



City of SeaTac

Council Study Session Agenda

May 8, 2012
4:00 PM

City Hall
Council Chambers

CALL TO ORDER:

1. **Agenda Bill #3412 – An Ordinance adding a new Section 2.65.365 to the SeaTac Municipal Code, prohibiting the use of all tobacco products in City parks (15 minutes)**
By: Parks and Recreation Director Kit Ledbetter
2. **Agenda Bill #3430 – A Motion authorizing the City Manager to execute a contract with Berger Partnership for phase II design and planning of the Riverton Heights site (10 minutes)**
By: Economic Development Manager Jeff Robinson
3. **Agenda Bill #3420 – A Motion authorizing the City Manager to execute a Schedule 74 Project Design Agreement with Puget Sound Energy for the Military Road South, South 176th Street to South 166th Street Improvements (10 minutes)**
By: Public Works Director Tom Gut
4. **Agenda Bill #3425 – A Motion authorizing the City Manager to execute a construction contract and authorizing expenditures for the South 164th Street Sidewalk Improvements (10 minutes)**
By: Public Works Director Tom Gut
5. **Agenda Bill #3428 – An Ordinance related to employment agreements for City Department Head level positions (15 minutes)**
By: Human Resources Director Anh Hoang
6. **PRESENTATIONS:**
 - **Edward Byrne Memorial Justice Assistant Grant Program (10 minutes)**
By: Judge Elizabeth Cordi-Bejarano / Court Administrator Paulette Revoir
 - **Public Safety Statistics (10 minutes)**
By: Police Chief Jim Graddon

ADJOURN:



City of SeaTac

Regular Council Meeting Agenda

May 8, 2012
6:00 PM

City Hall
Council Chambers

(Note: The agenda numbering is continued from the Council Study Session.)

CALL TO ORDER:

ROLL CALL:

FLAG SALUTE:

PUBLIC COMMENTS: (Speakers must sign up prior to the meeting. Individual comments shall be limited to three minutes. A representative speaking for a group of four or more persons in attendance shall be limited to ten minutes. When recognized by the Mayor or his designee, walk to the podium, state and spell your name, and give your address [optional] for the record.)

7. PRESENTATIONS:

● **Highline area Food Bank (5 minutes)**

By: Director Mike Werle

● **South Link Extension Project Update (30 minutes)**

By: Airport Link Project Director Miles Haupt

8. CONSENT AGENDA:

● **Approval of claims vouchers** (check nos. 98155 – 98308) in the amount of \$405,532.93 for the period ended May 4, 2012.

● **Approval of payroll vouchers** (check nos. 50583 – 50617) in the amount of \$412,977.92 for the period ended April 30, 2012.

● **Approval of payroll electronic fund transfers** (check nos. 72418 – 72596) in the amount of \$335,477.77 for the period ended April 30, 2012.

● **Approval of payroll wire transfer** (Medicare and Federal Withholding Tax) in the amount of \$66,339.73 for the period ended April 30, 2012.

● **Summary of Councilmember and City Manager travel City MasterCard expenses and/or reimbursement requests** for the period ended May 4, 2012.

Agenda Item reviewed at the April 24, 2012 Council Study Session and recommended for placement on this Consent Agenda:

Agenda Bill #3419; A Motion authorizing the City Manager to enter into a five-year lease agreement in the SeaTac Center with Sahra Abdulle, doing business as SeaTac Market / Sunset International Furniture

PUBLIC COMMENTS (related to the Consent Agenda): (Individual comments shall be limited to one minute and group comments shall be limited to three minutes.)

ACTION ITEMS:

9. Agenda Bill #3428 – An Ordinance related to employment agreements for City Department Head level positions (15 minutes)

By: Human Resources Director Anh Hoang

UNFINISHED BUSINESS:

NEW BUSINESS:

CITY MANAGER'S COMMENTS:

COUNCIL COMMENTS:

EXECUTIVE SESSION:

ADJOURN:


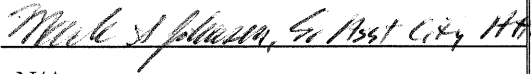


THE COUNCIL CHAMBERS IS ACCESSIBLE TO PERSONS WITH DISABILITIES AND IS EQUIPPED WITH ASSISTIVE LISTENING DEVICES. PERSONS REQUIRING SPECIAL ACCOMMODATIONS SHOULD CONTACT THE CITY CLERK'S OFFICE BEFORE 5:00 PM THE FRIDAY PRECEDING THE COUNCIL MEETING.

SeaTac City Council
REQUEST FOR COUNCIL ACTION

Department Prepared by: Parks and Recreation

Agenda Bill #: 3412

TITLE: An Ordinance adding a new Section 2.65.365 to the SeaTac Municipal Code, prohibiting the use of all tobacco products in City parks.

<i>April 30, 2012</i>	
<input checked="" type="checkbox"/> <u>X</u> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Info. Only <input type="checkbox"/> Other	
Date Council Action Requested: <u>RCM 05/22/2012</u>	
Ord/Res Exhibits: _____	
Review Dates: <u>CSS 05/08/2012</u>	
Prepared By: <u>Brian Tomisser, Recreation Supervisor</u>	
Director: <u></u>	City Attorney: <u></u>
Finance: <u></u>	BARS #: <u>N/A</u>
City Manager: <u></u>	Applicable Fund Name: <u>N/A</u>

3/12
2/12

SUMMARY: This Ordinance prohibits the use of all tobacco products in all City parks.

DISCUSSION / ANALYSIS / ISSUES: This Ordinance will increase the health, safety, and welfare of patrons of City parks. Tobacco use and second hand smoke have been linked to several health related issues, such as lung cancer, heart attack, bronchitis, pneumonia, asthma, chronic respiratory problems, and eye and nasal irritation.

In addition to the health benefits of eliminating tobacco usage, this will increase the image, cleanliness, and family friendliness of the parks. Tobacco usage results in tobacco debris being discarded throughout the parks. This ordinance will reduce park staff clean up time and the Parks will be cleaner. Tobacco debris being discarded throughout the parks also causes possible health hazards for humans and wild life as well if ingested. The City currently operates various programs for youth in City parks, and eliminating tobacco usage is also consistent with the healthy message and clean environment that we are promoting throughout our City programs.

Teens from the Tye Educational complex have been involved in this process from the beginning. They have spoken at the City Council study session and in private meetings with City Attorney Mary Mirante Bartolo and Police Chief Jim Graddon. The efforts of these students have been consistent with what is going on throughout the region. Furthermore, King County is currently considering a tobacco-free policy for their 200 parks in the region. Several cities in King County have introduced policies on this subject, including Burien, Bothell, Shoreline, Kirkland and Mercer Island. Many more King County cities are currently considering policies, including Woodinville, Des Moines, Tukwila, Lake Forest Park, and Sammamish.

Specifically, this Ordinance adopts a new Section in the City Park Code that prohibits the use of tobacco products in all City parks. Violation of the Ordinance is a civil infraction subject to a civil penalty of \$25.00.

RECOMMENDATION(S): It is recommended that the Ordinance be adopted.

FISCAL IMPACT: None.

ALTERNATIVE(S): 1. Amend the Ordinance prior to adoption; 2) Do not adopt the Ordinance.

ATTACHMENTS: None.

ORDINANCE NO. _____

AN ORDINANCE of the City Council of the City of SeaTac, Washington adding a new Section 2.45.365 to the SeaTac Municipal Code prohibiting the use of all tobacco products in City parks and establishing a penalty.

WHEREAS, the City Council finds that it is appropriate to prohibit the use of all tobacco products in City Parks;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SEATAC, WASHINGTON, DO ORDAIN as follows:

Section 1. A new Section 2.45.365 of the SeaTac Municipal Code is created to read as follows:

2.45.365 Tobacco Products in City Parks prohibited.

A. It is a civil infraction, with a monetary penalty of twenty-five dollars (\$25.00), including statutory assessments, for any person to smoke, light, or use cigars, cigarettes, tobacco products, or other smoking material in a park area.

B. The City Manager is authorized to post signs in park areas that advise members of the public that smoking in park areas is prohibited.

Section 2. This Ordinance shall be in full force and effect five (5) days after passage and publication as required by law.

ADOPTED this _____ day of _____, 2012, and signed in authentication thereof on this _____ day of _____, 2012.


CITY OF SEATAC

Tony Anderson, Mayor

ATTEST:

Kristina Gregg, City Clerk

Approved as to Form:



Mary E. Mirante Bartolo, City Attorney

[Effective Date: _____]

[Smoking in Parks Prohibited]

SeaTac City Council
REQUEST FOR COUNCIL ACTION
Department Prepared by: Parks and Recreation/CED

Agenda Bill #: 3430

TITLE: A Motion authorizing the City Manager to execute a contract with Berger Partnership for Phase II design and planning of the Riverton Heights site.

May 4, 2012	
<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Info. Only <input type="checkbox"/> Other	
Date Council Action Requested:	<u>RCM 05/22/2012</u>
Ord/Res Exhibits:	
Review Dates:	<u>CSS 05/8/2012</u>
Prepared By:	<u>Kit Ledbetter, Parks and Recreation Director and Jeff Robinson, Economic Development Manager</u>
Director:	<u><i>Daylene for Baker</i></u> City Attorney: <u><i>Mark A. Johnson, Esq. Asst City Atty</i></u>
Finance:	<u><i>Aan</i></u> BARS #: <u>301.000.04.594.19.63.195</u>
City Manager:	<u><i>Todd Cutler</i></u> Applicable Fund Name: <u>Municipal Capital Improvement Fund</u>

KSL
3/2

SUMMARY: This Motion authorizes the City Manager to execute a contract with Berger Partnership, in substantially similar form as attached hereto, for Phase II design and planning of the Riverton Heights site.

DISCUSSION / ANALYSIS / ISSUES: The project site is a 7.8 acre parcel that was previously occupied by the Riverton Heights Elementary School. The site has an existing parking lot, model airplane landing strip, mature trees, and remnants of asphalt from use as a school playground. The site slopes gently from west to east. Based on an extensive community engagement process, the proposed land uses include a park, fire station, and a housing component. It is the goal of this work to determine the most appropriate and realizable uses for this site based on a detailed assessment of space needs for each use. The plan will also identify potential "early implementation" projects to begin activation for the site. Information regarding the potential fire station will be provided by TCA Architecture and is included in this proposal.

The scope of work includes site, neighborhood, and code understanding, site planning, site plan feasibility, preliminary cost estimate, and master plan graphics and report preparation. The time estimated for completion of this work is six months.

The work being performed under this contract will be done in two phases--concept development and development of the preferred alternative and final design.

RECOMMENDATION(S): It is recommended that the Motion be carried.

FISCAL IMPACT: The proposed contract will not exceed \$30,000 and will be paid for through the BARS account listed above.

ALTERNATIVE(S): Do not complete the project at this time.

ATTACHMENTS: 1) Proposed contract with scope of work.

**RIVERTON HEIGHTS PROPERTY:
PHASE TWO DESIGN AND SITE PLANNING**

CONSULTANT CONTRACT

Project Description: The purpose of this Phase Two Design and Site Planning project will include site planning; site plan feasibility; preliminary cost estimate; and master plan graphic and report preparation. The project will utilize the extensive public participation and preliminary concept efforts completed in 2011 as the basis for Phase Two Design and Site Planning

THIS CONTRACT is made and entered into effective on the date upon which the last party to sign this Contract so signs the Contract, by and between the City of SeaTac, a municipal corporation of the State of Washington, hereinafter referred to as the "City", and Berger Partnership PS, hereinafter referred to as the "Consultant", on the following terms and conditions in conjunction with the project indicated above.

1. EMPLOYMENT. The City hereby agrees to retain and employ the Consultant, as an independent contractor, and the Consultant hereby agrees to serve the City pursuant to this Contract.

2. SCOPE OF SERVICES. The Consultant shall be responsible for completion of the scope of services detailed in Attachment A to this Contract.

3. TIME FOR BEGINNING AND COMPLETION. The consultant shall begin work on the "Scope of Services" on Attachment A immediately. All work shall be completed by December 31, 2012. The established completion date may be extended at the discretion of the City, subject to a prior supplemental written agreement executed by the City to extend the established completion date.

4. PROFESSIONAL STANDARDS. The Consultant shall be responsible, to the level of competency presently maintained by other practicing professionals in the same type of work in this community, for the professional and technical soundness, accuracy, and adequacy of all analyses, designs, drawings, specifications, plans, programs and other work and materials furnished under this Contract.

5. COMPENSATION. The City shall pay the Consultant compensation for the completion of the scope of services at a total amount of compensation that shall not exceed thirty thousand dollars (\$30,000.00). The City shall only pay for actual services rendered.

6. RECORDS INSPECTION AND AUDIT. All compensation payments shall be subject to adjustments for any amounts found upon audit or otherwise to have been improperly invoiced, and all records and books of account pertaining to any work

performed under this Contract shall be subject to inspection and audit by the City for a period of up to three (3) years from final payment of work performed under this contract.

7. OWNERSHIP OF DOCUMENTS. All plans, programs, specifications, designs, reports, records and other documents produced during or as a result of services rendered pursuant to this Contract shall be the property of the City and shall not be the property of the Consultant. Any reuse of such documents on or for any project other than that covered under this contract shall be without liability or legal exposure to the Consultant. The Consultant may, however, use the documents for the purpose of reference materials and future marketing of consulting services.

8. EQUAL EMPLOYMENT OPPORTUNITY. The Consultant shall strictly abide by all local, state and federal equal employment opportunity laws and policies relating to the establishment of non-discrimination in hiring and employment practices, and assuring the service of all clients, customers or involved members of the public without discrimination.

9. INDEMNIFICATION. The Consultant shall indemnify and hold harmless the City and its officers, agents and employees or any of them from any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, by any reason of or arising out of any negligent act or omission of the Consultant, its officers, agents and employees, or any of them relating to or arising out of the performance of this Contract; and if final judgment be rendered against the City and its officers, agents and employees or any of them, or jointly against the City and the Consultant and their respective officers, agents and employees, or any of them, the Consultant shall satisfy the same to the extent that such judgment was due to the Consultant's negligent acts or omissions.

The City shall indemnify and hold harmless the Consultant and its officers, agents and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, by any reason of or arising out of any negligent act or omission of the City, its officers, agents or employees, or any of them relating to or arising out of the performance of this Contract; and if final judgment be rendered against the City and its officers, agents and employees, or any of them, or jointly against the Consultant and the City and their respective officers, agents and employees, or any of them, the City shall satisfy the same to the extent that such judgment was due to the City's negligent acts or omissions.

10. PROFESSIONAL LIABILITY INSURANCE. The Consultant shall secure and maintain a policy of comprehensive professional liability insurance with an insurance company licensed to do business in the State of Washington, with policy limits of not less than \$1 million dollars. Written proof of the insurance policy and of the City as an additional insured, shall be filed with the City.

11. RESTRICTION AGAINST ASSIGNMENT. The Consultant shall not assign this Contract or any interest herein, subcontract any part of the consulting services to be

performed here, nor assign any money due or to become due hereunder, without first obtaining the consent of the City.

12. CONTINUATION OF PERFORMANCE. In the event that any dispute or conflict arises between the parties while this Contract is in effect, the Consultant agrees that, notwithstanding such dispute or conflict, the Consultant shall continue to make a good faith effort to cooperate and continue work toward successful completion of assigned duties and responsibilities.

13. TERMINATION OF CONTRACT. Performance of the consulting services under this Contract may be terminated for any cause deemed sufficient by either the City or the Consultant, in whole or in part, at any time, by either party giving the other written notice of such termination, specifying the extent and effective date thereof, by not sooner than thirty (30) days from date of such notice, providing that the Consultant shall complete and be compensated for any projects or duties previously assigned and accepted, and shall be compensated for all expenses incurred or committed to, that cannot be canceled.

14. CONTRACT ADMINISTRATION. This Contract shall be administered by the Principal on behalf of the Consultant and by the Economic Development Manager on behalf of the City. Any written notices required by terms of this contract shall be served or mailed as follows:

If to the City:
Todd Cutts, City Manager
4800 S 188th Street
SeaTac, WA 98188

If to the Consultant:
Greg Brower, Principal, PLA
1721 8th Avenue North
Seattle, WA 98109

15. CONSTRUCTION AND VENUE. This Contract shall be construed in accordance with the laws of the State of Washington. In the event of any litigation regarding the construction or effect of this Contract, or the rights of the parties pursuant to this Contract, it is agreed that venue shall be King County, Washington.

16. MERGER AND AMENDMENT. This Contract contains the entire understanding of the parties with respect to the matters set forth herein and any prior or contemporaneous understandings are merged herein. This Contract shall not be modified except by written instrument executed by all parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this contract.

CONSULTANT:

By: Principal _____

Date: _____

CITY OF SEATAC:

By: City Manager _____

Date: _____

Approved as to Form:

By: City Attorney _____

Attachment 1
Scope of Work



Concept Development

Our effort will begin with analysis and understanding of the site. We will investigate the site and surrounding neighborhood and learn about its relationship to the broader city. We will then prepare land use diagrams to compare and contrast the options.

- Review existing documentation for the site including the Phase 1 Riverton Heights report, codes, neighborhood plans, facility plans (with a focus on fire stations), and other applicable studies for this parcel.
- Meet with city staff to confirm needs and approach.
- Prepare two or three land use diagrams.
- Meet to review progress and obtain input on land use options.
- Provide a summary of findings, including a discussion of the viability of each proposed use.
- Meet with city staff to review the summary of findings and land use diagrams and obtain approval to proceed.

Deliverables:

Conceptual land use diagrams

Preferred Alternative and Final Design

In this phase we will prepare a master plan alternative based on input from city staff. This plan will reflect the input received and explore options for phasing including ideas for early implementation.

- Prepare a master plan of preferred alternatives. This is most likely a single concept with alternative ideas that support a main idea.
- Prepare a graphic of the final site plan with possible phasing, including a description of an early, visible implementation project.
- Support the master plan with character images that support the design intent. We will prepare a phasing diagram and options for early implementation.
- Prepare a written narrative for the master plan and phasing, including the early implementation project.
- We will prepare a preliminary cost estimate for the park that reflects the rough overall costs and is broken down by phase.

**Attachment 1
Scope of Work**



- Meet with city staff to review master plan and phasing, including options for an early implementation project and costs. Refine/revise as necessary based on input received.
- Present at a City Council Study Session. The goal of this meeting is to present the master plan and possible phasing options, including options of how and by whom the park component could be developed. This is a presentation of the master plan; public input will be kept to questions and clarifications.
- Assemble the site plan, narrative, cost estimate, conceptual ideas, meeting notes and summaries into a master plan report. The intent is to have a dynamic document that can be updated as necessary and will facilitate the funding and implementation of the project.

Deliverables:

- Master Plan
- Phasing diagram
- Preliminary cost estimate
- Presentation plans
- Master Plan Report

Assumptions

- The program for the park is based on the report "A Community Owned Vision for Riverton Heights Property", dated January 2011.
- Buildings will be developed only to the concept level of detail.
- The plans and narratives will be provided to support the idea of developing a park, fire station and a residential/commercial component. Additional work will be needed to determine the actual development potential.
- Meetings and presentations in addition to those listed will be provided as an additional service.
- Cost estimating will be provided for only the park component of the site. Cost estimates for the fire station and housing will be provided by others.

Fees

Based on the scope of services identified at this time, we have established a fee for landscape architectural services as follows:

Concept Development	\$9,600.00
Preferred Alternative and Final Plan	\$16,700.00
Fire Station Consultant (includes 10% markup)	\$2,750.00
Total	\$29,050.00

**Attachment 1
Scope of Work**



Fees will be billed monthly based upon the percentage of work completed. Services beyond those noted in this proposal will be billed as additional services on an hourly basis as follows, or lump sum fees can be negotiated:

Principal	\$175.00 per hour
Associate	\$125.00 per hour
Project Manager	\$100.00 per hour
Landscape Architectural Staff	\$90.00 per hour
Administrative Staff	\$55.00 per hour

Printing, reprographic expenses, CAD plots, travel costs, and other reimbursable expenses will be billed in addition to the above fees at cost plus a 10% administrative mark-up. All accounts are due in ten days. Invoices not paid within 30 days of invoice date will be subject to late charges of 1% per month. If payment for services is not received within 90 days of the invoice date, all subsequent services and/or issuance of documents may be postponed until receipt of payment, unless special arrangements are made prior to providing the services.

Fees may be subject to renegotiation if the proposal is not accepted within 60 days. If the duration of the contract exceeds one year, hourly rates may be subject to annual adjustments at the anniversary date of the contract.

Revisions & Additions To Proposal

Once the preferred concept is approved, any substantive revision to the drawings resulting from owner/client directed changes (including program changes, scope of work changes, modifications to existing documents, construction and/or site and conditions change and adjustments to time frames) will be billed as an extra service. Billing will be hourly, unless a guaranteed maximum fee is requested for the revision. Written confirmation of the change/revision will be sent as an amendment to this contract. Revision work started at the direction of the owner/client, then subsequently terminated, will be billed as extra services through date of stop-work notification.


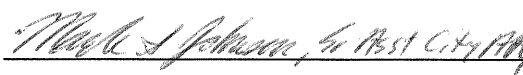
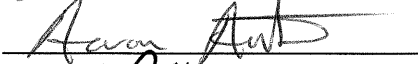

Consultants

TCA Architecture will provide input on the overall site plan and fire station.

SeaTac City Council
REQUEST FOR COUNCIL ACTION
 Department Prepared by: Public Works

Agenda Bill #: 3420

TITLE: A Motion authorizing the City Manager to execute a Schedule 74 Project Design Agreement with Puget Sound Energy (PSE) for the Military Road South, South 176th Street to South 166th Street Improvements.

April 26, 2012	
<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Info. Only <input type="checkbox"/> Other	
Date Council Action Requested:	<u>RCM 5/22/12</u>
Ord/Res Exhibits:	
Review Dates:	<u>CSS 5/8/12</u>
Prepared By:	<u>Florendo Cabudol, Assistant City Engineer</u>
Director:	<u></u>
City Attorney:	<u></u>
Finance:	<u></u>
BARS #:	<u>307.000.11.595.30.63.112</u>
City Manager:	<u></u>
Applicable Fund Name:	<u>Transportation CIP (307)</u>

SUMMARY: The agreement includes the design of the underground conversion of the distribution power lines on Military Road South from approximately South 176th Street to South 166th Street.

DISCUSSION / ANALYSIS / ISSUES: The proposed scope of the improvements to Military Road South includes relocating the existing aerial utilities underground. Puget Sound Energy (PSE) currently owns and operates distribution lines within the Military Road South right-of-way. PSE's scope of work, described in the agreement, includes preparation of plans, specifications, cost estimates, and a schedule. A separate construction agreement will be required prior to the actual construction. The design agreement is a standard form that is included in PSE's tariff with the Washington Utilities and Transportation Commission.

The City is required to reimburse PSE for all design cost upon receiving the final construction plans, specifications, and construction cost estimate. If the City chooses to terminate the project, the agreement requires the City to pay for 100% of the design cost up to the date of termination. If the city chooses to go forward with the construction project, the total cost of the conversion including design, easements, construction, and inspection would be shared in accordance with the terms of the tariff. The City's share would be 40% and PSE's share would be 60%.

RECOMMENDATION(S): It is recommended the Motion be carried.

FISCAL IMPACT: The design cost estimate is \$57,000. The design costs would be paid from the Military Road South project fund which has a current 2012 budget balance of \$481,696.

ALTERNATIVE(S): Do not enter into the agreement, and do not underground the existing overhead distribution power lines. However, it is the City's policy to underground electric lines with street improvements to arterial roadways.

ATTACHMENTS: Schedule 74 Project Design Agreement, PSE Design Estimate

SCHEDULE 74 UNDERGROUND CONVERSION

Project Design Agreement

Project Name: City of SeaTac – Military Rd. Conversion Between S.176th to S.166th

Notification Number: 11031430

THIS Agreement, dated as of this ____ day of _____, 2012, is made by and between the City of SeaTac, a municipal corporation of the State of Washington (the "Government Entity"), and PUGET SOUND ENERGY, Inc., a Washington Corporation (the "Company").

RECITALS

A. The Company is a public service company engaged in the sale and distribution of electric energy and, pursuant to its franchise or other rights from the Government Entity, currently locates its electric distribution facilities within the jurisdictional boundaries of the Government Entity.

B. The Government Entity is considering conversion of the Company's existing overhead electric distribution system to a comparable underground electric distribution, as more specifically described in the Scope of Work (as defined in paragraph 2, below) furnished to the Company by the Government Entity (the "Conversion Project").

C. The Government Entity has requested that the Company perform certain engineering design services and otherwise work cooperatively with the Government Entity to develop a mutually acceptable Project Plan (as defined in paragraph 6, below) for the Conversion Project, in accordance with and subject to the terms and conditions of this Agreement (the "Design Work").

D. The Government Entity and the Company wish to execute this written contract in accordance with Schedule 74 of the Company's Electric Tariff G ("Schedule 74") to govern the Design Work for the Conversion Project.

AGREEMENT

The Government Entity and the Company therefore agree as follows:

1. Unless specifically defined otherwise herein, all terms defined in Schedule 74 shall have the same meanings when used in this Agreement.
2. The Government Entity shall, within ten (10) business days after the date of this Agreement, provide the Company with a written scope of work for the Conversion Project which includes, among other things, (a) a reasonably detailed description of the scope of the work required for the Conversion Project, (b) a list of the key milestone dates for the Conversion Project, (c) reasonably detailed drawings showing any associated planned improvements to the Public Thoroughfare, and (d) a statement as to whether the Government Entity desires to install the ducts and vaults for the Conversion Project (the "Scope of Work"). The Government Entity shall provide the Company two (2) hard copies of the Scope of Work and a copy of the relevant electronic file(s) in a mutually agreed electronic format.
3. Within ten (10) business days of its receipt of the Scope of Work, the Company shall prepare and submit to the Government Entity (a) a reasonably detailed, good faith estimate of the cost to perform the Design Work (the "Design Cost Estimate"), and (b) a proposed schedule for completion of the Design Work which, to the extent reasonably practicable, reflects the applicable key milestone dates

specified in the Scope of Work and provides for completion of the Design Work within ninety (90) business days from the date the Company receives the Government Entity's notice to proceed under paragraph 5, below (the "Design Schedule"). The proposed Design Cost Estimate and the proposed Design Schedule shall be based upon the then-current Scope of Work. Unless otherwise specified in the Scope of Work, the Design Work shall not include negotiation or acquisition of third party property rights but shall include preliminary planning between the Company and the Government Entity regarding their respective obligations for negotiating and acquiring third party property rights.

4. Within ten (10) business days after the Government Entity's receipt of the proposed Design Cost Estimate and the proposed Design Schedule from the Company, the Government Entity and the Company shall meet in order to (a) review the proposed Design Cost Estimate, (b) review the proposed Design Schedule; (c) review the Scope of Work, and (d) make any changes necessary to create a final Scope of Work, final Design Cost Estimate, and final Design Schedule that are reasonably acceptable to both parties. If the parties are unable to agree upon a final version of the Scope of Work, Design Cost Estimate, and/or Design Schedule, then either party may, by written notice to the other party, submit the matter for resolution pursuant to the dispute resolution procedures in paragraph 16, below. The final Scope of Work, Design Cost Estimate and Design Schedule, once determined in accordance with this paragraph 4, may thereafter be changed or amended only in accordance with the change procedures set forth in paragraph 13, below.
5. The Government Entity shall, within ten (10) business days after determination of the final of the Scope of Work, Design Cost Estimate, and Design Schedule, issue (a) a written notice to proceed which shall delineate the final Scope of Work, Design Cost Estimate, and Design Schedule, or (b) a written notice to terminate this Agreement without cost to the Government Entity. If the Government Entity terminates this Agreement, the costs incurred by the Company in preparing and submitting the Design Cost Estimate and the Design Schedule shall not be reimbursable to the Company, and the rights and obligations of the parties under this Agreement shall be terminated in their entirety and without liability to either party.
6. Following the Company's receipt of the notice to proceed, and within the applicable time period specified in the Design Schedule, the Company shall, with the cooperation and assistance of the Government Entity as outlined in this Agreement, prepare a project plan for the Conversion Project (the "Project Plan") which shall include, among other things, the following: (a) a detailed description of the work that is required to be performed by each party and any third party in connection with the Conversion Project (the "Construction Work"), (b) the applicable requirements, drawings, and specifications for the Construction Work, (c) a description of any operating and other property rights that are required to be obtained by each party for the Conversion Project (and the requirements and specifications with respect thereto), (d) a detailed estimate of the costs to be incurred by each party in its performance of the Construction Work, and (e) a detailed schedule for completing the Construction Work (including, without limitation, the dates for delivery of the ducts and vaults and other materials for use at the site of the Construction Work).
7. The Government Entity shall be responsible for coordinating the Design Work with all other design work to be performed in connection with the Conversion Project and any associated planned improvements to the Public Thoroughfare. The parties shall work together in an effort to mitigate the costs of the Conversion Project to each party, including, without limitation, identifying ways to accommodate the facilities of the Company to be installed as part of the Conversion Project within the Public Thoroughfare.
8. Within the applicable time period specified in the Design Schedule, the Company shall prepare and submit to the Government Entity a proposed initial draft of the Project Plan. The parties understand and acknowledge that the proposed Project Plan submitted by the Company shall be preliminary in nature and shall not include, without limitation, information required to be supplied by the Government Entity (e.g., scope and estimate of the cost of the Construction Work to be performed by the Government Entity).

9. Within the applicable time period specified in the Design Schedule, the Government Entity shall (a) review the proposed Project Plan submitted by the Company, (b) complete any information required to be supplied by the Government Entity, (c) make any changes required to conform the proposed Project Plan to the Scope of Work and this Agreement, and (d) return the amended Project Plan to the Company.
10. Within the applicable time period specified in the Design Schedule, the Company shall review the amended Project Plan submitted by the Government Entity and notify the Government Entity in writing of either the Company's acceptance of, or the Company's specific objections to, the amended Project Plan. If the Company makes any objection to the amended Project Plan, and the parties are unable to resolve the objections and mutually agree upon the Project Plan prior to the final design date specified in the Design Schedule, then either party may, by written notice to the other party, submit the matter for resolution pursuant to the dispute resolution procedures in paragraph 16, below. The Project Plan, as mutually agreed upon by the parties or established through the dispute resolution process, shall be attached to and incorporated in a Project Construction Agreement substantially in the form attached hereto as Exhibit A (the "Construction Agreement") which is to be signed by the parties prior to commencement of the Construction Work.
11. The parties intend and agree that the Design Work and the Project Plan in its final form shall conform to the following requirements:
 - (a) The Project Plan shall, if requested by the Government Entity in its initial Scope of Work, specify that the Government Entity shall install the ducts and vaults for the Conversion Project; provided that (i) the parties mutually agree upon and set forth in the Project Plan (A) the costs of such installation work to be included in the Cost of Conversion, and (B) the specifications and standards applicable to such installation work, and (ii) such installation work is accomplished by the Government Entity in accordance with the applicable design and construction specifications provided by the Company and set forth in the Project Plan.
 - (b) Each estimate of the costs to be incurred by a party shall, at a minimum, be broken down by (i) the design and engineering costs, (ii) property and related costs, including any costs of obtaining operating rights, and (iii) construction costs, including and listing separately inspection, labor, materials, and equipment.
 - (c) All facilities of the Company installed as part of the Conversion Project shall be located, and all related property and operating rights shall be obtained, in the manner set forth in the applicable provisions of Schedule 74. The Project Plan shall describe in detail the location of such facilities, any related property and operating rights required to be obtained, and the relative responsibilities of the parties with respect thereto.
 - (d) The schedule set forth in the Project Plan for completing the Construction Work shall include, at a minimum, milestone time periods for completion of the Trenching, installation of ducts and vaults, the construction and removal of any Temporary Service, and the removal of overhead facilities.
 - (e) The Project Plan may include the specification of work and requirements for Government-Requested Upgrades and Company-Initiated Upgrades; provided, however, that the costs incurred by the Company with respect to the design and engineering of Company-Initiated Upgrades shall not be included in the costs reimbursable to the Company under this Agreement or the Construction Agreement. For purposes of the foregoing, (i) the term "Government-Requested Upgrade" shall mean any feature of the Underground Distribution System which is requested by the Government Entity and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced, and (ii) the term "Company-Initiated Upgrade" shall mean any feature of the Underground Distribution System which is required by the Company and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced. For

purposes of subparagraph (ii), above, a "comparable" system shall include, unless the parties otherwise agree, the number of empty ducts (not to exceed two (2), typically having a diameter of 6" or less) of such diameter and number as may be specified and agreed upon in the final Scope of Work necessary to replicate the load-carrying capacity (system amperage class) of the overhead system being replaced. For purposes of subparagraph (i), above, any empty ducts installed at the request of the Government Entity shall be a Government-Requested Upgrade.

- (f) The Project Plan shall set forth all specifications, design standards and other requirements for the Construction Work and the Conversion Project, including, but not limited to, the following:
 - (i) applicable federal and state safety and electric codes and standards, (ii) applicable construction and other standards of the Company, and (iii) applicable street design and other standards of the Government Entity which are in effect as of the commencement of the Conversion Project.

12. Upon request of the Government Entity, and in any event at the times specified in the Design Schedule, the Company shall provide periodic reports which compare the actual costs of the Design Work incurred to that point in time to the Design Cost Estimate, as changed or amended in accordance with paragraph 13, below. Further, if at any time the Company reasonably expects that the actual cost of the Design Work will exceed the Design Cost Estimate, as changed or amended in accordance with paragraph 13, below, the Company shall notify the Government Entity immediately. Upon receipt of the Company's notice, the Government Entity may, at its option,

- (a) notify the Company in writing that this Agreement is terminated; or
- (b) request a reasonably detailed explanation supported by documentation (reasonably satisfactory to the Government Entity) to establish that the actual costs in excess of the Design Cost Estimate are:
 - (i) reasonable,
 - (ii) consistent with the Scope of Work, and
 - (iii) consistent with sound engineering practices.

If the Government Entity requests an explanation, the Government Entity shall, within ten (10) business days after receipt of the explanation,

- (a) change the Scope of Work in accordance with paragraph 13, below, or
- (b) direct the Company to continue with the Design Work without a change in the Scope of Work, but reserving to the Government Entity the right to dispute the reasonableness of the costs to be paid the Company under paragraph 14, below, in accordance with the dispute resolution procedures in paragraph 16, below, or
- (c) direct the Company to discontinue performing the Design Work pending resolution, pursuant to paragraph 16, below, of any dispute regarding the reasonableness of the costs, in which event the Design Schedule will be adjusted to reflect the delay, or
- (d) notify the Company in writing that this Agreement is terminated.

In the event the Government Entity terminates this Agreement or discontinues the performance of the Design Work under subparagraph (c), above, for more than ninety (90) days, the Government Entity shall pay the Company for all costs incurred by the Company in its performance of the Design Work prior to the date the Company receives the Government Entity's notice of termination, plus any costs incurred by the Company for materials and other items ordered or procured by the Company with the prior authorization of the Government Entity in order to meet the schedule for the Conversion Project. The foregoing payment obligation shall survive any termination of this Agreement.

13. (a) Either party may, at any time, by written notice thereof to the other party, request changes to the Scope of Work (a "Request for Change"). No Request for Change shall be effective and binding upon the parties unless signed by an authorized representative of each party. If any approved Request for Change would cause an increase in the cost of, or the time required for, the performance of any part of the Design Work, an equitable adjustment in the Design Cost Estimate and the Design Schedule shall be made to reflect such increase. The parties shall negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If the parties are unable to agree upon the terms of the equitable adjustment, either party may submit the matter for resolution pursuant to the dispute resolution procedures in paragraph 16, below. Notwithstanding any dispute or delay in reaching agreement or arriving at a mutually acceptable equitable adjustment, each party shall, if requested by the other party, proceed with the Design Work in accordance with the Request for Change. Any such request to proceed must be accompanied by a written statement setting forth the requesting party's reasons for rejecting the proposed equitable adjustment of the other party.
- (b) The Design Cost Estimate and/or the Design Schedule shall be equitably adjusted from time to time to reflect any change in the costs or time required to perform the Design Work to the extent such change is caused by: (i) any Force Majeure Event under paragraph 17, below, (ii) the discovery of any condition within the Conversion Area which affects the scope, cost, schedule or other aspect of the Design Work and was not known by or disclosed to the affected party prior to the date of this Agreement, or (iii) any change or inaccuracy in any assumptions regarding the scope, cost, schedule or other aspect of the Design Work which are expressly identified by the parties in the final Scope of Work. Upon the request of either party, the parties will negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If, at any time thereafter, the parties are unable to agree upon the terms of the equitable adjustment, either party may submit the matter for resolution pursuant to the dispute resolution provisions in paragraph 16, below.
14. Upon completion of the Design Work (i.e., the date on which the Project Plan is final under paragraph 10, above, either by mutual agreement of the parties or as established through the dispute resolution procedures), the Government Entity shall pay the Company all actual, reasonable costs to the Company for the Design Work (which, if disputed in good faith by the Government Entity, may be submitted by either party for resolution pursuant to the dispute resolution provisions in paragraph 16, below), plus any costs incurred by the Company for materials and other items ordered by the Company with the prior authorization of the Government Entity in order to meet the schedule for the Conversion Project. If, thereafter, the Construction Agreement is executed by the parties and the Conversion Project is completed within five (5) years from the date of this Agreement, the full amount of the costs incurred by the Company in its performance of the Design Work shall be included in the "Shared Company Costs" under the Construction Agreement and any payment of such amounts under this Agreement shall be credited to the Government Entity in calculating the "Net Amount" payable under the Construction Agreement.
15. Within sixty (60) business days after completion of the Design Work, the Company shall issue to the Government Entity an itemized invoice for the amounts payable under this Agreement. Such invoice shall be in a form mutually agreed upon by the Company and the Government Entity and shall, at a minimum, itemize the design and engineering costs, including and listing separately inspection, labor, materials and equipment. In the event the Government Entity does not verify such invoice within ten (10) business days of receipt, the Government Entity shall provide a written request to the Company specifying the additional information needed to verify the invoice. The Company will provide, within a reasonable period after receipt of any request, such documentation and information as the Government Entity may reasonably request to verify such invoice. The Government Entity shall pay the Company all amounts payable under this Agreement within thirty (30) days after receipt of the Company's invoice. Payment as provided in this Agreement shall be full compensation for the Company's performance of the Design Work, including without limitation all services rendered and all materials, supplies, equipment, and incidentals necessary to complete the Design Work.

16. Dispute Resolution Procedures:

- (a) Any dispute, disagreement or claim arising out of or concerning this Agreement must first be presented to and considered by the parties. A party who wishes dispute resolution shall notify the other party in writing as to the nature of the dispute. Each party shall appoint a representative who shall be responsible for representing the party's interests. The representatives shall exercise good faith efforts to resolve the dispute. Any dispute that is not resolved within ten (10) business days of the date the disagreement was first raised by written notice shall be referred by the parties' representatives in writing to the senior management of the parties for resolution. In the event the senior management are unable to resolve the dispute within twenty (20) business days (or such other period as the parties may agree upon), each party may pursue resolution of the dispute through other legal means consistent with the terms of this Agreement. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.
 - (b) Any claim or dispute arising hereunder which relates to the Scope of Work, Design Cost Estimate, and Design Schedule under paragraph 4, above; the Project Plan under paragraph 10, above; or any Request for Change (including, without limitation, any associated equitable adjustment) under paragraph 13, above; and is not resolved by senior management within the time permitted under paragraph 16(a), above, shall be resolved by arbitration in Seattle, Washington, under the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The decision(s) of the arbitrator(s) shall be final, conclusive and binding upon the Parties. All other disputes shall be resolved by litigation in any court or governmental agency, as applicable, having jurisdiction over the Parties and the dispute.
 - (c) In connection with any arbitration under this paragraph 16, costs of the arbitrator(s), hearing rooms and other common costs shall be divided equally among the parties. Each party shall bear the cost and expense of preparing and presenting its own case (including, but not limited to, its own attorneys' fees); provided, that, in any arbitration, the arbitrator(s) may require, as part of his or her decision, reimbursement of all or a portion of the prevailing party's costs and expenses by the other party.
 - (d) Unless otherwise agreed by the parties in writing, the parties shall continue to perform their respective obligations under this Agreement during the pendency of any dispute.
17. In the event that either party is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond its reasonable control (a "Force Majeure Event"), then that party's performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God; storm, earthquake or other condition which necessitates the mobilization of the personnel of a party or its contractors to restore utility service to customers; laws, regulations, rules or orders of any governmental agency; sabotage; strikes or similar labor disputes involving personnel of a party, its contractors or a third party; or any failure or delay in the performance by the other party, or a third party who is not an employee, agent or contractor of the party claiming a Force Majeure Event, in connection with the Work or this Agreement. Upon removal or termination of the Force Majeure Event, the party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Agreement or procure a substitute for such obligation. The parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event.
18. This Agreement is subject to the General Rules and Provisions set forth in Tariff Schedule 80 of the Company's electric Tariff G and to Schedule 74 of such Tariff as approved by the Washington Utilities and Transportation Commission and in effect as of the date of this Agreement.

19. Any notice under this Agreement shall be in writing and shall be faxed (with a copy followed by mail or hand delivery), delivered in person, or mailed, properly addressed and stamped with the required postage, to the intended recipient as follows:

If to the Government Entity:

City of SeaTac
4800 South 188th Street
SeaTac, WA 98188-8605
Attn: Florendo Cabudol

Fax: 206-973-4740

If to the Company:

Puget Sound Energy, Inc.
6905 South 228th Street
Kent, WA 98032
Attn: Doug Corbin

Fax: 253-395-6882

Either party may change its address specified in this paragraph by giving the other party notice of such change in accordance with this paragraph.

20. This Agreement shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Washington (without reference to rules governing conflict of laws), except to the extent such laws may be preempted by the laws of the United States of America.
21. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and all other agreements and understandings of the Parties, whether written or oral, with respect to the subject matter of this Agreement are hereby superseded in their entireties.
22. This Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, purchasers, and transferees of the parties, including but not limited to, any entity to which the rights or obligations of a party are assigned, delegated, or transferred in any corporate reorganization, change of organization, or purchase or transfer of assets by or to another corporation, partnership, association, or other business organization or division thereof.

Government Entity:

Company:

THE CITY OF SEATAC

PUGET SOUND ENERGY, INC.

BY _____

BY _____

ITS _____

ITS Municipal Liaison Manager

Date Signed _____

Date Signed _____

Approved as to form:



Puget Sound Energy, Inc.
6905 South 228th Street
Kent, WA 98032

April 19, 2012

Mr. Florendo Cabudol
City of SeaTac
4800 South 188th Street
SeaTac, WA 98188-8605

Re: Military Rd Improvements (S. 176th to S. 166th), Schedule 74 Conversion
Design Cost Estimate & Proposed Schedule
PSE Work Order #101077155

Dear Mr. Cabudol:

Attached please find for your review Puget Sound Energy's (PSE) estimate to perform the design work for this underground conversion project (the Design Cost Estimate), and (2) proposed schedule to complete the design work (the Design Schedule). The estimate is based on the scope of work developed by PSE for conversion of the existing overhead electrical distribution facilities within the conversion area.

In addition to the Design Cost Estimate please review the following:

1. City of SeaTac (City) Project Description: Along Military Rd, between roughly S 176th St and S 166th St.
2. Schedule: The Design Cost Estimate is valid for 90 calendar days from the date of this letter. The preliminary design (fit/no-fit) with any necessary additional operating rights, submitted to the City within 30 business days after the design Notice to Proceed is provided. The final design is to be submitted to the City within 60 business days after the City approves the preliminary design.
3. The Design Cost Estimate is based on City plans dated December 7, 2011 marked 30%.
4. Installation of Vault and Ducts: The City plans to install the vault and ducts.
5. Assumptions and Contingencies:
 - Once the City is provided with the Preliminary Design, it is assumed that they will respond with either an approval or a list of requested changes. Once the initial changes are implemented, any subsequent changes will be addressed by Change Order.
 - This proposal is to provide two plan sets that meet PSE specifications. It does not include additional design or information to meet requirements of others or review of PSE design that may be incorporated into other's plan sets.

- This proposal is to provide a PSE electric plan set. It will not include a complete civil excavation design that incorporates other utilities.
- 6. Vaults that are flush with grade will be placed in the sidewalk and vaults with surface mounted equipment will be placed behind the sidewalk.
- 7. PSE Design Estimate: \$57,000

We look forward to continuing to work with the City on this project. Please feel free to contact me at 253-395-6867 if you have any questions.

Sincerely,



Douglas L. Corbin
Municipal Liaison Manager

Attachment: Design Estimate

Cc: T. Quann
J. McConachie
B. Swart



Date: 4/18/2012

Project Title: Military Rd Conversion, 166th to 176th

Project Description: Convert the existing OH Distribution system to UG along Military Rd from 166th St to 176th St

Rate Schedule: 74

Project Manager / Phone #: Dennis Booth 253-606-4787

Project Engineer / Phone #: Chris Tobin 253-841-6252

Municipal Liaison Mgr / Phone #: Doug Corbin 253-395-6867

Project #: 101077155

Revision #: 0

Revision Date: _____

Design Costs Estimate Summary^{1,2}

	100% Government Entity Reimbursable Costs						100% PSE Costs Estimate	Design Costs Totals Estimate
	Shared Costs ³	Private Conversion	Gov Req Upgrade	Temporary Services	Prior Conv/Reloc Within 5 Years	Total 100% GE Reimbursable Costs		
	Estimate	Estimate	Estimate	Estimate	Estimate	Estimate		
Design & Engineering								
Labor	\$ 2,300	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,300
Material	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Equipment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Service Provider Outside Services	\$ 45,600	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 45,600
Overhead	\$ 9,100	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 9,100
Design Costs Totals	\$ 57,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 57,000

Notes:

¹ Estimate of Company design work costs prepared in accordance with Section 3 of Schedule 74 Design Agreement

² All amounts shown in this estimate are rounded up to the next \$100

³ Shared Costs are allocated 40% to the Government Entity and 60% to the Company if the Conversion Project is completed

Estimated Amount Due At Completion of Design Work	\$ 57,000
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SeaTac City Council

REQUEST FOR COUNCIL ACTION

Department Prepared by: Public Works

Agenda Bill #: 3425

TITLE: A Motion authorizing the City Manager to execute a construction contract and authorizing expenditures for the South 164th Street Sidewalk Improvements.

April 27, 2012	
<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Info. Only <input type="checkbox"/> Other	
Date Council Action Requested: <u>5/22/2012 RCM</u>	
Ord/Res Exhibits: _____	
Review Dates: <u>5/8/2012 CSS</u>	
Prepared By: <u>Toli Khlevnoy, Civil Engineer</u>	
Director: <u><i>Shawn W. Mot</i></u>	City Attorney: <u><i>Mark S. Johnson, Sr. Asst. City Atty</i></u>
Finance: <u><i>Aaron Ault</i></u>	BARS #: <u>307.000.11.595.61.63.184</u>
City Manager: <u><i>Todd Ruth</i></u>	Applicable Fund Name: <u>Transportation CIP (307)</u>

AA
3/27

SUMMARY: This Motion awards the South 164th Street Sidewalk Improvements construction contract to R.W. Scott Construction Co. and authorizes total construction expenditures.

DISCUSSION / ANALYSIS / ISSUES: The South 164th Street Sidewalk Improvements project includes new pervious concrete sidewalks on both sides of the road, curb and gutter, asphalt overlay and storm drainage facilities. The project limits are between 34th Avenue South and Military Road South. This project provides improved pedestrian access on a safe walking route to McMicken Heights Elementary School.

The South 164th Street Sidewalk Improvements were advertised in April. Nine bids were received and opened on April 25, 2012. R.W. Scott Construction Company was the apparent low bidder with a bid 23% below the Engineer's Estimate and 3% below the next bid. R.W. Scott Construction Co. is currently constructing the South 154th Street Improvements for the City and is an experienced contractor qualified to perform the work.

RECOMMENDATION(S): It is recommended the Motion be carried.

FISCAL IMPACT: The total construction cost is anticipated to be \$1,003,100.47. The project is to be funded by City 307 transportation fund. The current 2012 account balance in this line item is \$1,329,180.76.

The project construction expenditure authorization and funding are as follows:

<u>Expenditure Authorization:</u>	
Construction Contract	\$ 893,727.70
Contingency (10%)	\$ 89,372.77
Materials Testing King Co.	\$ 10,000.00
Construction Inspection Overtime	<u>\$ 10,000.00</u>
Total	\$1,003,100.47

Revenue Estimate:

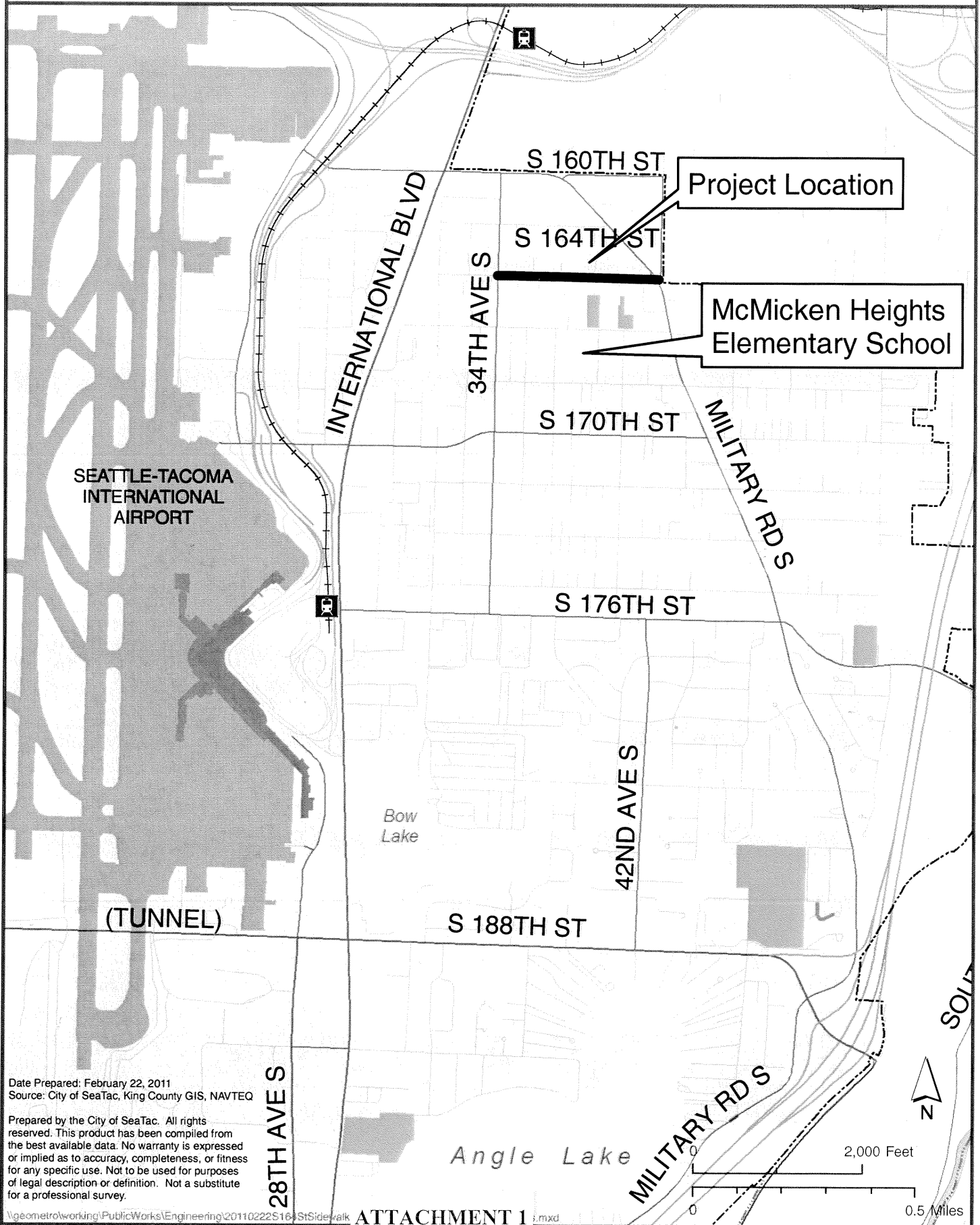
City Fund 307 (Transportation CIP)	\$1,003,100.47
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ALTERNATIVE(S): 1) Council may reject all bids and direct rebidding of the project; however, it would be highly unlikely that rebidding the project would result in a lower bid; 2) Council may direct staff to eliminate or delay the project. Delaying the project may lead to cost increases due to construction materials price escalation and inflation.

ATTACHMENTS: 1) Vicinity Map; 2) Bid Results

2011-2012 Neighborhood Pedestrian Improvements

City of SeaTac



Date Prepared: February 22, 2011
Source: City of SeaTac, King County GIS, NAVTEQ

Prepared by the City of SeaTac. All rights reserved. This product has been compiled from the best available data. No warranty is expressed or implied as to accuracy, completeness, or fitness for any specific use. Not to be used for purposes of legal description or definition. Not a substitute for a professional survey.

CITY OF SEATAC
CALL FOR South 164th Street Sidewalk Improvements Project BIDS TABULATION

CALL FOR BIDS ON: South 164th Street Sidewalk Improvements Project (ST-828)
 Department/Contact: PW/Engineering
 Ad Date/ Publication: Seattle Times 04/11/12 and 04/18/12; Daily Journal 04/11/12 and 04/18/12
 Pre-Submittal Consultant Conference: N/A
 Submission Deadline: 04/25/12 at 11:00 am
 Submission to Council: N/A
 Bid Opening: 04/25/11 at 11:15 am
 Personal Interviews: N/A
 Bid Award Date: N/A
 Estimate: \$ 1,159,102

BIDS RECEIVED FROM:

Name/Address/Phone/FAX	Date/Time Method	Tabulation
Kar-Vel Construction PO Box 58275 Renton, Wa 98058	04/25/12 Hand Delivered 10:03 AM	Bid Bond: <u>Yes</u> Total Bid: <u>\$1,260,788.00</u> Addenda 1: <u>Yes</u>
Road Construction Northwest, Inc. PO Box 188 Renton, WA 98057-0188	04/25/12 Hand Delivered 10:33 AM	Bid Bond: <u>Yes</u> Total Bid: <u>\$1,146,806.50</u> Addenda 1: <u>Yes</u>
Johansen Excavating, Inc. 28215 – 112 th Street East PO Box 674 Buckley, WA 98321	04/25/12 Hand Delivered 10:34 AM	Bid Bond: <u>Yes</u> Total Bid: <u>\$1,072,748.83</u> Addenda 1: <u>Yes</u>

Name/Address/Phone/FAX	Date/Time Method	Tabulation
Tucci & Sons Inc. 4224 Waller Road Tacoma, WA 98443	04/25/12 Hand Delivered 10:37 AM	Bid Bond: <u>Yes</u> Total Bid: <u>\$999,789.00</u> Addenda 1: <u>Yes</u>
West Coast Construction Co., Inc. PO Box 419 Woodinville, WA 98072	04/25/12 Hand Delivered 10:37 AM	Bid Bond: <u>Yes</u> Total Bid: <u>\$1,041,765.00</u> Addenda 1: <u>Yes</u>
Westwater Construction Company 31833 Kent-Blk Diamond Rd. Auburn, WA 98092	04/25/12 Hand Delivered 10:38 AM	Bid Bond: <u>Yes</u> Total Bid: <u>\$1,106,810.00</u> Addenda 1: <u>Yes</u>
R.W. Scott Construction Co. General Contractors 4005 West Valley Hwy Suite A Auburn, WA 98001	04/25/12 Hand Delivered 10:40 AM	(Apparent Lowest Bidder) Bid Bond: <u>Yes</u> Total Bid: <u>\$893,727.70</u> Addenda 1: <u>Yes</u>
HOFFMAN Construction, Inc. PO Box 845 Enumclaw, WA 98022	04/25/12 Hand Delivered 10:53 AM	Bid Bond: <u>Yes</u> Total Bid: <u>\$918,008.20</u> Addenda 1: <u>Yes</u>
Archer Construction Inc. 7855 S. 206 th St. Kent, WA 98032	04/25/12 Hand Delivered 10:54 AM	Bid Bond: <u>Yes</u> Total Bid: <u>\$1,085,035.44</u> Addenda 1: <u>Yes</u>

SeaTac City Council
REQUEST FOR COUNCIL ACTION

Department Prepared by: Human Resources

Agenda Bill #: 3428

TITLE: An Ordinance related to employment agreements for City Department Head level positions.

May 4, 2012	
<input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Info. Only <input type="checkbox"/> Other	
Date Council Action Requested: <u>RCM 05/08/2012</u>	
Ord/Res Exhibits: _____	
Review Dates: <u>Council Study Session 04/24/2012, 05/08/2012</u>	
Prepared By: <u>Anh Hoang, Human Resources Director</u>	
Director: <u>Johnson for</u>	City Attorney: <u>Mary Mirante Bartolo</u>
Finance: <u>Todd Curtis FOR AARON ANTON</u>	BARS #: _____ Various
City Manager: <u>Todd Curtis</u>	Applicable Fund Name: <u>Various</u>

SUMMARY: The proposed Ordinance authorizes the City Manager to execute employment agreements for Department Head level positions. Such employment agreements may contain provisions for severance upon termination of employees who are hired into "at-will" positions.

DISCUSSION / ANALYSIS / ISSUES: All regular employees of the City with the exception of the City Manager and City Attorney currently have a "just cause" employment relationship with the City, which means these employees cannot be disciplined or separated from employment without "just cause." The City Administration wishes to change the employment relationship for Department Head level employees who are hired after adoption of this Ordinance to an "at-will" employment relationship.

To aid the City to recruit and retain talent, and to provide due consideration for new hire employees for some personal security, the City administration is requesting the authorization to negotiate and sign employment agreements for Department Head level positions, to include severance pay for situations in which the employment relationship is ended by the City without "cause." Employees who voluntarily resign from the City for any reason, or employees who are terminated "for cause" would not be eligible for the severance package.

RECOMMENDATION(S): It is recommended that the Ordinance be adopted.

FISCAL IMPACT:

Each new position will be evaluated on a case by case basis. Therefore, the exact fiscal impact is unknown.

ALTERNATIVE(S): Do not adopt the revised Ordinance. This would mean the allowance for the City Manager to negotiate and sign employment agreements with Department Head new hires would not be adopted. City Administration would likely keep the directors as "just cause" employees due to the potential loss in the City's ability to recruit and retain executive level talent.

ATTACHMENTS: None.

ORDINANCE NO. _____

AN ORDINANCE of the City Council of the City of SeaTac, Washington, related to employment agreements for City Department Head level positions.

WHEREAS, it is appropriate to allow the City Manager to execute employment agreements for Department Head level positions, which may include severance pay consideration for employees who are hired into “at-will” positions in the City;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SEATAC, WASHINGTON, DO ORDAIN as follows:

Section 1. For Department Head level positions, the City Manager is authorized to negotiate and sign employment agreements with individuals who are employed “at-will” to serve at the pleasure of the City Manager. These employment agreements may include severance pay for separations of employment without just cause.

Section 2. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances shall not be affected.

Section 3. This Ordinance shall be in full force and effect five (5) days after passage and publication as provided by law.

Section 4. This Ordinance shall not be codified.

ADOPTED this _____ day of _____, 2012, and signed in authentication thereof on this _____ day of _____, 2012.


CITY OF SEATAC

Tony Anderson, Mayor

ATTEST:

Kristina Gregg, City Clerk

Approved as to Form:



Mary E. Mirante Bartolo, City Attorney

[Effective Date: _____]

[~~Director Positions—Employment Agreements~~]

6. PRESENTATIONS:

- **Edward Byrne Memorial Justice Assistant Grant Program** (*10 minutes*)

By: Judge Elizabeth Cordi-Bejarano / Court Administrator Paulette Revoir

- **Public Safety Statistics** (*10 minutes*)

By: Police Chief Jim Graddon

7. PRESENTATIONS:

- **Highline area Food Bank** *(5 minutes)*

By: Director Mike Werle

- **South Link Extension Project Update** *(30 minutes)*

By: Airport Link Project Director Miles Haupt

**PAYROLL/CLAIMS VOUCHERS WERE SENT
ELECTRONICALLY TO THE CITY COUNCIL**

**A HARD COPY OF THE VOUCHERS
CAN BE VIEWED IN THE CITY CLERK'S OFFICE**

**PAYROLL/CLAIMS VOUCHERS ARE ALSO
AVAILABLE ON OUR CITY WEBSITE**

www.ci.seatac.wa.us

City Council/City Manager Travel Summary
Consent Agenda: 5.8.12

Travel Pre-Approval Requests:

Rick Forschler

AWC Annual Conference

June 19-22 AWC Annual Conference

Vancouver, WA

Request is for registration only: Early bird until May 8: \$325

AWC Registration includes some, but not all meals.

The City Council has budgeted for two Councilmembers to attend in 2012 with a budget of \$905 each.

Travel Expense Approval: None

SeaTac City Council
REQUEST FOR COUNCIL ACTION

Department Prepared by: Community & Economic Development

Agenda Bill #:3419

TITLE: A Motion authorizing the City Manager to enter into a five-year lease agreement in the SeaTac Center with Sahra Abdulle, doing business as SeaTac Market / Sunset International Furniture.

<i>April 19, 2012</i>	
<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Info. Only <input type="checkbox"/> Other	
Date Council Action Requested:	<u>RCM 5-8-2012</u>
Ord/Res Exhibits:	_____
Review Dates:	<u>CSS 4-24-2012</u>
Prepared By:	<u>Jeff Robinson, Economic Development Manager</u>
Director:	<u><i>[Signature]</i></u> City Attorney: <u><i>Mark A Johnson, Jr Asst City Atty</i></u>
Finance:	<u><i>[Signature]</i></u> BARS #: <u>108.362.50.00.002</u>
City Manager:	<u><i>[Signature]</i></u> Applicable Fund Name: <u>Building Management Fund</u>

[Handwritten initials]

SUMMARY: This Motion authorizes the City Manager to execute a sixty month lease with one five-year option at the City's discretion with the SeaTac Market / Sunset International Furniture in the north building of the SeaTac Center in space that was most recently occupied by the Monte Carlo nightclub. The lease and options will both include a redevelopment clause that can be exercised at the City's discretion. The new full service market is planning on offering a wide range of canned goods, including fresh produce, meats and seafood.

DISCUSSION / ANALYSIS / ISSUES: The proposed lease is for 24,500 square feet that has been empty since the Monte Carlo Nightclub vacated the space in August, 2010. Since that time the space has been shown to over 20 prospective tenants all of which required an initial lease term longer than five years and substantial investment by the City in tenant improvements. For this lease the tenant will provide an advance of \$10,000.00 as prepayment for the fifth month's rent and triple net charges and a \$10,000.00 security deposit.

The tenant will receive four month's free rent but will pay the triple net charges as the tenant improvements and fixturing of the space is completed. The agreement also includes a personal guarantee of the rents due over the initial five-year term.

RECOMMENDATION(S): It is recommended that the Motion be carried.

FISCAL IMPACT: The total revenue generated by the lease over the initial five year term is approximately \$930,000, including triple net charges. The agreement includes a leasing commission to the Andover Company equal to 5% or approximately \$40,850.00 and a maximum fixturing allowance for the tenant of \$10,000.00. In addition, the City will clean the kitchen area and remove the carpeting on the first floor for an estimated cost of approximately \$10,000.00.

ALTERNATIVE(S): Do not carry the Motion. However, the space will remain vacant until such time as another tenant has been identified which would likely require a much larger expenditure by the City for tenant improvements.

ATTACHMENTS: 1) Proposed Lease Agreement



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RETAIL LEASE AGREEMENT
(Multi Tenant - Triple Net)

THIS RETAIL LEASE AGREEMENT (the "Lease") is entered into and effective as of this 28th day of March, 2012, between The City of SeaTac ("Landlord"), and Sahra H. Abdulle, dba SeaTac Market (Tenant). Landlord and Tenant agree as follows:

1. LEASE SUMMARY.

a. Trade Name. SeaTac Market.

b. Leased Premises. The leased commercial real estate i) consists of an agreed gross leasable area ("GLA") of 24,500 square feet as outlined on the floor plan attached as Exhibit A (the "Premises"), ii) is located on the land legally described on attached Exhibit B; and iii) is commonly known as 15221 International Blvd., North Building, SeaTac, WA (suite number and address). The Premises do not include, and Landlord reserves, the exterior walls and roof of the building in which the Premises are located (the "Building"), the land beneath the Building, and the pipes and ducts, conduits, wires, fixtures, and equipment above the suspended ceiling, and the structural elements of the Building. The Building, the land upon which it is situated, all other improvements located on such land, and all Common Areas appurtenant to the Building are referred to as the "Property." The Building and all other buildings on the Property as of the date of this Lease consist of a total agreed GLA of 66,924 square feet. GLA as used herein shall mean: 1) as to each building or part thereof within the Property, including Tenant's Premises, the actual number of square feet of ground floor space measured to the exterior faces of exterior walls and to the center of party walls, including columns, stairs, elevators and escalators, but excluding exterior ramps and loading docks; and 2) the actual number of square feet of any area in the Property exclusively used by a particular tenant, measured from the exterior faces of outside walls, fences, or boundary markers.

c. Lease Commencement Date. The term of this Lease shall be for a period of 64 months and shall commence on June 1, 2012 or such earlier or later date as provided in Section 3 (the "Commencement Date").

d. Lease Termination Date. The term of this Lease shall terminate at midnight on September 30, 2017 or such earlier or later date as provided in Section 3 (the "Termination Date"). Tenant shall have no right or option to extend this Lease, unless otherwise set forth in a rider attached to this Lease (e.g., Option to Extend Rider, CBA Form OR).

e. Base Rent. The base monthly rent shall be (check one): [] \$____, or [X] according to the Rent Rider attached hereto ("Base Rent"). Rent shall be payable at Landlord's address shown below in Section 1(j), or such other place designated in writing by Landlord.

f. Percentage Rent.

Period: _____ Percentage Rent: _____
percent (_____ %) of Gross Sales exceeding a breakpoint of \$ _____
percent (_____ %) of Gross Sales exceeding a breakpoint of \$ _____

(SA)

(SA)



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_____ percent (_____ %) of Gross Sales exceeding a breakpoint of \$ _____
 _____ percent (_____ %) of Gross Sales exceeding a breakpoint of \$ _____
 _____ percent (_____ %) of Gross Sales exceeding a breakpoint of \$ _____

g. Prepaid Rent. Upon execution of this Lease, Tenant shall deliver to Landlord the sum of \$10,000.00 as prepaid rent *INCLUDING TRIPLE NETS*, to be applied to the Rent due for months 5 through _____ of the Lease.

h. Security Deposit. Upon execution of this Lease, Tenant shall deliver to Landlord the sum of \$10,000.00 to be held as a security deposit pursuant to Section 5 below. The security deposit shall be in the form of (check one): cash, or letter of credit according to the Letter of Credit Rider (CBA Form LCR) attached hereto.

i. Permitted Use. The Premises shall be used only for wholesale and retail market and for no other purpose without the prior written consent of Landlord (the "Permitted Use").

j. Notice and Payment Addresses.

Landlord: <u>City of SeaTac</u>	<u>Colliers International</u>
<u>4800 South 188th Street</u>	<u>601 Union Street, Ste. 5300</u>
<u>SeaTac, WA 98188-8605</u>	<u>Seattle, WA 98101</u>
Fax No.: <u>Attn: Jeff Robinson</u>	<u>Attn: Gardner Erickson</u>
Email: <u>jrobinson@ci.seatac.wa.us</u>	

Tenant: Sahra H. Abdulle
4238 S. 137th Street
Tukwila, WA 98168
 Fax No.: _____
 Email: sahraabdulle@yahoo.com

k. Tenant's Pro Rata Share. Landlord and Tenant agree that Tenant's Pro Rata Share is 36.6 %, based on the ratio of the agreed GLA of the Premises to the agreed GLA of the Building and all other buildings on the Property as of the date of this Lease. Any adjustment to the Premises' or Building's GLA measurements will be reflected in an adjustment to Tenant's Base Rent or Pro Rata Share. Tenant acknowledges that the GLA of certain tenants at the Property may be excluded from the total GLA of the Property for purposes of calculating Tenant's Pro Rata Share of Common Area Charges or other expenses.

2. PREMISES.

a. Lease of Premises. Landlord leases to Tenant, and Tenant leases from Landlord the Premises upon the terms specified in this Lease.

b. Acceptance of Premises. Except as specified elsewhere in this Lease, Landlord makes no representations or warranties to Tenant regarding the Premises, including the structural



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condition of the Premises or the condition of all mechanical, electrical, and other systems on the Premises. Except for any tenant improvements to be completed by Landlord as described on attached Exhibit C (the "Landlord's Work"), Tenant shall be responsible for performing any work necessary to bring the Premises into a condition satisfactory to Tenant. By signing this Lease, Tenant acknowledges that it has had an adequate opportunity to investigate the Premises; acknowledges responsibility for making any corrections, alterations and repairs to the Premises (other than the Landlord's Work); and acknowledges that the time needed to complete any such items shall not delay the Commencement Date.

c. Tenant Improvements. Attached Exhibit C sets forth all Landlord's Work, if any, and all tenant improvements to be completed by Tenant (the "Tenant's Work"), if any, that will be performed on the Premises. Responsibility for design, payment and performance of all such work shall be as set forth on attached Exhibit C. If Tenant fails to notify Landlord of any defects in the Landlord's Work within thirty (30) days of delivery of possession to Tenant, Tenant shall be deemed to have accepted the Premises in their then condition. If Tenant discovers any major defects in the Landlord's Work during this 30-day period that would prevent Tenant from using the Premises for the Permitted Use, Tenant shall notify Landlord and the Commencement Date shall be delayed until after Landlord has notified Tenant that Landlord has corrected the major defects and Tenant has had five (5) days to inspect and approve the Premises. The Commencement Date shall not be delayed if Tenant's inspection reveals minor defects in the Landlord's Work that will not prevent Tenant from using the Premises for the Permitted Use. Tenant shall prepare a punch list of all minor defects in Landlord's Work and provide the punch list to Landlord, which Landlord shall promptly correct.

3. TERM. The term of this Lease shall commence on the Commencement Date specified in Section 1, or on such earlier or later date as may be specified by notice delivered by Landlord to Tenant advising Tenant that the Premises are ready for possession and specifying the Commencement Date, which shall not be less than _____ days (thirty (30) days if not filled in) following the date of such notice.

a. Early Possession. If Landlord permits Tenant to possess and occupy the Premises prior to the Commencement Date specified in Section 1, then such early occupancy shall not advance the Commencement Date or the Termination Date set forth in Section 1, but otherwise all terms and conditions of this Lease shall nevertheless apply during the period of early occupancy before the Commencement Date.

b. Delayed Possession. Landlord shall act diligently to make the Premises available to Tenant; provided, however, neither Landlord nor any agent or employee of Landlord shall be liable for any damage or loss due to Landlord's inability or failure to deliver possession of the Premises to Tenant as provided in this Lease. If possession is delayed, the Commencement Date set forth in Section 1 shall also be delayed. In addition, the Termination Date set forth in Section 1 shall be modified so that the length of the Lease term remains the same. If Landlord does not deliver possession of the Premises to Tenant within _____ days (sixty (60) days if not filled in) after the Commencement Date specified in Section 1, Tenant may elect to cancel this Lease by giving written notice to Landlord within ten (10) days after such time period ends. If Tenant gives notice of cancellation, the Lease shall be cancelled, all prepaid rent and security deposits shall be refunded to Tenant, and neither Landlord nor Tenant shall have any further obligations to the other. The first "lease year" shall commence on the Commencement Date and shall end on the date which is twelve (12) months from the end of the month in which the



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Commencement Date occurs. Each successive lease year during the initial term and any extension terms shall be twelve (12) months, commencing on the first day following the end of the preceding lease year. To the extent that the tenant improvements are not completed in time for the Tenant to occupy or take possession of the Premises on the Commencement Date due to the failure of Tenant to fulfill any of its obligations under this Lease, the Lease shall nevertheless commence on the Commencement Date.

4. RENT.

a. Payment of Rent. Tenant shall pay Landlord without notice, demand, deduction or offset, in lawful money of the United States, the Base Rent stated in Section 1 in advance on or before the first day of each month during the Lease term beginning on (check one): the Commencement Date, or _____ (if no date specified, then on the Commencement Date), and shall also pay any other additional payments due to Landlord ("Additional Rent"), including Percentage Rent and Common Area Charges (collectively "rent" or "Rent") when required under this Lease. Payments for any partial month at the beginning or end of the Lease term shall be prorated. All payments due to Landlord under this Lease, including late fees and interest, shall be also constitute Additional Rent, and upon failure of Tenant to pay any such costs, charges or expenses, Landlord shall have the same rights and remedies as otherwise provided in this Lease for the failure of Tenant to pay rent.

b. Triple Net Lease. This Lease is what is commonly called a "Net, Net, Net" or "triple-net" Lease, which means that, except as otherwise expressly provided herein, Landlord shall receive all Base Rent free and clear of any and all other impositions, taxes, liens, charges or expenses of any nature whatsoever in connection with the ownership and operation of the Premises. In addition to Base Rent, Tenant shall pay to the parties respectively entitled thereto, or satisfy directly, all Additional Rent and other impositions, insurance premiums, repair and maintenance charges, and any other charges, costs, obligations, liabilities, requirements, and expenses, including without limitation the Common Area Charges described in Section 8, which arise with regard to the Premises or may be contemplated under any other provision of the Lease during its term, except for costs and expenses expressly made the obligation of Landlord in this Lease.

c. Late Charges; Default Interest. If any sums payable by Tenant to Landlord under this Lease are not received within five (5) business days after their due date, Tenant shall pay Landlord an amount equal to the greater of \$100 or five percent (5%) of the delinquent amount for the cost of collecting and handling such late payment in addition to the amount due and as Additional Rent. All delinquent sums payable by Tenant to Landlord and not paid within five (5) business days after their due date shall, at Landlord's option, bear interest at the rate of fifteen percent (15%) per annum, or the highest rate of interest allowable by law, whichever is less (the "Default Rate"). Interest on all delinquent amounts shall be calculated from the original due date to the date of payment.

c. Less Than Full Payment. Landlord's acceptance of less than the full amount of any payment due from Tenant shall not be deemed an accord and satisfaction or compromise of such payment unless Landlord specifically consents in writing to payment of such lesser sum as an accord and satisfaction or compromise of the amount which Landlord claims. Any portion that



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remains to be paid by Tenant shall be subject to the late charges and default interest provisions of this Section 4.

d. Percentage Rent. In addition to Base Rent, Tenant shall pay to Landlord Percentage Rent at the rate specified in Section 1 above.

e. Gross Sales Defined. "Gross Sales" shall mean the entire amount of the actual sale price, whether for cash, credit or otherwise, of all sales of goods and services and all other income and receipts whatsoever of all business conducted in, at, or on the Premises, including, without limitation: (i) mail, catalogue, telephone, facsimile, internet, electronic, video and computer orders, and orders by means of other technology-based systems whether now existing or hereafter developed, and other orders received, placed or filled at the Premises, (ii) deposits not refunded to purchasers, (iii) orders taken at the Premises although filled elsewhere, (iv) gross receipts from vending and game machines, whether coin-, card-, computer-, or credit card-operated or otherwise (not to be construed to authorize Tenant to install vending or game machines unless specifically set forth elsewhere in this Lease), (v) sale price of gift and merchandise certificates, (vi) payments from other parties for shelf or advertising space at the Premises, (vii) the full value of all consideration other than money received, (viii) all other gross income or receipts from any business or operation in, at, or on the Premises, and (ix) Gross Sales (as defined in this subsection) by any subtenant, concessionaire or licensee. However, Gross Sales shall not include, but Tenant shall keep separate records of, the following as part of Tenant's Records: (a) returns to shippers or manufacturers, (b) proceeds from the sale of used trade fixtures, (c) any cash or credit refunds made upon any sale made in, at, or on the Premises where the merchandise is returned by the purchaser, (d) any sales or excise tax imposed by any duly constituted governmental authority (provided that no income or franchise tax; capital stock tax; tax based upon gross receipts, assets or net worth; or similar tax shall be deducted from Gross Sales), and (e) the exchange of merchandise between the stores and warehouses of Tenant, if any, where such exchange of merchandise is made solely for the convenient operation of the business of Tenant and not for the purpose of consummating a sale that has previously been made in, at, or on the Premises or for the purpose of depriving Landlord of the benefit of a sale that otherwise would be made in, at, or on the Premises. No deduction shall be allowed for any uncollected or uncollectible amounts or reserves therefore, nor for cost of products or services sold, or other costs, charges or expenses of purchasing, financing, selling, transportation, overhead or taxes except as expressly provided herein. Trade-ins shall not reduce the sale price of the item sold for purposes of calculating Gross Sales. Layaway, credit and installment sales shall be included in the month in which the goods or services are delivered or provided, or in which any portion of the payment is received, whichever first occurs, regardless of when or whether full payment is received.

f. Gross Sales Records. Tenant shall ensure that the business of Tenant and of any subtenant, licensee or concessionaire in, at or on the Premises is operated such that the following books and records are prepared, preserved and maintained in accordance with generally accepted accounting principles: (i) daily dated, sealed, continuous, cash register tapes, (ii) serially numbered sales slips, (iii) settlement report sheets of transactions with subtenants, concessionaires and licensees, (iv) bank statements, (v) general ledger or summary record of all receipts and disbursements from operations in, at or from the Premises, (vi) state and local sales and use tax returns, and (vii) such other records that would normally be kept pursuant to generally accepted accounting principles, or as the Landlord may reasonably require in order to



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determine Gross Sales hereunder ("Tenant's Records"). Tenant shall retain Tenant's Records at the Premises or at the home or regional office of Tenant for at least three (3) years from the end of the lease year to which they are applicable or, if any audit is required or a controversy should arise between the parties regarding Percentage Rent, until such audit or controversy is terminated, even though such retention period may be after the expiration of the Term or earlier termination of this Lease.

f. Gross Sales Statements. Tenant shall provide Landlord with a monthly statement of Gross Sales, including copies of any sales or use tax returns or statements filed with or prepared for local or state authorities during such period, within fifteen (15) days after the end of each calendar month, signed by an authorized representative, which shall show Gross Sales and an itemization of any exclusions or deductions therefrom for such month, as well as year-to-date amounts for the current lease year. Percentage Rent shall be paid on a monthly basis commencing with the first month in each year in which Tenant's Gross Sales for such lease year exceed the Breakpoint set forth in Section 1 above. If any Percentage Rent is due for any month, the payment shall accompany the monthly statement. In addition to regular monthly statements, Tenant shall provide an annual statement within sixty (60) days after the end of each Lease Year, which shall show the total amount of Gross Sales for such lease year, and shall be certified to be true, complete and correct by an independent certified public accountant reasonably satisfactory to Landlord, or at Tenant's option by Tenant's chief financial officer. If such annual statement shows that Tenant underpaid Percentage Rent for the lease year, Tenant shall include the additional amount with the yearly statement, and if the yearly statement shows that Tenant overpaid Percentage Rent, Landlord shall provide a credit or refund. Tenant shall require that any subtenant, licensee or concessionaire furnish similar statements.

g. Audits. Landlord may from time to time (but not more frequently than once each calendar year), upon at least ten (10) days' notice to Tenant, cause a complete audit or examination to be made of Tenant's Records and such books and records of any subtenant, licensee or concessionaire for all or any part of the three (3) lease years immediately preceding such notice. During the audit, Landlord or its authorized representatives shall have full and free access to Tenant's Records and the right to require that Tenant, its agents and employees furnish information or an explanation of the information as may be necessary for a proper examination and audit. If an audit or examination discloses that any of Tenant's statements of Gross Sales understates Gross Sales made during any lease year by three percent (3%) or more, or if Tenant shall have failed to furnish Landlord any monthly Gross Sales statements during any lease year or shall have failed to prepare and maintain Tenant's Records as required by this Lease, Tenant shall pay Landlord the cost of the audit or examination, including travel and related expenses, and any deficiency in Percentage Rent, with interest at the Default Rate. Landlord's acceptance of Percentage Rent during the Lease shall be without prejudice to the Landlord's examination, audit and other rights hereunder.

h. Breakpoint Prorations. The Breakpoint for any partial Lease Year shall be prorated on a per diem basis. If Base Rent is abated or reduced for any reason during any Lease Year, the Breakpoint for such period shall be reduced proportionately. If two Breakpoint amounts are in effect during different portions of a given Lease Year, the Breakpoint for such Lease Year shall be the weighted average of both Breakpoint amounts, determined as follows: (i) each Breakpoint amount shall be multiplied by the number of days during which it is in effect, and then divided by



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365, and (ii) the amounts so computed shall be added to obtain the weighted average Breakpoint for such Lease Year.

5. SECURITY DEPOSIT. Upon execution of this Lease, Tenant shall deliver to Landlord the security deposit specified in Section 1 above. Landlord's obligations with respect to the security deposit are those of a debtor and not of a trustee, and Landlord may commingle the security deposit with its other funds. If Tenant breaches any covenant or condition of this Lease, including but not limited to the payment of Rent, Landlord may apply all or any part of the security deposit to the payment of any sum in default and any damage suffered by Landlord as a result of Tenant's breach. Tenant acknowledges, however, that the security deposit shall not be considered as a measure of Tenant's damages in case of default by Tenant, and any payment to Landlord from the security deposit shall not be construed as a payment of liquidated damages for Tenant's default. If Landlord applies the security deposit as contemplated by this Section, Tenant shall, within five (5) days after written demand therefor by Landlord, deposit with Landlord the amount so applied. If Tenant complies with all of the covenants and conditions of this Lease throughout the Lease term, the security deposit shall be repaid to Tenant without interest within thirty (30) days after the surrender of the Premises by Tenant in the condition required by Section 13 of this Lease.

6. USES. The Premises shall be used only for the Permitted Use specified in Section 1 above, and for no other business or purpose without the prior written consent of Landlord. The Premises shall be used continuously and uninterrupted solely for the specific use set forth in Section 1 above and under the Trade Name set forth in Section 1 above and for no other purpose or use whatsoever. No act shall be done on or around the Premises that is unlawful or that will increase the existing rate of insurance on the Premises, the Building, or the Property or cause the cancellation of any insurance on the Premises, the Building, or the Property. Tenant shall not commit or allow to be committed any waste upon the Premises, or any public or private nuisance. Tenant shall not do or permit anything to be done on the Premises, the Building, or on the Property which will obstruct or interfere with the rights of other tenants or occupants of the Property, or their employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees or to injure or annoy such persons.

Tenant shall (i) remain open for business at least six (6) days a week and at least eight (8) hours a day; (ii) adequately staff its store with sufficient employees to handle the maximum business and carry sufficient stock of merchandise of such amount, character and quality to accomplish this purpose; (iii) keep the display windows and signs, if any, well-lit during the hours from sundown to midnight; (iv) keep the Premises and exterior and interior portions of windows, doors and all other glass or plate glass fixtures in a neat, clean, sanitary and safe condition; (v) warehouse, store or stock only such merchandise as Tenant intends to offer for sale at retail; and (vi) use for office or other non-selling purposes only such space as is reasonably required for Tenant's business. Tenant shall not, without Landlord's prior written consent, which consent Landlord may withhold in its sole discretion: (a) conduct any auction or bankruptcy sales; (b) conduct any fire sale except as a result of a fire on the Premises; (c) conduct any going out of business sale or close-out sale except at the expiration of the Lease term; (d) sell any so-called "surplus", "Army and Navy", or "secondhand" goods, as those terms are generally used on the Commencement Date and from time to time hereafter; (e) permit anything to be done on the Premises which will in any way obstruct, interfere with or infringe on the rights of other occupants or invitees of the Property; (f) install or erect any satellite dish or other roof- or building-mounted equipment; (g) install any Automated Teller Machines ("ATMs"), cash machines, lottery machines, appliances, video games, arcade games, pinball machines, vending machines, or pay telephones in or about the Premises;



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or (h) bring or keep on the Premises any item or thing or permit any act thereon which is prohibited by any law, statute, ordinance or governmental regulation now in force or hereinafter enacted or promulgated, or which is prohibited by any standard form of fire insurance policy. Furthermore, no portion of the Premises shall be used for: (1) the handling or sale of alcoholic beverages unless expressly permitted elsewhere in this Lease; (2) the handling or sale of gasoline, petroleum products, tires, or automobile accessories; (3) a beauty shop, nail shop, or salon; (4) the handling or sale of wigs or hair pieces; (5) a theater; (6) a place of amusement or recreation including the use of video, electronic, mechanical, or other gaming machines other than as offered for sale (and except for small numbers of hand-held, non-arcade game machines for the convenience of Tenant's customers); (7) a massage parlor, adult bookstore or adult video store; (8) a health spa, dance studio or aerobic studio; (9) a church or other religious institution; (10) a day care center; (11) a warehouse facility; (12) a car wash or sales, maintenance or service facility for motorized conveyances; or (13) a training or educational facility.

Neither Tenant nor any person who controls or is controlled by Tenant shall own, operate or become interested in a business similar or related to that operated by Tenant within the Premises, or within a radius of three (3) miles in any direction from the exterior boundary of the Property. As used in this Lease, the word "person" means any natural person or persons in individual or representative capacities and any entity or entities of any kind whatsoever, including without limitation, corporations, partnerships and associations, limited liability companies, or any combination of persons or entities. Without limiting Landlord's remedies, in the event Tenant should violate this covenant, Landlord may, at its option and for so long as such violative business is being operated, include all Gross Sales generated by such violative business in calculating the Gross Sales transacted from the Premises for the purpose of computing Percentage Rent.

7. COMPLIANCE WITH LAWS. Tenant shall not cause or permit the Premises to be used in any way which violates any law, ordinance, or governmental regulation or order. Landlord represents to Tenant that, as of the Commencement Date, to Landlord's knowledge, but without duty of investigation, and with the exception of any Tenant's Work, the Premises comply with all applicable laws, rules, regulations, or orders, including without limitation, the Americans With Disabilities Act, if applicable, and Landlord shall be responsible to promptly cure at its sole cost any noncompliance which existed on the Commencement Date. Tenant shall be responsible for complying with all laws applicable to the Premises as a result of the Permitted Use, and Tenant shall be responsible for making any changes or alterations as may be required by law, rule, regulation, or order for Tenant's Permitted Use at its sole cost and expense. Otherwise, if changes or alterations are required by law, rule, regulation, or order unrelated to the Permitted Use, Landlord shall make changes and alterations at its expense.

8. COMMON AREA CHARGES.

a. Definition. As used herein, "Common Area Charges" shall mean all costs of operating, maintaining and repairing the Premises, the Building and the Property and all Common Areas thereon, determined in accordance with generally accepted accounting principles, and including without limitation the following: all taxes and assessments (including, but not limited to, real and personal property taxes and assessments, local improvement district assessments and other special purpose assessments, and taxes on rent or gross receipts); insurance premiums paid by Landlord and (to the extent used) deductibles for insurance applicable to the Property; water, sewer and all other utility charges (other than utilities separately metered and paid directly by Tenant or other tenants); janitorial and all other cleaning services; refuse and trash removal;



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supplies, materials, tools, and equipment used in the operation, repair, and maintenance of the Property; refurbishing and repainting; carpet replacement; to the extent serving areas other than just the Premises, heating, ventilation and air conditioning ("HVAC") service, repair and replacement when necessary; elevator service and repair and replacement of elevators when necessary; pest control; lighting systems, fire detection and security services; landscape maintenance; management (fees and/or personnel costs); parking lot, road, sidewalk and driveway patching, resurfacing and maintenance; snow and ice removal; repair, maintenance, and, where reasonably required, replacement of signage; amortization of capital improvements as Landlord may in the future install to comply with governmental regulations and rules or undertaken in good faith with a reasonable expectation of reducing Common Area Charges (the useful life of which shall be a reasonable period of time as determined by Landlord); costs of legal services (except those incurred directly relating to a particular occupant of the Building); and accounting services, labor, supplies, materials and tools. Common Area Charges shall not include: Landlord's income tax or general corporate overhead, depreciation on the Building or equipment therein; loan payments; real estate broker's commissions; capital improvements to or major repairs of the Building shell (i.e., the Building structure, exterior walls, roof, and structural floors and foundations), except as described above; or any costs regarding the operation, maintenance and repair of the Premises, the Building, or the Property paid directly by Tenant or other tenants in the Building, or otherwise reimbursed to Landlord. If Tenant is renting a pad separate from any other structures on the Property for which Landlord separately furnishes the services described in this paragraph, then the term "Common Area Charges" shall not include those costs of operating, repairing, and maintaining the enclosed mall which can be separately allocated to the tenants of the other structures. Common Area Charges which cannot be separately allocated to the tenants of other structures may include but are not limited to: insurance premiums; taxes and assessments; management (fees and/or personnel costs); exterior lighting; parking lot, road, sidewalk and driveway patching, resurfacing and maintenance; snow and ice removal; and costs of legal services and accounting services. Permitted Common Area Charges of a capital nature will be amortized over a reasonable period.

b. Calculation and Payment. Tenant shall pay to Landlord Common Area Charges pursuant to the following procedure:

(i) Landlord shall provide to Tenant, at or before the Commencement Date, a good faith estimate of annual Common Area Charges for the calendar year in which the Commencement Date occurs. Landlord shall also provide to Tenant, as soon as possible following the first day of each succeeding calendar year, a good faith estimate of Tenant's annual Pro Rata Share of Common Area Charges for the then-current year.

(ii) Each estimate of Tenant's annual Pro Rata Share of Common Area Charges determined by Landlord, as described above shall be divided into twelve (12) equal monthly installments. Tenant shall pay to Landlord such monthly installment of Common Area Charges with each monthly payment of Base Rent. In the event the estimated amount of Tenant's Pro Rata Share of Common Area Charges has not yet been determined for any calendar year, Tenant shall pay the monthly installment in the estimated amount determined for the preceding calendar year until the estimate for the current calendar year has been provided to Tenant. When the estimate for the current calendar year is received, Tenant shall then pay any shortfall or receive a credit for any



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surplus for the preceding months of the current calendar year and shall, thereafter, make the monthly installment payments in accordance with the current estimate.

(iii) As soon as reasonably possible following the end of each calendar year of the Lease term, Landlord shall determine and provide to Tenant a statement (the "Common Area Charges Statement") setting forth the amount of Common Area Charges actually incurred and the amount of Tenant's Pro Rata Share of Common Area Charges actually payable by Tenant with respect to such calendar year. In the event the amount of Tenant's Pro Rata Share of Common Area Charges exceeds the sum of the monthly installments actually paid by Tenant for such calendar year, Tenant shall pay to Landlord the difference within thirty (30) days following receipt of the Common Area Charges Statement. In the event the sum of the monthly installments actually paid by Tenant for such calendar year exceeds the amount of Tenant's Pro Rata Share of Common Area Charges actually due and owing, the difference shall be applied as a credit to Tenant's future Pro Rata Share of Common Area Charges payable by Tenant pursuant to this Section, or if the term of this Lease has expired, the excess shall be refunded to Tenant within thirty (30) days after delivery of such Common Area Charges Statement.

(iv) If Tenant disputes any amount shown on the Common Area Charges Statement, Tenant may audit Landlord's books and records for the calendar year covered by such Common Area Charges Statement upon written notice to Landlord given within ninety (90) days after Tenant's receipt of such Common Area Charges Statement. If Tenant fails to provide notice of dispute within such ninety (90) day period, the Common Area Charges Statement shall be final and conclusive. Any audit conducted by Tenant shall be completed within sixty (60) days after Tenant's request. In the event the amount of Tenant's Pro Rata Share of Common Area Charges exceeds the sum of the monthly installments actually paid by Tenant for such calendar year, Tenant shall pay to Landlord the difference within thirty (30) days following completion of the audit. In the event the sum of the monthly installments actually paid by Tenant for such calendar year exceeds the amount of Tenant's Pro Rata Share of Common Area Charges actually due and owing, the difference shall be applied as a credit to Tenant's future Pro Rata Share of Common Area Charges payable by Tenant pursuant to this Section, or if the term has expired, the excess shall be refunded to Tenant within thirty (30) days after completion of the audit. Landlord and Tenant shall cooperate as may be reasonably necessary in order to facilitate the timely completion of any audit. Nothing in this Section shall in any manner modify Tenant's obligations to make payments as and when provided under this Lease.

9. UTILITIES AND SERVICES. Landlord shall provide the Premises the following services, the cost of which shall be included in the Common Area Charges, to the extent not separately metered to the Premises: water and electricity for the Premises seven (7) days per week, twenty-four (24) hours per day, and HVAC from ____ a.m. to ____ p.m. Monday through Friday; ____ a.m. to ____ p.m. on Saturday; and ____ a.m. to ____ p.m. on Sunday. HVAC services will also be provided by Landlord to the Premises during additional hours on reasonable notice to Landlord, at Tenant's sole cost and expense, at an hourly rate reasonably established by Landlord from time to time and payable by Tenant, as and when billed, as Additional Rent. Notwithstanding the foregoing, if Tenant's use of the Premises incurs utility service charges which are above those usual and customary for the Permitted Use, Landlord reserves the right to require Tenant to pay a reasonable additional charge for such usage. Landlord shall not be liable for any loss, injury or damage to person or property caused by or resulting from any



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variation, interruption, or failure of utilities due to any cause whatsoever, and Rent shall not abate as a result thereof.

Tenant shall furnish all other utilities (including, but not limited to, HVAC, telephone, Internet, and cable service if available) and other services, including janitorial services, which Tenant requires with respect to the Premises, except those to be provided by Landlord as described above, and shall pay, at Tenant's sole expense, the cost of all utilities separately metered to the Premises and of all other utilities and other services which Tenant requires with respect to the Premises, except those to be provided by Landlord and included in Common Area Charges as described above.

10. TAXES. Tenant shall pay all taxes, assessments, liens and license fees ("Taxes") levied, assessed or imposed by any authority having the direct or indirect power to tax or assess any such liens, related to or required by Tenant's use of the Premises as well as all Taxes on Tenant's personal property located on the Premises. Landlord shall pay all taxes and assessments with respect to the Property, including any taxes resulting from a reassessment of the Building or the Property due to a change of ownership or otherwise, all of which shall be included in Common Area Charges and subject to partial reimbursement by Tenant as set forth in Section 8.

11. COMMON AREAS.

a. Definition. The term "Common Areas" means all areas, facilities and building systems that are provided and designated from time to time by Landlord for the general non-exclusive use and convenience of Tenant with other tenants and which are not leased or held for the exclusive use of a particular tenant. To the extent that such areas and facilities exist within the Property, Common Areas include hallways, entryways, stairs, elevators, driveways, walkways, terraces, docks, loading areas, restrooms, trash facilities, parking areas and garages, roadways, pedestrian sidewalks, landscaped areas, security areas, lobby or mall areas, common heating, ventilating and air conditioning systems, common electrical service, equipment and facilities, and common mechanical systems, equipment and facilities. Tenant shall comply with reasonable rules and regulations concerning the use of the Common Areas adopted by Landlord from time to time. Without advance notice to Tenant and without any liability to Tenant, Landlord may change the size, use, or nature of any Common Areas; erect improvements on the Common Areas or convert any portion of the Common Areas to the exclusive use of Landlord or selected tenants; use the Common Areas for such promotions, exhibitions and similar uses as Landlord reasonably deems in the best interests of the Property and its tenants; and temporarily close parts of the Common Areas for such periods of time as may be necessary for temporary use as a work area in connection with the construction of buildings or other improvements within the Property or contiguous property; prevent the public from obtaining prescriptive rights in or to the Common Areas; use the Common Areas temporarily for a "farmers' market" or comparable entertainment or shopping events, so long as Tenant is not thereby deprived of the substantial benefit of the Premises. Landlord reserves the use of exterior walls and the roof of the Building and the right to install, maintain, use, repair and replace pipes, ducts, conduits, and wires leading through the Premises in areas which will not materially interfere with Tenant's use thereof.

b. Use of the Common Areas. Tenant shall have the non-exclusive right, in common with such other tenants to whom Landlord has granted or may grant such rights, to use the Common Areas. Tenant shall abide by rules and regulations adopted by Landlord from time to time and



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shall use its best efforts to cause its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, to comply with those rules and regulations, and not interfere with the use of Common Areas by others. Tenant shall cause its employees to park in areas designated for employee parking at or away from the Property, as designate by Landlord from time to time.

c. Maintenance of Common Areas. Landlord shall maintain the Common Areas in good order, condition and repair. This maintenance cost shall be a Common Area Charge assessed to Tenant pursuant to Section 8. In performing such maintenance, Landlord shall use reasonable efforts to minimize interference with Tenant's use and enjoyment of the Premises.

12. ALTERATIONS. Tenant may make alterations, additions or improvements to the Premises, including any Tenant's Work identified on attached Exhibit C (the "Alterations"), only with the prior written consent of Landlord, which, with respect to Alterations not affecting the structural components of the Premises or utility systems therein, shall not be unreasonably withheld, conditioned, or delayed. Landlord shall have thirty (30) days in which to respond to Tenant's request for any Alterations so long as such request includes the name of Tenant's contractors and reasonably detailed plans and specifications therefor. The term "Alterations" shall not include the installation of shelves, movable partitions, Tenant's equipment, and trade fixtures that may be performed without damaging existing improvements or the structural integrity of the Premises, the Building, or the Property, and Landlord's consent shall not be required for Tenant's installation or removal of those items. Tenant shall perform all work at Tenant's expense and in compliance with all applicable laws and shall complete all Alterations in accordance with plans and specifications approved by Landlord, using contractors approved by Landlord, and in a manner so as not to unreasonably interfere with other tenants. Tenant shall pay, when due, or furnish a bond for payment (as set forth in Section 20) all claims for labor or materials furnished to or for Tenant at or for use in the Premises, which claims are or may be secured by any mechanics' or materialmen's liens against the Premises or the Property or any interest therein. Tenant shall remove all Alterations at the end of the Lease term unless Landlord conditioned its consent upon Tenant leaving a specified Alteration at the Premises, in which case Tenant shall not remove such Alteration, and it shall become Landlord's property. Tenant shall immediately repair any damage to the Premises caused by removal of Alterations.

13. REPAIRS AND MAINTENANCE; SURRENDER. Tenant shall, at its sole expense, maintain the entire Premises in good condition and promptly make all non-structural repairs and replacements necessary to keep the Premises safe and in good condition, including all HVAC components and other utilities and systems and its store front, signage, windows, window frames, and plate glass. Landlord shall maintain and repair the Building structure, foundation, subfloor, exterior walls, roof structure and surface, and HVAC components and other utilities and systems serving more than just the Premises, and the Common Areas, the costs of which shall be included in Common Area Charges. Tenant shall not damage any demising wall or disturb the structural integrity of the Premises, the Building, or the Property and shall promptly repair any damage or injury done to any such demising walls or structural elements caused by Tenant or its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees. Notwithstanding anything in this Section to the contrary, Tenant shall not be responsible for any repairs to the Premises made necessary by the negligence or willful misconduct of Landlord or its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees therein. If Tenant fails to perform Tenant's obligations under this Section, Landlord may at Landlord's option enter upon the Premises after ten (10) days' prior notice to Tenant and put the same in good order, condition and repair and the cost thereof, together with



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interest thereon at the default rate set forth in Section 4, shall be due and payable as Additional Rent to Landlord together with Tenant's next installment of Base Rent. Upon expiration of the Lease term, whether by lapse of time or otherwise, Tenant shall promptly and peacefully surrender the Premises, together with all keys, to Landlord in as good condition as when received by Tenant from Landlord or as thereafter improved, reasonable wear and tear and insured casualty excepted.

14. ACCESS AND RIGHT OF ENTRY. After twenty-four (24) hours' notice from Landlord (except in cases of emergency, when no notice shall be required), Tenant shall permit Landlord and its agents, employees and contractors to enter the Premises at all reasonable times to make repairs, inspections, alterations or improvements, provided that Landlord shall use reasonable efforts to minimize interference with Tenant's use and enjoyment of the Premises. This Section shall not impose any repair or other obligation upon Landlord not expressly stated elsewhere in this Lease. After reasonable notice to Tenant, Landlord shall have the right to enter the Premises for the purpose of (a) showing the Premises to prospective purchasers or lenders at any time, and to prospective tenants within one hundred eighty (180) days prior to the expiration or sooner termination of the Lease term, and (b) for posting "for lease" signs within one hundred eighty (180) days prior to the expiration or sooner termination of the Lease term.

15. SIGNAGE. Tenant shall obtain Landlord's written consent as to size, location, materials, method of attachment, and appearance, before installing any signs upon the Premises. Tenant shall install any approved signage at Tenant's sole expense and in compliance with all applicable laws. Tenant may at its own expense erect and maintain upon the interior sales areas of the Premises all signs and advertising matter customary and appropriate in the conduct of Tenant's business, subject to Landlord's right to remove any signs or advertising matter which violates this Section. Tenant shall not affix or maintain upon the glass panes and supports of the show windows and doors, or within twelve inches (12") of the show windows and doors, any signs, advertising placards, names, insignia, trademarks, descriptive material or any other such like item or items except such as shall have first received the written approval of the Landlord as to size, type, color, location, copy, nature and display qualities. Tenant shall, at its own expense, be required to erect an exterior sign on its store front, which sign shall be in place and operating (if illuminated) concurrent with Tenant opening for business in the Premises. All signs, decorations and advertising media shall conform in all respects to any sign criteria established by Landlord for the Property from time to time, and shall be subject to the prior written approval of Landlord as to construction, method of attachment, size, shape, height, lighting, color and general appearance. Except for signs which comply with the terms of this Section, Tenant shall not erect, place, paint, or maintain in or on the Premises, any sign, exterior advertising medium, or any other object of any kind whatsoever, whether an advertising device and whether visible or audible, outside the Premises. Tenant shall not change the color, size, location, composition, wording or design of any sign or advertisement on the Premises that may have been previously approved by Landlord, without the prior written approval of Landlord and the applicable governmental authorities. Tenant shall not solicit business in or about the Common Areas, nor distribute any handbills or other advertising matter in or on automobiles or other vehicles parked in or about said Common Area. Without otherwise limiting the foregoing, Tenant shall not, without first obtaining Landlord's written consent, use any advertising or promotional media, including, without limitation, searchlights, loudspeakers or phonographs, which can be heard, seen or experienced outside the Premises. Tenant shall not damage or deface the Premises when installing or removing signage and shall repair any injury or damage to the Premises caused by such installation or removal. Tenant shall pay its Pro Rata Share of operating, maintaining, repairing, lighting, and, where reasonably necessary, replacement of any multi-tenant signage on which Tenant is granted space by Landlord.



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16. DESTRUCTION OR CONDEMNATION.

a. Damage and Repair. If the Premises or the portion of the Building or the Property necessary for Tenant's occupancy are partially damaged but not rendered untenable, by fire or other insured casualty, then Landlord shall diligently restore the Premises and the portion of the Property necessary for Tenant's occupancy to the extent required below and this Lease shall not terminate. Tenant may, however, terminate the Lease if Landlord is unable to restore the Premises within six (6) months of the casualty event by giving twenty (20) days written notice of termination.

The Premises or the portion of the Building or the Property necessary for Tenant's occupancy shall not be deemed untenable if twenty-five percent (25%) or less of each of those areas are damaged. If insurance proceeds are not available or are not sufficient to pay the entire cost of restoring the Premises, or if Landlord's lender does not permit all or any part of the insurance proceeds to be applied toward restoration, then Landlord may elect to terminate this Lease and keep the insurance proceeds, by notifying Tenant within sixty (60) days of the date of such casualty.

If the Premises, the portion of the Building or the Property necessary for Tenant's occupancy, or fifty percent (50%) or more of the GLA of the Property are entirely destroyed, or partially damaged and rendered untenable, by fire or other casualty, Landlord may, at its option: (a) terminate this Lease as provided herein, or (b) restore the Premises and the portion of the Property necessary for Tenant's occupancy to their previous condition to the extent required below; provided, however, if such casualty event occurs during the last six (6) months of the Lease term (after considering any option to extend the term timely exercised by Tenant) then either Tenant or Landlord may elect to terminate the Lease. If, within sixty (60) days after receipt by Landlord from Tenant of written notice that Tenant deems the Premises or the portion of the Property necessary for Tenant's occupancy untenable, Landlord fails to notify Tenant of its election to restore those areas, or if Landlord is unable to restore those areas within six (6) months of the date of the casualty event, then Tenant may elect to terminate the Lease upon twenty (20) days' notice to Landlord unless Landlord, within such twenty (20) day period, notifies Tenant that it will in fact restore the Premises or actually completes such restoration work to the extent required below, as applicable.

If Landlord restores the Premises or the Property under this Section, Landlord shall proceed with reasonable diligence to complete the work, and Rent shall be abated in the same proportion as the untenable portion of the Premises bears to the whole Premises, provided that there shall be a Rent abatement only if the damage or destruction of the Premises or the Property did not result from, or was not contributed to directly or indirectly by the act, fault or neglect of Tenant, or Tenant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees. No damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or annoyance directly, incidentally or consequentially arising from any repair or restoration of any portion of the Premises or the Property. Landlord shall have no obligation to carry insurance of any kind for the protection of Tenant; any alterations or improvements paid for by Tenant; any Tenant's Work identified in Exhibit C (regardless of who may have completed them); Tenant's furniture; or on any fixtures, equipment, improvements or



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appurtenances of Tenant under this Lease, and Landlord's restoration obligations hereunder shall not include any obligation to repair any damage thereto or replace the same.

b. Condemnation. If the Premises, the portion of the Building or the Property necessary for Tenant's occupancy, or 50% or more of the GLA of the Property are made untenable by eminent domain, or conveyed under a threat of condemnation, this Lease shall terminate at the option of either Landlord or Tenant as of the earlier of the date title vests in the condemning authority or the condemning authority first has possession of the Premises or the portion of the Property taken by the condemning authority. All Rents and other payments shall be paid to that date.

If the condemning authority takes a portion of the Premises or of the Building or the Property necessary for Tenant's occupancy that does not render them untenable, then this Lease shall continue in full force and effect and the Rent shall be equitably reduced based on the proportion by which the floor area of any structures is reduced. The reduction in Rent shall be effective on the earlier of the date the condemning authority first has possession of such portion or title vests in the condemning authority. The Premises or the portion of the Building or the Property necessary for Tenant's occupancy shall not be deemed untenable if twenty-five percent (25%) or less of each of those areas are condemned. Landlord shall be entitled to the entire award from the condemning authority attributable to the value of the Premises, the Building, or the Property and Tenant shall make no claim for the value of its leasehold. Tenant shall be permitted to make a separate claim against the condemning authority for moving expenses if Tenant may terminate the Lease under this Section, provided that in no event shall Tenant's claim reduce Landlord's award.

17. INSURANCE.

a. Tenant's Liability Insurance. During the Lease term, Tenant shall pay for and maintain commercial general liability insurance with broad form property damage and contractual liability endorsements. This policy shall name Landlord, its property manager (if any), and other parties designated by Landlord as additional insureds using an endorsement form acceptable to Landlord, and shall insure Tenant's activities and those of Tenant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees with respect to the Premises against loss, damage or liability for personal injury or bodily injury (including death) or loss or damage to property with a combined single limit of not less than \$2,000,000, and a deductible of not more than \$10,000. Tenant's insurance will be primary and noncontributory with any liability insurance carried by Landlord. Landlord may also require Tenant to obtain and maintain business income coverage for at least six (6) months, business auto liability coverage, plate glass insurance, and, if applicable to Tenant's Permitted Use, liquor liability insurance.

b. Tenant's Property Insurance. During the Lease term, Tenant shall pay for and maintain special form clauses of loss coverage property insurance (with coverage for earthquake if required by Landlord's lender and, if the Premises are situated in a flood plain, flood damage) for all of Tenant's improvements, alterations, personal property, fixtures and equipment in the amount of their full replacement value, with a deductible of not more than \$10,000.



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c. Miscellaneous. Tenant's insurance required under this Section shall be with companies rated A-/VII or better in Best's Insurance Guide, and which are admitted in the State in which the Premises are located. No insurance policy shall be cancelled or reduced in coverage and each such policy shall provide that it is not subject to cancellation or a reduction in coverage except after thirty (30) days prior written notice to Landlord. Tenant shall deliver to Landlord upon commencement of the Lease and from time to time thereafter, copies of the insurance policies or evidence of insurance and copies of endorsements required by this Section. In no event shall the limits of such policies be considered as limiting the liability of Tenant under this Lease. If Tenant fails to acquire or maintain any insurance or provide any policy or evidence of insurance required by this Section and such failure continues for three (3) days after notice from Landlord, Landlord may, but shall not be required to, obtain such insurance for Landlord's benefit and Tenant shall reimburse Landlord for the costs of such insurance upon demand. Such amounts shall be Additional Rent payable by Tenant hereunder and in the event of non-payment thereof, Landlord shall have the same rights and remedies with respect to such non-payment as it has with respect to any other non-payment of Rent hereunder.

d. Landlord's Insurance. Landlord shall carry special form clauses of loss coverage property insurance of the Building shell and core in the amount of their full replacement value, liability insurance with respect to the Common Areas, and such other insurance of such types and amounts as Landlord, in its discretion, shall deem reasonably appropriate. The cost of any such insurance shall be included in Common Area Charges, and if such insurance is provided by a "blanket policy" insuring other parties and/or locations in addition to the Building, then only the portion of the premiums allocable to the Building and Property shall be included in Common Area Charges.

e. Waiver of Subrogation. Landlord and Tenant hereby release each other and any other tenant, their agents or employees, from responsibility for, and waive their entire claim of recovery for any loss or damage arising from any cause covered by property insurance required to be carried or otherwise carried by each of them. Each party shall provide notice to the property insurance carrier or carriers of this mutual waiver of subrogation, and shall cause its respective property insurance carriers to waive all rights of subrogation against the other. This waiver shall not apply to the extent of the deductible amounts to any such property policies or to the extent of liabilities exceeding the limits of such policies.

18. INDEMNIFICATION.

a. Indemnification by Tenant. Tenant shall defend, indemnify, and hold Landlord and its property manager (if any) harmless against all liabilities, damages, costs, and expenses, including attorneys' fees, for personal injury, bodily injury (including death) or property damage arising from any negligent or wrongful act or omission of Tenant or Tenant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees on or around the Premises, or arising from any breach of this Lease by Tenant. Tenant shall use legal counsel reasonably acceptable to Landlord in defense of any action within Tenant's defense obligation.

b. Indemnification by Landlord. Landlord shall defend, indemnify and hold Tenant harmless against all liabilities, damages, costs, and expenses, including attorneys' fees, for



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personal injury, bodily injury (including death) or property damage arising from any negligent or wrongful act or omission of Landlord or Landlord's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees on or around the Premises or the Property, or arising from any breach of this Lease by Landlord. Landlord shall use legal counsel reasonably acceptable to Tenant in defense of any action within Landlord's defense obligation.

c. Waiver of Immunity. Landlord and Tenant each specifically and expressly waive any immunity that each may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. Neither party's indemnity obligations under this Lease shall be limited by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under the Worker Compensation Acts, Disability Benefit Acts or other employee benefit acts.

d. Exemption of Landlord from Liability. Except to the extent of claims arising out of Landlord's gross negligence or intentional misconduct, Landlord shall not be liable for injury to Tenant's business or assets or any loss of income therefrom or for damage to any property of Tenant or of its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, or any other person in or about the Premises or the Property.

e. Survival. The provisions of this Section shall survive expiration or termination of this Lease.

19. ASSIGNMENT AND SUBLETTING. Tenant shall not assign, sublet, mortgage, encumber or otherwise transfer any interest in this Lease (collectively referred to as a "Transfer") or any part of the Premises, without first obtaining Landlord's written consent which shall not be unreasonably withheld, conditioned, or delayed. No Transfer shall relieve Tenant of any liability under this Lease notwithstanding Landlord's consent to such Transfer. Without limiting the generality of the foregoing, it shall be deemed reasonable for Landlord to deny consent to a proposed Transfer if the transferee's proposed use of the Premises would violate any lease exclusives granted by Landlord to other tenants at the Property or would, in Landlord's commercially reasonable opinion, interfere with Landlord's desired tenant-mix for the Property. Consent to any Transfer shall not operate as a waiver of the necessity for Landlord's consent to any subsequent Transfer. In connection with each request for consent to a Transfer, Tenant shall pay the reasonable cost of processing same, including attorneys fees, upon demand of Landlord, up to a maximum of \$1,250.

If Tenant is a partnership, limited liability company, corporation, or other entity, any transfer of this Lease by merger, consolidation, redemption or liquidation, or any change in the ownership of, or power to vote, which singularly or collectively represents a majority of the beneficial interest in Tenant, shall constitute a Transfer under this Section.

As a condition to Landlord's approval, if given, any potential assignee or sublessee otherwise approved by Landlord shall assume all obligations of Tenant under this Lease and shall be jointly and severally liable with Tenant and any guarantor, if required, for the payment of Rent and performance of all terms of this Lease. In connection with any Transfer, Tenant shall provide Landlord with copies of all assignments, subleases and assumption agreements and documents.



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20. LIENS. Tenant shall not subject the Landlord's assets to any liens or claims of lien. Tenant shall keep the Premises free from any liens created by or through Tenant. Tenant shall indemnify and hold Landlord harmless from liability for any such liens including, without limitation, liens arising from any Alterations. If a lien is filed against the Premises by any person claiming by, through or under Tenant, Tenant shall, within ten (10) days after Landlord's demand, at Tenant's expense, either remove the lien or furnish to Landlord a bond in form and amount and issued by a surety satisfactory to Landlord, indemnifying Landlord and the Premises against all liabilities, costs and expenses, including attorneys' fees, which Landlord could reasonably incur as a result of such lien.

21. DEFAULT. The following occurrences shall each constitute a default by Tenant (an "Event of Default").

a. Failure To Pay. Failure by Tenant to pay any sum, including Rent, due under this Lease following five (5) days' written notice from Landlord of the failure to pay.

b. Vacation/Abandonment. Vacation by Tenant of the Premises (defined as an absence for at least fifteen (15) consecutive days without prior notice to Landlord), or abandonment by Tenant of the Premises (defined as an absence of five (5) days or more while Tenant is in breach of some other term of this Lease). Tenant's vacation or abandonment of the Premises shall not be subject to any notice or right to cure.

c. Insolvency. Tenant's insolvency or bankruptcy (whether voluntary or involuntary); or appointment of a receiver, assignee or other liquidating officer for Tenant's business; provided, however, that in the event of any involuntary bankruptcy or other insolvency proceeding, the existence of such proceeding shall constitute an Event of Default only if such proceeding is not dismissed or vacated within sixty (60) days after its institution or commencement.

d. Levy or Execution. The taking of Tenant's interest in this Lease or the Premises, or any part thereof, is taken by execution or other process of law directed against Tenant, or attachment of Tenant's interest in this Lease by any creditor of Tenant, if such attachment is not discharged within fifteen (15) days after being levied.

e. Other Non-Monetary Defaults. The breach by Tenant of any agreement, term or covenant of this Lease other than one requiring the payment of money and not otherwise enumerated in this Section or elsewhere in this Lease, which breach continues for a period of thirty (30) days after notice by Landlord to Tenant of the breach.

f. Failure to Take Possession. Failure by Tenant to take possession of the Premises on the Commencement Date or failure by Tenant to commence any Tenant Improvement in a timely fashion.

Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event less than thirty (30) days after notice by Tenant to Landlord. If Landlord fails to cure any such default within the allotted time, Tenant's sole remedy shall be to seek actual money damages (but not consequential or punitive damages) for loss arising from Landlord's failure to discharge its obligations under this Lease. Nothing herein contained shall relieve Landlord from its duty to perform of any of its obligations to the standard prescribed in this Lease.



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Any notice periods granted herein shall be deemed to run concurrently with and not in addition to any default notice periods required by law.

22. REMEDIES. Landlord shall have the following remedies upon an Event of Default. Landlord's rights and remedies under this Lease shall be cumulative, and none shall exclude any other right or remedy allowed by law.

a. Termination of Lease. Landlord may terminate Tenant's interest under the Lease, but no act by Landlord other than notice of termination from Landlord to Tenant shall terminate this Lease. The Lease shall terminate on the date specified in the notice of termination. Upon termination of this Lease, Tenant will remain liable to Landlord for damages in an amount equal to the Rent and other sums that would have been owing by Tenant under this Lease for the balance of the Lease term, less the net proceeds, if any, of any re-letting of the Premises by Landlord subsequent to the termination, after deducting all of Landlord's Reletting Expenses (as defined below). Landlord shall be entitled to either collect damages from Tenant monthly on the days on which rent or other amounts would have been payable under the Lease, or alternatively, Landlord may accelerate Tenant's obligations under the Lease and recover from Tenant: (i) unpaid rent which had been earned at the time of termination; (ii) the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of rent loss that Tenant proves could reasonably have been avoided; (iii) the amount by which the unpaid rent for the balance of the term of the Lease after the time of award exceeds the amount of rent loss that Tenant proves could reasonably be avoided (discounting such amount by the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus 1%); and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under the Lease, or which in the ordinary course would be likely to result from the Event of Default, including without limitation Reletting Expenses described below. For purposes of this Section, Percentage Rent shall be computed on the basis of the average monthly amount thereof accruing during the immediately preceding twenty-four (24) month period, except that if it becomes necessary to compute such amounts before such a period has occurred then such amounts shall be computed on the basis of the average monthly amounts accruing during such shorter period.

b. Re-Entry and Reletting. Landlord may continue this Lease in full force and effect and, without demand or notice, re-enter and take possession of the Premises or any part thereof, expel the Tenant from the Premises and anyone claiming through or under the Tenant, and remove the personal property of either. Landlord may relet the Premises, or any part of them, in Landlord's or Tenant's name for the account of Tenant, for such period of time and at such other terms and conditions as Landlord, in its discretion, may determine. Landlord may collect and receive the rents for the Premises. To the fullest extent permitted by law, the proceeds of any reletting shall be applied: first, to pay Landlord all Reletting Expenses (defined below); second, to pay any indebtedness of Tenant to Landlord other than rent; third, to the rent due and unpaid hereunder; and fourth, the residue, if any, shall be held by Landlord and applied in payment of other or future obligations of Tenant to Landlord as the same may become due and payable, and Tenant shall not be entitled to receive any portion of such revenue. Re-entry or taking possession of the Premises by Landlord under this Section shall not be construed as an election on Landlord's part to terminate this Lease, unless a notice of termination is given to Tenant. Landlord reserves the right following any re-entry or reletting, or both, under this Section to exercise its right to terminate the Lease. Tenant will pay Landlord the Rent and other sums which



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would be payable under this Lease if repossession had not occurred, less the net proceeds, if any, after reletting the Premises and after deducting Landlord's Reletting Expenses. "Reletting Expenses" is defined to include all expenses incurred by Landlord in connection with reletting the Premises, including without limitation, all repossession costs, brokerage commissions and costs for securing new tenants, attorneys' fees, remodeling and repair costs, costs for removing persons or property, costs for storing Tenant's property and equipment, and costs of tenant improvements and rent concessions granted by Landlord to any new Tenant, prorated over the life of the new lease.

c. Waiver of Redemption Rights. Tenant, for itself, and on behalf of any and all persons claiming through or under Tenant, including creditors of all kinds, hereby waives and surrenders all rights and privileges which they may have under any present or future law, to redeem the Premises or to have a continuance of this Lease for the Lease term or any extensions thereof.

d. Nonpayment of Additional Rent. All costs which Tenant is obligated to pay to Landlord pursuant to this Lease shall in the event of nonpayment be treated as if they were payments of Rent, and Landlord shall have the same rights it has with respect to nonpayment of Rent.

e. Failure to Remove Property. If Tenant fails to remove any of its property from the Premises at Landlord's request following an uncured Event of Default, Landlord may, at its option, remove and store the property at Tenant's expense and risk. If Tenant does not pay the storage cost within five (5) days of Landlord's request, Landlord may, at its option, have any or all of such property sold at public or private sale (and Landlord may become a purchaser at such sale), in such manner as Landlord deems proper, without notice to Tenant. Landlord shall apply the proceeds of such sale: (i) to the expense of such sale, including reasonable attorneys' fees actually incurred; (ii) to the payment of the costs or charges for storing such property; (iii) to the payment of any other sums of money which may then be or thereafter become due Landlord from Tenant under any of the terms hereof; and (iv) the balance, if any, to Tenant. Nothing in this Section shall limit Landlord's right to sell Tenant's personal property as permitted by law or to foreclose Landlord's lien for unpaid rent.

23. MORTGAGE SUBORDINATION AND ATTORNMENT. This Lease shall automatically be subordinate to any mortgage or deed of trust created by Landlord which is now existing or hereafter placed upon the Premises including any advances, interest, modifications, renewals, replacements or extensions ("Landlord's Mortgage"). Tenant shall attorn to the holder of any Landlord's Mortgage or any party acquiring the Premises at any sale or other proceeding under any Landlord's Mortgage provided the acquiring party assumes the obligations of Landlord under this Lease. Tenant shall promptly and in no event later than fifteen (15) days after request execute, acknowledge and deliver documents which the holder of any Landlord's Mortgage may reasonably require as further evidence of this subordination and attornment. Notwithstanding the foregoing, Tenant's obligations under this Section to subordinate in the future are conditioned on the holder of each Landlord's Mortgage and the party acquiring the Premises at any sale or other proceeding under any such Landlord's Mortgage not disturbing Tenant's occupancy and other rights under this Lease, so long as no uncured Event of Default by Tenant exists.

24. NON-WAIVER. Landlord's waiver of any breach of any provision contained in this Lease shall not be deemed to be a waiver of the same provision for subsequent acts of Tenant. The acceptance by



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Landlord of Rent or other amounts due by Tenant hereunder shall not be deemed to be a waiver of any previous breach by Tenant.

25. HOLDOVER. If Tenant shall, without the written consent of Landlord, remain in possession of the Premises and fail to return them to Landlord after the expiration or termination of this Lease, the tenancy shall be a holdover tenancy and shall be on a month-to-month basis, which may be terminated according to Washington law. During such tenancy, Tenant agrees to pay to Landlord 150% of the rate of rental last payable under this Lease, unless a different rate is agreed upon by Landlord. All other terms of the Lease shall remain in effect. Tenant acknowledges and agrees that this Section does not grant any right to Tenant to holdover, and that Tenant may also be liable to Landlord for any and all damages or expenses which Landlord may have to incur as a result of Tenant's holdover.

26. NOTICES. All notices under this Lease shall be in writing and effective (i) when delivered in person or via overnight courier to the other party, (ii) three (3) days after being sent by registered or certified mail to the other party at the address set forth in Section 1; or (iii) upon confirmed transmission by facsimile to the other party at the facsimile numbers set forth in Section 1. The addresses for notices and payment of rent set forth in Section 1 may be modified by either party only by written notice delivered in conformance with this Section.

27. COSTS AND ATTORNEYS' FEES. If Tenant or Landlord engage the services of an attorney to collect monies due or to bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of Rent or other payments, or possession of the Premises, the losing party shall pay the prevailing party a reasonable sum for attorneys' fees in such action, whether in mediation or arbitration, at trial, on appeal or in any bankruptcy proceeding.

28. ESTOPPEL CERTIFICATES. Tenant shall, from time to time, upon written request of Landlord, execute, acknowledge and deliver to Landlord or its designee a written statement specifying the following, subject to any modifications necessary to make such statements true and complete: (i) the total rentable square footage of the Premises; (ii) the date the Lease term commenced and the date it expires; (iii) the amount of minimum monthly Rent and the date to which such Rent has been paid; (iv) that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way; (v) that this Lease represents the entire agreement between the parties; (vi) that all obligations under this Lease to be performed by either party have been satisfied; (vii) that there are no existing claims, defenses or offsets which the Tenant has against the enforcement of this Lease by Landlord; (viii) the amount of Rent, if any, that Tenant paid in advance; (ix) the amount of security that Tenant deposited with Landlord; (x) if Tenant has sublet all or a portion of the Premises or assigned its interest in the Lease and to whom; (xi) if Tenant has any option to extend the Lease or option to purchase the Premises; and (xii) such other factual matters concerning the Lease or the Premises as Landlord may reasonably request. Tenant acknowledges and agrees that any statement delivered pursuant to this Section may be relied upon by a prospective purchaser of Landlord's interest or assignee of any mortgage or new mortgagee of Landlord's interest in the Premises. If Tenant shall fail to respond within ten (10) days to Landlord's request for the statement required by this Section, Landlord may provide the statement and Tenant shall be deemed to have admitted the accuracy of the information provided by Landlord.

29. TRANSFER OF LANDLORD'S INTEREST. This Lease shall be assignable by Landlord without the consent of Tenant. In the event of any transfer or transfers of Landlord's interest in the Premises,



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other than a transfer for collateral purposes only, upon the assumption of this Lease by the transferee, Landlord shall be automatically relieved of obligations and liabilities accruing from and after the date of such transfer, including any liability for any retained security deposit or prepaid rent, for which the transferee shall be liable, and Tenant shall attorn to the transferee.

30. LANDLORD'S LIABILITY. Anything in this Lease to the contrary notwithstanding, covenants, undertakings and agreements herein made on the part of Landlord are made and intended not as personal covenants, undertakings and agreements for the purpose of binding Landlord personally or the assets of Landlord but are made and intended for the purpose of binding only the Landlord's interest in the Premises, as the same may from time to time be encumbered. In no event shall Landlord or its partners, shareholders, or members, as the case may be, ever be personally liable hereunder.

31. RIGHT TO PERFORM. If Tenant shall fail to timely pay any sum or perform any other act on its part to be performed hereunder, Landlord may make any such payment or perform any act on Tenant's behalf. Tenant shall, within ten (10) days of demand, reimburse Landlord for its expenses incurred in making such payment or performance. Landlord shall (in addition to any other right or remedy of Landlord provided by law) have the same rights and remedies in the event of the nonpayment of sums due under this Section as in the case of default by Tenant in the payment of Rent.

32. HAZARDOUS MATERIAL. As used herein, the term "Hazardous Material" means any hazardous, dangerous, toxic or harmful substance, material or waste including biomedical waste which is or becomes regulated by any local governmental authority, the State of Washington or the United States Government, due to its potential harm to the health, safety or welfare of humans or the environment. Landlord represents and warrants to Tenant that, to Landlord's knowledge without duty of investigation, there is no Hazardous Material on, in, or under the Premises as of the Commencement Date except as may otherwise have been disclosed to Tenant in writing before the execution of this Lease. If there is any Hazardous Material on, in, or under the Premises as of the Commencement Date which has been or thereafter becomes unlawfully released through no fault of Tenant, then Landlord shall indemnify, defend and hold Tenant harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses including without limitation sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees, incurred or suffered by Tenant either during or after the Lease term as the result of such contamination.

Tenant shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about, or disposed of on the Premises or the Property by Tenant, its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, except with Landlord's prior consent and then only upon strict compliance with all applicable federal, state and local laws, regulations, codes and ordinances. If Tenant breaches the obligations stated in the preceding sentence, then Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses including, without limitation, diminution in the value of the Premises or the Property; damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises or the Property, or elsewhere; damages arising from any adverse impact on marketing of space at the Premises or the Property; and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees incurred or suffered by Landlord either during or after the Lease term. These indemnifications by Landlord and Tenant include, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work, whether or not required by any federal, state or local governmental agency or political subdivision,



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because of Hazardous Material present in the Premises, or in soil or ground water on or under the Premises. Tenant shall immediately notify Landlord of any inquiry, investigation or notice that Tenant may receive from any third party regarding the actual or suspected presence of Hazardous Material on the Premises.

Without limiting the foregoing, if the presence of any Hazardous Material brought upon, kept or used in or about the Premises or the Property by Tenant, its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, results in any unlawful release of any Hazardous Materials on the Premises or the Property, Tenant shall promptly take all actions, at its sole expense, as are necessary to return the Premises or the Property, to the condition existing prior to the release of any such Hazardous Material; provided that Landlord's approval of such actions shall first be obtained, which approval may be withheld at Landlord's sole discretion. The provisions of this Section shall survive expiration or termination of this Lease.

33. QUIET ENJOYMENT. So long as Tenant pays the Rent and performs all of its obligations in this Lease, Tenant's possession of the Premises will not be disturbed by Landlord or anyone claiming by, through or under Landlord.

34. MERGER. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.

35. GENERAL.

a. Heirs and Assigns. This Lease shall apply to and be binding upon Landlord and Tenant and their respective heirs, executors, administrators, successors and assigns.

b. Brokers' Fees. Tenant represents and warrants to Landlord that except for Tenant's Broker, if any, described and disclosed in Section 37 of this Lease, it has not engaged any broker, finder or other person who would be entitled to any commission or fees for the negotiation, execution or delivery of this Lease and shall indemnify and hold harmless Landlord against any loss, cost, liability or expense incurred by Landlord as a result of any claim asserted by any such broker, finder or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of Tenant. Landlord represents and warrants to Tenant that except for Landlord's Broker, if any, described and disclosed in Section 37, it has not engaged any broker, finder or other person who would be entitled to any commission or fees for the negotiation, execution or delivery of this Lease and shall indemnify and hold harmless Tenant against any loss, cost, liability or expense incurred by Tenant as a result of any claim asserted by any such broker, finder or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of Landlord.

c. Entire Agreement. This Lease contains all of the covenants and agreements between Landlord and Tenant relating to the Premises. No prior or contemporaneous agreements or understandings pertaining to the Lease shall be valid or of any force or effect and the covenants and agreements of this Lease shall not be altered, modified or amended to except in writing, signed by Landlord and Tenant.



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- d. Severability.** Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision of this Lease.
- e. Force Majeure.** Time periods for either party's performance under any provisions of this Lease (excluding payment of Rent) shall be extended for periods of time during which the party's performance is prevented due to circumstances beyond such party's control, including without limitation, fires, floods, earthquakes, lockouts, strikes, embargoes, governmental regulations, acts of God, public enemy, war or other strife.
- f. Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Washington.
- g. Memorandum of Lease.** Neither this Lease nor any memorandum or "short form" thereof shall be recorded without Landlord's prior consent.
- h. Submission of Lease Form Not an Offer.** One party's submission of this Lease to the other for review shall not constitute an offer to lease the Premises. This Lease shall not become effective and binding upon Landlord and Tenant until it has been fully signed by them.
- i. No Light, Air or View Easement.** Tenant has not been granted an easement or other right for light, air or view to or from the Premises. Any diminution or shutting off of light, air or view by any structure which may be erected on or adjacent to the Building shall in no way effect this Lease or the obligations of Tenant hereunder or impose any liability on Landlord.
- j. Authority of Parties.** Each party signing this Lease represents and warrants to the other that it has the authority to enter into this Lease, that the execution and delivery of this Lease has been duly authorized, and that upon such execution and delivery, this Lease shall be binding upon and enforceable against the party on signing.
- k. Time.** "Day" as used herein means a calendar day and "business day" means any day on which commercial banks are generally open for business in the state where the Premises are situated. Any period of time which would otherwise end on a non-business day shall be extended to the next following business day. Time is of the essence of this Lease.

36. EXHIBITS AND RIDERS. The following exhibits and riders are made a part of this Lease, and the terms thereof shall control over any inconsistent provision in the sections of this Lease:

- Exhibit A: Floor Plan Outline of the Premises
- Exhibit B: Legal Description of the Property
- Exhibit C: Tenant Improvement Schedule

CHECK THE BOX FOR ANY OF THE FOLLOWING THAT WILL APPLY. CAPITALIZED TERMS USED IN THE RIDERS SHALL HAVE THE MEANING GIVEN TO THEM IN THE LEASE.

- Rent Rider
- Arbitration Rider
- Letter of Credit Rider



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- Guaranty of Tenant's Lease Obligations Rider
- Option to Extend Rider
- Rules and Regulations

37. **AGENCY DISCLOSURE.** At the signing of this Lease, Landlord is represented by Connie Boyle and Mike Ewing of The Andover Company (insert both the name of the Broker and the Firm as licensed) (the "Landlord's Broker"), and ~~Tenant is represented by _____~~ (insert both the name of the Broker and the Firm as licensed) (the "Tenant's Broker").

This Agency Disclosure creates an agency relationship between Landlord, Landlord's Broker (if any such person is disclosed), and any managing brokers who supervise Landlord's Broker's performance (collectively the "Supervising Brokers"). In addition, this Agency Disclosure creates an agency relationship between Tenant, Tenant's Broker (if any such person is disclosed), and any managing brokers who supervise Tenant's Broker's performance (also collectively the "Supervising Brokers"). If Tenant's Broker and Landlord's Broker are different real estate licensees affiliated with the same Firm, then both Tenant and Landlord confirm their consent to that Firm and both Tenant's and Landlord's Supervising Brokers acting as dual agents. If Tenant's Broker and Landlord's Broker are the same real estate licensee who represents both parties, then both Landlord and Tenant acknowledge that the Broker, his or her Supervising Brokers, and his or her Firm are acting as dual agents and hereby consent to such dual agency. If Tenants' Broker, Landlord's Broker, their Supervising Brokers, or their Firm are dual agents, Landlord and Tenant consent to Tenant's Broker, Landlord's Broker and their Firm being compensated based on a percentage of the rent or as otherwise disclosed on the attached addendum. Neither Tenant's Broker, Landlord's Broker nor either of their Firms are receiving compensation from more than one party to this transaction unless otherwise disclosed on an attached addendum, in which case Landlord and Tenant consent to such compensation. Landlord and Tenant confirm receipt of the pamphlet entitled "The Law of Real Estate Agency."

38. **COMMISSION AGREEMENT.** If Landlord has not entered into a listing agreement (or other compensation agreement with Landlord's Broker), Landlord agrees to pay a commission to Landlord's Broker (as identified in the Agency Disclosure paragraph above) as follows:

- \$ _____
- 5 % of the gross rent payable pursuant to the Lease
- \$ _____ per square foot of the Premises
- Other _____

Landlord's Broker shall shall not (shall not if not filled in) be entitled to a commission upon the extension by Tenant of the Lease term pursuant to any right reserved to Tenant under the Lease calculated as provided above or as follows _____ (if no box is checked, as provided above). Landlord's Broker shall shall not (shall not if not filled in) be entitled to a commission upon any expansion of Premises pursuant to any right reserved to Tenant under the Lease, calculated as provided above or as follows _____ (if no box is checked, as provided above).

Any commission shall be earned upon execution of this Lease, and paid one-half upon execution of the Lease and one-half upon occupancy of the Premises by Tenant. Landlord's Broker shall pay to Tenant's Broker (as identified in the Agency Disclosure paragraph above) the amount stated in a separate



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RETAIL LEASE AGREEMENT
(Multi Tenant - Triple Net)

agreement between them or, if there is no agreement, \$_____ or _____% (complete only one) of any commission paid to Landlord's Broker, within five (5) days after receipt by Landlord's Broker.

If any other lease or sale is entered into between Landlord and Tenant pursuant to a right reserved to Tenant under the Lease, Landlord shall shall not (shall not if not filled in) pay an additional commission according to any commission agreement or, in the absence of one, according to the commission schedule of Landlord's Broker in effect as of the execution of this Lease. Landlord's successor shall be obligated to pay any unpaid commissions upon any transfer of this Lease and any such transfer shall not release the transferor from liability to pay such commissions.

39. BROKER PROVISIONS.

LANDLORD'S BROKER, TENANT'S BROKER AND THEIR FIRMS HAVE MADE NO REPRESENTATIONS OR WARRANTIES CONCERNING THE PREMISES, THE MEANING OF THE TERMS AND CONDITIONS OF THIS LEASE; LANDLORD'S OR TENANT'S FINANCIAL STANDING; ZONING OR COMPLIANCE OF THE PREMISES WITH APPLICABLE LAWS; SERVICE OR CAPACITY OF UTILITIES; OPERATING COSTS; OR HAZARDOUS MATERIALS. LANDLORD AND TENANT ARE EACH ADVISED TO SEEK INDEPENDENT LEGAL ADVICE ON THESE AND OTHER MATTERS ARISING UNDER THIS LEASE.

IN WITNESS WHEREOF this Lease has been executed the date and year first above written.

_____	<u>SAHRA ABPUIL</u>
LANDLORD:	TENANT:
_____	_____
LANDLORD:	TENANT:
_____	_____
BY:	BY:
_____	_____
ITS:	ITS:



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RETAIL LEASE AGREEMENT
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STATE OF WASHINGTON

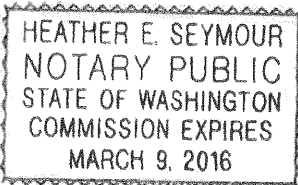
COUNTY OF King

ss.

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

Dated this 29th day of March, 2012.

Heather E Seymour
(Signature of Notary)



(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,
residing at Seattle, WA
My appointment expires 3/9/2016

STATE OF WASHINGTON

COUNTY OF _____

ss.

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

Dated this _____ day of _____, 20____.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,
residing at _____
My appointment expires _____



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RETAIL LEASE AGREEMENT
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STATE OF WASHINGTON

COUNTY OF _____

ss.

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

Dated this _____ day of _____, 20____.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)
Notary public in and for the state of Washington,
residing at _____
My appointment expires _____

STATE OF WASHINGTON

COUNTY OF _____

ss.

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

Dated this _____ day of _____, 20____.

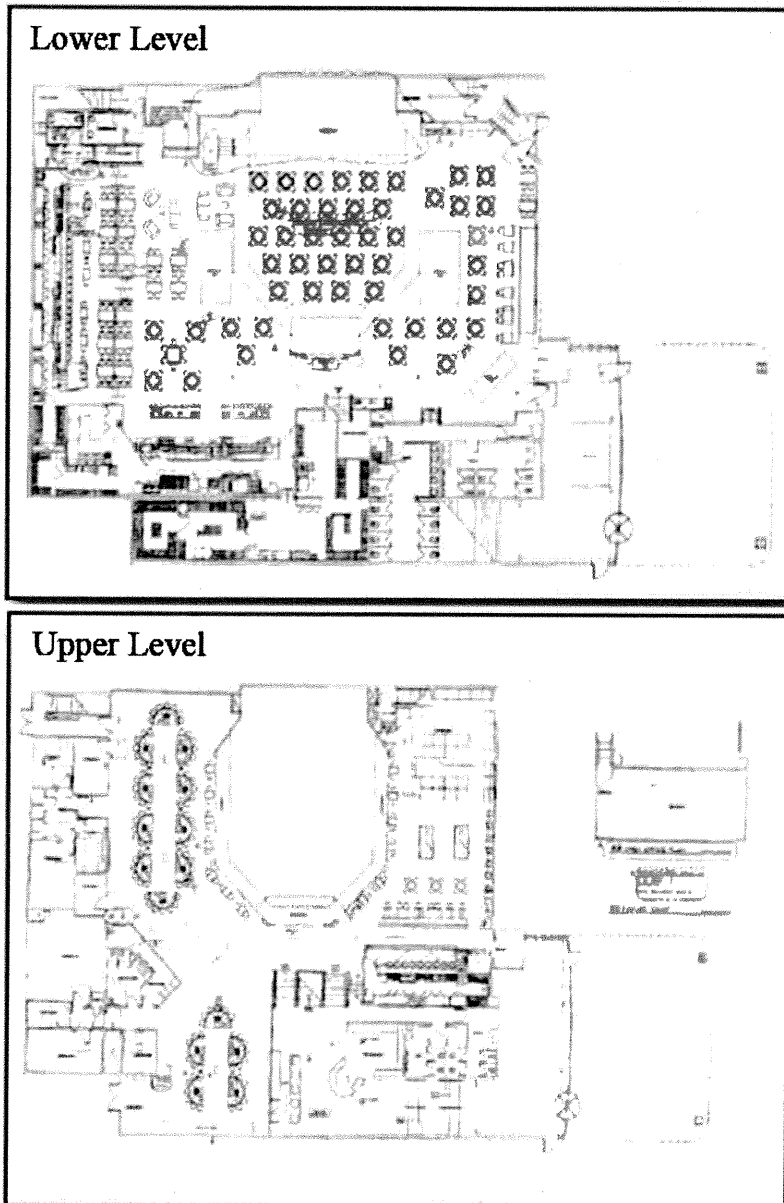
(Signature of Notary)

(Legibly Print or Stamp Name of Notary)
Notary public in and for the state of Washington,
residing at _____
My appointment expires _____

RETAIL LEASE AGREEMENT
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EXHIBIT A

[Floor Plan/Outline of the Premises]





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RETAIL LEASE AGREEMENT
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EXHIBIT B

[Legal Description of the Property]

Legal Description

PARCEL A

Lots 6, 7 and 8, Block 1, Third Addition to the Adams Homes Tracts, according to the plat thereof recorded in Volume 15 of Plats, page 17, in King County, Washington,
EXCEPT the north 2 feet of the east 175 8 feet of said Lot 6,
AND EXCEPT those portions of Lots 6, 7 and 8 lying easterly of the west margin of Primary State Highway Number 1;
AND EXCEPT that portion of Lot 8 conveyed to the state of Washington for highway purposes by deed recorded under Recording Number 5133875.

PARCEL B

Lots 4, 9 and 10, and the east 66 feet of the south 104 9 feet of Lot 3, Block 1, Third Addition to Adams Homes Tracts, according to the plat thereof recorded in Volume 15 of Plats, page 17, in King County, Washington;
EXCEPT the north 200 feet of that portion of said Lot 4, lying west of the west line of the east 60 feet thereof;
AND EXCEPT the west 56 feet of said Lot 10,
AND EXCEPT that portion of said Lots 9 and 10 conveyed to the state of Washington for highway purposes by deed recorded under Recording Number 5133875



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RETAIL LEASE AGREEMENT
(Multi Tenant – Triple Net)

EXHIBIT C

[Tenant Improvement Schedule]

1. Tenant Improvements to be Completed by Landlord

Landlord to provide \$10,000 fixture allowance to increase lighting for market in facility.

Landlord shall clean kitchen and premises. Landlord remove existing carpet on lower floor to expose a clean concrete surface.

2. Tenant Improvements to be Completed by Tenant



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 Rent Rider
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RENT RIDER

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This Rent Rider ("Rider") is a part of the lease agreement dated March 28, 2012 (the "Lease") between The City of SeaTac ("Landlord") and Sahra H. Abdulle, dba Sunset Int'l Furniture & Tabarak Wholesale/Retail Co. ("Tenant") concerning the space commonly known as SeaTac Center (the "Premises"), located at the property commonly known as 15221 International Boulevard, Suite 201, SeaTac, WA (the "Property").

- 1. BASE MONTHLY RENT SCHEDULE.** Tenant shall pay Landlord base monthly rent during the Lease Term according to the following schedule:

Lease Year (Stated in Years or Months)	Base Monthly Rent Amount
<u>Months 1-4</u>	<u>\$ Fixturing period - No Rent</u>
<u>Months 5-12</u>	<u>\$ 8,000.00/mo., plus \$2,000 NNN</u>
<u>Months 13-24</u>	<u>\$15,000.00/mo., plus \$2,000 NNN</u>
<u>Months 25-36</u>	<u>\$15,450.00/mo., plus \$2,000 NNN</u>
<u>Months 37-48</u>	<u>\$15,914.00/mo., plus \$2,000 NNN</u>
<u>Months 49-60</u>	<u>\$16,391.00/mo., plus \$2,000 NNN</u>
<u>Months 61-64</u>	<u>\$16,883.00/mo., plus \$2,000 NNN</u>

- 2. CONSUMER PRICE INDEX ADJUSTMENT ON BASE MONTHLY RENT.** The base monthly rent shall be increased on the first day of the second year of the Lease and on the first day of each year of the Lease thereafter (each, an "Adjustment Date") during the term of this Lease (but not during any extension term(s) unless specifically set forth elsewhere in the Lease or another Rider attached thereto). The increase shall be determined in accordance with the increase in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (all items for the geographical statistical area in which the Premises is located on the basis of 1982-1984 equals 100) (the "Index"). The base monthly rent payable immediately prior to the applicable adjustment date shall be increased by the percentage that the Index published for the date nearest preceding the applicable Adjustment Date has increased over the Index published for the date nearest preceding the first day of the Lease Year from which the adjustment is being measured. Upon the calculation of each increase, Landlord shall notify Tenant of the new base monthly rent payable hereunder. Within twenty (20) days of the date of Landlord's notice, Tenant shall pay to Landlord the amount of any deficiency in Rent paid by Tenant for the period following the subject Adjustment Date, and shall thereafter pay the increased Rent until receiving the next notice of increase from Landlord. If the components of the Index are materially changed after the Commencement Date, or if the Index is discontinued during the Lease term, Landlord shall notify Tenant of a substitute published index which, in Landlord's reasonable discretion, approximates the Index, and shall use the substitute index to make subsequent adjustments in base monthly rent. In no event shall base monthly rent be decreased pursuant to this Rider.

INITIALS: LANDLORD _____ DATE _____ TENANT SA DATE 3/28/12
 LANDLORD _____ DATE _____ TENANT _____ DATE _____



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Guaranty
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GUARANTY OF TENANT'S LEASE OBLIGATIONS RIDER

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New text inserted by licensee indicated by small capital letters.

This Guaranty of Tenant's Lease Obligations Rider (the "Guaranty") is made by Sahra H. Abdulle, whose address is 4238 S. 137th Street, Tukwila, WA 98168 ("Guarantor"), for the benefit of City of SeaTac ("Landlord"), whose address is 4800 South 188th Street, SeTac, WA 98188-8605.

- 1. Underlying Lease. Landlord and Sahra H. Abdulle, dba Sunset Int'l Furniture & Tabarak Wholesale/Retail Co ("Tenant"), have entered into that certain Lease Agreement dated March 28, 2012 (the "Lease") concerning the leased space commonly known as 15221 International Blvd., Suite 201, SeaTac, WA. (the "Premises").
2. Guaranty. Guarantor induced Landlord to enter into the Lease in consideration for Guarantor's guaranty, and Guarantor further acknowledges that it receives direct financial and economic benefits because Tenant will lease the Premises. Therefore, Guarantor absolutely, unconditionally and irrevocably guarantees to Landlord and its successors and assigns, without deduction by reason of set-off, defense or counterclaim, a) the full, punctual, and complete payment of all rent and other sums to be paid to Landlord under the Lease, including all attorney's fees, costs and expenses of collection incurred by Landlord in enforcing its rights and remedies under the Lease and this Guaranty; and b) the full, punctual, and complete discharge and performance of each and every other term, covenant, obligation and warranty of Tenant contained in the Lease. If Tenant defaults or breaches the Lease, Guarantor shall perform Tenant's obligations on Tenant's behalf. This Guaranty shall remain in full force and effect until all the terms, covenants, conditions, and agreements contained in the Lease are fully performed and observed. This Guaranty shall be enforceable against Guarantor without the necessity of any suit or proceeding on the part of Landlord against Tenant or any other party.
3. No Discharge of Guarantor. This Guaranty shall not be discharged and the liability of Guarantor shall in no way be affected by (a) the release or discharge of Tenant in any receivership, bankruptcy or other proceeding; (b) the impairment, limitation or modification of any liability to Landlord of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease or resulting from the operation of any present or future provision of federal or state bankruptcy or insolvency laws or other statute or from the decision in any court; (c) the rejection or disaffirmance of the Lease in any bankruptcy, insolvency, or similar proceeding; (d) the assignment, transfer, or encumbrance of all or any portion of the Tenant's interest in the Lease, the subletting of all or any portion of the Premises, or the granting to any third party of any rights of occupancy of all or any portion of the Premises; (e) waiver of discharge by Landlord of default or future performance by Tenant of any term of the Lease or Guaranty; (f) the exercise, forbearance, or election by Landlord of any of its rights or remedies reserved under the Lease, this Guaranty, or by law; (g) the release by Landlord of any security given to Landlord; or (h) any extension, renewal, amendment, expansion, or termination of the Lease.
4. Notice. Landlord shall have no obligation to notify Guarantor of any of the events described in Paragraph 3 of this Guaranty, and Guarantor waives any such notice and acknowledges specifically that such waiver includes notice of acceptance of this Guaranty, notice of any event of default under the Lease or this Guaranty, opportunity to cure any event of default under the Lease or this Guaranty, and proof of notice or demand to Tenant relating to any event of default. Guarantor hereby further waives any and all defenses, rights of subrogation, reimbursement, indemnification, contribution, and any other rights and defenses that are or may become available to it. Until all of the obligations of Tenant set forth in the Lease are fully performed and observed (including without limitation the payment of all rent and other sums required to be paid by Tenant to Landlord), Guarantor shall have

INITIALS: LANDLORD _____ DATE _____ TENANT SA DATE 5/28/12
LANDLORD _____ DATE _____ TENANT _____ DATE _____



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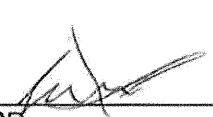


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GUARANTY OF TENANT'S LEASE OBLIGATIONS RIDER

no right of subrogation against Tenant by reason of any payments or acts of performance by Guarantor hereunder, and subordinates any liability or indebtedness of Tenant now or hereafter held by Guarantor to the obligations of Tenant to Landlord under the Lease.

- 5. **Attorneys' Fees.** If either party is required to employ an attorney to enforce or declare its rights hereunder, including in any appeal, bankruptcy or insolvency proceeding involving Tenant or any Guarantor, the prevailing party in any such action shall be entitled to recover its attorneys' fees and costs.
- 6. **Successors and Assigns.** The benefits of this Guaranty shall inure to the successors and assigns of Landlord and shall be binding upon Guarantor's successors, assigns, heirs, and legal and personal representatives.

	<u>3/28/12</u>
GUARANTOR	DATE
GUARANTOR	DATE

SPOUSE (if personal guaranty)	DATE
SPOUSE (if personal guaranty)	DATE

INITIALS: LANDLORD _____ DATE _____ TENANT SA DATE 3/28/12
 LANDLORD _____ DATE _____ TENANT _____ DATE _____



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Option to Extend Rider
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OPTION TO EXTEND RIDER

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This Option to Extend Rider ("Rider") is made part of the lease agreement dated December 15, 2011 (the "Lease") between The City of SeaTac ("Landlord") and Sahra H. Abdulle, dba Sunset Int'l Furniture & Tabarak Wholesale/Retail Company ("Tenant") concerning the leased space commonly known as 15221 International Blvd., North Building, SeaTac, WA (the "Premises"), located at the property commonly known as SeaTac Center (the "Property").

1. Extension of Lease. Provided Tenant is not in default of any provision of the Lease at the time that Tenant exercises the right to extend the Lease or at the time the new term begins, Tenant shall have one (1) (zero if not completed) successive options to extend the term of the Lease for five (5) years each. The term of the Lease shall be extended on the same terms, conditions and covenants set forth in the Lease, except that (i) the amount of the Base Rent stated in the Lease shall be adjusted as set forth below (provided, however, that Base Rent shall not be decreased); (ii) there shall be no free or abated rent periods, tenant improvement allowances or other concessions that may have been granted to Tenant at the beginning of the initial term hereof; and (iii) after exercise of Tenant's final extension term option, there shall be no further extension or renewal term options.

OPTION: OPTION IS SUBJECT TO A REDEVELOPMENT CLAUSE: IN THE EVENT THAT LANDLORD WILL BE PURSUING REDEVELOPMENT OF THE PROPERTY, LANDLORD SHALL GIVE NOTICE TO TENANT NO LATER THAN SEPTEMBER 30, 2016 OF THEIR INTENT TO REDEVELOP AND RELOCATE TENANT OR VOID THE OPTION AGREEMENT.

2. Notice. To extend the Lease, Tenant must deliver written notice to Landlord not less than one hundred eighty (180) days prior to the expiration of the then-current Lease term. Time is of the essence of this Rider.

3. Monthly Rent. Landlord and Tenant shall made a good faith effort to determine and agree on the fair market value of rent for the Premises for the next term of the Lease.

a. Failure to Agree on Rent. If Landlord and Tenant are unable to agree on the fair market rental value for the Premises within thirty (30) days after Tenant gives notice to extend, they shall then have ten (10) days to select or, appoint one real estate appraiser to determine the fair market value of rent for the Premises. All appraisers selected or appointed pursuant to this Rider shall be a Member of the American Institute of Real Estate Appraisers ("M.A.I.") with at least ten (10) years experience appraising commercial properties in the commercial leasing market in which the Premises are located, or equivalent. The appraiser appointed shall determine the fair market rental value for the Premises within twenty (20) days of appointment, which determination shall be final, conclusive, and binding upon both Landlord and Tenant, and Base Rent shall be adjusted accordingly for the new term. The appraiser's fees and expenses shall be shared equally between the parties.

b. Failure to Appoint One Appraiser. If Landlord and Tenant cannot mutually agree upon an appraiser, then either party may give the other party written notice that it has selected and appointed an M.A.I. appraiser, complete with the name, address, and other identifying information about the appraiser. The party receiving such notice shall then have ten (10) days to select and appoint its own M.A.I. appraiser and respond by giving written notice to the other party, complete with the name, address, and other identifying information about the appraiser. If, however, the responding party fails to select and appoint an appraiser and give notice to the other party within ten (10) days, the determination of the appraiser first appointed shall be final, conclusive and binding upon both parties, and the Base Rent shall be adjusted accordingly for the new term. The appraiser's fees and expenses shall be shared equally between the parties.

c. Method of Determining Rent. The appraisers appointed shall proceed to determine fair market rental value

INITIALS: LANDLORD _____ DATE _____ TENANT SA DATE 3/28/12
LANDLORD _____ DATE _____ TENANT _____ DATE _____



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OPTION TO EXTEND RIDER

within twenty (20) days following their appointment. The conclusion shall be final, conclusive and binding upon both Landlord and Tenant. If the appraisers should fail to agree, but the difference in their conclusions as to fair market rental value is ten percent (10%) or less of the lower of the two appraisals, then the fair market rental value shall be deemed to be the average of the two, and Base Rent shall be adjusted accordingly for the new term. If the two appraisers should fail to agree on the fair market rental value, and the difference between the two appraisals exceeds ten percent (10%) of the lower of the two appraisals, then the two appraisers shall appoint a third M.A.I.-qualified appraiser. If they fail to agree on a third appraiser within ten (10) days after their individual determination of the fair market rental value, either party may apply to the courts for the county in which the Premises are located, requesting the appointment of a the third M.A.I.-qualified appraiser. The third appraiser shall promptly determine the fair market rental value of the Premises. The parties shall then take the average of the two appraisals that are closest in value, which shall then constitute the fair market value; shall be final, conclusive and binding upon both parties; and Base Rent shall be adjusted accordingly for the new term. Each party shall pay the fees and expenses for its own appraiser. In the event a third appraiser must be appointed, his or her fees and expenses shall be borne equally by the parties.

INITIALS: LANDLORD _____ DATE _____ TENANT SA DATE 3/28/12
 LANDLORD _____ DATE _____ TENANT _____ DATE _____

SeaTac City Council

REQUEST FOR COUNCIL ACTION

Department Prepared by: Human Resources

Agenda Bill #: 3428

TITLE: An Ordinance related to employment agreements for City Department Head level positions.

May 4, 2012	
<input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Info. Only <input type="checkbox"/> Other	
Date Council Action Requested: <u>RCM 05/08/2012</u>	
Ord/Res Exhibits: _____	
Review Dates: <u>Council Study Session 04/24/2012, 05/08/2012</u>	
Prepared By: <u>Anh Hoang, Human Resources Director</u>	
Director: <u>Johnson for</u>	City Attorney: <u>Mary Mirante Bartolo</u>
Finance: <u>Todd Cutts FOR AARON ANTON BARS#</u>	<u>Various</u>
City Manager: <u>Todd Cutts</u>	Applicable Fund Name: <u>Various</u>

SUMMARY: The proposed Ordinance authorizes the City Manager to execute employment agreements for Department Head level positions. Such employment agreements may contain provisions for severance upon termination of employees who are hired into “at-will” positions.

DISCUSSION / ANALYSIS / ISSUES: All regular employees of the City with the exception of the City Manager and City Attorney currently have a “just cause” employment relationship with the City, which means these employees cannot be disciplined or separated from employment without “just cause.” The City Administration wishes to change the employment relationship for Department Head level employees who are hired after adoption of this Ordinance to an “at-will” employment relationship.

To aid the City to recruit and retain talent, and to provide due consideration for new hire employees for some personal security, the City administration is requesting the authorization to negotiate and sign employment agreements for Department Head level positions, to include severance pay for situations in which the employment relationship is ended by the City without “cause.” Employees who voluntarily resign from the City for any reason, or employees who are terminated “for cause” would not be eligible for the severance package.

RECOMMENDATION(S): It is recommended that the Ordinance be adopted.

FISCAL IMPACT:

Each new position will be evaluated on a case by case basis. Therefore, the exact fiscal impact is unknown.

ALTERNATIVE(S): Do not adopt the revised Ordinance. This would mean the allowance for the City Manager to negotiate and sign employment agreements with Department Head new hires would not be adopted. City Administration would likely keep the directors as “just cause” employees due to the potential loss in the City’s ability to recruit and retain executive level talent.

ATTACHMENTS: None.

ORDINANCE NO. _____

AN ORDINANCE of the City Council of the City of SeaTac, Washington, related to employment agreements for City Department Head level positions.

WHEREAS, it is appropriate to allow the City Manager to execute employment agreements for Department Head level positions, which may include severance pay consideration for employees who are hired into “at-will” positions in the City;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SEATAC, WASHINGTON, DO ORDAIN as follows:

Section 1. For Department Head level positions, the City Manager is authorized to negotiate and sign employment agreements with individuals who are employed “at-will” to serve at the pleasure of the City Manager. These employment agreements may include severance pay for separations of employment without just cause.

Section 2. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances shall not be affected.

Section 3. This Ordinance shall be in full force and effect five (5) days after passage and publication as provided by law.

Section 4. This Ordinance shall not be codified.

ADOPTED this _____ day of _____, 2012, and signed in authentication thereof on this _____ day of _____, 2012.


CITY OF SEATAC

Tony Anderson, Mayor

ATTEST:

Kristina Gregg, City Clerk

Approved as to Form:



Mary E. Mirante Bartolo, City Attorney

[Effective Date: _____]

[Director Positions—Employment Agreements]