

**Request for Proposal
ACQ-2008-0002-RFP
for a**

**PARKING LOT AIRSPACE LEASE
Offered by**

Washington State Department of Transportation

Proposal Due Date: November 12, 2008

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1. PROJECT OVERVIEW

The Washington State Department of Transportation (**WSDOT**) is offering this Request for Proposals (**RFP**) to solicit proposals from parties interested in leasing a WSDOT-owned property located in Tacoma, Washington for the purpose of constructing, operating, and maintaining a parking lot.

The Proposer shall be responsible for fulfilling all of the requirements of this RFP. Proposals will be evaluated against criteria described in this document to determine which proposal provides the best overall value to WSDOT. WSDOT will then enter into an Airspace Lease with the Proposer of the successful proposal for the construction, operation, and maintenance of a parking lot according to the terms and conditions identified in this RFP.

2. DEFINITIONS

The following terms as used throughout this RFP shall have the meanings set forth below.

“Airspace Lease” means the lease to be entered into by and between WSDOT and the apparent successful Proposer that sets forth the terms and conditions under which WSDOT will lease the Premises. This document will be in substantially the same form as **Exhibit A** attached to this RFP.

“Amortization Option” means the option available to Proposer to include a term in the Airspace Lease that requires WSDOT to pay under specified circumstance the amount equal to the unamortized construction cost of the parking facility constructed on the Premises by the Proposer based on a straight line five-year amortization schedule using the construction costs provided by the Proposer in its Proposal. The circumstances under which this payment would be made is if WSDOT terminates the Airspace Lease on the basis that termination is in the best interest of the State during the initial five (5) years of the Airspace Lease term.

“Base Rental Fee A” means the minimum monthly rent, as stated in the Revenue Proposal (**Exhibit D**), Proposer agrees to pay WSDOT each month for the leasing of the Premises, in addition to the Percentage Rent A, if any, during the period commencing the day following the day WSDOT issues Final Acceptance and terminating ten-years after the commencement of the Airspace Lease.

“Base Rental Fee B” means the minimum monthly rent, as stated in the Revenue Proposal (**Exhibit D**), Proposer agrees to pay WSDOT each month for the leasing of the Premises, in addition to the Percentage Rent B, if any, during the five (5) year renewal period of the Airspace Lease, if any.

“Business Days” means Monday through Friday, 8:00 a.m. to 5:00 p.m., PST or PDST, as applicable, except for holidays observed by the State of Washington.

“Construction Plans” means all plans, specifications, and information detailing how the Proposer will construct the parking lot facility on the Premises.

“Construction Rental Fee” means the monthly rent, as stated in the Revenue Proposal (**Exhibit D**), Proposer agrees to pay WSDOT each month during the construction period commencing upon execution of the Airspace Lease and terminating at 11:59 p.m. the day WSDOT issues Final Acceptance.

“Days” mean calendar days.

“Developer Agreement” means the document that sets forth the terms and conditions under which the apparent successful Proposer will construct the parking lot on the Premises. This document will be in substantially the same form as **Exhibit G** attached to this RFP.

“Exhibit A” means the document entitled Airspace Lease attached to this RFP as **Exhibit A**, and by this reference incorporated herein.

“Exhibit B” means the document entitled Right of Way Map that depicts the Premises and which is attached to this RFP as **Exhibit B**, and by this reference incorporated herein.

“Exhibit C” means the document entitled Proposer’s Business References, attached to this RFP as **Exhibit C**, and by this reference incorporated herein.

“Exhibit D” means the document entitled Revenue Proposal, attached to this RFP as **Exhibit D**, and by this reference incorporated herein.

“Exhibit E” means the Amortization Option Form, attached hereto as **Exhibit E**, and by this reference incorporated herein.

“Exhibit F” means the document entitled JC Agreement, attached to this RFP as **Exhibit F**, and by this reference incorporated herein.

“Exhibit G” means the document entitled Developer, Agreement attached to this RFP as **Exhibit G**, and by this reference incorporated herein.

“Final Acceptance” means the written notification from WSDOT to the successful Proposer that WSDOT concurs that all the obligations under the executed Developer Agreement have been completed by the successful Proposer.

“Gross Revenue” means all revenues of any nature (including, but not limited to, cash, credits, property or other consideration of any kind or nature) that are received by the successful Proposer (whether directly or indirectly) in connection with the Airspace Lease, less sales taxes.

“JC Agreement” means that agreement to be entered into by and between WSDOT and the apparent successful Proposer that sets forth the terms and conditions under which WSDOT will perform project functions, including but not limited to, the review of Construction Plans and inspection of construction work. This document will be in substantially the same form as **Exhibit F** attached to this RFP.

“Letter of Intent to Propose” means the letter Proposer is required to submit to WSDOT indicating the Proposer's intent to respond to this RFP, as further detailed in **Section 3.3** herein.

“Letter of Submittal” means the letter Proposer is required to submit to WSDOT as part of its Proposal, as further detailed in **Section 5** herein.

“(M)” Whenever appearing in this document, **(M)** indicates a mandatory requirement for the Proposer submitting a Proposal. Disqualification may occur if a Proposer does not fulfill the stated requirement.

“PDST” means Pacific Daylight Savings Time.

“PST” means Pacific Standard Time.

“Percentage Rent A” means the additional monthly rent, as stated in the Revenue Proposal (**Exhibit D**), Proposer agrees to pay to WSDOT, in addition to Base Rental Fee A, for the leasing of the Premises during the period commencing on the day following WSDOT's issuance of Final Acceptance, and terminating ten-years after commencement of the Airspace Lease.

“Percentage Rent B” means the additional monthly rent, as stated in the Revenue Proposal (**Exhibit D**), Proposer agrees to pay to WSDOT, in addition to Base Rental Fee B, for the leasing of the Premises during the five (5) year renewal period of the Airspace Lease, if any.

“Premises” means the real property depicted in **Exhibit B** and legally described as follows:

That portion of the Southwest Quarter of Section 4, Township 20 North, Range 3 East, W.M., in the City of Tacoma, Pierce County, Washington. Beginning at a point on the Westerly Right of Way of SR 705 Tacoma Spur opposite Highway Engineer's Station (hereinafter referred to as HES) S-CBD 21+34.54 and 33 feet left, as shown on sheet 4 of 8 of the Washington State Department of Transportation's Right of Way and Limited Access Plan, SR 705 Tacoma Spur dated June 20, 1980 and revised June 26, 2004; thence Northwesterly along the Westerly Right of Way line to the

October 10, 2008

Hood Street Parking Lot RFP

intersection with Hood Street as now constructed; thence Northeasterly along Hood Street to the South margin of South 15th Street as now constructed; thence Easterly along the South line of South 15th Street to the Easterly Right of Way line of SR 705 Tacoma Spur, thence Southerly along the East Right of Way line of SR 705 Tacoma Spur to the intersection of a line drawn radial to and parallel with the Highway pier at HES SB 165+51, thence westerly along said line to the intersection to the Westerly Right of Way line of SR 705 Tacoma Spur; thence Northerly along the West Right of Way line of SR 705 Tacoma Spur to the point of beginning, with a vertical height limit at a horizontal plane twelve (12) feet below and parallel with the underside of the SR 705 bridge decks. Excepting that part conveyed to the BNSF Railway Company filed December 12, 2005 under Auditor's file number 20062270288 being parcel B, details of which can be found on sheets 1 through 4 of a unrecorded Right of Way plan dated April 24, 2005, by Duane Hartman & Associates for BNSF Railway. All located below the SR 705 bridge structures, in the City of Tacoma, Pierce County, Washington, and known to be a portion of the highway right of way of SR 705, Tacoma Spur, Sheet 4 of 8 Sheets and more commonly known as Hood Street, located between South 15th and Hood Street.

“Proposal” means a formal written offer submitted in response to this RFP to lease the Premises from WSDOT in accordance with the terms of this RFP.

“Proposer” means, as the context requires, an individual, partnership, firm, corporation, or joint venture submitting a Proposal, including any Subcontractor.

“RCW” means the Revised Code of Washington.

“Request for Proposals” or **“RFP”** means this Request for Proposal ACQ-2008-0002.

“RFP Coordinator” means the individual identified in **Section 3.1.1** of this RFP who is the sole point of contact in WSDOT for this procurement.

“State” means the State of Washington.

“Subcontractor” means one not in the employment of Proposer, who is performing all or part of the activities under this RFP under a separate contract with Proposer. The term “Subcontractor” means Subcontractor(s) of any tier.

“WSDOT” means Washington State Department of Transportation.

“WSDOT Contracting Officer” means the WSDOT Director of Real Estate Services, or the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this RFP, an authorized representative of the WSDOT Contracting Officer acting within the limits of his/her authority.

3. INSTRUCTIONS FOR COMPLETING AND SUBMITTING PROPOSALS

3.1. RFP Coordinator

- 3.1.1.** The RFP Coordinator is the **sole point of contact** in the WSDOT for this procurement. All communication with WSDOT regarding the RFP shall be with the RFP Coordinator as follows:

Mark Eldridge, RFP Coordinator
Phone: 360-705-7314
FAX: 360-705-6811
Email: Eldridm@wsdot.wa.gov

- 3.1.2.** All Proposals must be address to:

Mailing Address:
PO BOX 47338
Olympia WA 98504-7338

OR

Street Address:

Washington State Department of Transportation
243 Israel Road
Tumwater, WA 98501

NOTE: Hand Deliveries must go to the first floor WSDOT Real Estate Services Reception Desk; not the first floor security desk.

- 3.1.3.** You may use facsimile and/or email for any communication required in this RFP, **EXCEPT** for your formal response to this RFP (your Proposal) and protest, if any. You may not send your Proposals or protest by facsimile or email communication.
- 3.1.4.** **Communication regarding this RFP with any other WSDOT personnel will be considered unofficial and non-binding to the WSDOT. Proposers are to rely on written statements issued by the RFP Coordinator. Communication directed to parties other than the RFP Coordinator may result in disqualification of the Proposer.**

3.2. Schedule of Procurement Activities

All Proposers must adhere to the following schedule of activities. Proposers mailing Proposals should allow normal mail delivery time to ensure timely receipt of their Proposals by the RFP Coordinator listed in this RFP. Notwithstanding the provisions of RCW 1.12.070, late proposals will not be accepted, nor will time extensions be granted.

RFP PROCUREMENT SCHEDULE

Activity	Due Dates	Time
Issue RFP	10/11/08	12:00/noon PDST
Mandatory Letter of Intent to Propose Due	10/17/08	5:00 PM PDST
Mandatory Pre-Proposal Conference and Site Visit	10/22/08	10:30 AM PDST
Written Questions Due	10/29/08	5:00 PM PDST
Amendments to RFP Issued	11/05/08	5:00 PM PDST
Proposals Due	11/12/08	5:00 PM PST
Evaluate Proposals	11/19/08	5:00 PM PST
Send Notification of Apparently Successful Proposer	11/21/08	5:00 PM PST
Executed JC Agreement and Provide Required Bond or Escrow	12/08/08	5:00 PM PST
100% Construction Plans Due	No later than 02/09/09	5:00 PM PST
Construction Plans Approved and Execute Airspace Lease & Developer Agreement	No later than six (6) months after Proposer's submittal of 100% Construction Plans	Prior to 03/08/09: 5:00 PM PST On or after 03/08/09: 5:00 PM PDST

WSDOT reserves the right to revise the above schedule.

3.3. (M) Mandatory Letter Of Intent to Propose (FAX or Email Acceptable)

3.3.1. A letter indicating the Proposer's intent to respond to this RFP must be received by the RFP Coordinator at the address specified in **Section 3.1.2** of this RFP, no later than the date and time listed in **Section 3.2**. The Proposer may submit the Letter of Intent to Propose by U.S. mail, facsimile or email. By submitting this letter, the Proposer accepts the procedure, review criteria and the administrative instructions of this RFP.

3.3.2. Each Proposer must include the following information in the Letter of Intent to Propose:

A. Proposer's name

B. Name and title of Proposer's authorized representative for this RFP (This representative shall also be named the authorized representative identified in the Proposer's Proposal)

C. Address

D. Telephone number

- E. FAX number
- F. Email address
- G. Statement of intent to propose

3.3.3. Only Proposers submitting a Letter of Intent to Propose will receive amendments and other information regarding this RFP. Failure to submit a Letter of Intent to Propose by the deadline specified in **Section 3.2** will result in the rejection of the Proposer's Proposal.

3.4. (M) Mandatory Pre-Proposal Conference and Site Visit

A Pre-Proposal Conference will be held from 10:30 a.m. to 12:30 p.m., PDST, October 22, 2008, at the satellite office of the Washington State Department of Transportation, 950 Broadway, Suite 501, Tacoma, WA 98402, followed by a site visit to the property to be leased. WSDOT will discuss general requirements of this RFP, construction items and schedule. Any written questions received during this conference and site visit will be processed according to the question and answer procedure described in the following paragraph. Oral questions and answers will not be recorded and no further response will be provided. Attendance at this pre-proposal conference and site visit are mandatory.

3.5. Proposer Questions and Answers

3.5.1. Specific questions concerning this RFP should be submitted in writing to the RFP Coordinator at the address specified in Section 3.1.2 of this RFP. Faxed and email - submissions of questions are acceptable. The RFP Coordinator must receive questions no later than 5:00 p.m. PDST on the date specified in Section 3.2 Schedule of Procurement Activities.

3.5.2. All questions and answers will be compiled and presented in written form as an amendment to the RFP. Only individuals, or business entities, submitting a Letter of Intent to Propose will be notified via email of amendments and/or other communications regarding this RFP.

3.6. Amendment to the RFP

3.6.1. In the event that it becomes necessary to revise any part of this RFP, an amendment will be provided to all Proposers who have timely submitted a Letter of Intent to Propose to WSDOT by the date specified in **Section 3.2**.

3.6.2. The Proposer is instructed to disregard any oral representations it may have received. Proposal evaluation will be based on the material contained in the RFP and any amendments to the RFP that have been issued.

3.6.3. WSDOT reserves the right to revise the RFP and/or to issue amendment(s) to the RFP. For this purpose, the answers to questions that are submitted to the RFP Coordinator, together with other pertinent information, shall be provided as an amendment to the RFP.

3.6.4. WSDOT also reserves the right to cancel or to reissue the RFP in whole or in part, prior to the execution of the Airspace Lease. In the event it becomes necessary to revise any part of the RFP, an amendment will be provided to all those who submitted a Letter of Intent to Propose.

3.7. (M) Proposal Contents

3.7.1. Proposal Presentation and Format Requirements

A. The Proposal should be prepared simply and economically, providing a straightforward and concise description of the Proposer's ability to meet the requirements of this RFP. Do not use fancy bindings, colored displays or promotional material. Standard brochures are *not* to be included in the Proposal. Emphasis should be on completeness and clarity of content.

B. Proposals must be prepared on standard or recycled 8 ½ x 11-inch paper using separators for the major sections of the proposal and each copy to be bound by binder clips or three ring binders.

C. The Proposal must be organized in the order as outline below:

- (1) Signed Letter of Submittal, including statement of Proof of Insurance
- (2) Business References/Completed **Exhibit C**
- (3) Financial and Business Requirements
- (4) Management Proposal
- (5) Operating Plan
- (6) Revenue Proposal/Completed **Exhibit D**
- (7) Parking Lot Construction Plans
- (8) Amortization Option/Completed **Exhibit E**
- (9) Parking Lot Construction Costs, if applicable

3.7.2. Number of Copies

Proposer is required to submit two (2) copies with original signatures, four (4) identical copies with photocopies of the original signatures, and one (1) electronic copy formatted for Microsoft Office 2003 software on a CD-ROM, of the Proposal to the RFP Coordinator.

3.7.3. Delivery of Proposals

The Proposal, whether mailed or hand delivered, must be received by the RFP Coordinator at the address specified in **Section 3.1.2** no later than the date and time specified in **Section 3.2**. Late Proposals shall not be accepted and shall automatically be disqualified from further consideration. The delivery envelope shall be clearly marked to the attention of the RFP Coordinator. The method of delivery shall be at Proposer's discretion and sole risk to assure delivery at the designated office. Faxed or emailed Proposals will not be accepted and will be disqualified. The RFP Coordinator shall send a notice acknowledging receipt of the Proposal.

3.7.4. Mandatory Response Overview

A. The Proposer shall complete a response to each mandatory section. Proposals may be disqualified for not completing proposal sections. Each mandatory item is noted with an (M).

B. In response to each RFP requirement, Proposers must clearly demonstrate that their Proposal meets the requirement. The Proposer will be scored based on how well the Proposer meets

WSDOT's requirements. Failure to provide a response shall be considered non-responsive and be the basis for disqualification of the Proposal.

3.7.5. Proprietary Information/Public Disclosure

A. Materials submitted in response to this competitive procurement shall become the property of WSDOT.

B. All Proposals received shall remain confidential until the Airspace Lease, if any, resulting from this RFP are awarded, i.e. signed by all parties. Thereafter, the Proposals shall be deemed public records as defined in chapter 42.56 RCW, "Public Records."

C. In the event a Proposer desires to claim portions of its Proposal as exempt from public disclosure, the Proposer must identify those portions in the Proposal cover letter. Each page of the Proposal claimed to be exempt must be clearly identified as "confidential. WSDOT will consider a Proposer's request for exemption from disclosure; however, WSDOT will make a decision predicated upon applicable laws. Marking the entire Proposal exempt from disclosure will not be honored. The Proposer must be reasonable in designating information as confidential. If any information is marked as proprietary in the Proposal, such information will not be made available until that Proposer has been given an opportunity to timely seek a court injunction against the requested disclosure.

D. The Proposal of the successful Proposer generally becomes part of the contract, which is subject to public disclosure. Data contained in the Proposal, including all documentation provided and innovations developed as a result of the contract, become the property of WSDOT.

3.7.6. Failure to Comply

For a Proposal to be considered complete, a response must be given to all requirements and all sections of the RFP. Proposer's failure to comply with any part of the RFP or failure to address all areas requested by this RFP may result in the Proposer's Proposal being disqualified for being non-responsive to the RFP.

3.7.7. Acceptance Period

A. Proposals providing less than ninety (90) Days for acceptance by WSDOT from the due date set for receipt of Proposals will be considered non-responsive and will be rejected.

B. If WSDOT receives only one (1) responsive Proposal as a result of this RFP, WSDOT reserves the right to select and award the Airspace Lease to the single Proposer.

3.7.8. Obligation to Contract

This RFP does not obligate the State of Washington or WSDOT to lease, or construct upon, the real property specified herein. WSDOT also reserves the right to cancel or to reissue the RFP in whole or in part, prior to execution of a lease.

3.7.9. Cost to Propose

WSDOT will not be liable for any costs incurred by the Proposer in preparation of a Proposal submitted in response to this RFP, in conducting presentation(s), in facilitating site visit(s), in preparing Construction Plans, or any other activities related to responding to this RFP.

3.7.10. Waivers

WSDOT reserves the right to waive specific terms and conditions contained in this RFP. It shall be understood by all Proposers that the Proposal is predicated upon acceptance of all terms and conditions contained in this RFP, unless the Proposer has obtained such a waiver in writing from WSDOT prior to submission of the Proposal. Such a waiver, if granted, will be granted to all Proposers.

3.7.11. Limitations on Right To Rely

A. Proposer expressly acknowledges and agrees that, except as set forth below, the WSDOT's rights under this RFP to review, comment on, inspect, approve, disapprove and/or accept architectural and other designs, specifications, the plan, construction, and to monitor and sample work or activities:

- (1) exist solely for the benefit and protection of WSDOT;
- (2) except for express contractual standards for approval or disapproval set forth elsewhere in this RFP, do not create or impose upon WSDOT any standard or duty of care, contractual or non-contractual, toward Proposer, all of which are hereby disclaimed; and
- (3) may not be relied upon, nor may WSDOT's exercise or failure to exercise any such rights be relied upon by Proposer in determining whether Proposer has satisfied the standards and requirements set forth in this RFP.

B. Regardless of WSDOT's exercise or failure to exercise any such rights and regardless of the issuance of Final Acceptance, Proposer shall have an independent duty and obligation to and shall not thereby be relieved in any way from its obligation, to obtain all necessary regulatory approvals for the facility, and to design and construct the facility in accordance with the standards and requirements set forth in this RFP.

C. No rights of WSDOT described above, no exercise or failure to exercise such rights, no failure of WSDOT to meet any particular standard of care in the exercise of such rights, and no acceptances shall:

- (1) be deemed or construed to waive any of WSDOT's rights and remedies under this RFP or permits; or
- (2) be deemed or construed as any kind of representation or warranty, express or implied, by WSDOT.

D. Notwithstanding any contrary provision of this Section:

- (1) Proposer shall be entitled to rely on specific written deviations and specific written interpretive engineering decisions WSDOT gives under this RFP; and
- (2) Proposer shall be entitled to rely on any permit WSDOT issues to it for the matters authorized thereby, subject to satisfying all conditions set forth therein.

4. AWARD AND EXECUTION OF AGREEMENTS

4.1. RFP Evaluation

4.1.1. Evaluation

The process for awarding this RFP may be done in phased sections. The Proposal will be evaluated based on the process outlined below. The top scoring Proposer(s) will proceed to the next step, if necessary, in this RFP process. Proposals with tied scores will be treated equally and the tied Proposals will be moved forward to the next phase if they are among the top scoring Proposers and further process is chosen.

4.1.2. Specific Criteria for RFP Evaluation:

Criteria for Evaluation	
RFP Compliance/Administrative Review	Pass/Fail
Business References	Pass/Fail
Financial and Business Requirements	Pass/Fail
Operating Plan Proposal	20%
Construction Plans	10%
Revenue Proposal	60% (total)
(1) Base Rents	Maximum 40%
(2) Percentage Rents & Amortization Option	Maximum 20%
Best Value to WSDOT	10%

4.2. Pass/Fail Evaluations

Proposers receiving a failing score from the RFP Compliance/Administrative Review, Business References, or Financial and Business Requirements sections shall be viewed as not meeting the minimum mandatory requirements and will be eliminated from further consideration.

4.3. Best Value to WSDOT

Proposer shall describe in detail what value their Proposal will provide to WSDOT, including, but not limited to, creativity, supportability, and flexibility of the Proposal, compliance to industry standards, and value-added.

4.4. Clarification of Proposal

WSDOT reserves the right to require clarification, additional information and materials in any form relative to any or all of the provisions or conditions of the RFP.

4.5. Most Favorable Terms

WSDOT reserves the right to make an award without further discussion of the Proposal submitted. Therefore, the Proposal should be submitted initially on the most favorable terms that the Proposer can offer. At its discretion, WSDOT reserves the right to request best and final offers from the RFP finalists. The Proposer should be prepared to accept this RFP for incorporation into the Airspace Lease and/or Developer Agreement resulting from this RFP. The Airspace Lease and/or the Developer Agreement may incorporate some or all of the Proposal. It is understood that the Proposal will become a part of the official file on this matter without obligation to the WSDOT.

4.6. Proposal Rejections

WSDOT will make the sole determination of clarity and completeness in the responses to any of the provisions in this RFP.

4.7. Award Based on Multiple Factors

The evaluation process is designed to award the Airspace Lease to the Proposer whose Proposal best meets the requirements of this RFP. WSDOT executive management will make the final decision/selection after analysis of the proposals has been submitted.

4.8. Award of Contract

WSDOT will notify the successful Proposer of the contract award in writing.

4.9. Execution of JC Agreement

Proposer shall properly execute and return the JC Agreement in accordance with the schedule outlined in **Section 3.2**. Proposer will also remit the \$7,500 bond or escrow payment, as required by the JC Agreement, simultaneously with the submission of the JC Agreement. WSDOT will not commence review of the Proposer's Construction Plans until Proposer and WSDOT have executed the JC Agreement and Proposer has remitted the bond to WSDOT or paid \$7,500 into the escrow account for the benefit of WSDOT.

4.10. Failure to Execute JC Agreement

Failure of the apparent successful Proposer to return, within the prescribed time period, the signed JC Agreement and bond/escrow payment or failure or refusal to sign the JC Agreement, shall result in forfeiture of the award of the RFP to the apparent successful Proposer. If this should occur, WSDOT may then award the Airspace Lease to the Proposer with the second highest evaluation calculation or reject all remaining Proposals. If the Proposer with the second highest evaluation calculation fails to return the required documents as stated above within the time provided after award, the Airspace Lease may then be awarded successively in a like manner to the remaining responsible Proposers until the above requirements are met or the remaining Proposals are rejected.

4.11. Submittal of 100% Construction Plans

Proposer shall submit to WSDOT the 100% Construction Plans in accordance with the schedule outlined in **Section 3.2**. The 100% Construction Plans shall be prepared in accordance with the requirements in **Section 11**.

4.12. Failure to Submit the 100% Construction Plans or Obtain WSDOT Approval

Failure of the apparent successful Proposer to submit the 100% Construction Plans within the prescribed time period or failure to obtain WSDOT approval of the 100% Construction Plans within six (6) months of submission of the 100% Construction Plans, shall result in forfeiture of the award of the RFP to the apparent successful Proposer. If this should occur, WSDOT may then award the Airspace Lease to the Proposer with the second highest evaluation calculation or reject all remaining Proposals. If the Proposer with the second highest evaluation calculation fails to return the required documents as stated above within the time provided after award, the Airspace Lease may then be awarded successively in a like manner to the remaining responsible Proposers until the above requirements are met or the remaining Proposals are rejected.

4.13. Execution of the Developer Agreement

Upon WSDOT's acceptance of the 100% Construction Plans, WSDOT shall incorporate the relevant information from the apparent successful Proposal and the WSDOT approved 100% Construction Plans into the Developer Agreement and provide the apparent successful Proposer with two (2) original Developer Agreements. Within ten (10) Days after receipt of said Developer Agreements, the apparent successful Proposal shall return to the RFP Coordinator the two (2) signed original Developer Agreements together with the surety bond as required in the Developer Agreement. Until WSDOT executes the Developer Agreement, no Proposal shall bind WSDOT nor shall the apparent successful Proposer have any access to property covered by the Airspace Lease and/or Developer Agreement. The Proposer shall bear all risks for any work begun outside of such areas and for any materials ordered before the Developer Agreement and the Airspace Lease are executed by WSDOT.

4.14. Execution of Airspace Lease

Upon WSDOT's acceptance of the 100% Construction Plans, WSDOT shall incorporate the relevant information from the apparent successful Proposal and the WSDOT approved 100% Construction Plans into the Airspace Lease and provide the apparent successful Proposer with three (3) original Airspace Lease documents. Within ten (10) Days after receipt of said Airspace Leases, the successful Proposer shall return to the RFP Coordinator the three (3) signed original Airspace Lease documents together with the initial Construction Rental Fee and an insurance certification as required by **Section 7.3.7**. Until WSDOT executes the Airspace Lease, no Proposal shall bind WSDOT nor shall the Proposer have any access to property covered by the Airspace Lease and/or Developer Agreement. The Proposer shall bear all risks for any work begun outside of such areas and for any materials ordered before the Airspace Lease is executed by WSDOT.

4.15. Failure to Execute Airspace Lease and Developer Agreement

Failure of the apparent successful Proposer to return, within the prescribed time periods, the insurance certificate, the signed Airspace Lease, the surety bond, or the Developer Agreement, or failure or refusal to sign the Airspace Lease or Developer Agreement shall result in forfeiture of the award of the RFP to the apparent successful Proposer. If this should occur, WSDOT may then award the Airspace Lease to the Proposer with the second highest evaluation calculation or reject all remaining Proposals. If the Proposer with the second highest evaluation calculation fails to return the required documents as stated above within the time provided after award, the Airspace Lease may then be awarded successively in a like manner to the remaining responsible Proposers until the above requirements are met or the remaining Proposals are rejected.

4.16. Publicity

No informational pamphlets, notices, press releases, research reports and/or similar public notices concerning the JC Agreement, Airspace Lease, or Developer Agreement, may be released by the apparently successful Proposer, without obtaining prior written approval from WSDOT.

4.17. Notification to Unsuccessful Proposers

Proposers, whose Proposals have not been selected, will be so notified via email.

4.18. Debriefing of Unsuccessful Proposers

4.18.1. Proposers who submitted a Proposal and were not selected will be given the opportunity for a debriefing conference. The RFP Coordinator must receive the request for a debriefing conference within five (5) Business Days after the notification of unsuccessful Proposer letter/email is sent. The debriefing shall be held within five (5) Business Days of the request.

4.18.2. Discussion will be limited to a critique of the requesting Proposer's Proposal. Comparisons between Proposals or evaluations of the other Proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

4.19. Resolution of Complaints and Protests

4.19.1. Protests. Protests may be made after WSDOT has announced the apparently successful Proposer and after the protesting Proposer has had a debriefing conference with WSDOT. Protests may be made on only these grounds:

- A.** Arithmetic errors were made in computing the score.
- B.** WSDOT failed to follow procedures established in the solicitation document; or applicable state or federal laws or regulations.
- C.** There was bias, discrimination, or conflict of interest on the part of an evaluator.

4.19.2. A person authorized to bind the Proposer to a contractual relationship must sign the protest letter. WSDOT must receive the written protest within five (5) Business Days after the debriefing conference. WSDOT will postpone further steps in the acquisition process until the protest has been resolved.

4.19.3. Individuals not involved in the protested acquisition will objectively review the written protest material submitted by the Proposer and all other relevant facts known to WSDOT.

4.19.4. In conducting its review, WSDOT will consider all available relevant facts. WSDOT will resolve the appeal in one of the following ways:

- A.** Find that the protest lacks merit thereby upholding WSDOT's action.
- B.** Find only technical or harmless errors in WSDOT's acquisition process, determining WSDOT to be in substantial compliance, and therefore rejecting the protest; or
- C.** Find merit in the protest and provide options to WSDOT, including:
 - (1)** Correcting errors and reevaluating all Proposals;

- (2) Reissuing the solicitation document; or
- (3) Making other findings and determining other courses of action as appropriate.

4.19.5. WSDOT will issue a written decision within five (5) Business Days after receipt of the notice of appeal, unless more time is needed. The protesting Proposer will be notified if additional time is necessary. If WSDOT determines that the protest is without merit, WSDOT will proceed with Airspace Lease execution process with the apparently successful Proposer. If the protest is determined to have merit, one of the alternatives noted in the above paragraph will be taken. WSDOT's determination is final, and no further administrative appeal is available.

4.19.6. Protest Form and Content

A. A protest must be in writing and must contain the facts and arguments upon which the protest is based and must be signed by a person authorized to bind the Proposer to a contractual relationship. At a minimum, this must include:

- (1) The name of the protesting Proposer, its mailing address and phone number, and the name of the individual responsible for submission of the protest.
- (2) Information about the acquisition and the acquisition method.
- (3) Specific and complete statement of WSDOT's action(s) being protested.
- (4) Specific reference to the grounds for the protest.
- (5) Description of the relief or corrective action requested.

B. Protests shall be addressed to:

Director
Real Estate Services
Washington State Department of Transportation
243 Israel Road
Tumwater, Washington 98501
PO Box 47338
Olympia, Washington 98504-7338

C. The Proposer shall also submit a copy of the protest to the RFP Coordinator at the same time the protest is sent to the Director.

5. LETTER OF SUBMITTAL (M)

This section sets forth the requirements for the Letter of Submittal.

- 5.1. The Letter of Submittal must be on official Proposer letterhead, and must be signed by a person authorized to bind your organization to a lease.
- 5.2. Your Letter of Submittal must include the following in the order given:
 - 5.2.1. Proposer's name
 - 5.2.2. Name and title of the Proposer's authorized representative
 - 5.2.3. Address
 - 5.2.4. Telephone number
 - 5.2.5. Fax Number
 - 5.2.6. Statement that proof of insurance shall be provided if awarded a lease

6. BUSINESS REFERENCES

6.1. (M) Business References

The Proposer must provide names, addresses, telephone numbers, fax numbers, and e-mail addresses of three (3) non-Proposer owned business references. Include a brief description of the type of operations conducted. All references should be of comparable size and complexity to the WSDOT Airspace Lease operations. The Proposer must grant permission to WSDOT to independently contact the references at WSDOT's convenience. Do not include current WSDOT staff as references. The Proposer shall submit a completed Proposer's Business References, attached hereto as **Exhibit C**.

7. FINANCIAL AND BUSINESS REQUIREMENTS

This section sets forth the requirements for the Financial and Business Requirements responses. The Proposer must respond to all items designated (M).

7.1. (M) Tax Information

The Proposer must provide its Federal Employer Tax Identification number and the Washington Uniform Business Identification (UBI) number issued by the State of Washington Department of Revenue.

7.2. (M) Financial Information

The Proposer must provide all information requested in the exact order specified below. This section is scored on a pass/fail basis. Failure to respond to any mandatory requirements will be viewed as non-responsive and the Proposal may be disqualified.

7.2.1. (M) Public Corporation: Financial Statements

If the Proposer is a publicly held corporation, it must provide the last two (2) years of comparative financial statements or annual reports with the name, address and telephone number of a contact in the Proposer's principal financing or banking organization.

7.2.2. (M) Non-Public Corporations

If the Proposer is not a publicly held corporation, it must comply with the section above, Financial Statements, by providing the following information:

A. (M) Business Description

Describe the proposing organization, including size, longevity, client base, areas of specialization and expertise and any other pertinent information in such a manner that would enable proposal evaluators to determine the stability and financial strength of the organization.

B. (M) Banking Reference

- (1) Provide a reference from the Proposer's current bank;
- (2) Provide a credit rating and name the rating service; and
- (3) Provide a credit rating report and the name of the service providing the report.

7.3. Business Description and Organization

7.3.1. The Proposer must provide all of the following information.

A. (M) Business Identification. The Proposer must provide an overview of the Proposer, including but not limited to the following:

- (1) Proposer's name and address and main business location;
- (2) State the location of the facility from which the Proposer would operate, the telephone, fax and email address;
- (3) Proposer's start-up date; and

(4) Summary of Proposer's pertinent expertise, skills, client base and services that are available for the design and construction of the parking lot under the Developer Agreement and the operation of the parking lot under the Airspace Lease.

7.3.2. (M) Company Officers

The Proposer must provide the names, addresses and telephone numbers of principal officers (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.).

State the name, the title or position, address, email address, fax and telephone numbers of the individual who would have primary responsibility for the design, construction, and operation of the parking lot resulting from this RFP. Disclose who within the Proposer organization will have prime responsibility and final authority for the operations under the Airspace Lease. Name other individuals providing service related to performance of Proposer's obligations under the Airspace Lease.

7.3.3. (M) Legal Status

The Proposer must specify the legal status of the Proposer (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business, as the entity now exists.

7.3.4. (M) Previous State Contracts

If the Proposer or any party named previously contracted with and/or leased real property from the State during the past 24 months, the Proposer must indicate the name of the State agency, the contract number and describe the work and/or provide other information available to identify the contract and/or lease.

7.3.5. (M) Former Employee Status

If any employee of the Proposer or Subcontractor was an employee of the State during the past 24 months, or is now an employee of the State, the Proposer must identify the individual by name, State agency previously or currently employed by, job title or position held, and separation date, if any.

7.3.6. (M) Contract/Lease Terminations

A. If the Proposer or any of its Subcontractor(s) has had a contract/lease terminated for default in the last five (5) years, describe such incident. "Termination for default" is defined as notice to stop performance due to the Proposer's non-performance or poor performance and the issue of performance was either (1) not litigated due to inaction on the part of the Proposer, or (2) litigated and such litigation determined that the Proposer was in default.

B. Submit full details of the terms for default. Identify the other party, its name, address, and telephone number. Present the Proposer's position on the matter. WSDOT will evaluate the facts and may, at its sole discretion, reject the Proposal on the grounds of the past experience.

C. If the Proposer or any of its Subcontractor(s) has experienced no such termination for default in the past five (5) years, indicate accordingly.

7.3.7. (M) Proof of Insurance

A. The Proposer must indicate in the submittal letter and as a condition of the Airspace Lease award, that it will provide proof of insurance from the Proposer's insurance carrier, outlining the extent of the Proposer's liability coverage.

B. The Proposer shall, at its own expense, obtain and keep in full force and effect during the term of the Airspace Lease insurance coverage as set forth in the Airspace Lease **(Exhibit A)**. The Proposer shall, at its own expense, also obtain and keep in full force and effect during the term of the Developer Agreement all insurance coverage and performance bonds as set forth in the Developer Agreement **(Exhibit G)**. The Proposer shall furnish evidence of insurance to WSDOT at the time it submits the executed Developer Agreement and Airspace Lease.

C. The Proposer shall require any Subcontractor to provide adequate insurance coverage for the activities arising out of the subcontracts.

8. MANAGEMENT PROPOSAL

8.1. (M) Management Organization Chart

The Proposer must provide a management organizational chart indicating lines of authority for personnel who will be involved in the performance of the Developer Agreement and the Airspace Lease, and indicate other work responsibilities beyond the Developer Agreement and Airspace Lease, that would be required of the assigned staff. This chart must also show lines of authority to the next senior level of management and identify the WSDOT personnel it feels is necessary in order to be successful.

8.2. (M) Minimum Qualifications

The Proposer must demonstrate it is licensed (and in good standing) to do business in the State and is licensed to do construction business in the State.

8.3. (M) Proposer's Recent and Relevant Experiences

8.3.1. In the event the proposed use is to operate a commercial parking operation on the Premises, the Proposer should demonstrate experience in managing responsible commercial parking operations, indicate the experience in generating and managing revenue for commercial parking operations, if any, and indicate any other relevant experience that indicates the qualifications of the Proposer, for the performance of the Airspace Lease.

8.3.2. In the event the proposed use is exclusive parking by Proposer's business customers, building tenants, or the like, Proposer shall provide existing and recent real estate holdings showing property management experience and expertise.

9. OPERATING PLAN PROPOSAL

9.1. (M) Proposed Operating Plan

- 9.1.1. The Proposal must include the details of how the Premises will be used and by whom, hours of operations, security, and specific types of parking arrangements that are to be utilized.
- 9.1.2. In the event the Proposer intends to utilize the Premises as either a principal or incidental revenue generating parking lot (commercial parking), Proposer shall provide: a detailed gross income statement to be utilized in parking lot operations that lists each type of parking arrangement and proposed parking rates together with a compilation of Gross Revenue for each different arrangement or rate. For instance, number of stalls and rates for hourly and/or daily weekday user; monthly weekday user; evening user; weekend user; events (by type of event and date); parking penalty income, and any other ancillary income generated. In addition, applicable parking 'turnover rates' and monthly 'oversell rates' shall be included on said statements.
- 9.1.3. In the event the Proposer intends to use the Premises for exclusive parking by Proposer's business customers and/ or building occupants or tenants, or the like, the Proposer shall fully detail the proposed exclusive use and term.
- 9.1.4. Proposer is required to charge prevailing market parking rates for each parking arrangement.
- 9.1.5. The proposed operating plan will be evaluated by WSDOT as to whether it is sufficiently detailed, and will be evaluated with the entirety of the Proposal in determining the best value to WSDOT.

9.2. (M) Audit Procedures

The Proposer shall identify all internal and audit controls, and other Gross Revenue reporting procedures and safeguards, to be utilized in parking lot operations, including, but not limited to cash handling procedures. The Proposer shall also submit additional information to supplement how the Proposer will achieve and maintain maximum Gross Revenue receipts for the benefit of WSDOT.

10. (M) REVENUE PROPOSAL

10.1. Evaluation

The evaluation process is designed to award an Airspace Lease for the proposal that results in the highest value provided to WSDOT. Additionally, it also evaluates the best and most responsible bid in terms of maximizing and sharing revenue with adequate auditing, internal controls, and other revenue reporting safeguards in place. WSDOT will also take into consideration the value to WSDOT of the Proposer's Amortization Option selection.

10.2. Revenue Proposal

10.2.1. The Proposer shall submit with its Proposal a completed Revenue Proposal in the form set forth in **Exhibit D**.

10.2.2. The Revenue Proposal shall include the following:

- A.** Construction Rental Fee. A monthly rental fee for the Premises for each month during the construction period commencing upon execution of the Airspace Lease and terminating at 11:59 p.m. the day WSDOT issues Final Acceptance.
- B.** Base Rental Fee A. A minimum monthly base rental fee for the Premises during the Airspace Lease commencing the day following WSDOT's issuance of Final Acceptance and terminating ten-years after the commencement of the Airspace Lease.
- C.** Base Rental Fee B. A minimum monthly base rental fee for the Premises during the one 5-year renewal period of the Airspace Lease.
- D.** Percentage Rent A. A percentage of the Gross Revenue that exceeds the Base Rental Fee A that Proposer will pay to WSDOT each month during the Airspace Lease commencing the day following WSDOT's issuance of Final Acceptance and terminating ten-years after the commencement of the Airspace Lease.
- E.** Percentage Rent B. A percentage of the Gross Revenue that exceeds the Base Rental Fee B that Proposer will pay to WSDOT each month during the five (5) year renewal period of the Airspace Lease.

10.3. Exclusive Parking

In the event the proposed use of the Premises is exclusive parking for use by Proposer's business customers and/ or building occupants or tenants, or the like, an annual rent escalation clause will be included in the Airspace Lease based on an annual upward adjustment of 3% or the Seattle - Tacoma Consumer Price Index (CPI), whichever is higher.

10.4. Amortization Option

10.4.1. This RFP offers the Proposer the option to include a term in the Airspace Lease that requires WSDOT, under specified circumstances, to pay the amount equal to the unamortized construction cost of the parking facility constructed on the Premises based on a straight line five-year amortization schedule using the construction costs provided by the Proposer in its Proposal. The circumstances under which this payment would be made is the termination of the Airspace Lease by WSDOT within the initial five (5) years of the Airspace Lease on the basis it is in the best interest of the State to terminate the lease.

10.4.2. The Proposer must submit with its Proposal a completed Amortization Option Form, in the form of **Exhibit E** indicating the Proposer's election to include or exclude the following clause in the Airspace Lease:

The STATE may terminate this Lease upon not less than sixty (60) days prior written notice, unless an emergency exists, as determined by the STATE, then immediately, if the STATE determines it is the best interest of the STATE to terminate this Lease. In the event the STATE terminates the Lease as provided above during the initial five (5) years of the Lease term, the STATE shall pay TENANT the amount equal to the unamortized construction cost of TENANT's facility on the Premises based on a straight line five year amortization schedule. The construction cost amount to be used to calculate the unamortized construction costs is \$_____.

10.4.3. If the Proposer elects to include the amortization clause in the Airspace Lease, the Proposer must also include on the Amortization Option Form the construction cost amount that will be used to calculate the unamortized construction costs.

10.4.4. In addition, if the Proposer elects to include the amortization clause in the Airspace Lease, the Proposer must also submit with its Proposal parking lot construction costs as set forth in **Section 12** of this RFP.

11. PARKING LOT CONSTRUCTION PLANS

11.1. General

- 11.1.1. The Construction Plans must include a minimum of six (6) feet of clearance and concrete barrier protection around all columns and abutments located on the Premises and a minimum of two (2) feet of cover for all footings. In addition, any clearances under the highway structure located on the Premises that is less than sixteen (16) feet must be signed and warning devices must be installed to the satisfaction of WSDOT.
- 11.1.2. The Construction Plans shall comply with all codes, laws, rules, regulations, authorities having jurisdiction and generally accepted construction/engineering practices in preparing the Construction Plans. All pertinent documents shall be stamped by a Washington state licensed engineer. Proposer shall promptly reply and cooperate with WSDOT in response to inquiries and changes, if any, to the Construction Plans. The review and acceptance of the Construction Plans by WSDOT shall be at the sole discretion of WSDOT. All Construction Plans that are submitted by Proposer to WSDOT shall become the property of WSDOT.
- 11.1.3. A geotechnical report of the Premises was conducted in 2001. A copy of this report may be requested from the RFP Coordinator. This report is for information purposes only and WSDOT is not liable nor guarantees its accuracy and totality. Proposers are advised to contact the author of the report for further information.
- 11.1.4. The Proposer is responsible for all permitting for construction to be done in the City of Tacoma, County of Pierce and State of Washington. All Construction Plans shall be in compliance with each entities regulations and restrictions.

11.2. Proposal Submittal

The Proposal must include preliminary Construction Plans showing the improvements and final configuration of the planned parking lot. The Construction Plans must show the general lot layout, grading plan showing approximate cut and fill heights, proposed number of parking stalls, access locations, landscape areas, buffer distance from the bridge columns, drainage schematic, and the approximate location of retaining walls any other planned structures.

11.3. 100% Construction Plans

Proposer shall develop and submit to WSDOT a professional and comprehensible set of 100% Construction Plans for the Hood Street parking lot in accordance with the schedule outlined in **Section 3.2.**

12. PARKING LOT CONSTRUCTION COSTS

If the Proposer elected to include the amortization clause in the Airspace Lease, as detailed in **Section 10.4**, the Proposer must also submit with its Proposal a separate cost estimate for the construction of the improvements Proposer plans to make to the Premises. This construction cost breakdown must include the units and total costs for all major items. The total estimated construction cost amount will be the amount used to calculate the unamortized construction costs due the Proposer in the event WSDOT terminates the Airspace Lease on the basis it is the best interest of the State to so terminate.

END OF DOCUMENT

Exhibit A

AA-X-XXXXX

IC _____

AIRSPACE LEASE

THIS IS AN AIRSPACE LEASE made and entered into between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, (STATE), and _____, (TENANT) a _____{insert legal status}_____ (Lease).

RECITALS

A. The STATE desires to lease a portion of I-705 right of way, commonly known as Hood Street for parking purposes in consideration of monthly rent payments.

B. The STATE issued a Request for Proposal ACQ-2008-0002-RFP, dated October 10, 2008, (RFP) for the purpose of soliciting tenants interested in providing proposals to lease Hood Street.

C. TENANT submitted a timely Response to the RFP. The STATE evaluated all properly submitted responses to the RFP and selected the proposal of TENANT.

D. TENANT and STATE have, concurrent with the execution of this Lease, entered into a Developer Agreement, dated _____, 2008 (Developer Agreement), the terms of which are hereby incorporated into this Lease.

E. The land and premises to be leased are not presently needed for highway purposes.

F. The STATE is granted authority to lease real property under RCW 47.12.120.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, IT IS MUTUALLY AGREED THAT:

1. PREMISES.

A. The STATE does hereby lease to the TENANT, and the TENANT does hereby lease from the STATE the real property described as follows:

That portion of the Southwest Quarter of Section 4, Township 20 North, Range 3 East, W.M., in the City of Tacoma, Pierce County, Washington. Beginning at a point on the Westerly Right of Way of SR 705 Tacoma Spur opposite Highway Engineer's Station (hereinafter referred to as HES) S-CBD 21+34.54 and 33 feet left, as shown on sheet 4 of 8 of the Washington State Department of Transportation's Right of Way and Limited Access Plan, SR 705 Tacoma Spur dated June 20, 1980 and revised June 26, 2004; thence Northwesterly along the Westerly Right of Way line to the intersection with Hood Street as now constructed; thence Northeasterly along Hood Street to the South margin of South 15th Street as now constructed; thence Easterly along the South line of South 15th Street to the Easterly Right of Way line of SR 705 Tacoma Spur, thence Southerly along the East Right of Way line of SR 705 Tacoma Spur to the intersection of a line drawn radial to and parallel with the Highway pier at HES SB 165+51, thence westerly along said line to the intersection to the Westerly Right of Way line of SR 705 Tacoma Spur; thence Northerly along the West Right of Way line of SR 705 Tacoma Spur to the point of beginning, with a vertical height limit at a horizontal plane twelve (12) feet below and parallel with the underside of the SR 705 bridge decks. Excepting that part conveyed to the BSNF Railway Company filed December 12, 2005 under Auditor's file number 20062270288 being parcel B, details of which can be found on sheets 1 through 4 of a unrecorded Right of Way plan dated April 24, 2005, by Duane Hartman & Associates for BSNF Railway. All located below the SR 705 bridge structures, in the City of Tacoma, Pierce County, Washington, and known to be a portion of the highway right of way of SR 705, Tacoma Spur, Sheet 4 of 8 Sheets and more commonly known as Hood Street, located between South 15th and Hood Street. Said area is hereinafter referred to as the **Premises**.

B. The Premises does not include any portion of, the SR 705 bridge structures and any element thereof, which is expressly excepted there from.

2. TERM. The term of this Lease shall be Ten (10) years, COMMENCING ON THE DATE OF EXECUTION OF THIS LEASE BY THE STATE (**Commencement Date**).

3. RENEWAL. This Lease may be renewed by the TENANT for one additional Five (5) year period (**Renewal Period**); Provided that the TENANT is not in default and has not been in default during the term of this Lease. TENANT shall give notice of its intent to renew this Lease for the Renewal Period at least Ninety (90) calendar days, but not more than Six (6) months, prior to the expiration of this Lease.

4. HOLDING OVER. In the event the TENANT shall hold over or remain in possession of the Premises with the consent of the STATE after the expiration of the stated term of this Lease, or any written extension or renewal of the term of this Lease, such holding over or continued possession shall create a tenancy from month-to-month only, upon the same terms and conditions as are set forth herein; Provided, that the STATE or TENANT may, in addition to other remedies provided elsewhere herein, terminate this Lease for any reason with not less than Twenty (20) days prior written notice.

5. RENT.

A. Definitions.

(1) **“Base Rental Fee A”** means the minimum monthly rent TENANT shall pay the STATE each month for the leasing of the Premises, in addition to the Percentage Rent A, if any, during the period commencing the day following the day the STATE issues Final Acceptance and terminating ten-years after the Commencement Date.

(2) **“Base Rental Fee B”** means the minimum monthly rent TENANT shall pay the STATE each month for the leasing of the Premises, in addition to the Percentage Rent B, if any, during the five (5) year renewal period of this Lease, if any.

(3) **“Construction Rental Fee”** means the monthly rent TENANT shall pay the STATE each month during the construction period commencing upon execution of the Lease and terminating at 11:59 p.m. the day the STATE issues Final Acceptance.

(4) **“Gross Income Statement”** means a detailed monthly income statement attached hereto as **Exhibit B**, and by this reference made a part hereof.

(5) **“Final Acceptance”** means the written notification from the STATE to TENANT that the STATE concurs that all the obligations under the executed Developer Agreement have been completed by the TENANT.

(6) **“Gross Revenue”** means all revenues of any nature (including, but not limited to, cash, credits, property or other consideration of any kind or nature) that are received by TENANT (whether directly or indirectly) in connection with this Lease less sales taxes.

(7) **“Percentage Rent A”** means the additional monthly rent TENANT shall pay to the STATE, in addition to Base Rental Fee A, for the leasing of the

Premises during the period commencing on the day following WSDOT's issuance of Final Acceptance, and terminating ten-years after commencement of this Lease.

(8) **"Percentage Rent B"** means the additional monthly rent TENANT shall pay to the STATE, in addition to Base Rental Fee B, for the leasing of the Premises during the five (5) year renewal period of this Lease, if any.

B. Construction Rental Fee. The TENANT covenants and agrees to pay rent for the Premises to the STATE in advance on or before the 1st day of each calendar month (due date) during the construction period of the Lease commencing on the Commencement Date and terminating at 11:59 p.m. the day the STATE issues Final Acceptance. The Construction Rental Fee shall be paid at the rate of _____ Dollars (\$_____) per month for rent and _____ Dollars (\$_____) for Washington State Leasehold Excise Tax, for a total monthly payment of _____ Dollars (\$_____), payable at the address designated under **Section 6**.

C. Base Rental Fees.

(1) Base Rental Fee A. The TENANT covenants and agrees to pay Base Rental Fee A for the Premises to the STATE each month in the time and manner set forth in **Section 5.E** for the period of the Lease term commencing the day following the day the STATE issues Final Acceptance and terminating ten-years after the Commencement Date. The Base Rental Fee A shall be paid at the rate of _____ Dollars (\$_____) per month for rent and _____ Dollars (\$_____) for Washington State Leasehold Excise Tax, for a total monthly payment of _____ Dollars (\$_____), payable at the address designated under **Section 6**.

(2) Base Rental Fee B. The TENANT covenants and agrees to pay Base Rental Fee B for the Premises to the STATE each month in the time and manner set forth in **Section 5.E** during the five (5) year renewal period of this Lease, if any. The Base Rental Fee B shall be paid at the rate of _____ Dollars (\$_____) per month for rent and _____ Dollars (\$_____) for Washington State Leasehold Excise Tax, for a total monthly payment of _____ Dollars (\$_____), payable at the address designated under **Section 6**.

D. Percentage Rent.

(1) Percentage Rent A. In addition to payment of the Base Rental Fee A, the TENANT covenants and agrees to pay Percentage Rent A for the Premises to the STATE

each month in the time and manner set forth in **Section 5.E** for the period of the Lease term commencing the day following the day the STATE issues Final Acceptance and terminating ten-years after the Commencement Date. The Percentage Rent A shall be paid in the amount of _____ percentage of the monthly Gross Revenue that exceeds Base Rental Fee A payable at the address designated under **Section 6**.

(2) Percentage Rent B. In addition to payment of the Base Rental Fee B, the TENANT covenants and agrees to pay Percentage Rent B for the Premises to the STATE each month in the time and manner set forth in **Section 5.E** during the five (5) year renewal period of this Lease, if any. The Percentage Rent B shall be paid in the amount of _____ percentage of the monthly Gross Revenue that exceeds Base Rental Fee B payable at the address designated under **Section 6**.

E. Payment. TENANT covenants and agrees to pay rent (Base Rental Fee plus Percentage Rent) for the Premises to the STATE monthly on or before the 16th day of the month following that calendar month for which rent is due (Due Date) during the entire term of this Lease and any Renewal Period. For example, rent for November 2008, shall be due on or before the 16th of December, 2008. Rent shall be payable at the address designated under **Section 6** herein. In no event shall the rent be less than the Base Rental Fee.

F. Gross Income Statement. If TENANT has indicated on the response to the RFP that percentage rent will be paid, then on the 16th day of the each month TENANT agrees to submit to STATE an accurate and complete Gross Income Statement for the prior month. The STATE and/or Federal Highways Administration (FHWA) reserve the right, upon request, to inspect and audit accounting ledgers, which record the income from the parking operations occurring on the Premises. The STATE and/or FHWA may extract there from data which records operating expenses and profits and/or losses. Failure or refusal by the TENANT to timely submit an accurate and complete Gross Income Statement each month shall constitute a material breach of this Lease, and a material default. In the event of such default, all rights of the TENANT under this Lease shall terminate immediately, and the STATE may seek other remedies to which it has recourse.

G. Prevailing Parking Rates. In the event TENANT intends to use the Premises as either a principal or incidental revenue-generating parking lot, then TENANT shall charge all users of the Premises in accordance with prevailing rates for similar parking operated by others, and the STATE shall be given the opportunity to review, upon request, TENANT parking rates on an annual basis. At a minimum, the information shall clearly detail and describe each type of parking arrangement and the parking rates for each type, including number of

customers for each arrangement and/or different rates, together with a compilation of gross revenue for each different arrangement or rate. For instance, number of stalls and rates for hourly and/or daily weekday user; monthly weekday user; evening user; weekend user; events (by type of event and date); parking penalty income, and any other ancillary income generated. Applicable parking 'turnover rates' and monthly 'oversell rates' shall be included.

H. Rent Adjustments. In the event the TENANT intends to use the Premises for exclusive parking by TENANT's employees, customers, or building occupants or tenants, or the like, the Base Monthly Rent shall be adjusted annually by 3% or the percentage change that occurred during the preceding calendar year in the U.S. Consumer Price Index for the Seattle - Tacoma Consumer (U.S. CPI), using the data as published by the United States Department of Labor's Bureau of Labor Statistics, or its successor; Provided, that in the event such index is discontinued the parties hereto shall select and use for such adjustment purpose, a similar index that reflects consumer price changes generally recognized as an authority by financial and insurance institutions (By way of illustration only, if the Base CPI is 190 and the CPI figure for the fourth calendar month before the adjustment year is 195, then the rent for that year shall be increased by 2.63 percent). Failure or refusal by the TENANT to pay the adjusted rental rate shall constitute a default of this Lease for which the STATE may terminate with not less than Five (5) days prior written notice.

6. RENT PAYMENTS PAYABLE TO: Washington State Department of Transportation. Mail payments to:

DEPARTMENT OF TRANSPORTATION (Mailing Address)
Attn.: Assistant Director, Property Management Program
P. O. Box 47339
Olympia, WA 98504-7338

DEPARTMENT OF TRANSPORTATION (Physical Address)
Attn.: Assistant Director, Property Management Program
243 Israel Road S.E., Suite 101
Tumwater, WA 98501

7. CHARGE FOR LATE PAYMENT, NSF CHECKS.

A. If any sums payable to STATE under this Lease are not received by the Fifth (5th) day following its due date, TENANT shall pay STATE, in addition to the amount due, for the cost of collecting and handling such payment, an amount equal to the greater of One Hundred and no/100 Dollars (\$100.00) or Five Percent (5%) of the delinquent amount. In addition, all delinquent sums payable by TENANT to STATE and not paid within Five (5) days of the due date shall, at STATE's option, bear interest at the rate of Twelve Percent (12%) per

annum, or the highest rate of interest allowable by law, whichever is greater; provided that if the highest rate allowable by law is less than Twelve Percent (12%), interest charged hereunder shall not exceed that amount. Interest on all delinquent amounts shall be calculated from the original due date to the date of payment. Also there shall be a charge for any check returned uncollectable in accordance with WAC 468-20-900. STATE and TENANT agree that such charges represent a fair and reasonable estimate of the costs incurred by STATE by reason of late payments and uncollectable checks.

B. The STATE's acceptance of late payment charges and/or any portion of the overdue payment shall in no event constitute an accord and satisfaction, compromise of such payment, or a waiver of TENANT's default with respect to such overdue payment, nor prevent the STATE from exercising any other rights and remedies granted in this Lease.

C. When a delinquency exists, any payments received will be applied first to the late payment charge and late payment fees, next to delinquent rent, and any balance remaining to the current month's rent and Leasehold Excise Tax, if applicable.

8. TERMINATION BY STATE.

A. The STATE may terminate this Lease, without penalty or further liability as follows:

(1) Immediately if TENANT fails or refuses to timely submit an accurate and complete Gross Income Statement if required in **Section 5** herein;

(2) Upon not less than Five (5) days prior written notice to TENANT, if TENANT fails to cure a default for payment of amounts due under this Lease within that Five (5) day period;

(3) Upon not less than Thirty (30) days prior written notice to TENANT, if TENANT defaults, other than for non payment of rent, and fails to cure such default within that Thirty (30) day period, or such longer period, as may be reasonably determined by the STATE, if TENANT is diligently working to cure the default;

(4) Immediately, upon written notice, if the STATE is required by court order, by legislative action, or by a governmental agency having jurisdiction to take some action, which would effectively prohibit TENANT's long-term [more than One-Hundred-Eighty (180) consecutive days] use of the Premises;

(5) Immediately, upon written notice, if a receiver is appointed to take possession of TENANT's assets, the TENANT makes a general assignment for the benefit of creditors, or the TENANT becomes insolvent or takes or suffers action under the Bankruptcy Act;

(6) Upon not less than Sixty (60) days prior written notice, unless an emergency exists, as determined by the STATE, then immediately, if the STATE determines that it is in the best interest of the STATE to terminate this Lease; or

(7) Upon not less than Thirty (30) days prior written notice if the Premises has been abandoned, in the STATE's sole judgment, for a continuous period of Ninety (90) days.

B. Waiver or acceptance of any default of the terms of this Lease by the STATE shall not operate as a release of the TENANT's responsibility for any prior or subsequent default.

C. If TENANT defaults on any provision in this Lease, such as, but not limited to, the timely payment of rent, Three (3) times within a Twelve (12) month period, the third default shall be deemed "non-curable" and this Lease may be terminated by the STATE on not less than Thirty (30) days written notice.

9. TERMINATION BY TENANT. TENANT may terminate this Lease without penalty or further liability as follows:

A. Upon not less than Sixty (60) days prior written notice for any reason;

B. Upon not less than Thirty (30) days prior written notice, if the STATE defaults and fails to cure such default within that Thirty (30) day period, or such longer period, as may be reasonably determined by TENANT, if the STATE is diligently working to cure the default; or

C. Immediately, upon written notice, if in TENANT's judgment the Premises is destroyed or damaged so as to substantially and adversely affect TENANT's authorized use of the Premises.

10. REIMBURSEMENT OF CONSTRUCTION COSTS. The STATE may terminate this Lease upon not less than sixty (60) days prior written notice, unless an emergency exists, as determined by the STATE, then immediately, if the STATE determines it is the best

interest of the STATE to terminate this Lease. In the event the STATE terminates the Lease as provided above during the initial five (5) years of the Lease term, the STATE shall pay TENANT the amount equal to the unamortized construction cost of TENANT's facility on the Premises based on a straight line five year amortization schedule. The construction cost amount to be used to calculate the unamortized construction costs is \$_____.

11. NONAPPLICABILITY OF RELOCATION ASSISTANCE. The TENANT acknowledges that this Lease does not at any time entitle the TENANT to assistance under the Uniform Relocation and Real Property Acquisition Policy (Ch. 8.26 RCW).

12. ENCUMBRANCES.

A. It is expressly understood that the TENANT shall not encumber the Premises. The TENANT and the STATE acknowledge and agree that the TENANT may encumber the TENANT's leasehold interest and/or the improvements to be constructed upon the Premises (but not the STATE's property or improvements) for financing purposes. Any encumbrance is void without the prior written consent of the STATE. If the TENANT intends to secure financing, the TENANT must secure the financing from a legal source (hereinafter called the Lender) and must provide the STATE with written notice of the Lender's name and address within Thirty (30) days of obtaining financing. As a prerequisite to obtaining the written consent of the STATE to allow the Lender to assume the interest of the TENANT in this Lease, the Lender must agree to provide the STATE not less than Thirty (30) days prior written notice in the event of a TENANT default on the loan.

B. In the event the TENANT defaults in performance of any obligation under this Lease, the STATE will not terminate the Lease because of such default unless and until the STATE gives not less than Thirty (30) days prior written notice of the default to the Lender. Upon such notification, the Lender must cure such default, if the default can be cured by the payment of money within the Thirty (30) day period. If the default is not curable by money, Lender must (a) cause the commencement of and thereafter diligently pursue to completion steps and proceedings for the exercise of power of sale in the manner provided by law (foreclosure) and (b) cause and perform all of the covenants and conditions of this Lease requiring the expenditure of money by the TENANT until such time as the improvements on the Premises shall be sold in the manner provided by law (foreclosed). If the Lender fails or refuses to comply with any and all of the conditions in this section, the STATE shall be released from the covenant of forbearance, and the STATE may terminate this Lease with not less than Thirty (30) days prior written notice.

C. In the event of a foreclosure or trustee's sale of the Lender's security interest pursuant to the laws of the State of Washington, the purchaser at said sale, be it the Lender or another, shall succeed to all of the right, title and interest of the secured party. The Lender may, with the STATE's consent, receive a deed (a quitclaim deed of all interest of the TENANT) or assignment of the TENANT's interest in lieu of a foreclosure.

13. USE OF PREMISES.

A. TENANT's use of the Premises is limited to operation and maintenance of a parking lot of operable vehicles. For the purposes of this Lease, the term "operable vehicles" shall mean vehicles capable of being driven from the Premises under their own power on ten (10) minutes notice. TENANT shall conduct its parking lot operations on the Premises in accordance with the Operation Plan attached hereto as **Exhibit E** and by this reference made a part hereof. Any modification to the Operation Plan shall be by written amendment executed by both parties.

B. Access to the Premises is limited to the existing access on Hood Street. In addition, direct access to ramps or traveled lanes of the I-705 limited access highway is not permitted.

C. TENANT shall, at its sole cost and expense, provide security of the Premises to the STATE's satisfaction during operating hours. During non-operating hours, TENANT shall prohibit vehicle access to the Premises. The STATE may require TENANT to provide additional security as may be required by the State or the Federal Homeland Security Agency, such as but not limited to, restricting the size or type of vehicles that are allowed to enter the Premises, installation of security cameras, and temporary closures.

D. In using the Premises, the TENANT shall comply with all policies and regulations, including, but not limited to Chapter 47.42 RCW et seq. and WAC 468-66 et seq., heretofore adopted or hereafter promulgated by the STATE relative to the location, operation, and maintenance of improvements located on the Premises. Direct access to ramps or traveled lanes of limited access highways is not permitted. Access to the Leased Premises shall be via city streets. All grading and construction plans and any changes thereof are subject to approval by the STATE. TENANT shall not commit or allow to be committed any waste upon the Leased Premises nor allow any public or private nuisance.

E. In using the Premises, it is expressly agreed that TENANT shall (1) comply with all applicable federal, state and local laws, ordinances, and regulations, including

environmental requirements that are in force or which may hereafter be in force, and (2) secure all necessary permits and licenses for the uses of the Premises authorized in this Lease.

14. SIGNS, DISPLAY LIGHTS, ADVERTISING MATERIALS.

A. TENANT is required to install and maintain, to the STATE's satisfaction signs and warning devices under the SR 705 highway structure at such locations where clearance under the highway structure is less than sixteen (16) feet.

B. Signs, display lights, or advertising media/materials are not permitted unless they comply with Ch. 47.42 RCW and Ch. 468-66 WAC and are completely detailed on a separate plan sheet which requires specific prior written approval by the STATE.

15. CONDITION OF THE PROPERTY. The STATE and TENANT acknowledge that they have jointly examined the Premises and the TENANT accepts said Premises in its present condition as of the Commencement Date of this Lease.

16. MAINTENANCE. TENANT shall perform or cause to be performed at its expense all maintenance of the Premises that will include, but not be limited to, keeping the Premises in good condition, both as to safety and appearance, to the satisfaction of the STATE. Maintenance shall include, but not be limited to, all upkeep, maintenance, repair and replacement, as needed, of landscaping, and landscape irrigation systems and the walkways on the Premises. The STATE reserves the right to periodically observe and inspect said maintenance work.

17. ENVIRONMENTAL REQUIREMENTS.

A. TENANT represents, warrants and agrees that it will conduct its activities on and off the Premises in compliance with all applicable environmental laws. As used in this Lease, Environmental Laws means all federal, state and local environmental laws, rules, regulations, ordinances, judicial or administrative decrees, orders, decisions, authorizations or permits, including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., the Clean Air Act, 42 U.S.C. § 7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11001, et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., the Oil Pollution Control Act, 33 U.S.C. § 2701, et seq., and Washington or any other comparable local, state, or federal statute or ordinance pertaining to the environment or natural

resources and all regulations pertaining thereto, including all amendments and /or revisions to said laws and regulations.

B. Toxic or hazardous substances are not allowed on the Premises without the express written permission of the STATE and under such terms and conditions as may be specified by the STATE. For the purposes of this Lease, "Hazardous Substances," shall include all those substances identified as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, et seq., and the Washington Model Toxics Control Act, RCW 70.105D et seq., including all amendments and/or revisions to said laws and regulations, and shall include gasoline and other petroleum products. In the event such permission is granted, the disposal of such materials must be done in a legal manner by the TENANT.

C. TENANT agrees to cooperate in any environmental investigations conducted by STATE staff or independent third parties where there is evidence of contamination on the Premises, or where the STATE is directed to conduct such audit by an agency or agencies having jurisdiction. TENANT will reimburse the STATE for the cost of such investigations, where the need for said investigation is determined to be caused by the TENANT's operations. TENANT will provide the STATE with notice of any inspections of the Premises, notices of violations, and orders to clean up contamination. TENANT will permit the STATE to participate in all settlement or abatement discussions. In the event that the TENANT fails to take remedial measures as duly directed by a state, federal, or local regulatory agency within Ninety (90) days of such notice, the STATE may elect to perform such work, and the TENANT covenants and agrees to reimburse the STATE for all direct and indirect costs associated with the STATE's work where those costs are determined to have resulted from the TENANT's use of the Premises. TENANT further agrees that the use of the Premises shall be such that no hazardous or objectionable smoke, fumes, vapor, odors, or discharge of any kind shall rise above the grade of the right of way.

D. For the purposes of this Lease, "Costs" shall include, but not be limited to, all response costs, disposal fees, investigatory costs, monitoring costs, civil or criminal penalties, and attorney fees and other litigation costs incurred in complying with state or federal environmental laws, which shall include, but not be limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq.; the Clean Water Act, 33 U.S.C. § 1251; the Clean Air Act, 42 U.S.C. § 7401; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901; and the Washington Model Toxics Control Act, Ch. 70.105D RCW, et seq., including all amendments and/or revisions to said laws and regulations.

E. TENANT agrees to defend, indemnify and hold harmless the STATE from and against any and all claims, causes of action, demands and liability including, but not limited to, any costs, liabilities, damages, expenses, assessments, penalties, fines, losses, judgments and attorneys' fees associated with the removal or remediation of any Hazardous Substances that have been released, or otherwise come to be located on the Premises, including those that may have migrated from the Premises through water or soil to other properties, including without limitation, the adjacent STATE property, and which are caused by or result from TENANT's activities on the Premises. TENANT further agrees to retain, defend, indemnify and hold harmless the STATE from any and all liability arising from the offsite disposal, handling, treatment, storage, or transportation of any such Hazardous Substances removed from said Premises.

F. The provisions of this section shall survive the termination or expiration of this Lease.

18. STATE'S RESERVATION OF RIGHT TO MAINTAIN AND GRANT UTILITY FRANCHISES AND PERMITS.

A. The STATE reserves the right for utility franchise and permit holders to enter upon the Premises to maintain, repair and enhance existing facilities and install new utilities and, for itself, to grant utility franchises and/or permits across the Premises. Such installation will be accomplished in such a manner as to minimize any disruption to the TENANT. The franchise/permit holder will be required to restore paving and grading damaged by the installation.

B. The TENANT shall not disturb markers installed by a franchise/permit holder and will contact and provide notice to any franchise/permit holder and all owners of underground facilities prior to any excavation. TENANT shall contact the STATE and call the Underground Utility Locating Service, or its successor organization, as part of its efforts to ascertain any and all owners of underground utility facilities and to locate the utility. The TENANT shall not damage legally installed underground utilities. TENANT shall comply with all applicable provisions of Chapter 19.122 RCW relating to underground facilities.

19. TAXES, ASSESSMENTS, AND UTILITIES. The TENANT agrees to pay all assessments that benefit the Premises and/or which may hereafter become a lien on the interest of the TENANT in accordance with RCW 79.44.010. The TENANT also agrees to pay all taxes that may hereafter be levied or imposed upon the interest of the TENANT or by reason of this Lease. The TENANT is responsible for and agrees to pay the cost of utilities, including,

but not limited to, surcharges, fuel adjustments, rate adjustments and taxes that serve the Premises.

20. LIENS.

A. Nothing in this Lease shall be deemed to make the TENANT the agent of the STATE for purposes of construction, repair, alteration, or installation of structures, improvements, equipment, or facilities on the Premises. The TENANT acknowledges that the STATE may not, and shall not, be subject to claims or liens for labor or materials in connection with such activities by the TENANT.

B. The TENANT shall at all times indemnify and hold harmless the STATE from all claims for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities on or within the Premises, and from the cost of defending against such claims, including attorney fees.

C. In the event a lien is filed upon the Premises, the TENANT shall:

(1) Record a valid Release of Lien;

(2) Deposit sufficient cash with the STATE to cover the amount of the claim on the lien in question and authorize payment to the extent of said deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to lienholder claim; or

(3) Procure and record a bond which releases the Premises from the claim of the lien and from any action brought to foreclose the lien.

D. Should the TENANT fail to accomplish 1, 2, or 3, above, within Fifteen (15) days after the filing of such a lien, the Lease shall be in default.

21. STATE'S RIGHT OF ENTRY AND INSPECTION. The STATE, for itself, its agents and contractors, and for the Federal Highway Administration, reserves the right to enter upon the Premises at any time without notice to the TENANT for the purpose of inspection, maintenance, construction, or reconstruction of the highway facility or any element thereof, or to perform environmental audits as provided for elsewhere in this Lease. Further, the STATE and the Federal Homeland Security agency reserve the right to conduct surveillance including, but not limited to, video and other means upon the Leased Premises at any time, without notice to the TENANT for the purpose of security inspections. Any loss of the use of

the Premises due to the STATE's, Federal Homeland Security, or Federal Highway's exercise of such rights will be adjusted by the term of the Lease, as specified in **Section 2**; Provided, that if such use would effectively prohibit TENANT's use of the Premises for a period of One-Hundred-Eight (180) days or less, this Lease shall be suspended, in writing, by such period of time and reinstated, in writing, to fulfill the full ten (10) year term. The STATE shall in no way be responsible for any incidental or consequential damages due to such loss of use, if any, by the TENANT. The STATE and the Federal Highway Administration may from time-to-time go upon the Premises for the purpose of inspecting any excavation, construction, or maintenance work being done by the TENANT. Entry upon the Premises for any other purpose by the STATE and the Federal Highway Administration shall be conducted with reasonable notice to the TENANT and during the hours of 8:00 a.m. to 5:00 p.m.

22. INSURANCE.

A. At its sole expense, the TENANT shall secure and maintain in effect a policy providing public liability insurance issued by an insurer licensed to conduct business in the State of Washington. The insurance policy shall provide liability coverage for any and all claims of bodily injury, property damage, and personal injury arising from the TENANT's use of the Premises. The insurance policy required by this section shall provide coverage as follows: No less than Two Million and no/100 Dollars (\$2,000,000.00) bodily injury and property damage or combined single limit of liability per occurrence, with a general aggregate limit of no less than Four Million and no/100 Dollars (\$4,000,000.00) per policy period. Such aggregate limits shall apply for this Premises location under said policy shall be triggered on an "occurrence basis," not on a "claims made" basis.

B. The Commercial General Liability Policy form ISO (Insurance Services Office, Inc.) policy form CG 00 01 12 04, or its equivalent without modification, and shall be endorsed to include pollution liability coverage under ISO form CG 00 39 12 04, or its equivalent without modification, in amounts previously stated. The use of an equivalent form shall require prior written approval by the STATE. The TENANT shall provide additional endorsements and/or increase the policy limits at its sole cost, when and if the STATE deems it necessary due to the TENANT's use of the Premises, within Ten (10) days of the STATE's written request to do so.

C. The STATE shall be named as an additional insured by endorsement of the liability policy required by this section utilizing ISO Form 2026 (Additional Insured – Designated Person or Organization) or its equivalent without modification. The endorsement

shall require the insurer to provide the STATE with not less than Thirty (30) days prior written notice before any cancellation of the coverage required by this section.

D. No changes whatsoever shall be initiated as to the coverage without prior written approval by the STATE and written authorization by the STATE to make any requested changes.

E. Unless approved by the STATE in advance and in writing, the liability coverage required by this section shall not be subject to any deductible or self-insured retentions of liability greater than: Five Thousand and no/100 Dollars (\$5,000.00) per occurrence. The payment of any such deductible or self-insured retention of liability amounts remains the sole responsibility of TENANT.

F. TENANT assumes all obligations for premium payment, and in the event of nonpayment, the TENANT is obligated to reimburse the STATE the cost of maintaining the insurance coverage and any legal fees incurred in enforcing such reimbursement should the TENANT fail to pay the policy premiums.

G. Coverage obtained by the TENANT in compliance with this section shall not be deemed as having relieved the TENANT of any liability in excess of such coverage.

H. The TENANT shall provide the STATE with a certificate of insurance reflecting the insurance coverage required by this section within Ten (10) business days of the execution of this Lease. Such certificates shall also be provided upon the Renewal Period of said policies and changes in carriers.

23. HOLD HARMLESS/INDEMNIFICATION.

A. The TENANT, its successors and assigns, will protect, save, and hold harmless the STATE, its authorized agents and employees, from all claims, actions, costs, damages, or expenses of any nature whatsoever by reason of the acts or omissions of the TENANT, its assigns, subtenants, agents, contractors, licensees, invitees, employees, or any person whomsoever, arising out of or in connection with any acts or activities related to this Lease, whether those claims, actions, costs, damages, or expenses result from acts or activities occurring on or off the Premises. The TENANT further agrees to defend the STATE, its agents or employees, in any litigation, including payment of any costs or attorney's fees, for any claims or actions commenced, arising out of, or in connection with acts or activities related to this Lease, whether those claims, actions, costs, damages, or expenses result from acts or activities occurring on or off the Premises. This obligation shall not include such claims, actions, costs,

damages, or expenses which may be caused by the sole negligence of the STATE or its authorized agents or employees; provided, that if the claims or damages are caused by or result from the concurrent negligence of (a) the STATE, its agents or employees and (b) the TENANT, its assigns, subtenants, agents, contractors, licensees, invitees, employees, or involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the TENANT or its assigns, subtenants, agents, contractors, licensees, invitees, employees.

B. The indemnification provisions contained in this section shall survive the termination or expiration of this Lease.

24. USE OF RIGHT OF WAY UNDER OR ADJACENT TO STRUCTURE.

A. The TENANT agrees to provide protection against vehicular hits or other likely causes of damage arising from the TENANT's use of the Premises to all retaining walls and to piers exposed to such potential damage under any elevated highway structure existing on the Premises. Such wall and pier protection shall be provided to the satisfaction of the STATE prior to occupancy.

B. TENANT shall provide and maintain, at its own expense, jersey barriers, ecology blocks, bollards, fencing or other protective devices Three (3) feet away from and around each bridge support column located within the Premises. TENANT understands and agrees that Homeland Security requirements are subject to change and agrees to comply with future restrictions as may be required by STATE or federal requirements, such as increased stand-off distance and vehicle size restrictions.

C. The TENANT shall not weld any metal object to any metal member of any metal structure, nor drill or rivet into nor otherwise fasten anything to any pier or beam on any concrete, metal, or wood structure without the STATE's specific written approval of detailed drawings for such welding, riveting, drilling, or fastening.

D. The TENANT shall at its own expense, and upon prior written approval from the STATE, make any provisions it deems necessary to protect users of the proposed facility from any hazards resulting from use and operation of the highway.

25. PERSONAL PROPERTY. The STATE shall not be liable in any manner for, or on account of, any loss or damage sustained to any property of whatsoever kind stored, kept, or maintained on or about the Premises, except for such claims or losses that may be caused by the STATE or its authorized agents or employees. Upon termination of this Lease, the STATE or its

agent may remove all personal property of the TENANT remaining on the Premises at the TENANT's expense and dispose of it in any manner the STATE deems appropriate. TENANT agrees to reimburse the STATE for the costs of such removal and disposal within Thirty (30) days of the date of the STATE's invoice.

26. ADDITIONAL CONSTRUCTION PROHIBITED. No new construction by the TENANT is permitted for the duration of this Lease, except that work to be performed pursuant to the Developer Agreement and as may be approved in advance and in writing by STATE.

27. "AS-BUILT" PLANS. Within Sixty (60) days following the TENANT's completion of underground utilities and/or buildings or other construction, the TENANT shall furnish the STATE a complete set of reproducible "As-Built" plans, acceptance of which shall be subject to the STATE's approval.

28. NONDISCRIMINATION. TENANT, for itself, its successors and assigns, as part of the consideration hereof, does hereby agree to comply with all applicable civil rights and antidiscrimination requirements, including, but not limited to, Chapter 49.60 RCW.

29. ASSIGNMENT.

A. Neither this Lease nor any rights created by it may be assigned, sublet, or transferred without the prior written approval of the STATE. Any such assignment shall be in writing on a form approved by the STATE and shall include an assumption of the Lease by the assignee. In determining whether to approve an assignment or sublease the STATE shall be entitled to consider the proposed assignee's or sublessee's financial condition, managerial capability, business reputation, nature of the proposed assignee's or sublessee's business, and such other factors as may reasonably bear upon the suitability of the assignee or sublessee as a TENANT of the Premises or the holder of this Lease.

B. TENANT shall provide the written assignment form to the STATE at least Sixty (60) days prior to the date the TENANT requires the approved form. In addition, TENANT shall provide to the STATE a copy of said written assignment within Fifteen (15) days of its execution. If the TENANT is a corporation, then the transfer of Forty Percent (40%) of TENANT's stock is deemed an assignment for the purposes of this Lease and requires STATE approval. STATE's consent to one assignment or sublease shall not waive the requirement of obtaining STATE consent to any subsequent assignment or sublease. The TENANT hereby covenants that it is acting as principal and not as an agent for any undisclosed principal.

C. In the event the TENANT assigns this Lease, sublets, or otherwise allows third party use of any portion of the Premises, whether by written or verbal agreement, without the STATE's written approval, the STATE, in addition to or in lieu of terminating this Lease for default and in addition to any damages it may experience, may demand a share of any revenue generated by such unauthorized use. The STATE shall set the amount of said share and its decision shall be final and binding. The STATE may demand such share at any time during the term of this Lease. The TENANT agrees to pay said share retroactively to the date the unauthorized third-party use commenced. Furthermore, such unauthorized assignment shall not relieve the TENANT from all of its obligations under this Lease, including, but not limited to, the payment of rent and the maintenance of insurance. Further, TENANT shall execute an assignment as provided above within Ten (10) days of the date the STATE approves the assignment.

D. Transfer of ownership or control of the abutting property owned or controlled by the TENANT to a third party may be understood to serve as an assignment of the Lease and such assignment requires the STATE's prior written approval of such assignment, which approval will not be unreasonably withheld. The TENANT shall notify the STATE of the transfer within Thirty (30) days after closing or change of control in the TENANT's property and request approval of the assignment of this Lease.

30. PERFORMANCE BY STATE. If TENANT defaults in the performance or observation of any covenant or agreement contained in this Lease, the STATE, without notice if deemed by the STATE that an emergency exists, or if no emergency exists, with Thirty (30) days prior written notice, may direct TENANT to stop work and may itself perform or cause to be performed such covenant or agreement and may enter upon the Premises for such purpose. Such emergency shall include, but not be limited to, endangerment of life, the highway facility or failure of TENANT to obtain in a timely manner the specified insurance coverage. TENANT shall reimburse the STATE the entire cost and expense of such performance by the STATE within Thirty (30) days of the date of the STATE's invoice. Any act or thing done by the STATE under the provisions of this section shall not be construed as a waiver of any agreement or condition herein contained or the performance thereof.

31. DISPOSITION OF IMPROVEMENTS. Except as provided elsewhere herein, upon termination of this Lease under any provision hereof, the improvements constructed by the TENANT on the Premises shall become the property of the STATE or, at the option of the STATE, shall be removed by the TENANT at the TENANT's expense in a manner prescribed by the STATE. In the event the TENANT fails to remove said improvements upon termination, the STATE may remove and dispose of said improvements as it deems appropriate and at the

TENANT's expense. The TENANT shall reimburse the STATE for all expenses incurred in such removal and disposal within Thirty (30) days of the date of the STATE's invoice for such costs.

32. RESTORATION OF SITE. Prior to termination of this Lease, TENANT agrees, if so directed by the STATE, to restore the Premises to its condition prior to TENANT's occupancy, reasonable wear and tear excepted. This work is to be done at the TENANT's expense to the satisfaction of the STATE.

33. VACATION OF PREMISES. Upon termination of this Lease, the TENANT shall cease its operations on and/or use of the Premises. In the event the TENANT fails to vacate the Premises on the date of termination, the TENANT shall be liable for any and all costs to the STATE arising from such failure.

34. BINDING CONTRACT. This Lease shall not become binding upon the STATE unless and until executed for the STATE by the Secretary of Transportation or her duly authorized representative.

35. ATTORNEYS' FEES. In the event of any controversy, claim, or dispute arising out of this Lease, each party shall be solely responsible for the payment of its own legal expenses, including but not limited to, attorney's fees and costs.

36. MODIFICATIONS. This Lease contains all the agreements and conditions made between the parties hereto pertaining to the rental of the Premises herein described and may not be modified orally or in any other manner other than by a written agreement signed by all parties hereto. The receipt of rent by the STATE, with knowledge of any breach of this Lease by the TENANT, and/or with knowledge of any default on the part of the TENANT shall not be deemed to be a waiver of any provision of this Lease. Failure on the part of the STATE to enforce any covenant or provision herein contained shall not discharge or invalidate such covenant or provision or affect the right of the STATE to enforce the same in the event of any subsequent breach or default.

37. INTERPRETATION. This Lease shall be governed by and interpreted in accordance with the laws of the State of Washington. The titles to paragraphs or sections of this Lease are for convenience only and shall have no effect on the construction or interpretation of any part hereof.

38. SEVERABILITY. In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Lease shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

39. VENUE. TENANT agrees that the venue of any action or suit concerning this Lease shall be in the Thurston County Superior Court and all actions or suits thereon shall be brought therein, unless applicable law requires otherwise.

40. TOTALITY OF AGREEMENT. It is understood that no guarantees, representations, promises, or statements expressed or implied have been made by the STATE except to the extent that the same are expressed in this Lease and the Developer Agreement.

41. NOTICES. Wherever in this Lease written notices are to be given or made, they will be served, personally delivered or sent by certified or overnight mail addressed to the parties at the address listed below unless a different address has been designated in writing and delivered to the other party. The TENANT agrees to accept service of process at said address; provided, that such address is located in the State of Washington. Otherwise, the TENANT designates the Secretary of State of Washington as an agent for the purpose of service of process. Such service shall be deemed personal service.

STATE: DEPARTMENT OF TRANSPORTATION (Mailing Address)
Attn.: Assistant Director, Property Management Program
P. O. Box 47338
Olympia, WA 98504-7338

DEPARTMENT OF TRANSPORTATION (Physical Address)
Attn.: Assistant Director, Property Management Program
243 Israel Road Southeast
Tumwater, WA 98501

TENANT: _____

THE REMAINDER OF THIS PAGE INENTIONALLY LEFT BLANK

Signatures:

Accepted and Approved by:

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION

By: _____

Title: _____

Dated: _____

By: _____

Mike Palazzo
Acting Director, Real Estate Services

Dated: _____

APPROVED AS TO FORM

By: _____

Assistant Attorney General

_____, 2008

CORPORATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
COUNTY OF)

On this _____ day of _____, 2008, before me personally appeared _____ to me known to be the _____ of the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

GIVEN under my hand and official seal the day and year last above written.

(Signature)

(Print or type name)

Notary Public in and for the State of Washington
residing at _____

My commission expires _____

STATE AGENCY ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

On this _____ day of _____, 2008, before me personally appeared _____ Mike Palazzo, to me known to be the duly appointed Acting Director, Real Estate Services, and that he executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said State of Washington, for the uses and purposes therein set forth, and on oath states that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the _____ day of _____, 2008.

(Signature)

(Print or type name)
Notary Public in and for the State of Washington
residing at _____
My commission expires _____

Exhibit B

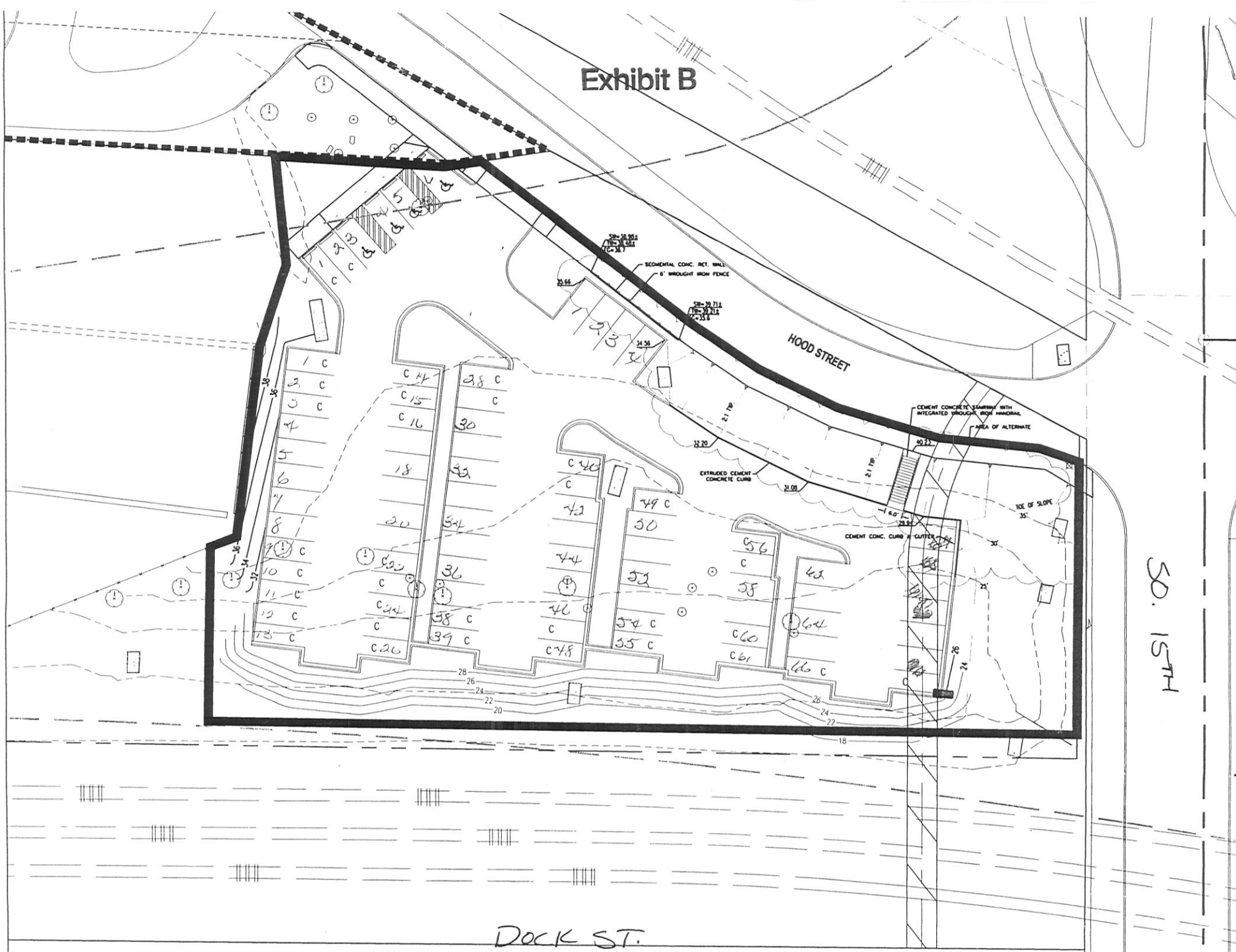




Exhibit "B"

Hood Street
Parking Lot



EXHIBIT C

PROPOSER'S BUSINESS REFERENCES

Proposer		
Reference Name		
Contact Person 1		
Contact 1 Phone Fax Numbers		
Contact 1 Email address		
Contact Person 2		
Contact 2 Phone Fax Numbers		
Contact 2 Email Address		
Type of Business		
Original Amount of Contract		
Number of claims and or disputes by either party		
Equipment Supplied/Services Provided	Lease/Contract Date and Duration	

PROPOSER'S BUSINESS REFERENCES



EXHIBIT D

Revenue Proposal

Date: _____

To the Secretary of Transportation
Olympia, Washington

I _____, the undersigned, with this Revenue Proposal certify that _____ has examined the location and condition of the Premises, as that terms is defined in the RFP.

The undersigned hereby proposes to lease Premises from WSDOT pursuant to the terms and conditions in the Airspace Lease attached to the RFP as Exhibit A and pay monthly rent to WSDOT in accordance with the terms and conditions in the RFP and as indicated in this Revenue Proposal:

CONSTRUCTION RENTAL FEE:

Proposer will pay \$ _____ to WSDOT each month during the construction period of the Airspace Lease commencing upon execution of the Airspace Lease and terminating at 11:59 p.m. the day WSDOT issues Final Acceptance.

BASE RENTAL FEE A:

Proposer will pay to WSDOT a minimum monthly base rental fee in the amount of \$ _____ each month during the Airspace Lease for the period commencing the day following WSDOT's issuance of Final Acceptance and terminating ten-years after commencement of the Airspace Lease.

BASE RENTAL FEE B:

Proposer will pay to WSDOT a minimum monthly base rental fee in the amount of \$ _____ each month during the one 5-year renewal period of the Airspace Lease.

PERCENTAGE RENT A:

Proposer will pay to WSDOT additional monthly rent in the amount of _____ percentage of the monthly Gross Revenue that exceeds Base Rental Fee A during the Airspace Lease for the period commencing the day following WSDOT's issuance of Final Acceptance and terminating ten-years after commencement of the Airspace Lease.

PERCENTAGE RENT B:

Proposer will pay to WSDOT additional monthly rent in the amount of _____ percentage of the monthly Gross Revenue that exceeds Base Rental Fee B during the one 5-year renewal period of the Airspace Lease.

Proposer's Signature: _____

Date: _____

EXHIBIT E

AMORTIZATION OPTION FORM

Date: _____

To the Secretary of Transportation
Olympia, Washington

I _____, the undersigned, with this Amortization Option Form certify that _____ makes the election indicated below to either include or exclude the following provision from the Airspace Lease:

The STATE may terminate this Lease upon not less than sixty (60) days prior written notice, unless an emergency exists, as determined by the STATE, then immediately, if the STATE determines it is the best interest of the STATE to terminate this Lease. In the event the STATE terminates the Lease as provided above during the initial five (5) years of the Lease term, the STATE shall pay TENANT the amount equal to the unamortized construction cost of TENANT's facility on the Premises based on a straight line five year amortization schedule. The construction cost amount to be used to calculate the unamortized construction costs is \$_____.

The undersigned hereby makes the following election:

____ **Yes, the above stated clause shall be included in the Airspace Lease and the construction cost amount to be included in the clause shall be \$_____.**

____ **No. The above stated clause shall not be included in the Airspace Lease.**

Proposer's Signature: _____

Date: _____

EXHIBIT F JC AGREEMENT

“Date”

“Name”

“Company”

“Address”

“City, State Zip”

Re: SR 705, Tacoma Spur Sheet 4 of 6
RFP – Hood Street Parking Lot
IC #3-27-07502
DS File #2008-xxx-A

“Dear Sir/Madam”:

The Proposal Response for the RFP Hood Street Parking Lot will require a technical review and approval by the Washington State Department of Transportation (Department) prior to construction. The actual, direct and related expenses associated with the review process are the obligation of the proponent. Such costs include, but are not limited to: technical plan reviews, correspondence, meetings, administrative overhead, construction administration and any field inspection during the actual construction of the improvements.

A reimbursable account number will be assigned to your project upon receipt and approval of this signed letter of authorization. ***Any costs incurred by the Department on behalf of this project will be billed on a monthly basis to the name and address listed above unless requested otherwise.*** Failure to pay in full each month will stop the review and approval process. Payments not made within 30 days of receipt of invoice may be charged interest at the appropriate legal rate, which is currently 1% per month. To secure payment of the potential costs incurred in the review process, the Department requests that a Bond or an assignment of escrow in the amount of \$7,500 accompany the endorsed original copy of this letter.

Please provide, within 15 days of the above date, the appropriate endorsement below, including Tax Identification Number (T.I.N.), acknowledging the terms and conditions of the review process.

Upon receipt and approval of this endorsed letter with bond, the Department will sign and return a copy of the approved letter for your files and initiate the review process. Should you have any questions, please contact Dale Severson at (360) 357-2736.

Sincerely,

Dale C. Severson, P.E.
Development Services Engineer
WSDOT, Olympic Region

PROPONENT'S ENDORSEMENT BY:

Signature _____
Print Name _____
Title _____
T.I.N. _____
Date _____

WSDOT APPROVAL BY:

Robert E. Jones
Olympic Region Planning Manager
Date _____

EXHIBIT G



Developer Agreement Construction by Developer At Developer Expense			Developer and Address
Agreement Number			Section/Location
State Route No. Interstate 705	Control Section No.	Region Olympic	Description of Work Construction of Parking Lot
Surety Bond \$250,000	Work Hours As provided by local permits		

This AGREEMENT, made and entered into this _____ day of _____, _____, between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, hereinafter called the "STATE", and the above named organization, hereinafter called the "DEVELOPER".

WHEREAS, the DEVELOPER wishes to construct a parking lot and related improvements within the STATE's rights-of-way, and

WHEREAS, the STATE and DEVELOPER now wish to define responsibility for construction of the proposed improvements.

NOW THEREFORE, by virtue of RCW 47.12.120, it is mutually agreed between the parties hereto as follows:

1. The STATE agrees to grant the DEVELOPER permission to construct the above described work within STATE right-of-way at the location described in Exhibit "A", attached hereto and by this reference made a part of this AGREEMENT.
2. The DEVELOPER agrees to construct the project as shown on Exhibit "B", at 100 percent DEVELOPER expense and responsibility. Exhibit "B" is attached hereto and by this reference made a part of this AGREEMENT.

The responsibility of the Developer for performance, safe conduct, and adequate policing and supervision of the project shall not be lessened or otherwise affected by the STATE's approval of plans, specifications, or work, or by the presence at the worksite of the STATE's representative(s), or by compliance by the DEVELOPER with any requests or recommendations made by such representative(s).

The DEVELOPER is responsible for acquiring any permits as required by local agencies with jurisdiction, including, but not limited to: building, plumbing, mechanical, electrical, fire alarms, and fire sprinklers.
3. Any change of work from that shown on Exhibit "B" must be approved in writing by the STATE prior to beginning such work. Plan revisions may be required by the STATE if design standards change between the time of the AGREEMENT approval and the beginning of construction.
4. Within 15 days of execution of this AGREEMENT by both parties the DEVELOPER shall provide a construction schedule showing critical dates and activities that will lead to the timely completion of the work required under this AGREEMENT.

Failure by the DEVELOPER to provide the construction schedule within the prescribed time period may cause cancellation of the AGREEMENT. Cancellation of this agreement will not lessen the DEVELOPER's responsibility to reimburse the STATE for those costs agreed to in Section 13 and those costs covered in JC Agreement # _____, dated _____ (JC AGREEMENT).
5. Prior to beginning of construction, a preconstruction conference shall be held with the STATE, DEVELOPER, and the DEVELOPER's contractor, if any.

The DEVELOPER, at its own expense, shall adequately police and supervise all work on the above-described project by itself, its contractor(s), subcontractor(s), agent(s), and others, so as to not endanger or injure any person or property.

7. Work within the STATE right-of-way shall be restricted to the above-specified hours and no work shall be allowed on the right-of-way Saturdays, Sundays, or Holidays, unless otherwise authorized by the STATE.
8. In the construction of this facility, the DEVELOPER shall comply with the "Manual on Uniform Traffic Control Devices for Streets and Highways", current edition, which by this reference is incorporated herein. Any closures or restrictions of the highway shall require a STATE approved traffic control plan.
9. All material and workmanship shall conform to the Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction, current edition, which by this reference is incorporated herein, and shall be subject to inspection by the STATE.
10. All disturbed right-of-way shall be seeded, fertilized, mulched, and protected from erosion.
11. The DEVELOPER shall provide an executed surety bond in the amount stated above. This surety bond, also covering state sales tax, shall:
 - A. Be on a STATE furnished form or a form acceptable to the STATE;
 - B. Be signed by an approved surety (or sureties) that (1) is registered with the Washington State Insurance Commissioner, and (2) appears on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner;
 - C. Be conditioned upon the faithful performance of this AGREEMENT by the DEVELOPER within the prescribed time;
 - D. Guarantee that the surety shall indemnify, defend, and protect the STATE against any claim of direct or indirect loss resulting from the failure: (1) of the DEVELOPER or any of the employees, contractors or subcontractors to faithfully perform the work in accordance with this AGREEMENT, and (2) of the DEVELOPER or any contractor, or subcontractors of the DEVELOPER to pay all laborers, mechanics, subcontractors, material persons, or any other person who provides supplies or provisions for carrying out the work;
 - E. Allow the STATE to require sureties or surety companies on the surety bond to appear and qualify themselves. Whenever the STATE deems the surety or sureties to be inadequate, it may, upon written demand, require the DEVELOPER to furnish additional surety to cover any remaining work. Until the added surety is furnished, work will stop.
 - F. Upon the request of any person or entity appearing to be a potential beneficiary of the surety bond covering payment of obligations arising under this AGREEMENT, the DEVELOPER shall promptly furnish a copy of the surety bond or shall permit a copy to be made.

The surety bond shall remain in full force and effect until released in writing by the STATE.

The STATE will recover from the DEVELOPER and its sureties such damages as the STATE may sustain by reason of the DEVELOPER's failure to comply with the provisions of this AGREEMENT.

12. The DEVELOPER shall obtain and keep in force for the duration of the work under this AGREEMENT, an insurance policy and/or program of self insurance, of combination thereof, that provides liability coverage for the project, including public liability coverage for bodily injury, property damage and personal injury of not less than TWO MILLION (\$2,000,000.00) combined single limit per occurrence, with a general aggregate amount of not less than FOUR MILLION (\$4,000,000.00) per policy period. The STATE

shall be specifically named as an insured in a policy with the same company which insures the DEVELOPER or by an endorsement to an existing policy. Insurance coverage obtained by DEVELOPER shall not be deemed as having relieved DEVELOPER of any liability. DEVELOPER further warrants that its contractor shall specifically name STATE in a policy as an insured in an amount not less than TWO MILLION (\$2,000,000.00) combined single limit per occurrence, with a general aggregate amount of not less than FOUR MILLION (\$4,000,000.00) per policy period and specifically naming the STATE as an insured in a policy with the same company which insures the DEVELOPER's contractor or by an endorsement to an existing policy.

The DEVELOPER shall furnish the STATE proof of insurance prior to undertaking any work covered by this AGREEMENT.

13. The DEVELOPER shall reimburse the STATE for all actual, direct and related indirect cost necessitated by this AGREEMENT and as required in the JC AGREEMENT. Such costs include, but are not limited to, AGREEMENT preparation, plan review and construction inspection.
14. As agreed to in the Airspace Lease, dated _____, 2008 (Airspace Lease), and by this reference made a part of this AGREEMENT, STATE shall have ownership and control of the completed facility within STATE right-of-way subject to Final Acceptance (as defined in section 15 herein) by STATE, which acceptance shall not be unreasonably withheld. Maintenance responsibility for the facility and other maintenance associated with the worksite following the completion of construction, shall be as agreed to in the Airspace Lease, and by this reference made a part of this AGREEMENT.
15. The DEVELOPER shall deliver to the STATE a certified letter requesting Final Acceptance of the work performed under this AGREEMENT and stating DEVELOPER has performed all the obligations under this AGREEMENT, including but not limited to obtaining written approval from all agencies with jurisdiction over compliance with applicable construction codes, such as but not limited to, building, fire, mechanical, and electrical codes. For the purposes of this AGREEMENT, the term "Final Acceptance" shall mean written notification from the STATE to DEVELOPER that the STATE concurs that DEVELOPER has completed all the obligations under this AGREEMENT.
16. Any breach of the terms and conditions of this AGREEMENT, or failure on the part of the DEVELOPER to proceed with due diligence and in good faith in the construction work provided for herein, shall subject this AGREEMENT to be cancelled and, at the option of the STATE, may require the DEVELOPER to remove all or part of the facilities constructed hereunder at the DEVELOPER's sole expense.
17. The DEVELOPER shall indemnify and hold the STATE, and its agents, employees and/or officers harmless from and shall process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the STATE, its agents, employees and officers arising out of, in connection with, or incident to the execution of this AGREEMENT and/or the DEVELOPER's performance or failure to perform any aspect of this AGREEMENT. Provided, however, that if such claims are caused by or result from the concurrent negligence of (a) the DEVELOPER and (b) the STATE, its agents, employees and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the DEVELOPER, and provided further, that nothing herein shall require the DEVELOPER to hold harmless or defend the STATE, its agents, employees and/or officers from any claims arising from the sole negligence of the STATE, its agents, employees, and/or officers.
18. DEVELOPER expressly acknowledges and agrees that, except as set forth below, the STATE's rights under this AGREEMENT to review, comment on, inspect, approve, disapprove and/or accept

architectural and other designs, specifications, the plan, construction, and to monitor and sample work or activities:

A. exist solely for the benefit and protection of the STATE;

B. except for express contractual standards for approval or disapproval set forth elsewhere in this AGREEMENT, do not create or impose upon the STATE any standard or duty of care, contractual or non-contractual, toward DEVELOPER, all of which are hereby disclaimed; and

C. may not be relied upon, nor may STATE's exercise or failure to exercise any such rights be relied upon by DEVELOPER in determining whether DEVELOPER has satisfied the standards and requirements set forth in this AGREEMENT.

Regardless of STATE's exercise or failure to exercise any such rights and regardless of the issuance of Final Acceptance, DEVELOPER shall have an independent duty and obligation to and shall not thereby be relieved in any way from its obligation, to obtain all necessary regulatory approvals for the facility, and to design and construct the facility in accordance with the standards and requirements set forth in this AGREEMENT.

No rights of the STATE described above, no exercise or failure to exercise such rights, no failure of the STATE to meet any

particular standard of care in the exercise of such rights, and no acceptances shall:

A. relieve DEVELOPER of its indemnification obligations under this AGREEMENT;

B. be deemed or construed to waive any of STATE's rights and remedies under this AGREEMENT or permits; or

C. be deemed or construed as any kind of representation or warranty, express or implied, by STATE.

Notwithstanding any contrary provision of this Section 18:

A. DEVELOPER shall be entitled to rely on specific written deviations and specific written interpretive engineering decisions STATE gives under this AGREEMENT; and

B. DEVELOPER shall be entitled to rely on any permit STATE issues to it for the matters authorized thereby, subject to satisfying all conditions set forth therein.

19. In the event that any party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action or proceedings shall be brought in a court of competent jurisdiction situated in Thurston County, Washington.

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

DEVELOPER

By: _____

Title: _____

Date: _____

**STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION**

By: _____

Title: _____

Date: _____