease, the Tenant shall procure and maintain for the duration of this Work Letter Agreement, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of work hereunder by the Tenant, its agents, representatives, employees and/or contractor/sub-contractors. The Tenant or contractor/sub-contractor shall pay the costs of such insurance. The Tenant shall furnish separate certificates of insurance and policy endorsements from each contractor/sub-contractor as evidence of compliance with the insurance requirements of this Work Letter Agreement. The insurance requirements contained herein are separate and in addition to those required in the Lease.

8.2 The Tenant is responsible for ensuring compliance with all of the insurance requirements stated herein. Failure by the Tenant, its agents, employees, officers, contractor/sub-contractors to comply with the insurance requirements stated herein shall constitute a material breach of this Work Letter Agreement.

8.3 Each insurance policy shall be written on an "occurrence" form; except that insurance on a "claims made" form may be acceptable with prior Landlord approval. If coverage is approved and purchased on a "claims made" basis, the Tenant 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 Work Letter Agreement termination, and/or conversion from a "claims made" form to an "occurrence" coverage form.

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 in this provision shall affect and/or alter the application of any other provision contained within this Work Letter Agreement.

8.4 By requiring such minimum insurance, the Landlord shall not be deemed or construed to have assessed the risks that may be applicable to the Tenant under this Work Letter Agreement, nor shall such minimum limits be construed to limit the limits available under any insurance coverage obtained by the Tenant. The Tenant shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

8.5 Minimum Scope of Insurance. Coverage shall be at least as broad as the following:

- 8.5.1 General Liability: Insurance Services Office form number (CG 00 01) covering **COMMERCIAL GENERAL LIABILITY**.
- 8.5.2 Professional Liability, Errors and Omissions Coverage: In the event that services delivered pursuant to this Work Letter Agreement either directly or indirectly involve or require professional services, Professional Liability, Errors and Omissions coverage shall be provided. “Professional Services”, for the purpose of this Work Letter Agreement section, shall mean any services provided by a licensed professional or those services that require a professional standard of care.
- 8.5.3 Automobile Liability: Insurance Services Office form number (CA 00 01) covering **BUSINESS AUTO COVERAGE**, symbol 1 “any auto”; or the appropriate coverage provided by symbols 2, 7, 8, or 9.
- 8.5.4 Workers’ Compensation: 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.
- 8.5.5 Stop Gap/Employers Liability: 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.
- 8.5.6 Builder's Risk/Installation Floater: The Tenant/Contractor shall procure and maintain during the life of the Work Letter Agreement, or until issuance of a final occupancy permit, whichever is longer, “All Risk” Builders Risk Insurance at least as broad as ISO form number CP0020 (Builders Risk Coverage Form) with ISO form number CP0030 (Causes of Loss—Special Form) including coverage for collapse, theft and property in transit. The coverage shall insure for direct physical loss to property of the entire construction project, for one hundred percent of the replacement value thereof. The policy shall be endorsed to cover the interests, as they may appear, of King County, Owner, Tenant, contractor and sub-contractors of all tiers with King County listed as a loss payee.
- 8.5.7 Minimum Limits of Insurance—Capital Projects: The Tenant shall maintain limits no less than the following:
  - a) Commercial General Liability: \$1,000,000 combined single limit per occurrence by bodily injury, personal injury, and property

damage; and for those policies with aggregate limits, a \$2,000,000 aggregate limit.

- b) Professional Liability, Errors, and Omissions: \$1,000,000, Per Claim and in the Aggregate.
- c) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage if the use of motor vehicles is contemplated.
- d) Workers' Compensation: Statutory requirements of the state of residency.
- e) Stop Gap /Employers Liability: \$1,000,000.
- f) Builders Risk Insurance: One hundred percent replacement value of funded structure.

8.6 Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to, and approved by, the Landlord. The deductible and/or self-insured retention of the policies shall not apply to the Tenant's liability to the Landlord and shall be the sole responsibility of the Tenant.

8.7 Other Insurance Provisions: The insurance policies required in this Work Letter Agreement are to contain, or be endorsed to contain, the following provisions:

8.7.1 All Liability Policies except Professional and Workers Compensation: The Landlord, its officers, officials, employees, and agents are to be covered as additional insureds on the contractor's insurance as respects liability arising out of activities performed by or on behalf of the Tenant/contractor in connection with this Work Letter Agreement. Such coverage shall include Products-Completed Operations.

8.7.2 The Tenant's/contractor's insurance coverage shall be primary insurance as respects Landlord, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by Landlord, its officers, officials, employees, or agents shall not contribute with the Tenant's insurance or benefit the Tenant in any way.

8.7.3 The Tenant's/contractor'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.

8.7.4 Property Coverage Policies: Landlord shall be added as a Named Insured as their interests may appear to all Builders Risk policies.

8.7.5 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 45 days prior written notice has been given to Landlord.

8.8 Acceptability of Insurers. Unless otherwise approved by Landlord, insurance is to be placed with insurers with a 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 Landlord. If, at any time, the foregoing policies shall fail to meet the above requirements, the Tenant shall, upon notice to that effect from Landlord, promptly obtain a new policy, and shall submit the same to Landlord, with appropriate certificates and endorsements, for approval.

8.9 Verification of Coverage. The Tenant shall furnish Landlord with certificates of insurance and endorsements required by this Work Letter Agreement. 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 Landlord prior to the commencement of activities associated with the Work Letter Agreement. Landlord reserves the right to require complete, certified copies of all required insurance policies at any time.

8.10 Tenant shall include all contractors as insureds under its policies or shall require separate certificates of insurance and policy endorsements from each contractor. If Tenant is relying on the insurance coverages provided by contractors as evidence of compliance with the insurance requirements of this Work Letter Agreement, then such requirements and documentation shall be subject to all of the requirements stated herein.

8.11 If Tenant is a municipal corporation or an Agent of the state of Washington and is self-insured for any of the above insurance requirements, a certification of self-insurance shall be provided for the self-insured requirements and attached hereto and be incorporated by reference and shall constitute compliance with this Section 8. If the certificate of self-insurance does not cover all mandatory requirements, Tenant shall provide separate certificates and endorsements that document coverage.

## **9.0 GENERAL**

9.1 This Work Letter Agreement, the Preliminary and Final Approved Plans, and any approved Field Change Orders shall constitute the complete construction specifications and no other representations, or oral agreements between the parties shall be recognized in the event of a dispute between Landlord and Tenant.



9.2 Time is of the essence with respect to each of the duties and obligations of Landlord and Tenant set forth in this Work Letter Agreement. Notwithstanding any of the foregoing provisions hereof, default by Tenant or Landlord under any provisions of this Work Letter Agreement which are not cured within applicable notice and cure periods set forth in the Lease shall constitute a default under the Lease.

9.3 Any notice, statement, advice, approval (with the exception of design approval pursuant to section 2.0 and Field Change Orders pursuant to section 3.0), consent or other communication required or permitted to be given by either party to the other pursuant to this Work Letter Agreement shall be given in the manner set forth in Section 31 (Notices) of the Lease.

9.4 In any instance where this Work Letter Agreement expressly provides that Tenant must obtain Landlord's approval or consent, and Landlord fails to act within the specified time period, Landlord shall be conclusively deemed to have granted its approval or consent.

9.5 It is understood and agreed that this Work Letter Agreement is solely for the benefit of the parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this Work Letter Agreement. No employees or agents of Tenant or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees of Landlord. Tenant shall comply, and shall ensure its contractors comply, with all federal, state and local laws, regulations, and ordinances applicable to the work and services to be performed under this Work Letter Agreement. The parties' rights and remedies in this Work Letter Agreement are in addition to any other rights and remedies provided by law. This Work Letter Agreement shall be interpreted in accordance with the laws of the State of Washington in effect on the date of execution of this Work Letter Agreement. The Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Work Letter Agreement.

TENANT AND LANDLORD AGREE TO THE ABOVE TERMS CONTAINED IN THIS EXHIBIT C AND ATTACHMENTS AND TO THE RELATED PROVISIONS OF THE LEASE TO WHICH THIS EXHIBIT C IS ATTACHED.

**TENANT:**  
CITY OF KENT  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**LANDLORD:**  
KING COUNTY  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Tom Brubaker, City Attorney

\_\_\_\_\_  
Sr. Deputy Prosecuting Attorney

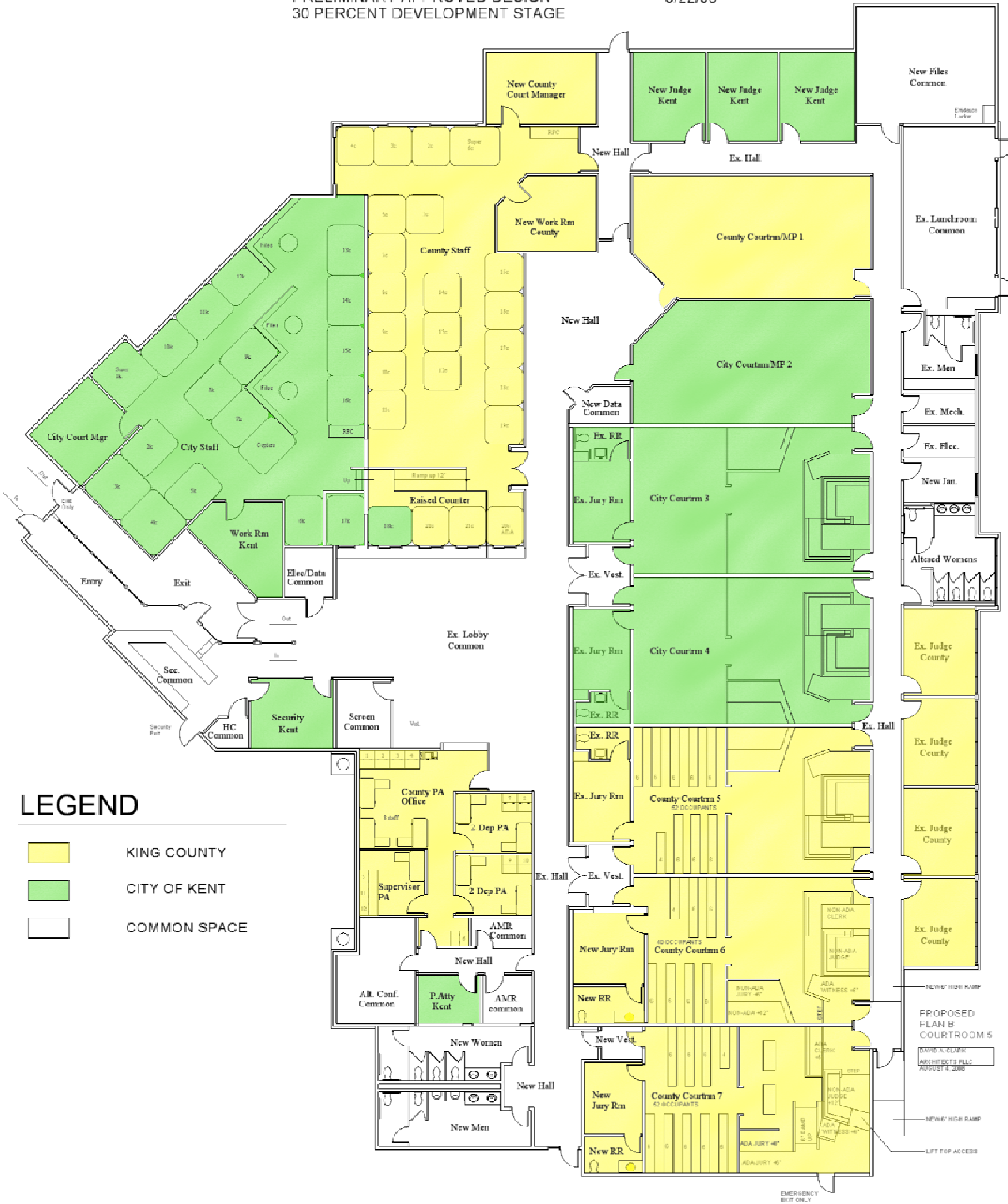
**ATTACHMENT 1**

**PRELIMINARY APPROVED DESIGN  
30 PERCENT DEVELOPMENT STAGE**

# ATTACHMENT A1

PRELIMINARY APPROVED DESIGN  
30 PERCENT DEVELOPMENT STAGE

5/22/08



## LEGEND

- KING COUNTY
- CITY OF KENT
- COMMON SPACE

## LEGEND

- EX. WALLS TO REMAIN
- NEW WALLS
- OUTLINE OF EXISTING BUILDING
- OUTLINE OF NEW ADDITIONS

## AREAS

EXISTING BUILDING	ALTERED AREAS	NEW CONSTRUCTION	SOUTH ADDITION	WEST ADDITION	NORTH ADDITION	NEW TOTAL AREA
11,200	4,809	1,917	3,645	1,830	7,299	22,690

PROPOSED PLAN B COURTROOM 5  
DATE: 4/1/08  
ADDED TO PLAN AUGUST 4, 2008

## FLOOR PLAN

1/8" = 1'-0"



**ATTACHMENT 2**

**FINAL APPROVED DESIGN**

## EXHIBIT D

### **Formula for allocating value of Building and Property upon Termination or Expiration of Lease**

This formula for allocating value is part of and incorporated into that certain Lease (the "Lease") between King County, a political subdivision of the State of Washington (hereafter "Landlord") and the City of Kent, a municipal corporation (collectively "Parties"), for the Premises, as defined in Section 1.B of the Lease, located at 1210 S. Central Avenue, Kent, WA 98032. Capitalized terms shall have the meanings set forth in the Lease. In case of conflicting definitions, the definitions contained herein shall control.

#### **1. Concept:**

1.1 The City and County should both receive value for their respective investment upon sale of the Aukeen Court Facility, or termination or expiration of the Lease. That value should be determinable at any point in time based upon an agreed formula as set forth in this Exhibit D .

1.2 The formula below would apply whether the Facility is sold to a third party (because the City chose not to exercise its Right of First Offer), or to the City (upon termination for convenience or expiration of the Lease), or the County elects to retain the Facility (upon default termination or expiration of the Lease).

1.3 The formula would not apply in the event termination occurs prior to the Date of Commencement of Tenant Improvements. The formula should be read together with the City's Right of First Offer to purchase the Facility in order to determine the cost to the City to exercise that right.

#### **2. Terms:**

**2.1 Facility:** Collectively, the Aukeen Court building ("Building" as defined in Section 1 of the Lease) and the parcel of real property on which it sits (the "Property", as defined in Section 1 of the lease), as the Building and Property are expanded and or modified in order to accomplish the Project.

**2.2 Project:** The defined project described in Exhibit C of the Lease, that generally being the addition of 3 courtrooms, 3 judges chambers, and renovation of common spaces in the Building, together with ancillary space.

**2.3 Appraiser:** An real property appraiser jointly selected by the City and County, through process defined in Section 26 of the Lease.

**2.4 Lease:** The Agreement between the City and County authorizing the City to lease portions of the existing Premises, undertake the Project, and upon completion of that Project, lease a defined portions of the expanded Building .

**2.5 Pre-Construction Appraisal Value:** The Fair Market Value of the Facility as a courthouse immediately prior to commencement of construction of the Project, as determined by the Appraiser.

**2.6 Post-Construction Appraisal Value:** The Fair Market Value of the Facility as a courthouse determined by the Appraiser, upon completion of the Project.

**2.7 Fair Market Value:** The amount in cash which a well informed buyer, willing but not obligated to buy the property, would pay, and which a well informed seller, willing but not obligated to sell, would accept, taking into consideration the continued use of the Facility as a courthouse.

**2.8 Lease Term:** The period in which the Lease is in effect.

**2.9 Lease Commencement Date:** The first date on which the Lease is in effect.

**2.10 Lease Termination Date:** The last date on which the Lease is in effect.

**2.11 Expiration Date:** The last date on which the Lease is in effect per Section 1.B.5 of the Lease (natural expiration of the Lease term, 20 years following Commencement Date), as that date may be extended.

3. **Formulas:** the formulas for calculating the amounts owed to the County and City under various scenarios of lease termination and sale of Facility are as provided below:

$$L = (S \times K) + P$$

$$T = (S - L)$$

**L** = Amount owed to County, as owner and Landlord, upon sale of the Facility or Lease termination/expiration.

**T** = Amount owed to City, as investor and Tenant, upon sale of the Facility or Lease termination/expiration.

**S** = Fair Market Value of the Facility at the date of Lease Termination or Lease Expiration (as applicable), as determined by the Appraiser. If the Facility is sold to a third party, then S will equal Fair Market Value (as determined by the Appraiser) or the sale price, whichever is higher. Taxes, fees and closing costs paid by County, if any, to accomplish the sale to the City or third party shall be included in the calculation of "S". In the event of a termination of the Lease for condemnation or casualty/damage, "S" shall equal the amount of

proceeds of condemnation awarded, or insurance proceeds in the event of casualty/damage, to the County as owner of the Facility.

**K** = The percentage that the Pre-Construction Appraisal Value bears to the Post-Construction Appraisal Value. For example, if the Pre-Construction Appraisal Value of the Facility is \$2 Million, and the Post-Construction Appraisal Value is \$5.6 Million,  $K = 35.7\%$

**P** = the amount, if any, of default penalty chargeable to the City in the event the County terminates the Lease for default. The amount of the penalty will be the amount of any out-of-pocket costs incurred by the County directly as a result of the default.

4. **Timing of Payment:**

4.1 In the event of a default termination in which the County retains the Facility, T is payable to the City over 3 years, in roughly equal amounts.

4.2 In the event of any other termination or expiration, payment to the City or County (as appropriate) shall be made at closing (in event of sale to City or a third party) or within ninety (90) days of Lease expiration (in event County retains the Facility).

5. **Hypothetical Examples:** the following are hypothetical examples of how the formulas would be used to calculate the amounts owed to the County and City under various scenarios of lease termination and sale of Facility:

5.1 Formula Calculation in event of termination for convenience by County.  
*Assume:* Building is valued at \$4M by Appraiser prior to Tenant's construction of Project.

Post-construction value is appraised at \$6M.

5 years later, County terminates Lease for convenience and City elects to purchase the Facility per its Right of First Offer. Appraised FMV of Facility at Lease Termination Date is \$7M (including closing costs for transfer).

*Formula Calculation:*

$$K = 4 \div 6 = 66\%$$

$$S = \$7M$$

$$P = 0$$

$L = (\$7M \times .66) = \$4,620,000$  == amount paid by City to County upon closing of sale.

$T = (\$7M - \$4,620,000) = \$2,380,000$  == share of building value credited to City at closing of sale.

5.2 Formula Calculation in event City defaults under Lease and County terminates Lease and retains the Facility. :

*Assume:*

Building is valued at \$4M by Appraiser prior to Tenant's construction of Project.

Post-construction value is appraised at \$6M.

5 years later, Tenant defaults under Lease and Landlord terminates the Lease and elects to retain title to the Facility. Landlord incurs \$300,000 in out of pocket costs as a direct result of Tenant's default.

*Formula Calculation:*

$$K = 4 \div 6 = 66\%$$

$$S = \$7M$$

$$P = \$300,000$$

$L = (\$7M \times .66) + \$300,000 = \$4,920,000 =$  share of building value retained by County.

$T = (\$7M - \$4,920,000) = \$2,080,000 ==$  amount paid to City by County in roughly equal amounts over 3 years.



**EXHIBIT E**

**RECIPROCAL PARKING EASEMENT**

AFTER RECORDING RETURN TO:

City of Kent  
Attn: Property Manager  
220 Fourth Avenue S  
Kent, Washington 98032

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**Grantor:** City of Kent, a Washington municipal corporation.

**Grantee :** King County, a political subdivision of Washington.

**Abbreviated Legal Description:** Ptn. Tract 24 Horseshoe Acre Tracts recorded in Vol. 15, page 10 and a Ptn. of S.W. Russell DLC lying in the NW ¼, 25-22-04, King County, State of Washington.

**Additional Legal Description** See Exhibit 1.

**Assessor's Tax Parcel ID No.** 346280-0205-0 and 000660-0043-0.

**Project Name:** Kent Municipal Court Parking Lot

**Document Date:** \_\_\_\_\_

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**RECIPROCAL PARKING EASEMENT**

THIS INSTRUMENT made this \_\_\_\_ day of \_\_\_\_\_, 200, by and between the **CITY OF KENT**, a municipal corporation of the State of Washington (the "City") and **KING COUNTY**, a political subdivision of the State of Washington (the "County").

1. Property. The City owns the real property legally described as Lot A, B and C in Exhibit 1 and depicted in Exhibit 2, which are incorporated by this reference. The County owns the adjoining real property legally described as Lot D in Exhibit 1 and depicted in Exhibit 2. The City has constructed five parking lots on the real property described in Exhibit 1. These parking lots are depicted on Exhibit 3 incorporated herein:

- a) Phase I consists of thirty-two (32) parking stalls, built on Lots C and D, non-restricted parking used by the public in conjunction with the government services existing on Lot C and D;
- b) Phase II consists of twenty-six (26) parking stalls, built on Lots C and D, restricted parking for City and County personnel;

c) Phase III consists of fifty-one (51) parking stalls, built on Lot C, 48 stalls restricted for City and County personnel and 3 stalls for general public;

d) Phase IV consists of eighty-four (84) parking stalls, built on Lot C, non-restricted parking used by the public in conjunction with the government services existing on Lot C and D; and;

e) Phase V is proposed to be built and will consist of approximately seventy-one (71) stalls to be constructed on Lots A and B. Maintenance and use of Phase V is addressed in that certain Lease between the parties dated \_\_\_\_\_ and to which this Reciprocal Parking Easement is attached.

2. Purpose. The purpose of this Parking Easement is to grant the City and the County the right to use the portions of the parking lots constructed on the other party's real property for Phase I, Phase II, Phase III, and Phase IV and to establish the allocation of the restricted parking stalls in Phase II and Phase III as between the City and the County to provide perpetual parking rights to the City and County buildings which are appurtenant to this easement. In consideration for the County entering into that certain Lease dated \_\_\_\_\_ (to which this Reciprocal Parking Easement is attached) is the assurance of continued access by the public and by County staff, both for the term of the Lease and thereafter in the event the County retains title to the Building and including further the ability to assure such parking access rights to the County's successors in interest. Therefore, while the Lease is in effect, and so long thereafter as the County owns the building appurtenant to this easement and has not exercised its right to acquire title to the said parking lots and the City jail property, Tenant grants the County the non-exclusive right to use and access the parking stalls in the Phase I through IV parking lots/stalls described herein, including therein some spaces for the County's restricted use, and the balance for public use for access to both County and City services.

3. Grant to City. The County, for and in consideration of mutual benefits derived and/or other valuable consideration, receipt of which is hereby acknowledged by the County, does grant to the City, its successors and/or assigns, an easement for use of and access to that portion of the Phase I and Phase II parking stalls depicted in Exhibit 3 which are located on the real property legally described in Exhibit 1 as Lot D and the balance of the parking stalls for public use associated with County and City services provided by the buildings that are appurtenant to this easement. The County reserves the right to use the easement area, so long as that use does not unreasonably interfere with the use of the City and public parking and so long as that use is consistent with the conveyance by the City in the following paragraph.

4. Grant to County. The City, for and in consideration of mutual benefits derived and/or other valuable consideration, receipt of which is hereby acknowledged by City, does grant to the County, its successors and/or assigns, an easement for use of and access to any portion of the Phase I, Phase II, Phase III, and Phase IV parking stalls identified in Exhibit 3, which are located on the real property legally described in Exhibit 1 as Lot C and the balance of the parking stalls for public use associated with County and City services provided by the buildings that are appurtenant to this easement. The City shall retain the right to use the easement area, so long as that use does not unreasonably interfere with the use of the County and public parking and so long as that use is consistent with the conveyance by the County in the previous paragraph.

5. Non-Discrimination. The City shall not enact any policy which would have the effect, intended or unintended, of rendering public parking for County services at a disadvantage relative to public parking for City services. Likewise, the County shall not enact any policy which would have the effect, intended or unintended, of rendering public parking for City services at a disadvantage relative to public parking for County services.

6. Parking Stall Allocation. The County will have use of and access to seven (7) of the twenty-one (21) Phase II parking stalls and use of and access to sixteen (16) of the forty-eight (48) Phase III restricted parking stalls.

7. Maintenance. The City shall maintain and repair the constructed parking lots as shown in Exhibit 3. The cost of such maintenance and repair shall be allocated among the City and County until such time that the Lease shall expire or terminate, commencing upon completion of Phase V construction. The County shall pay to the City County's share of Phase I, Phase II, Phase III, and Phase IV reasonable parking lot maintenance and repair expenses based on a one third (1/3) allocation of those direct expenses incurred by the City, which maintenance and repair expenses shall be commensurate with maintenance and repair expenses for City-owned and maintained parking lots of similar usage. A list and schedule of standard City maintenance and repair is attached and incorporated as Exhibit 4. The City shall provide the County quarterly with an invoice showing the calculation of these direct expenses, which shall be due and payable to the City within 30 days of invoicing. Upon expiration or termination of the Lease, the County's maintenance obligations shall increase to two-thirds (2/3) allocation for Phase I, Phase II, Phase III and Phase IV.

8. Terms of Use. The City and County shall at all times exercise their rights under this Easement in accordance with the requirements of all applicable statutes, orders, rules and regulations of any public authority having jurisdiction. The City and County accept the easement areas in their present physical condition, "as is."

9. Indemnification. County does hereby release, indemnify and promise to defend and save harmless City from and against any and all liability, loss, damage, expense actions and claims, including costs and reasonable attorney's fees incurred by City in connection therewith, arising directly or indirectly on account of or out of the negligent exercise by County, its servants, agents, employees, and contractors of the rights granted in this Easement. City does hereby release, indemnify and promise to defend and save harmless County from and against any and all liability, loss, damage, expense actions and claims, including costs and reasonable attorney's fees incurred by County in connection therewith, arising directly or indirectly on account of or out of the negligent exercise by City, its servants, agents, employees and contractors of the rights granted in this Easement.

10. Run with the Land; No Merger. This Reciprocal Easement shall be a covenant running with the land forever and shall be binding on the City and County, their successors and assigns, or until such time that the County may acquire the underlying fee interest in the City's real property described in Exhibit 1, whereupon it is the intent of the County and City that the County's easement merge into its fee title; or until such time that the City may acquire the

underlying fee interest in the County's real property described in Exhibit 1, whereupon it is the intent of the City and County that the City's easement merge into its fee title.

11. Neither the City or County shall charge fees for parking in any of the parking lots encumbered by this Easement unless such fees have been mutually agreed to in writing by the City and County.

**KING COUNTY:**

**CITY OF KENT:**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: Suzette Cooke  
Its: Mayor  
Date: \_\_\_\_\_

STATE OF WASHINGTON )  
  ) : ss.  
COUNTY OF KING             )

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she is authorized to execute the instrument on behalf of the **KING COUNTY**, as its \_\_\_\_\_, and such execution to be the free and voluntary act of such party for the uses and purposes mentioned in the foregoing instrument.

*-Notary Seal Must Appear Within This Box-*

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

\_\_\_\_\_

NOTARY PUBLIC, in and for the State of Washington  
residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

STATE OF WASHINGTON )  
  ) : ss.  
COUNTY OF KING             )

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, I know or have satisfactory evidence that **Suzette Cooke** is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she is authorized to execute the instrument on behalf of the **CITY OF KENT** as its **Mayor**, and such execution to be the free and voluntary act of such party for the uses and purposes mentioned in the foregoing instrument.

*-Notary Seal Must Appear Within This Box-*

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

\_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC, in and for the State of Washington  
residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
King County Sr. Prosecuting Attorney

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

EXHIBIT 1

LOT "A":

TAX ACCOUNT NUMBER: 000660-0021-0

LEGAL DESCRIPTION: S W RUSSELL DLC NO 41 PORTION OF SAMUEL W RUSSELL DONATION CLAIM NO 41 IN NE QTR STR 25-22-04 DAF: BEGINNING AT POINT S LINE OF SAID DONATION CLAIM 422 FT WEST OF INTERSECTION OF SAID S LINE WITH LINE BETWEEN RANGES 4 & 5 EAST W.M. WHICH POINT IS ON E LINE OF KENT-THOMAS CO RD TH NORTH ALONG SAID E LINE 220 FT TO TPOB WHICH TPOB IS NW CORNER OF TRACT DEEDED TO GAY H ELLIOT UNDER RECORDING NO 2368597 TH EAST ALONG N LINE OF SAID GAY H ELLIOT TRACT 149 FT TO W LINE OF TRACT DEEDED TO B.W. ELLIOT BY DEED UNDER RECORDING NO 2368598 TH NORTH ALONG SAID W LINE 144.5 FT TO S LINE OF COUNTY ROAD (S 259TH ST) TH WEST ALONG SAID S LINE OF COUNTY ROAD 149 FT TO E LINE OF SAID KENT-THOMAS CO RD TH SOUTH ALONG SAID E LINE 144.5 FT TO TPOB EXCEPT PORTIONS CONVEYED TO CITY OF KENT BY DEEDS UNDER RECORDING NOS 7308100427 & 9208031788.

LOT "B":

TAX ACCOUNT NUMBER: 000660-0044-09

LEGAL DESCRIPTION: RUSSELL S W - DC # 41 N 60 FT OF S 220 FT OF W 149 FT OF E 1350.62 FT OF DC LESS ST.

LOT "C":

TAX ACCOUNT NUMBER: 346280-0205-0

LEGAL DESCRIPTION: HORSESHOE ACRE TRS TO KENT POR TRACT 24 & POR S W RUSSELL DLC # 41 IN NW QTR STR 25-22-04 DAF: BEG AT INTSN E MGN EAST VALLEY HWY (AKA CENTRAL AVE) WITH N LN TRACT 24 HORSESHOE ACRES TH N 00-40-16 E ALONG E MGN EAST VALLEY HWY DIST 160.00 FT TH S 89-44-28 E PLL WITH N LN SD TRACT 24 DIST 143.00 FT TH W 00-40-16 E PLL WITH EAST WALLEY HWY 205.99 FT M/L TO S MGN S 259TH ST TH EAST ALG S MGN 2 259TH ST 90.07 FT M/L TO PT 187.12 FT W OF E LN SEC 25 TH S 00-35-50 W PLL WITH E LN SEC DIST 366.85 FT TO N LN TRACT 24 HORSESHOE ACRES TH N 89-44-28 W ALG SD N LN 68.96 FT TH S 00-30-26 W 53.83 FT TH S 45-54-33 E 94.10 FT TH S 00-03-47 W 84.40 FT TH S 89-35-24 E 128.73 FT TH S 00-07-57 W 114.25 FT TO S LN TRACT 24 HORSESHOE ACRES TH N 89-44-28 W ALG SD S LN 363.79 FT TO E MGN EAST VALLEY HWY TH N 00-40-16 E ALG SD E MGN 313.00 FT TO TPOB.

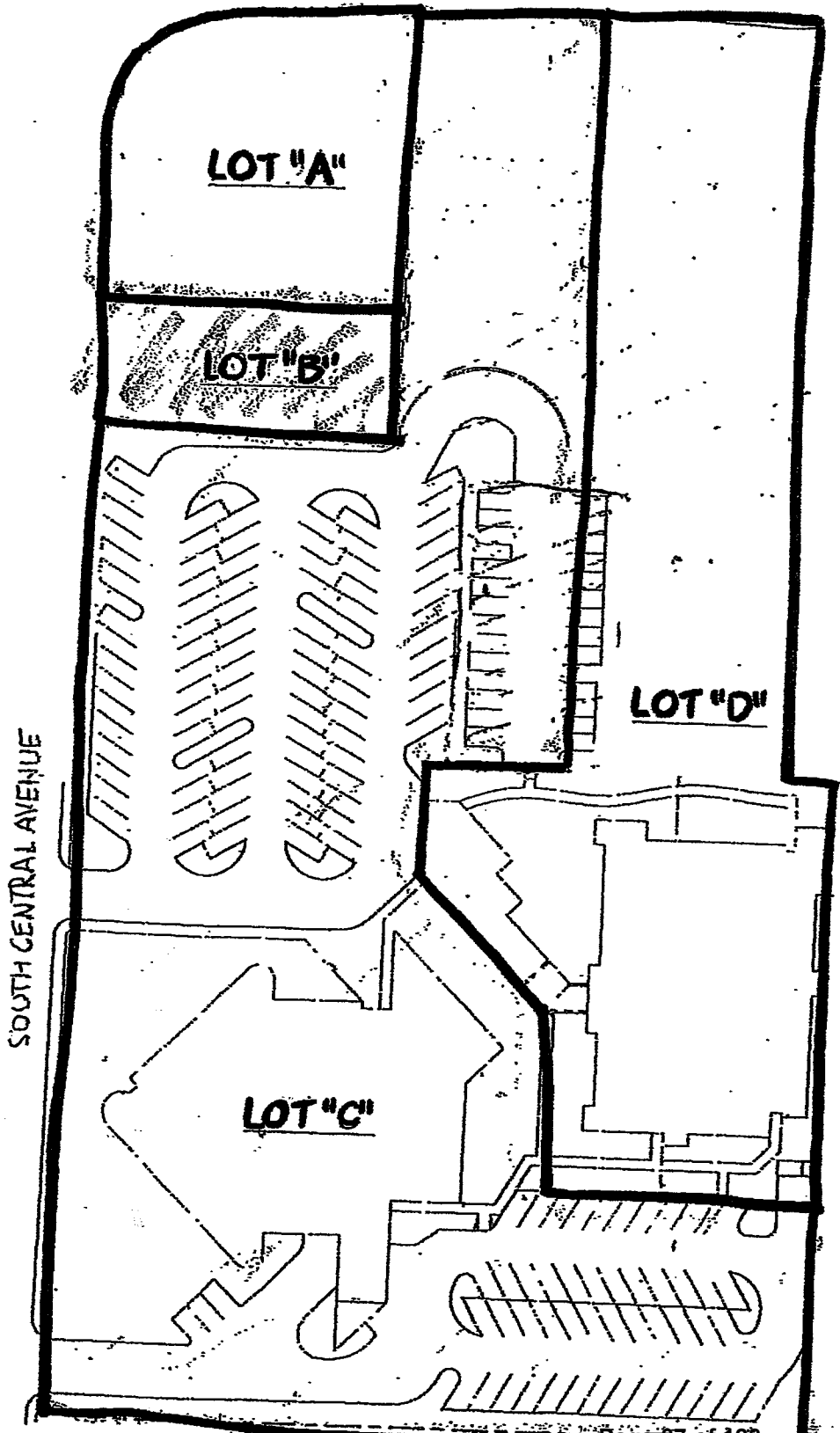
LOT "D":

TAX ACCOUNT NUMBER: 000660-0043-0

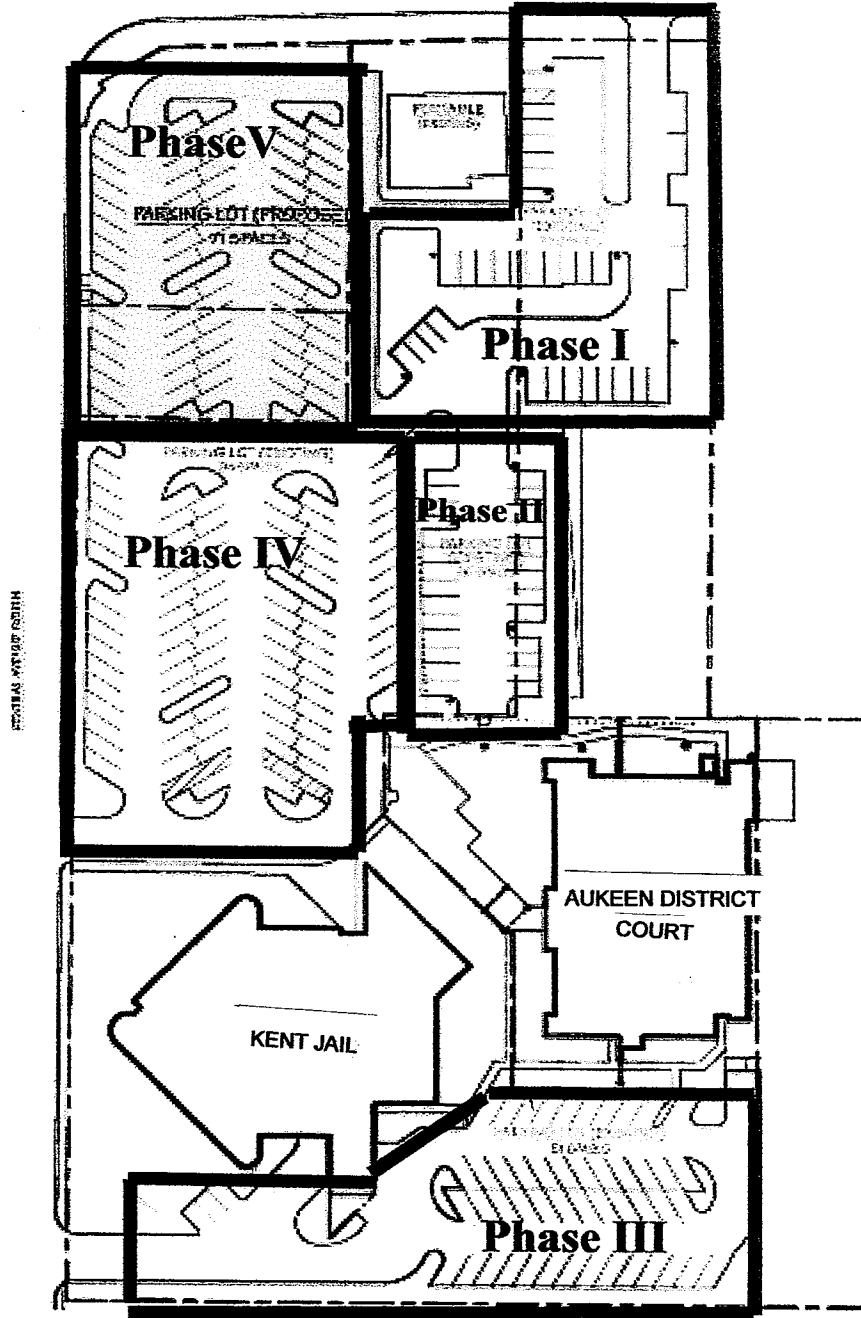
LEGAL DESCRIPTION: S W RUSSELL D C #41 POR TRACT 24 HORSESHOE ACRE TRACTS & POR S W RUSSELL DLC IN NW QTR STR 25-22-04 DAF: BEG AT INTSN S BNDRY LN SD DLC WITH E LN SEC 25 TH N 89-44-28 W ALG S BNDRY SD DLC 59.86 FT TO TPOB TH S 00-07-57 W 203.74 FT TH N 89-35-24 W 128.73 FT TH N 00-03-47 E 84.40 FT TH N 45-54-33 W 94.10 FT TH N 00-30-26 E 58.83 FT TO S BNDRY SD DLC TH S 89-44-28 E 68.95 FT TO PT 187.12 FT W OF E LN SEC 25 TH N 00-35-50 E PLL TO SD E LN 366.85 FT M/L TO S MGN S 259TH ST TH E ALG S MGN 102.13 FT M/L TO PT 85.00 FT W OF E LN SEC 25 TH S 00-35-50 W 367.42 FT TO S LN SD DLC TH S 89-44-28 E ALG S LN 25.14 FT TO TPOB.

EXHIBIT 2

SOUTH 259TH STREET



**Exhibit 3**



AUKEEN DISTRICT COURT EXPANSION LEASE  
EXHIBIT E – RECIPROCAL PARKING EASEMENT Exhibit 3

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## **EXHIBIT 4**

### **Schedule of Standard City Maintenance and Repair**

- Sweeping monthly
- Striping every other year
- Seal coating every seven (7) to ten (10) years
- Re-surfacing every fifteen (15) to twenty (20) years as needed

**RIDER ONE**

WHEN RECORDED RETURN TO:

Property Management  
City of Kent  
220 Fourth Avenue South  
Kent, Washington 98032

**Grantor:** King County, a political subdivision of Washington.

**Grantee:** City of Kent, a Washington municipal corporation.

**Abbreviated Legal Description:** Ptn. Tract 24 Horseshoe Acre Tracts recorded in Vol. 15, page 10 and a Ptn. Of S.W. Russell DLC lying in the NW ¼, 25-22-04, King County, State of Washington.

**Additional Legal Description** See Attachment A-1.

**Assessor's Tax Parcel ID No.** 000660-0043-0.

**Project Name:** Aukeen District Court Facility Purchase.

**Document Date:** \_\_\_\_\_

**AMENDMENT TO RIGHT OF FIRST OFFER TO  
PURCHASE PROPERTY  
(Aukeen District Court Facility)**

This Amendment to Right of First Offer (the "Amendment Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, by and between KING COUNTY, a municipal corporation and political subdivision of the State of Washington ("King County") and the CITY OF KENT, a municipal corporation of the State of Washington ("City of Kent").

## RECITALS

- A. King County is the owner of certain real property commonly known as the Aukeen District Court facility and certain real property underlying that facility (collectively known as "Facility").
- B. The City of Kent has an interest in acquiring the Facility.
- C. In order to preserve the potential for the City of Kent to acquire the Facility, King County has heretofore granted the City of Kent a right of first offer to purchase the F.
- D. The City of Kent has entered into a long-term Lease with King County which includes an expansion and renovation of the Facility at the sole cost of the City of Kent. Such expansion will affect the fair market value of the Facility.
- E. In consideration for the expansion costs borne by the City of Kent, the City of Kent will be charged fair market rent for the Premises described in the Lease, payment of which will be deferred (as a rent credit), until the exercise of this Right of First Offer, or sooner at the option of the City of Kent.
- F. In order to reflect the investment in the Facility and the value of the Facility to King County and the City of Kent, respectively, a formula will be used to determine the purchase price if and when the Right of First Offer is exercised.
- G. In order to accomplish the expansion of the Facility, the underlying real property shall be amended by a Lot Line Adjustment, after which time the Facility as amended by the Lot Line Adjustment shall be subject to the Right of First Offer, and an amended legal description shall be set forth in Attachment "A" incorporated herein.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

Upon removal of the Lot Line Adjustment contingency contained in Section 1.B.2 of that certain Lease, dated \_\_\_\_\_ (recording number \_\_\_\_\_) ("Lease"), Attachment A to that certain Right of First Offer Agreement dated January 22, 2003, and filed under recording number 20030122002928 ("Original Agreement") shall be repealed and replaced by the amended legal description reflecting the Lot Line Adjustment attached as Attachment A-1 incorporated herein.

Upon exercise of the Right of First Offer, the formula provided in Attachment B hereto shall be applied to determine the purchase price of the Facility. The formula in Attachment B shall similarly be applied to determine the purchase price offered to third parties by King County.

All other terms and conditions of said Original Agreement remain in full force and effect.

DATED as of the day and year first above written.

**KING COUNTY**  
a political subdivision of Washington

**CITY OF KENT**  
a Washington municipal corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: Suzette Cooke  
Its: Mayor  
Date: \_\_\_\_\_

STATE OF WASHINGTON )  
  ) : ss.  
COUNTY OF KING        )

I hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 2008, I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument on behalf of the **KING COUNTY**, as its \_\_\_\_\_, and such execution to be the free and voluntary act of such party for the uses and purposes mentioned in the foregoing instrument.

*-Notary Seal Must Appear Within This Box-*

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

\_\_\_\_\_

\_\_\_\_\_

NOTARY PUBLIC, in and for the State of Washington  
residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

STATE OF WASHINGTON )  
                                  : ss.  
COUNTY OF KING        )

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, I know or have satisfactory evidence that Suzette Cooke is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she is authorized to execute the instrument on behalf of the **CITY OF KENT** as its **Mayor**, and such execution to be the free and voluntary act of such party for the uses and purposes mentioned in the foregoing instrument.

*-Notary Seal Must Appear Within This Box-*

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

\_\_\_\_\_  
\_\_\_\_\_  
NOTARY PUBLIC, in and for the State of Washington  
residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

ATTACHMENT A-1:  
LEGAL DESCRIPTION OF PROPERTY  
(as amended by Lot Line Adjustment)

ATTACHMENT B:  
**Formula for allocating value of Building and Property  
upon Termination or Expiration of Lease**

This formula for allocating value is part of and incorporated into that certain Lease (the "Lease") between King County, a political subdivision of the State of Washington (hereafter "Landlord") and the City of Kent, a municipal corporation (collectively "Parties"), for the Premises, as defined in Section 1.B of the Lease, located at 1210 S. Central Avenue, Kent, WA 98032. Capitalized terms shall have the meanings set forth in the Lease. In case of conflicting definitions, the definitions contained herein shall control.

**1. Concept:**

1.1 The City and County should both receive value for their respective investment upon sale of the Aukeen Court Facility, or termination or expiration of the Lease. That value should be determinable at any point in time based upon an agreed formula as set forth in this Exhibit D.

1.2 The formula below would apply whether the Facility is sold to a third party (because the City chose not to exercise its Right of First Offer), or to the City (upon termination for convenience or expiration of the Lease), or the County elects to retain the Facility (upon default termination or expiration of the Lease).

1.3 The formula would not apply in the event termination occurs prior to the Date of Commencement of Tenant Improvements. The formula should be read together with the City's Right of First Offer to purchase the Facility in order to determine the cost to the City to exercise that right.

**2. Terms:**

**2.1 Facility:** Collectively, the Aukeen Court building ("Building" as defined in Section 1 of the Lease) and the parcel of real property on which it sits (the "Property", as defined in Section 1 of the lease), as the Building and Property are expanded and or modified in order to accomplish the Project.

**2.2 Project:** The defined project described in Exhibit C of the Lease, that generally being the addition of 3 courtrooms, 3 judges chambers, and renovation of common spaces in the Building, together with ancillary space.

**2.3 Appraiser:** An real property appraiser jointly selected by the City and County, through process defined in Section 26 of the Lease.

**2.4 Lease:** The Agreement between the City and County authorizing the City to lease portions of the existing Premises, undertake the Project, and upon completion of that Project, lease a defined portions of the expanded Building.

**2.5 Pre-Construction Appraisal Value:** The Fair Market Value of the Facility as a courthouse immediately prior to commencement of construction of the Project, as determined by the Appraiser.

**2.6 Post-Construction Appraisal Value:** The Fair Market Value of the Facility as a courthouse determined by the Appraiser, upon completion of the Project.

**2.7 Fair Market Value:** The amount in cash which a well informed buyer, willing but not obligated to buy the property, would pay, and which a well informed seller, willing but not obligated to sell, would accept, taking into consideration the continued use of the Facility as a courthouse.

**2.8 Lease Term:** The period in which the Lease is in effect.

**2.9 Lease Commencement Date:** The first date on which the Lease is in effect.

**2.10 Lease Termination Date:** The last date on which the Lease is in effect.

**2.11 Expiration Date:** The last date on which the Lease is in effect per Section 1.B.5 of the Lease (natural expiration of the Lease term, 20 years following Commencement Date), as that date may be extended.

3. **Formulas:** the formulas for calculating the amounts owed to the County and City under various scenarios of lease termination and sale of Facility are as provided below:

$$L = (S \times K) + P$$

$$T = (S - L)$$

**L** = Amount owed to County, as owner and Landlord, upon sale of the Facility or Lease termination/expiration.

**T** = Amount owed to City, as investor and Tenant, upon sale of the Facility or Lease termination/expiration.

**S** = Fair Market Value of the Facility at the date of Lease Termination or Lease Expiration (as applicable), as determined by the Appraiser. If the Facility is sold to a third party, then S will equal Fair Market Value (as determined by the Appraiser) or the sale price,



whichever is higher. Taxes, fees and closing costs paid by County, if any, to accomplish the sale to the City or third party shall be included in the calculation of “S”. In the event of a termination of the Lease for condemnation or casualty/damage, “S” shall equal the amount of proceeds of condemnation awarded, or insurance proceeds in the event of casualty/damage, to the County as owner of the Facility.

**K** = The percentage that the Pre-Construction Appraisal Value bears to the Post-Construction Appraisal Value. For example, if the Pre-Construction Appraisal Value of the Facility is \$2 Million, and the Post-Construction Appraisal Value is \$5.6 Million,  $K = 35.7\%$

**P** = the amount, if any, of default penalty chargeable to the City in the event the County terminates the Lease for default. The amount of the penalty will be the amount of any out-of-pocket costs incurred by the County directly as a result of the default.

4. **Timing of Payment:**

4.1 In the event of a default termination in which the County retains the Facility, T is payable to the City over 3 years, in roughly equal amounts.

4.2 In the event of any other termination or expiration, payment to the City or County (as appropriate) shall be made at closing (in event of sale to City or a third party) or within ninety (90) days of Lease expiration (in event County retains the Facility).

5. **Hypothetical Examples:** the following are hypothetical examples of how the formulas would be used to calculate the amounts owed to the County and City under various scenarios of lease termination and sale of Facility:

5.1 Formula Calculation in event of termination for convenience by County.  
*Assume:* Building is valued at \$4M by Appraiser prior to Tenant’s construction of Project.

Post-construction value is appraised at \$6M.

5 years later, County terminates Lease for convenience and City elects to purchase the Facility per its Right of First Offer. Appraised FMV of Facility at Lease Termination Date is \$7M (including closing costs for transfer).

*Formula Calculation:*

$$K = 4 \div 6 = 66\%$$

$$S = \$7M$$

$$P = 0$$

$L = (\$7M \times .66) = \$4,620,000$  == amount paid by City to County upon closing of sale.

$T = (\$7M - \$4,620,000) = \$2,380,000$  == share of building value credited to City at closing of sale.

5.2 Formula Calculation in event City defaults under Lease and County terminates Lease and retains the Facility. :

*Assume:*

Building is valued at \$4M by Appraiser prior to Tenant's construction of Project.

Post-construction value is appraised at \$6M.

5 years later, Tenant defaults under Lease and Landlord terminates the Lease and elects to retain title to the Facility. Landlord incurs \$300,000 in out of pocket costs as a direct result of Tenant's default.

*Formula Calculation:*

$$K = 4 \div 6 = 66\%$$

$$S = \$7M$$

$$P = \$300,000$$

$L = (\$7M \times .66) + \$300,000 = \$4,920,000$  = share of building value retained by County.

$T = (\$7M - \$4,920,000) = \$2,080,000$  == amount paid to City by County in roughly equal amounts over 3 years.

**RIDER TWO**

WHEN RECORDED RETURN TO:

King County Property Services Division  
King County Administration Building  
500 Fourth Avenue, Room 500  
Seattle, WA 98104

**Grantor:** City of Kent, a Washington municipal corporation

**Grantee:** King County, a political subdivision of Washington..

**Abbreviated Legal Description:** SW RUSSELL DLC NO 41 PORTION OF SAMUEL W  
RUSSELL DONATION CLAIM NO 41 IN NE QTR STR  
25-22-04 DAF

HORSESHOE ACRE TRS TO KENT POR TRACT 24 &  
POR SW RUSSELL DLC # 41 IN NW QTR STR 25-22-  
04 DAF

**Additional Legal Description** See Attachment A.

**Assessor's Tax Parcel ID Nos.** 000660-0021-0 and 346280-0205-0.

**Project Name:** City Jail and Community Corrections Facility Purchase

**Document Date:** \_\_\_\_\_

**RIGHT OF FIRST OFFER TO  
PURCHASE PROPERTY**  
(City Jail and Community Corrections Facilities)

This Right of First Offer (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_,  
by and between KING COUNTY, a municipal corporation and political subdivision of the State  
of Washington ("King County") and the CITY OF KENT, a municipal corporation of the State  
of Washington ("City of Kent").

**RECITALS**

A. City of Kent is the owner of certain real property commonly known as the Kent City Jail and Community Corrections Facility and associated parking areas, legally described in Attachment “A” incorporated herein (the “Property”).

B. King County has an interest in acquiring the Property.

C. In order to preserve the potential for King County to acquire the Property, City of Kent has agreed to grant King County a right of first offer to purchase the Property.

D. City of Kent has recorded a lot line adjustment to the Property in connection with the expansion of the Aukeen District Court facility.

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Right of First Offer. If at any time after the date of this Agreement City of Kent desires to sell the Property (which does not include a change of use or custodianship within the City), subject to City of Kent Council approval, City of Kent shall first provide King County the right of first offer to purchase the Property on the terms set forth herein.

2. Notice, Terms of Transaction. Before marketing or offering the Property for sale, City of Kent shall provide King County with notice of its intent to sell (the “Sale Notice”). The Sale Notice shall be in writing, and shall specify the minimum terms and conditions under which City of Kent is willing to sell the Property (the “Minimum Terms”). The Minimum Terms shall include an all cash price for the sale of the Property based upon a MIA appraisal of the Property. A copy of the appraisal shall be included with the Minimum Terms. King County may pay for a second MIA appraisal if King County does not find the first appraisal acceptable. If the parties are not able to agree on a price based on the two appraisals King County will be deemed to have failed to exercise the right of first offer. The Minimum Terms shall also include the form of conveyance deed to be provided, a general description of the representations and warranties (if any) to be provided by City of Kent, a preliminary title commitment for the Property, and such other matters as City of Kent shall deem appropriate.

3. Exercise of Right. King County shall have a period of ninety (90) days after its receipt of the Sale Notice in which to exercise its right of first offer to purchase the Property on the Minimum Terms, or on such other terms as mutually agreed between City of Kent and King County. King County must exercise this right of first offer in writing, and the right shall be deemed exercised only when written notice of exercise is personally delivered to City of Kent. Failure to exercise the right of first offer in writing within such 90 day period shall cause the right to terminate as it applies to the Sale Notice. If King County does not exercise the right of

first offer, at the request of City of Kent in connection with a subsequent sale of the Property, King County shall provide written confirmation that King County did not exercise the right. The written confirmation shall be in recordable form and may be provided by City of Kent to potential purchasers, lenders and title insurance companies which may be involved in the subsequent sales transaction.

4. Access to Property. For the ninety (90) day period after the date King County receives a Sale Notice, King County shall have the right to enter upon the Property for purposes of conducting studies, investigations and surveys of the Property. King County shall provide City of Kent with at least twenty-four (24) hours prior written notice before entering the Property for such purposes, shall conduct all studies and investigations so as not to interfere with the normal operation of the Property, and shall indemnify, defend and hold harmless City of Kent from all claims, actions or damages arising from King County's entry onto and testing on the Property, except to the extent due to City of Kent's negligence. King County shall also promptly repair any and all damage that arises due to King County's entry onto and testing on the Property.

To the extent not in conflict with applicable law, King County agrees to keep confidential all information with respect to the Property made available to King County by City of Kent, and will divulge such information only to those of its employees and advisors who have a specific need to know such information for the purposes of investigating the status of the property for potential purchase by the King County, and only after advising each such employee and/or advisor of the confidentiality provisions of this Agreement. If King County elects not to purchase the Property, King County shall immediately return to City of Kent all information relating to the Property made available by City of Kent.

5. Effect of Exercise. If King County exercises the right of first offer in the manner set forth in Section 3 above, King County shall thereafter proceed to purchase the Property from City of Kent on the Minimum Terms (or such other terms as mutually agreed between City of Kent and King County). Closing shall occur within one hundred twenty (120) days of the date of exercise of the right by King County. The sale of the Property to King County shall be through a purchase and sale agreement, statutory warranty deed and other related documents, the form of which shall be mutually agreed upon by the parties.

6. Failure to Exercise. If King County does not exercise its right of first offer in the manner set forth in Section 3 above, City of Kent shall have a period of twelve (12) months from the date the right of first offer terminates in which to market and sell the Property, provided that the sales price is no less than 95% of the sale price set forth in the Minimum Terms and the other terms of sale are not substantially more favorable to the buyer than the Minimum Terms offered to King County. City of Kent shall inform King County of the terms of such proposed sale to another buyer, so that King County can compare them to the Minimum Terms. If City of Kent has not closed the sale of the Property within such twelve (12) month period, or if City of Kent desires to sell the Property at a price which is less than 95% of the sales price set forth in the

Minimum Terms or on substantially more favorable terms than the Minimum Terms offered to King County, this right of first offer shall be reinstated in full, and City of Kent must first reoffer the property to King County on the terms set forth above.

If King County does not exercise its right of first offer in the manner set forth in Section 3 above and City of Kent thereafter sells the Property as set forth above, the right of first offer and this Agreement shall thereafter terminate and become null and void. In this respect, and except as specifically provided in Section 7 below, this Agreement and the rights of King County hereunder shall not apply to a successor owner or purchaser of the Property.

7. Excluded Transactions. The right of first offer set forth in this Agreement shall not apply to (i) the merger, consolidation or reorganization of City of Kent, whether or not City of Kent is the surviving entity in such merger, consolidation or reorganization; and (ii) a foreclosure sale, trustees sale or deed in lieu of foreclosure with respect to any financial liens or encumbrances on the Property. Notwithstanding the foregoing, in the event of a transaction described in (i), or (ii) above, the right of first offer shall continue to apply to the Property notwithstanding such transfers and/or contributions (i.e., if the Property is transferred to a subsidiary as described above, the sale of the Property by the successor would be subject to the right of first offer).

8. Subordination. This Agreement and the rights of King County hereunder shall be subject and subordinate to any mortgages or deeds of trust that may now or hereafter be placed upon the Property and to any or all advances to be made or amounts owing thereunder, and all renewals, replacements, consolidations and extensions thereof. King County shall execute and deliver, within fifteen (15) days after demand therefore, whatever instruments may reasonably be required from time to time by any mortgagee or deed of trust beneficiary to confirm such subordination.

9. Personal Rights. The right of first offer set forth in this Agreement is personal to King County, and may not be transferred or assigned by King County without the express written consent of City of Kent, which shall not be unreasonably withheld.

10. Recordation/Release. This Agreement will be recorded in the real property records of King County, Washington. However, at the request of City of Kent, King County will sign and record a termination of this Agreement in connection with a sale of the Property (in accordance with the terms hereof). Without limiting the foregoing requirements, the failure of King County to record a termination of this Agreement within fifteen (15) days of request from City of Kent (and assuming City of Kent is otherwise entitled to such termination pursuant to this Agreement) shall constitute a default by King County hereunder, and City of Kent may seek immediate equitable relief to obtain such termination (in addition to any other rights of City of Kent hereunder).

11. Breach, Remedy. In the event either party defaults or fails to perform its obligations hereunder, the aggrieved party may seek any and all remedies available at law or in equity. Without limiting the foregoing, if the Property is sold in contravention of King County's rights under this Agreement, King County shall have the right to equitable relief to declare the sale to be invalid.

12. Governing Law, Attorneys' Fees. This Agreement shall be construed according to the laws of the State of Washington. If either City of Kent or King County should find it necessary to employ an attorney, including an employee of either party, to enforce a provision of the Agreement or to recover damages for the breach hereof (including proceedings in bankruptcy), the prevailing party shall be entitled to be reimbursed for its reasonable court costs and attorneys' fees, in addition to all damages, through all levels of appeal.

13. Authority. Each person signing this Agreement on behalf of City of Kent and King County, respectively, warrants that he/she has the proper corporate authority to enter into this Agreement.

14. Notices. Any and all notices required under this Agreement shall be deemed to have been given upon receipt when personally delivered, sent overnight courier, or two days after deposit in the United States mail. All notices shall be addressed as set forth below or such other address as any party may later specify in writing:

**Seller:**                               **City of Kent**  
Attn: Facilities Manager  
220 Fourth Avenue South  
Kent, WA 98032-5895

*With a copy to:*                       City of Kent  
City Attorney's Office  
220 Fourth Avenue South  
Kent, WA 98032-5895

**Buyer:**                               King County Property Services Division  
King County Administration Building  
500 Fourth Avenue, Room 500  
Seattle, WA 98104

*With a copy to:*                       King County Prosecuting Attorney  
Civil Division  
500 Fourth Avenue, Room 900  
Seattle, WA 98104

*With a copy to:*                       King County Transit Division

201 S. Jackson Street  
Seattle, WA 98104

15. Complete Agreement. This Agreement constitutes the full and complete agreement concerning the right of first offer. Any modification of this Agreement shall be in writing and properly executed by the parties hereto or their successors-in-interest.

DATED as of the day and year first above written.

**KING COUNTY**  
a political subdivision of Washington

**CITY OF KENT**  
a Washington municipal corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: Suzette Cooke  
Its: Mayor  
Date: \_\_\_\_\_



STATE OF WASHINGTON )  
  : ss.  
COUNTY OF KING            )

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she is authorized to execute the instrument on behalf of **KING COUNTY**, as its \_\_\_\_\_, and such execution to be the free and voluntary act of such party for the uses and purposes mentioned in the foregoing instrument.

*-Notary Seal Must Appear Within This Box-*

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

\_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC, in and for the State of Washington  
residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

STATE OF WASHINGTON )  
: ss.  
COUNTY OF KING )

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, I know or have satisfactory evidence that Suzette Cooke is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she is authorized to execute the instrument on behalf of the **CITY OF KENT** as its **Mayor**, and such execution to be the free and voluntary act of such party for the uses and purposes mentioned in the foregoing instrument.

*-Notary Seal Must Appear Within This Box-*

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

\_\_\_\_\_

NOTARY PUBLIC, in and for the State of Washington  
residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

ATTACHMENT A:  
LEGAL DESCRIPTION OF PROPERTY

LOT "A":

TAX ACCOUNT NUMBER: 000660-0021-0

LEGAL DESCRIPTION: S W RUSSELL DLC NO 41 PORTION OF SAMUEL W RUSSELL DONATION CLAIM NO 41 IN NE QTR STR 25-22-04 DAF: BEGINNING AT POINT S LINE OF SAID DONATION CLAIM 422 FT WEST OF INTERSECTION OF SAID S LINE WITH LINE BETWEEN RANGES 4 & 5 EAST W.M. WHICH POINT IS ON E LINE OF KENT-THOMAS CO RD TH NORTH ALONG SAID E LINE 220 FT TO TPOB WHICH TPOB IS NW CORNER OF TRACT DEEDED TO GAY H ELLIOT UNDER RECORDING NO 2368597 TH EAST ALONG N LINE OF SAID GAY H ELLIOT TRACT 149 FT TO W LINE OF TRACT DEEDED TO B.W. ELLIOT BY DEED UNDER RECORDING NO 2368598 TH NORTH ALONG SAID W LINE 144.5 FT TO S LINE OF COUNTY ROAD (S 259TH ST) TH WEST ALONG SAID S LINE OF COUNTY ROAD 149 FT TO E LINE OF SAID KENT-THOMAS CO RD TH SOUTH ALONG SAID E LINE 144.5 FT TO TPOB EXCEPT PORTIONS CONVEYED TO CITY OF KENT BY DEEDS UNDER RECORDING NOS 7308100427 & 9208031788.

LOT "C":

TAX ACCOUNT NUMBER: 346280-0205-0

LEGAL DESCRIPTION: HORSESHOE ACRES TRS TO KENT POR TRACT 24 & POR S W RUSSELL DLC # 41 IN NW QTR STR 25-22-04 DAF: BEG AT INTSN E MGN EAST VALLEY HWY (AKA CENTRAL AVE) WITH N LN TRACT 24 HORSESHOE ACRES TH N 00-40-16 E ALONG E MGN EAST VALLEY HWY DIST 160.00 FT TH S 89-44-28 E PLL WITH N LN SD TRACT 24 DIST 143.00 FT TH W 00-40-16 E PLL WITH EAST VALLEY HWY 205.99 FT M/L TO S MGN S 259TH ST TH EAST ALG S MGN 2 259TH ST 90.07 FT M/L TO PT 187.12 FT W OF E LN SEC 25 TH S 00-35-50 W PLL WITH E LN SEC DIST 366.85 FT TO N LN TRACT 24 HORSESHOE ACRES TH N 89-44-28 W ALG SD N LN 68.96 FT TH S 00-30-26 W 53.83 FT TH S 45-54-33 E 94.10 FT TH S 00-03-47 W 84.40 FT TH S 89-35-24 E 128.73 FT TH S 00-07-57 W 114.25 FT TO S LN TRACT 24 HORSESHOE ACRES TH N 89-44-28 W ALG SD S LN 363.79 FT TO E MGN EAST VALLEY HWY TH N 00-40-16 E ALG SD E MGN 313.00 FT TO TPOB.

**EXHIBIT F**

**AGREEMENT TO EXECUTE PARKING LOT LEASE  
BETWEEN CITY OF KENT AND KING COUNTY**

This Agreement To Execute Parking Lot Lease (“Agreement”) is made and entered into by and between KING COUNTY, a political subdivision of the State of Washington (“County”), and the CITY OF KENT, a municipal corporation of the State of Washington (“City”) (collectively “the Parties”). In consideration of this Agreement, the Parties covenant and agree as follows:

**Recitals**

A. The City owns or is acquiring ownership of Lot A , B, and C legally described in Exhibit 1 and depicted on Exhibit 2. The County owns the adjacent Lot D also legally described and depicted on Exhibit 1 and Exhibit 2.

B. Five parking lots including approximately 258 parking stalls were constructed or are being constructed by the City on Lots A, B, C, and D. These parking lots were constructed for use by the occupants of the Aukeen Court building (“Aukeen”), 1210 and 1220 South Central Avenue, and the City of Kent Municipal Jail (the “Jail”), 1230 South Central Avenue. The use of the five parking lots is used roughly two-thirds by the occupants of Aukeen and one-third each by the Jail. Also related to the use of the parking lots is the Reciprocal Parking Easement, recording number 20030122002929 and any amendments/replacements to same.

C. Since 1998 the City has leased space in Aukeen for City municipal court (“Municipal Court”) operations. The Parties currently operate under a Lease Agreement dated ----- (“Aukeen Lease”).

D. In the event of the termination of the Aukeen Lease the parties recognize the need for the County to continue to use the parking lots built on City owned real property. The Reciprocal Parking Easement addresses parking lots constructed on Lots C and D, and this Agreement is intended to address the parking lot on Lots A and B.

NOW THEREFORE, in consideration of the promises and agreements contained in this Agreement and subject to the terms and conditions set forth, it is mutually understood and agreed by the parties as follows:

**Agreement**

1. A Parking Lot Lease for Lot A and B between the City as landlord and the County as tenant is attached and incorporated as Exhibit 3.

2. The Parties agree to execute the Parking Lot Lease which is substantially similar to the Parking Lot Lease attached as Exhibit 3 in the event of the following:

- a) expiration or other termination of the Aukeen Lease; and
- b) Tenant's Work described in Exhibit C to the Aukeen lease was Substantially Completed (as defined in the Aukeen Lease); and
- c) the City has vacated the Premises as described in the Aukeen Lease; and
- d) either the City has not exercised its rights under the Right of First Offer, King County recording number 20030122002928 and amendments thereto; or the County has determined it will retain ownership of Lot D and not offer Lot D for sale.

3. If any term or provision of this Agreement or portion thereof shall be found invalid, void, illegal, or unenforceable generally or with respect to any particular party, by a court of competent jurisdiction, it shall not affect, impair or invalidate any other terms or provisions or the remaining portion thereof, or its enforceability with respect to any other party.

4. This Agreement shall be interpreted and construed under and pursuant to the laws of the State of Washington. Any action regarding or arising from this Agreement shall be brought in the Washington State Superior Court located in the county where the real property is located. Time is of the essence of this Agreement. In the event an attorney is engaged by either party to enforce the terms of this Agreement or in the event suit is brought relating to or arising from this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable attorney fees and costs.

5. This Agreement, together with the Exhibits (which are collectively incorporated where referred to herein and made a part hereof as though fully set forth), contain all the terms and provisions between the City and County relating to the matters set forth herein and no prior or contemporaneous agreement or understanding pertaining to the same shall be of any force or effect, except any such contemporaneous agreement specifically referring to and modifying this Agreement, signed by both parties. Neither this Agreement or Exhibits referred to above may be modified, except in writing signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement, which shall become effective on the last date entered below.

**KING COUNTY**

BY: \_\_\_\_\_  
Ronald Sims, King County Executive

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
Timothy P. Barnes, Sr. Deputy Prosecuting Attorney

**CITY OF KENT**

BY: \_\_\_\_\_  
Suzette Cooke, Mayor

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
Kent City Attorney's Office

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EXHIBIT 1

LOT "A":

TAX ACCOUNT NUMBER: 000660-0021-0

LEGAL DESCRIPTION: S W RUSSELL DLC NO 41 PORTION OF SAMUEL W RUSSELL DONATION CLAIM NO 41 IN NE QTR STR 25-22-04 DAF: BEGINNING AT PCINT S LINE OF SAID DONATION CLAIM 422 FT WEST OF INTERSECTION OF SAID S LINE WITH LINE BETWEEN RANGES 4 & 5 EAST W.M. WHICH POINT IS ON E LINE OF KENT-THOMAS CO RD TH NORTH ALONG SAID E LINE 220 FT TO TPOB WHICH TPOB IS NW CORNER OF TRACT DEEDED TO GAY H ELLIOT UNDER RECORDING NO 2368597 TH EAST ALONG N LINE OF SAID GAY H ELLIOT TRACT 149 FT TO W LINE OF TRACT DEEDED TO B.W. ELLIOT BY DEED UNDER RECORDING NO 2368598 TH NORTH ALONG SAID W LINE 144.5 FT TO S LINE OF COUNTY ROAD (S 259TH ST) TH WEST ALONG SAID S LINE OF COUNTY ROAD 149 FT TO E LINE OF SAID KENT-THOMAS CO RD TH SOUTH ALONG SAID E LINE 144.5 FT TO TPOB EXC FORTIONS CONVEYED TO CITY OF KENT BY DEEDS UNDER RECORDING NOS 7308100427 & 9208031788.

LOT "B":

TAX ACCOUNT NUMBER: 000660-0044-09

LEGAL DESCRIPTION: RUSSELL S W - DC # 41 N 60 FT OF S 220 FT OF W 149 FT OF E 1350.62 FT OF DC LESS ST.

LOT "C":

TAX ACCOUNT NUMBER: 346280-0205-0

LEGAL DESCRIPTION: HORSESHOE ACRE TRS TO KENT POR TRACT 24 & POR S W RUSSELL DLC # 41 IN NW QTR STR 25-22-04 DAF: BEG AT INTSN E MGN EAST VALLEY HWY (AKA CENTRAL AVE) WITH N LN TRACT 24 HORSESHOE ACRES TH N 00-40-16 E ALONG E MGN EAST VALLEY HWY DIST 160.00 FT TH S 89-44-28 E PLL WITH N LN SD TRACT 24 DIST 143.00 FT TH W 00-40-16 E PLL WITH EAST WALLEY HWY 205.99 FT M/L TO S MGN S 259TH ST TH EAST ALG S MGN 2 259TH ST 90.07 FT M/L TO PT 187.12 FT W OF E LN SEC 25 TH S 00-35-50 W PLL WITH E LN SEC DIST 366.85 FT TO N LN TRACT 24 HORSESHOE ACRES TH N 89-44-28 W ALG SD N LN 68.96 FT TH S 00-30-26 W 53.83 FT TH S 45-54-33 E 94.10 FT TH S 00-03-47 W 84.40 FT TH S 89-35-24 E 128.73 FT TH S 00-07-57 W 114.25 FT TO S LN TRACT 24 HORSESHOE ACRES TH N 89-44-28 W ALG SD S LN 363.79 FT TO E MGN EAST VALLEY HWY TH N 00-40-16 E ALG SD E MGN 318.00 FT TO TPOB.

LOT "D":

TAX ACCOUNT NUMBER: 000660-0043-0

LEGAL DESCRIPTION: S W RUSSELL D C #41 POR TRACT 24 HORSESHOE ACRE TRACTS & POR S W RUSSELL DLC IN NW QTR STR 25-22-04 DAF: BEG AT INTSN S BNDRY LN SD DLC WITH E LN SEC 25 TH N 89-44-28 W ALG S BNDRY SD DLC 59.86 FT TO TPOB TH S 00-07-57 W 203.74 FT TH N 89-35-24 W 128.73 FT TH N 00-03-47 E 84.40 FT TH N 45-54-33 W 94.10 FT TH N 00-30-26 E 58.83 FT TO S BNDRY SD DLC TH S 89-44-28 E 68.95 FT TO PT 187.12 FT W OF E LN SEC 25 TH N 00-35-50 E PLL TO SD E LN 366.85 FT M/L TO S MGN S 259TH ST TH E ALG S MGN 102.13 FT M/L TO PT 85.00 FT W OF E LN SEC 25 TH S 00-35-50 W 367.42 FT TO S LN SD DLC TH S 89-44-28 E ALG S LN 25.14 FT TO TPOB.

EXHIBIT 2

SOUTH 259TH STREET

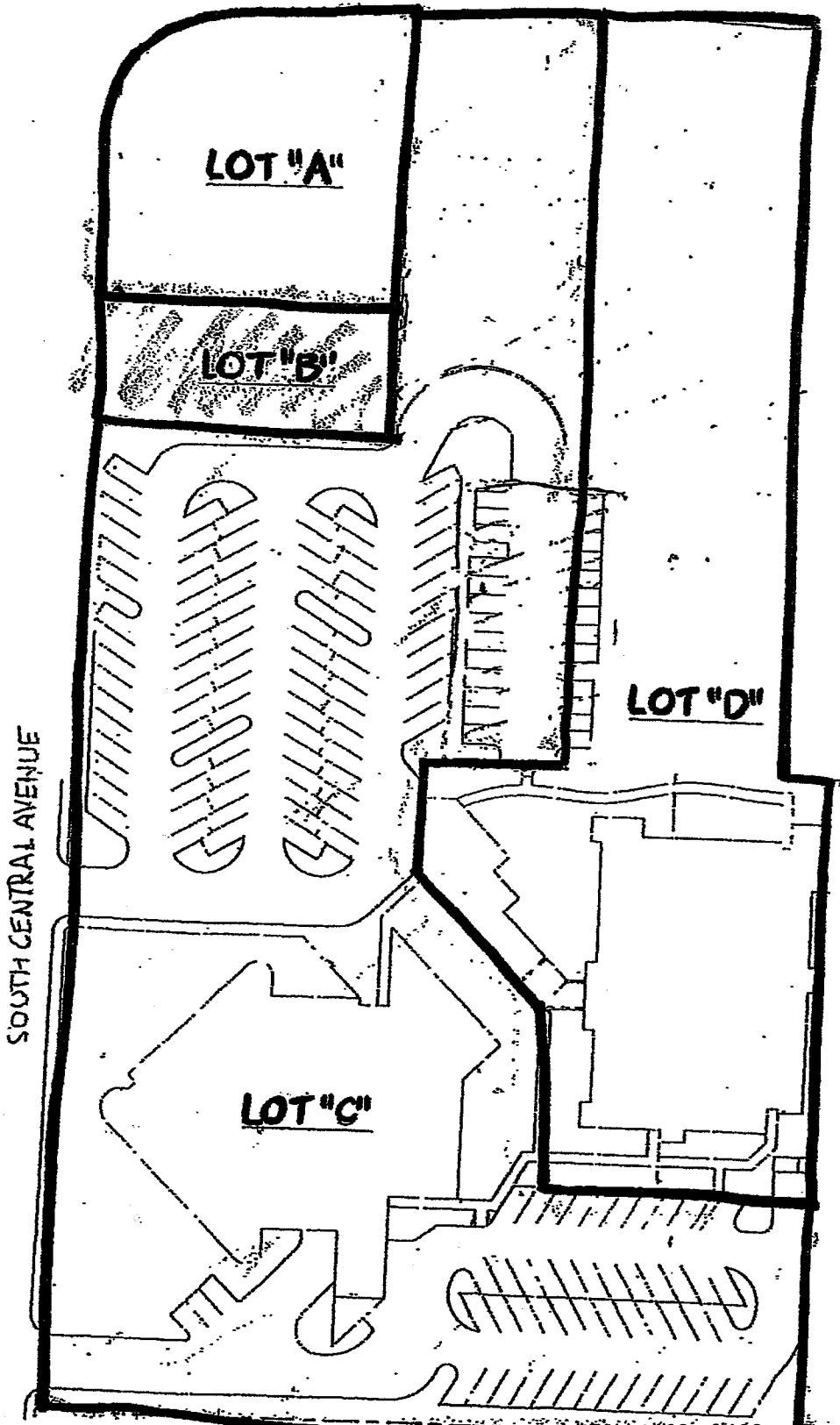




EXHIBIT 3  
PARKING LOT LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is entered into by and between the CITY OF KENT, Washington municipal corporation ("Landlord") and KING COUNTY, a political subdivision of the State of Washington, ("Tenant"). In consideration of this Parking Lot Lease Agreement ("Lease"), Landlord and Tenant covenant and agree as follows:

BACKGROUND

A. Landlord is the owner in fee simple of Lot A, B, and C located in the City of Kent, King County, Washington, legally described on the attached Exhibit 1 and depicted in the attached Exhibit 2. Tenant is in owner of the adjacent Lot D also legally described in Exhibit 1 and depicted in Exhibit 2.

B. When the City was a tenant in the Aukeen Court building ("Aukeen") located on Lot D, the City constructed five parking lots on Lots A, B, C, and D, approximately 258 parking stalls as depicted in Exhibit 3. These parking lots were constructed for use by the occupants of Aukeen, 1210 and 1220 South Central Avenue, and the City of Kent Municipal Jail (the "Jail"), 1230 South Central Avenue. The use of the five parking lots is used roughly two-thirds, 172 parking stalls, by the occupants of Aukeen and one-third, 86 stalls, by the Jail. Approximately 46 of the parking stalls are located on Lot D, with the remainder on Lots A, B and C.

C. Also, related to the use and maintenance of the parking lots is the Reciprocal Parking Easement, recording number 20030122002929 and any amendments/replacements to the same.

Accordingly, the parties are entering into this Lease on the terms and conditions set forth below.

AGREEMENT

In consideration of their mutual covenants, the parties agree as follows:

1. Leased Premises. Landlord leases to Tenant and Tenant leases from Landlord the real property legally described on the attached Exhibit 1 (the "Premises") labeled as Lot A and Lot B, which are comprised of approximately seventy-one (71) parking stalls.

2. Term. This Lease shall commence upon the last date executed by both parties (the "Commencement Date"), and end on the date that is one day before the Two hundred and forty (240) full calendar months (20 years) following the date on which this Lease is executed by both parties.

3. Rent.

a. Base Rent. Tenant shall pay Base Rent equal to the Appraised Rent Value, as determined by Section 3.b., calculated as a monthly amount, for the Premises, which Base Rent shall be due and payable on the first day of each calendar month in advance and adjusted every five (5) years thereafter based on the Seattle Tacoma Bremerton All Urban Consumers' Price Index year ending rate (December). Monthly Rent shall be mailed to: City of Kent, 220 Fourth Avenue South, Kent, Washington 98032, Attention: Facilities Management.

b. Appraised Rent Value. The parties have selected Darin Shedd of Allen, Brackett, Shedd as the Appraiser to provide the Appraisal Rent Value just prior to the Commencement Date. In the event he is no longer willing or available to serve as appraiser, the parties shall select another appraiser. In the event the parties cannot agree, they shall each select an appraiser and the two appraisers shall in turn select the Appraiser. The Appraiser shall conduct an appraisal of the Fair Rental Value of a 126 parking stall located on Lots A, B, and C, as near as practicable to a date immediately prior to the Commencement Date. One hundred and twenty-six (126) is the number of parking stalls the Tenant needs in order to have use of two-thirds (2/3) of the parking stalls on Lot A, B and C. The parties shall each pay one-half of the Appraiser's fee.

4. Additional Rent for Repair and Maintenance.

Additional Rent shall be payable quarterly in arrears within 30 days of invoicing. Tenant shall pay as Additional Rent a two-thirds share of the total repair and maintenance expenses for the parking lots on Lots A and B. The Reciprocal Parking Easement provides for Tenant/County to pay two-thirds of the repair and maintenance costs for Lots C and D, which obligation is exclusive and separate from the obligations contained herein. Landlord shall provide Tenant quarterly with a written statement showing the calculation of said Additional Rent.

5. Use of Premises.

a. Tenant shall use the Premises for parking lot purposes in conjunction with use of the Aukeen Court building as constructed at the time of execution of this Lease on Lot D (approximately \_\_\_\_\_ square feet). The Premises shall be used for no other purposes.

b. Use of the Premises by Tenant shall be conclusive evidence the Premises were in good, clean and tenantable condition and delivered in accordance with this Lease.

6. Normal Maintenance and Repair.

a. Unless expressly provided otherwise in this Lease, Landlord shall maintain and repair, suitable for use as a parking lot the Premises. Landlord's maintenance and repair obligations shall include: sweeping monthly, stripping every other year, seal coating every seven (7) to ten (10) years, and re-surfacing every fifteen (15) to twenty (20) years as needed.

b. In the event any additional repairs or maintenance are caused by or result from Tenant's excessive or improper use or occupation thereof or which are caused by or result from the negligence or improper conduct of Tenant, its agents, employees or invitees, the cost of such repairs or maintenance shall be paid solely by Tenant.

7. INSURANCE.

a. The Tenant agrees, at its own expense, to maintain, through its self-funded Self-Insurance program, coverage for all of its liability exposures under this Lease. The Tenant agrees to provide Landlord with at least thirty (30) days prior written notice of any material change in the Tenant's self-funded Self-Insurance program, and will provide Landlord with a certificate of self-insurance as adequate proof of coverage. Landlord further acknowledges, agrees and understands that the Tenant does not purchase Commercial General Liability insurance and is a self-insured governmental entity; therefore the Tenant does not have the ability to add the Landlord as an additional insured. Should the Tenant cease self-insuring its liability exposures and purchase Commercial General Liability insurance, Tenant agrees to add the Landlord (and Landlord's Lender) as an additional insured.

b. The Landlord agrees, at its own expense, to maintain, through its self-funded Self-Insurance program, coverage for all of its liability exposures under this Lease. The Landlord agrees to provide Tenant with at least thirty (30) days prior written notice of any material change in the Landlord's self-funded Self-Insurance Program, and will provide Tenant with a certificate of self-insurance as adequate proof of coverage. Tenant further acknowledges, agrees and understands that the Landlord does not purchase Commercial General Liability insurance and is a self-insured governmental entity; therefore the Landlord does not have the ability to add the Tenant as an additional insured. Should the Landlord cease self-insuring its liability exposures and purchase Commercial General Liability insurance, Landlord agrees to add the Tenant as an additional insured.

c. The Landlord will carry "All Risk" property insurance in an amount equal to the full replacement value of all improvements located on the Premises.

d. Tenant shall maintain "All Risk" property insurance in an amount equal to One Million Dollars (\$1,000,000) combined single limit per occurrence and in the aggregate for bodily injury, personal injury and property damage.

e. In consideration of the duration of this Lease, the parties agree that the Insurance Requirements Section herein, at the discretion of Landlord, may be reviewed and adjusted with each amendment of the Lease, with each assignment of this Lease, and every five years from Commencement Date. Any adjustments made as determined by Landlord, shall be in accordance with reasonably prudent risk management practices and insurance industry standards and shall be effective upon 90 days written notice by Landlord.

8. Waiver of Subrogation.

Landlord and Tenant release and relieve the other, and waive the entire right of recovery for loss or damage to property located within or constituting a part or all of the Premises to the extent that the loss or damage is actually covered (and claim amount recovered) by insurance, or self insurance, carried by either party and in force at the time of such loss or damage. This waiver applies whether or not the loss is due to the negligent acts or omissions of Landlord or Tenant, or their respective officers, directors, employees, agents, contractors, or invitees. Each of Landlord and Tenant shall have their respective property insurers endorse the applicable insurance policies or self insurance program, to reflect the foregoing waiver of claims, provided, however, that the endorsement shall not be required if the applicable policy of insurance, or self insurance program permits the named insured to waive rights of subrogation on a blanket basis, in which case the blanket waiver shall be acceptable.

9. Damage or Destruction.

In the event the Premises shall be destroyed or rendered untenable, either wholly or in part, by fire or other casualty, Landlord may, at its option, elect to restore the Premises to as near its previous condition as is reasonably possible and in the meantime the Base Rent and Additional Rent shall be abated in the same proportion as the untenable portion of the Premises bears to the entire Premises, provided, such abatement (i) shall apply only to the extent the Premises are untenable for the purposes permitted under this Lease and not used by Tenant as a result thereof, and (ii) shall not apply if Tenant or any other occupant of the Premises or any of their agents, employees, invitees, transferees or contractors caused the damage. Unless Landlord, within sixty (60) days after the happening of any such casualty, shall notify Tenant of its election to so restore, this Lease shall thereupon terminate, provided, if in Landlord's estimation the Premises cannot be restored within one hundred twenty (120) days following such destruction, Landlord shall notify Tenant and Tenant may terminate this Lease (regardless of Landlord's intent to restore) by delivery of notice to Landlord within thirty (30) days of Landlord's notice. Tenant agrees if it elects not to terminate the Lease, that the abatement of Base Rent and Additional Rent as provided above shall be Tenant's sole and exclusive recourse in the event of such damage, and Tenant waives any other rights Tenant may have under

applicable law or this Lease to perform repairs or terminate the Lease by reason of damage to the Premises.

10. Condemnation.

Either party may terminate this Lease if the whole or any material part of the Premises shall be taken or condemned for any public or quasi-public purpose through the exercise of eminent domain. Landlord shall also have the right to terminate this Lease in the event of a Taking of any portion of the Building or Property which would leave the remainder of the Building unsuitable for use as a courthouse in a manner comparable to the use prior to the Taking. In order to exercise its right to terminate this Lease, Landlord or Tenant, as the case may be, must provide written notice of termination to the other within 45 days after the terminating party first received notice of Taking. Any such termination shall be effective as of the date the physical taking of the Premises or the portion of the Building or Property occurs. In addition, Base Rent and Additional Rent for any portion of the Premises taken or condemned shall be abated during the unexpired term of this Lease effective when the condemner takes possession. Tenant shall hold harmless Landlord for any and all costs incurred by Tenant as a result of a Taking. Tenant's only recourse for compensation in the event of a Taking shall be against the condemner. Landlord and Tenant agree to cooperate in any condemnation proceeding to determine just compensation. Tenant may file a claim against the condemner at its sole cost and expense, separate from any claim brought against the condemner by Landlord, for just compensation, but only to the extent such claim does not diminish the award which would otherwise be received by Landlord.

11. Assignment and Sublease.

Tenant shall not assign this Lease or any part thereof and shall not let or sublet the whole or any portion of the Premises without the written consent of Landlord, which consent shall not be unreasonably withheld by Landlord. This Lease shall not be assignable by operation of law. If consent is once given by the Landlord to a sublease of this Lease, or any interest therein, Landlord shall not be barred from afterwards refusing to consent to any further sublease. The Landlord does agree to provide written consent to assignments from Tenant to a third party that Tenant has sold or otherwise transferred Lot D and Aukeen.

12. Taxes.

a. Tenant shall pay all real and personal property taxes (or payments in lieu of taxes) and assessments for the Premises that are directly the result of Tenant's use, if any, which become due and payable during the term of this Lease. All such payments shall be made, and evidence of all such payments shall be provided to Landlord, at least ten (10) days prior to the delinquency date of the payment.

b. If the methods of taxation in effect at the Commencement Date of the Lease are altered so that in lieu of or as a substitute for any portion of the property taxes and special assessments now imposed on property there is imposed a tax upon or against the rentals payable by Tenant to Landlord, Tenant shall pay those amounts in the same manner as provided for the payment of real and personal property taxes.

13. Rights Reserved by Landlord. Except to the extent expressly limited herein, Landlord reserves full rights to control the Premises (which rights may be exercised without subjecting Landlord to claims for constructive eviction, abatement of Rent, damages or other claims of any kind), including more particularly, but without limitation, the following rights:

a. General Matters. To: (i) change the name or the designation of the Premises (subject to restrictions in Section 13.C. below), (ii) install and maintain signs on the Premises, and grant any other person the right to do so, (iii) grant to any person the right to conduct any business or render any service at the Premises, whether or not the same are similar to the use permitted Tenant by this Lease, but only so long as those uses are not incompatible with Tenant's use of the Premises, and (vii) in case of fire, invasion, insurrection, riot, civil disorder, emergency or other dangerous condition, or threat thereof: (a) limit or prevent access to the Premises, (b) shut down services, and (c) otherwise take such action or preventative measures deemed necessary by Landlord for safety or the protection of the Premises (but this provision shall impose no duty on Landlord to take such actions, and no liability for actions taken in good faith).

b. Access to Premises. To enter the Premises in order to inspect, maintain and repair, or exercise other rights of Landlord under this Lease or applicable Laws. However, Landlord shall: (i) provide reasonable advance written notice to Tenant's court administrator or other appropriate person for matters which will involve a significant disruption to Tenant's operations (except in emergencies), and (ii) take reasonable steps to minimize any significant disruption to Tenant's operations. If Tenant requests that any such access occur before or after Landlord's regular business hours and Landlord approves, Tenant shall pay all overtime and other additional costs in connection therewith.

c. Changes to the Premises. To: (i) perform repairs or maintenance; (ii) make replacements, restorations, renovations, alterations, additions and improvements, otherwise in and to the Premises or any part thereof, including changes relating to the connection with or entrance into or use of the Premises; (iii) erect barricades and take such other actions as Landlord deems appropriate; (iv) provide the 71 parking stalls on Lot A and B in another location or configuration on Lot A, B, C, or other adjacent real property. Provided that Landlord shall have no right to reduce the number of parking stalls provided below the 71 parking stalls provided on Lot A and B; and, Landlord shall take reasonable steps to minimize or avoid any denial of access to the Premises except when necessary on a temporary basis.

14. Release and Indemnity.

a. **Tenant Indemnity.** Tenant shall indemnify, defend (using legal counsel reasonably acceptable to Landlord) and save Landlord harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including Landlord's reasonable attorneys fees incurred in connection with claims prior to Tenant's acceptance of its indemnity and defense obligations hereunder, regardless of whether such claims involve litigation) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to any property occurring during the Term of this Lease and arising out of or in connection with (i) Tenant's occupation, use or improvement of the Premises, (ii) Tenant's breach of its obligations hereunder or (iii) any negligent act or omission of Tenant or any subtenant, licensee, assignee or concessionaire of Tenant, or of any officer, agent, employee, or contractor of Tenant. Nothing in this Section 14.a. shall require Tenant to protect, defend and indemnify Landlord to the extent of Landlord's negligence. This indemnity with respect to acts or omissions during the term of this Lease shall survive termination or expiration of this Lease. The foregoing indemnity covers actions brought by Tenant's own employees and it is specifically and expressly intended to constitute a waiver of Tenant's immunity, as respects the Landlord only, under Washington's Industrial Insurance Act, RCW Title 51, only to the extent necessary to provide Landlord with a full and complete indemnity from claims made by Tenant and its employees, to the extent provided herein. Tenant shall promptly notify Landlord of casualties or accidents occurring in or about the Premises. LANDLORD AND TENANT ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF SECTION 14 WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

b. **Landlord Indemnity.** Landlord shall indemnify, defend (using legal counsel reasonably acceptable to Tenant) and save Tenant harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including Tenant's reasonable attorneys fees incurred in connection with claims prior to Landlord's acceptance of its indemnity and defense obligations hereunder, regardless of whether such claims involve litigation) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to any property occurring during the Term of this Lease and arising out of or in connection with (i) Landlord's occupation, use or improvement of the Property, or that of its employees, agents or contractors, (ii) Landlord's breach of its obligations hereunder, or (iii) any negligent act or omission of Landlord or any subtenant, licensee, assignee or concessionaire of Landlord, or of any officer, agent, employee, or contractor of Landlord. Nothing in this Section 14.b. shall require Landlord to protect, defend and indemnify Tenant to the extent of Tenant's negligence. This indemnity with respect to acts or omissions during the term of this Lease shall survive termination or expiration of this Lease. The foregoing indemnity covers actions brought by Landlord's own employees and it is specifically and expressly intended to constitute a waiver of Landlord's immunity, as respects the Tenant only, under Washington's Industrial Insurance Act, RCW Title 51, only to the extent necessary to provide Tenant with a full and complete indemnity from claims made by Landlord and its employees, to the extent provided herein. LANDLORD AND TENANT ACKNOWLEDGE THAT THE INDEMNIFICATION

PROVISIONS OF SECTION 14 WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

c. Release. Landlord and Tenant hereby fully and completely waives and releases all claims against each other for any losses or other damages sustained by the other party or any person claiming through the other party resulting from any accident or occurrence in or upon the Property, Building, and Premises, or any act, omission or negligence of co-tenants, licensees or any other persons or occupants of the Building; provided only, that the releases contained in this Section shall not apply to claims for actual damage to persons or property resulting from the negligence or willful misconduct of the party making the claim.

d. Limitation on Indemnity. In compliance with RCW 4.24.115 as in effect on the date of this Lease, all provisions of this Lease pursuant to which Landlord or Tenant (the "Indemnitor") agrees to indemnify the other (the "Indemnitee") against liability for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including the Premises, (i) shall not apply to damages caused by or resulting from the negligence of the Indemnitee, its agents or employees, and (ii) to the extent caused by or resulting from the concurrent negligence of (a) the Indemnitee or the Indemnitee's agents or employees, and (b) the Indemnitor or the Indemnitor's agents or employees shall apply only to the extent of the Indemnitor's negligence.

e. Definitions. As used in any Section of this Lease establishing indemnity or release of Landlord, "Landlord" shall include Landlord, its directors, elected officials, agents, employees and contractors, and "Tenant" shall include Tenant and any person or entity claiming through Tenant.

15. Expiration of Lease Term. Upon the expiration of the Lease Term, unless Landlord has approved the Tenant Holding Over as provided in Section 16 Tenant shall vacate the Premises leaving them in good condition, ordinary wear and tear excepted.

16. Holding Over. If the Tenant shall, with the written consent of Landlord, holdover after the expiration of the term of this Lease, such tenancy shall be for an indefinite period of time on a month to month tenancy, such tenancy may be terminated as provided by the laws of the State of Washington. During such tenancy Tenant agrees to pay to the Landlord the same rate of rental as set forth herein, unless a different rate is agreed upon, and to be bound by all of the terms, covenants, and conditions as herein specified, so far as applicable.

17. Default. It shall be a default if:



a. Tenant defaults in the payment of Base Rent, Additional Rent, or any other sums payable to Landlord when due, and does not cure such default within fifteen (15) calendar days after written notice from Landlord.

b. Tenant abandons or vacates the Premises for a period longer than thirty (30) days;  
or

c. Either party defaults in the performance of any other covenant or condition of this Lease and does not cure such other default within thirty (30) calendar days after written notice from the non-defaulting party specifying the default at issue.

18. Cure by Landlord.

In the event of any default of this Lease by Tenant, the Landlord may at any time, after notice, cure the default for the account of and at the expense of the Tenant. If Landlord is compelled to pay or elects to pay any sum of money or to do any act which will require the payment of any sum of money or is compelled to incur any expense, including reasonable attorney fees in instituting, prosecuting or defending any action to enforce the Landlord's rights under this Lease, the sums so paid by Landlord, with all interest, costs and damages shall be deemed to be Additional Rent and shall be due from the Tenant to Landlord on the first day of the month following the incurring of the respective expenses. If Tenant disputes the appropriateness of the Additional Rent in good faith, Tenant will pay such Additional Rent "under protest". Any payment under protest by Tenant shall not be considered an admission of liability or a waiver of Tenant's rights under this Agreement, and such payment shall be subject to refund if Tenant's position is upheld by a court.

19. Damages and Attorney's Fees.

In the event of an instance of Tenant's default as identified in Section 17, Landlord shall be entitled to the amount of unpaid rent accrued through the date of termination; and liquidated damages in the amount of six (6) months rent. If it becomes necessary for the Landlord to use an attorney and/or bring suit for damages or possession, or if Tenant shall bring any action for any relief against Landlord, declaratory or otherwise, arising out of this Agreement, the prevailing party shall have and recover against the other party in addition to the cost allowed by law, such sum as the court may adjudge to be reasonable attorney's fees.

20. Notices. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested; to the following addresses:

If to Landlord, to:     City of Kent  
                                  Attn: Facilities Manager

220 Fourth Avenue South  
Kent, WA 98032

If to Tenant, to: King County Real Estate Services Section  
Attn: Leasing Supervisor  
King County Administration Building  
500 Fourth Avenue, Room 500  
Seattle, WA 98104

21. Hazardous Substance Indemnification.

Tenant represents and warrants that its use of the Premises herein will not generate any hazardous substance, and it will not negligently or intentionally store or dispose on the Premises nor transport to or over the Premises any hazardous substance in violation of any federal or state law. Tenant further agrees to hold Landlord harmless from and indemnify Landlord against any release of any such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the negligence of Landlord, its employees or agents. Similarly, Landlord warrants that the Premises are free of any hazardous substances and agrees to indemnify and hold Tenant harmless from the Landlord's negligent or intentional introduction of any hazardous substance by Landlord. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

22. Subordination to Mortgage. Any mortgage now or subsequently placed upon any property of which the Premises are a part shall be deemed to be prior in time and senior to the rights of the Tenant under this Lease. Tenant subordinate all of its interest in the leasehold estate created by this Lease to the lien of any such mortgage. Tenant shall, at Landlord's request, execute any additional documents necessary to indicate this subordination within ten (10) days of written request by Landlord.

28. Estoppel Certificate. Tenant shall, at any time and from time to time upon not less than thirty (30) days prior request by Landlord, deliver to Landlord a statement in writing certifying that (a) the Lease is unmodified and in full force (or if there have been modifications, that the Lease is in full force as modified and identify the modifications); (b) the dates to which rent and other charges have been paid; (c) so far as the person making the certificate knows, Landlord is not in default under any provisions of the Lease; and (d) such other matters as Landlord may reasonably request.

29. Non-Waiver. Failure of Landlord to insist on strict performance of any of the conditions, covenants, terms or provisions of this Lease or to exercise any of its rights hereunder shall not waive such rights, but Landlord shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Tenant to Landlord after a breach of this Lease shall not be deemed a waiver of such breach unless expressly set forth in writing.

30. Miscellaneous.

a. This Lease constitutes the entire agreement and understanding of the Parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Lease must be in writing and executed by both parties.

b. This Lease shall be construed in accordance with the laws of the State of Washington. Venue and jurisdiction of any lawsuit arising out of the performance or obligations of this lease shall be in the King County Superior Court, Norm Maleng Regional Justice Center, Kent, Washington.

c. If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.

THIS LEASE IS EXECUTED and shall become effective on the last date indicated below.

**TENANT: KING COUNTY**

BY: \_\_\_\_\_  
Ronald Sims, King County Executive

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
Timothy P. Barnes, Sr. Deputy Prosecuting Attorney

**LANDLORD: CITY OF KENT**

BY: \_\_\_\_\_  
Suzette Cooke, Mayor

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
Kent City Attorney's Office

EXHIBIT 1

LOT "A":

TAX ACCOUNT NUMBER: 000660-0021-0

LEGAL DESCRIPTION: S W RUSSELL DLC NO 41 PORTION OF SAMUEL W RUSSELL DONATION CLAIM NO 41 IN NE QTR STR 25-22-04 DAF: BEGINNING AT POINT S LINE OF SAID DONATION CLAIM 422 FT WEST OF INTERSECTION OF SAID S LINE WITH LINE BETWEEN RANGES 4 & 5 EAST W.M. WHICH POINT IS ON E LINE OF KENT-THOMAS CO RD TH NORTH ALONG SAID E LINE 220 FT TO TPOB WHICH TPOB IS NW CORNER OF TRACT DEEDED TO GAY H ELLIOT UNDER RECORDING NO 2368597 TH EAST ALONG N LINE OF SAID GAY H ELLIOT TRACT 149 FT TO W LINE OF TRACT DEEDED TO B.W. ELLIOT BY DEED UNDER RECORDING NO 2368598 TH NORTH ALONG SAID W LINE 144.5 FT TO S LINE OF COUNTY ROAD (S 259TH ST) TH WEST ALONG SAID S LINE OF COUNTY ROAD 149 FT TO E LINE OF SAID KENT-THOMAS CO RD TH SOUTH ALONG SAID E LINE 144.5 FT TO TPOB EXCEPT PORTIONS CONVEYED TO CITY OF KENT BY DEEDS UNDER RECORDING NOS 7308100427 & 9208031788.

LOT "B":

TAX ACCOUNT NUMBER: 000660-0044-09

LEGAL DESCRIPTION: RUSSELL S W - DC # 41 N 60 FT OF S 220 FT OF W 149 FT OF E 1350.62 FT OF DC LESS ST.

LOT "C":

TAX ACCOUNT NUMBER: 346280-0205-0

LEGAL DESCRIPTION: HORSESHOE ACRES TRS TO KENT POR TRACT 24 & POR S W RUSSELL DLC # 41 IN NW QTR STR 25-22-04 DAF: BEG AT INTSN E MGN EAST VALLEY HWY (AKA CENTRAL AVE) WITH N LN TRACT 24 HORSESHOE ACRES TH N 00-40-16 E ALONG E MGN EAST VALLEY HWY DIST 160.00 FT TH S 89-44-28 E PLL WITH N LN SD TRACT 24 DIST 143.00 FT TH W 00-40-16 E PLL WITH EAST WALLEY HWY 205.99 FT M/L TO S MGN S 259TH ST TH EAST ALG S MGN 2 259TH ST 90.07 FT M/L TO PT 187.12 FT W OF E LN SEC 25 TH S 00-35-50 W PLL WITH E LN SEC DIST 366.85 FT TO N LN TRACT 24 HORSESHOE ACRES TH N 89-44-28 W ALG SD N LN 68.96 FT TH S 00-30-26 W 53.83 FT TH S 45-54-33 E 94.10 FT TH S 00-03-47 W 84.40 FT TH S 89-35-24 E 128.73 FT TH S 00-07-57 W 114.25 FT TO S LN TRACT 24 HORSESHOE ACRES TH N 89-44-28 W ALG SD S LN 363.79 FT TO E MGN EAST VALLEY HWY TH N 00-40-16 E ALG SD E MGN 313.00 FT TO TPOB.

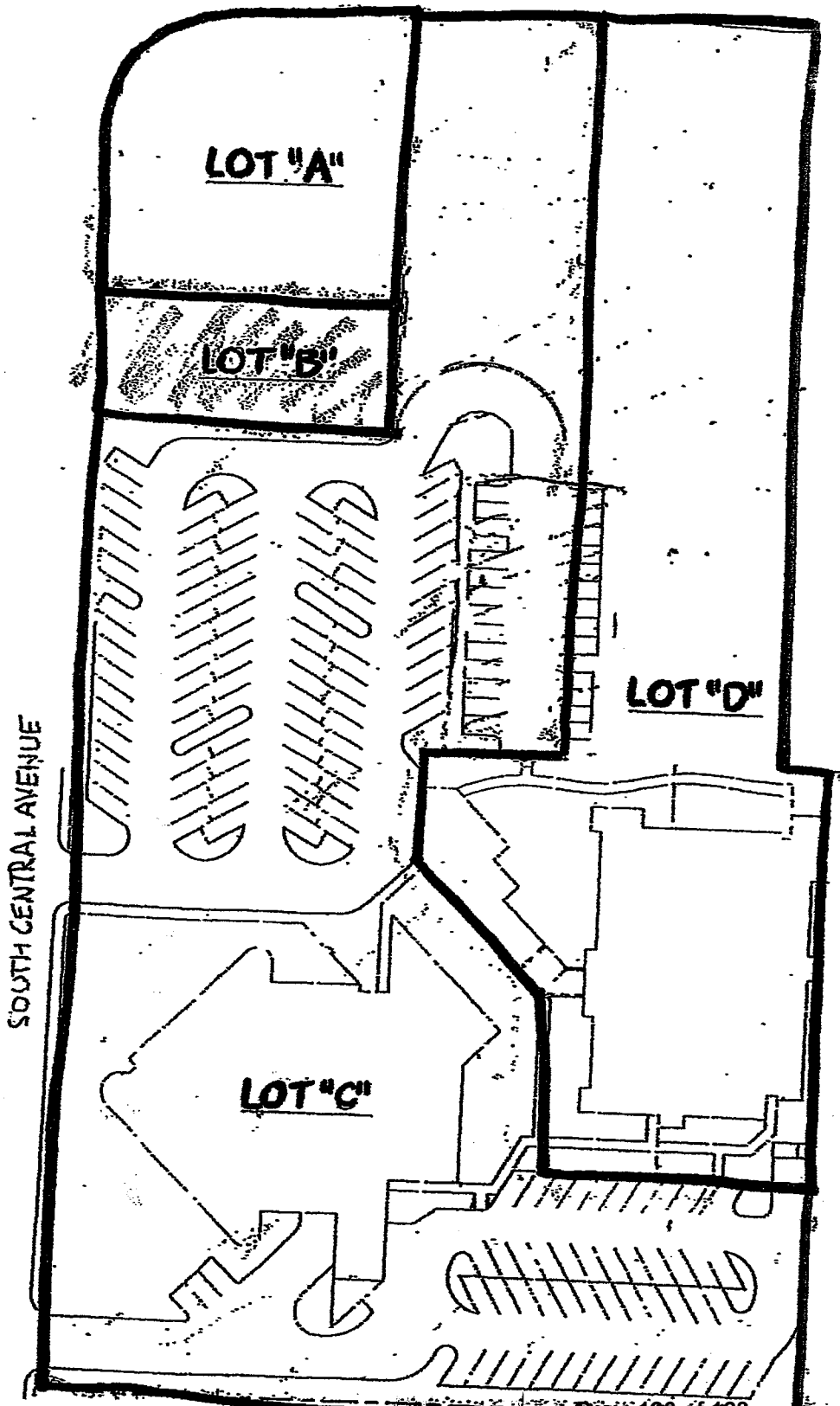
LOT "D":

TAX ACCOUNT NUMBER: 000660-0043-0

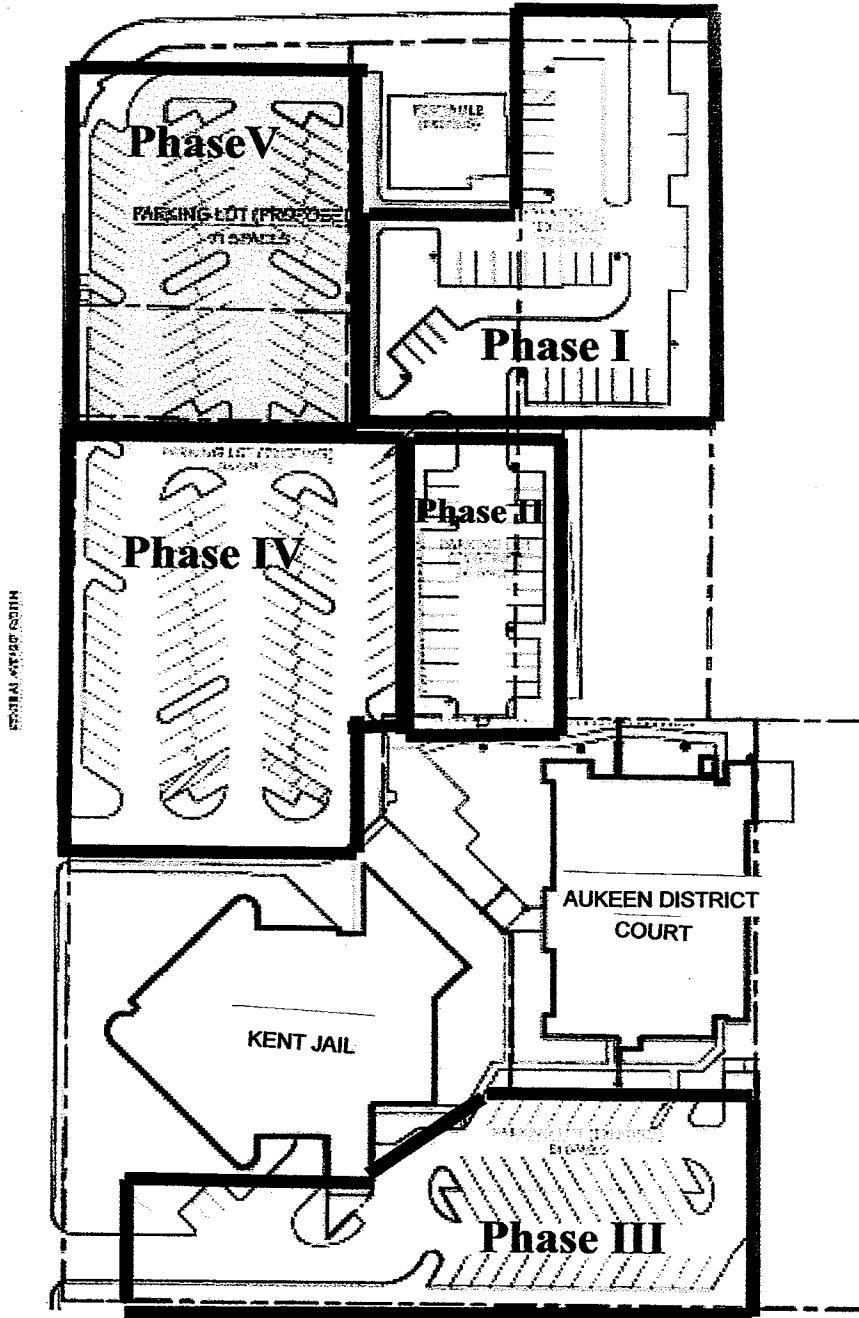
LEGAL DESCRIPTION: S W RUSSELL D C #41 POR TRACT 24 HORSESHOE ACRE TRACTS & POR S W RUSSELL DLC IN NW QTR STR 25-22-04 DAF: BEG AT INTSN S BNDRY LN SD DLC WITH E LN SEC 25 TH N 89-44-28 W ALG S BNDRY SD DLC 59.86 FT TO TPOB TH S 00-07-57 W 203.74 FT TH N 89-35-24 W 128.73 FT TH N 00-03-47 E 84.40 FT TH N 45-54-33 W 94.10 FT TH N 00-30-26 E 58.83 FT TO S BNDRY SD DLC TH S 89-44-28 E 68.95 FT TO PT 187.12 FT W OF E LN SEC 25 TH N 00-35-50 E PLL TO SD E LN 366.85 FT M/L TO S MGN S 259TH ST TH E ALG S MGN 102.13 FT M/L TO PT 85.00 FT W OF E LN SEC 25 TH S 00-35-50 W 367.42 FT TO S LN SD DLC TH S 89-44-28 E ALG S LN 25.14 FT TO TPOB.

EXHIBIT 2

SOUTH 259TH STREET



**Exhibit 3**



**EXHIBIT G**

**LEGAL DESCRIPTION OF LOT B**

(to become subject to Rider 2, Right of First Offer, following acquisition by City of Kent)

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

That portion of the S. W. Russell Donation Claim, Section 25, Township 22 North, Range 4 East, W.M., in King County, Washington, described as follows:

Beginning at the Intersection of the East Kent-Auburn Highway with the North line of Tract 24, HORSESHOE ACRE TRACTS TO KENT, according to the plat thereof recorded in Volume 15 of Plats, page(s) 10, records of King County, Washington;  
THENCE North along the East margin of said Highway, 160 feet to the True Point of Beginning;  
THENCE North along the East margin of said Highway 60 feet;  
THENCE East 149 feet;  
THENCE South 60 feet;  
THENCE West 149 feet to the True Point of Beginning;  
EXCEPT the West 6 feet conveyed to the City of Kent under Recording No. 7305010046, a re-recording of Recording No. 7304250009.

SITUATE in the County of King, State of Washington

**ABBREVIATED LEGAL**

Portion of the Northeast quarter of the Northeast quarter of Section 25; Township 22 North, Range 4 East, W.M.

Tax Account No. 000660-0044-09

AUKEEN DISTRICT COURT EXPANSION LEASE  
Exhibit G: Legal Description of "Lot B"

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