

CITY OF ROY, WASHINGTON

RESOLUTION NO. 786

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROY, PIERCE COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN AND ENTER INTO A BALLOT DROP BOX PROPERTY USE AGREEMENT WITH PIERCE COUNTY.

WHEREAS, the City desires to assist the Pierce County Auditor's office's efforts to provide convenient locations for voters to submit ballots; and

WHEREAS, the City and the County agree that a space in front of the Roy Community Center and Library is an appropriate location for a ballot drop box;

NOW, THEREFORE, be it resolved by the City Council of the City of Roy, Washington:

Section 1. The City Council of the City of Roy hereby authorizes the mayor to sign the Ballot Drop Box Property Use Agreement attached hereto as Exhibit A, in substantially the form on file in the city clerk-treasurer's office.

Section 2. Severability. If any section, sentence, clause or phrase of this Resolution should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Resolution.

Section 3. All acts consistent with this resolution are hereby authorized.

Adopted this 23rd day of February, 2015.


KAREN YATES, Mayor

Attest:

Approved as to Form:


DEBRA DEARINGER
City Clerk-Treasurer


R. TYE GRAHAM, CITY ATTORNEY
WSBA#44037

**BALLOT DROP BOX PROPERTY USE AGREEMENT
(Pierce County Auditor)**

This Ballot Drop Box Property Use Agreement (hereinafter "Agreement") is made and entered into as of the Effective Date (defined in Section 21 below) by and between the CITY OF ROY, a Washington non-charter code city (hereinafter "City of Roy") and PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington (hereinafter "Pierce County"). City of Roy and Pierce County may hereinafter be referred to collectively as "Parties" or individually as a "Party."

RECITALS

WHEREAS City of Roy owns that certain parcel of real property consisting of the land and improvements commonly known as City of Roy Library and Community Center, 122 - 3rd Street East, Roy, WA and legally described in **Exhibit A** attached hereto and by this reference incorporated herein (hereinafter "Subject Property"); and

WHEREAS Pierce County has secured funds in 2015 budget to purchase, install, use and maintain a ballot drop box of the type and nature schematically depicted in **Exhibit B** attached hereto and by this reference incorporated herein (hereinafter "Drop Box") in various locations throughout Pierce County to collect ballots cast by voters in general and special elections conducted by the Auditor of Pierce County pursuant to Chapter 29A of the Revised Code of Washington; and

WHEREAS City of Roy desires to make available to Pierce County for the installation, use and maintenance of the Drop Box those certain portions of the Subject Property depicted and described in **Exhibit C** attached hereto and by this reference incorporated herein (hereinafter collectively the "Premises"); and

WHEREAS the Parties agree that it is in their mutual interest and in the best interest of the general public that ballot drop boxes be located throughout Pierce County so as to facilitate and encourage public interest in electoral participation by local residents.

NOW, THEREFORE, for in and consideration of the terms, covenants and conditions set forth in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City of Roy and Pierce County hereby agree as follows:

A G R E E M E N T

1. Incorporation of Recitals. The above recitals are true and correct and are incorporated herein by this reference as if fully set forth.

2. Grant of Use Right. City of Roy hereby grants to Pierce County, and Pierce County hereby accepts from City of Roy, the right to use the Subject Property and Premises upon the terms, covenants and conditions set forth in this Agreement.

3. Use Period. This Agreement shall commence on the Effective Date and terminate at midnight on December 31, 2025 (hereinafter "Use Period"). This Agreement shall automatically renew for successive periods of one (1) year each beginning January 1 and ending December 31 (hereinafter "Renewal Period(s)"). Notwithstanding the foregoing, this Agreement may be terminated at any time by either Party upon ninety (90) calendar days prior written notice to the other.

4. Delivery of Use; Acceptance. Pierce County shall be entitled to use of the Premises as of the Effective Date. Pierce County has inspected the Premises and has determined to its complete satisfaction the same are suitable for the uses described in Section 5.1 below.

5. Use of Premises.

5.1 Permitted Uses. Pierce County shall use the Premises for the sole purposes of installing, using, maintaining and removing the Drop Box at the location identified in **Exhibit A** and for no other uses or purposes without the prior written consent of City of Roy, which consent may be granted, withheld, conditioned or delayed by City of Roy in its sole and absolute judgment and discretion.

5.2 Prohibited Uses. Pierce County shall not use the Premises in violation of any statute, rule, ordinance, permit, order, regulation or code in effect and applicable to any part thereof, nor shall it do or suffer to be done in or about the Premises, or bring into, keep, or suffer to be brought into or kept in or about the Premises, anything that may constitute a waste, hazard, nuisance or unreasonable annoyance to City of Roy or its residents. Separate and apart from this Agreement, Pierce County shall be solely and exclusively responsible for obtaining any regulatory approvals necessary to install the Drop Box.

6. Pierce County's Responsibilities.

6.1 Installation. Pierce County shall, at its sole cost and expense, install the Drop Box in good and workmanlike manner in accordance with the manufacturer's specifications and with all laws, rules, regulations, ordinances, permits and requirements of all governmental agencies having jurisdiction.

6.2. Maintenance. Pierce County shall, at its sole cost and expense, maintain the Drop Box throughout the Use Period in good repair and in a neat, clean, safe, sanitary and graffiti-free condition. If the Drop Box is breached, damaged, vandalized or defaced in any way, Pierce County shall re-secure, repair or replace the Drop Box as soon as practicable after receiving notice thereof.

6.3 Security. Pierce County shall be solely responsible for the security of the Drop Box and its contents. If any threat is made with respect to the Drop Box, such as an incendiary or other device, Pierce County shall be solely responsible for dealing with and resolving that threat at Pierce County's sole expense.

7. City of Roy's Responsibilities. City of Roy shall: (a) exercise due care and caution with respect to the Drop Box while conducting its business operations in and about the Subject Property and shall, at its sole cost and expense, repair any and all damage to the Drop Box caused by the negligent or willful conduct of its elected or appointed officials, contractors, servants, agents or employees; and (b) notify Pierce County immediately if City of Roy becomes aware that: (i) the Drop Box is breached, damaged, vandalized or defaced in any way; and/or (ii) any threat is made with respect to the Drop Box.

8. Indemnification. Pierce County shall indemnify, defend, and hold City of Roy, its elected or appointed officials and employees harmless from all claims, liabilities, costs, attorney fees and expenses of any kind, type or nature whatsoever arising out of or in any way relating to: (a) Pierce County's use of the Subject Property and/or the Premises pursuant to this Agreement, specifically including, without limitation, any use of and/or entry onto the Subject Property by any member of the public in relation to the Drop Box; (b) any activity, work or thing done, permitted or suffered by Pierce County in or about the Subject Property and/or the Premises; (c) any breach or default in the performance of any obligation to be performed by Pierce County under this Agreement; or (d) any act or omission of Pierce County or of its elected or appointed officials, contractors, servants, agents or employees caused by negligence or willful misconduct and then only to the extent of its or their proportionate share of liability. Pierce County's obligation to indemnify City of Roy under this Section 8 includes an obligation to indemnify for losses resulting from death or injury to Pierce County's elected or appointed officials, contractors, servants, agents or employees, and Pierce County hereby waives any and all immunities it now has or hereafter may have under Title 51 RCW (Industrial Insurance), or other worker's compensation, disability benefit or other similar act that would otherwise be applicable in the case of such a claim and further acknowledges that such waiver was mutually negotiated by the Parties as required by RCW 4.24.115.

9. Default; Remedies. In the event of a default under this Agreement, either Party may pursue any remedy allowed by law.

10. **Waiver.** Failure by either Party to promptly enforce any right under this Agreement shall not operate as a waiver of such right with respect to any future default.

11. **Notices.** Any notices required or desired to be given shall be by telephone, electronic mail and U.S. mail to the person(s) set forth below:

To: City of Roy
Attn: Mayor Karen Yates
P.O. Box 700 / 216 McNaught St
Roy, WA 98580
Telephone: 253-843-1113
Email: Mayor@cityofRoywa.us

Copy to: _____
Attn: _____

Telephone: ____-____-_____
Email: _____

To Pierce County: Pierce County Auditor - Elections Division
Attn: Julie Colacurcio//Mike Rooney
2501 South 35th Street, Suite C
Tacoma, WA 98409-7284
Telephone: 253-798-6587 (Colacurcio)
253-798-2148 (Rooney)
Email: jcolacu@co.pierce.wa.us (Colacurcio)
mrooney@co.pierce.wa.us (Rooney)

Copy to: Pierce County Facilities Management
Attn: Real Property Management Specialist
1102 Broadway, Suite 302
Tacoma, WA 98402-2160
Telephone: 253-798-7223
Email: rtacket@co.pierce.wa.us

Copy to: Pierce County Prosecuting Attorney/Civil Division
Attn: David H. Prather, Deputy Prosecuting Attorney
955 Tacoma Avenue South, Suite 301
Tacoma, WA 98402-2160
Telephone: 253-798-4168 (Direct Line)
Email: dprathe@co.pierce.wa.us

Any Party, by written notice to the other in the manner herein provided, may designate contact information different from that set forth above. Any notices sent by a Party's attorney on behalf of such Party shall be deemed delivered by such Party.

12. Negotiation and Construction. This Agreement was negotiated by the Parties with the assistance of their own legal counsel and shall be construed according to its fair meaning and not strictly for or against either Party.

13. Time. Time is of the essence of this Agreement and of every term and provision hereof. If the date for any performance under this Agreement falls on a weekend or holiday, the time shall be extended to the next business day.

14. Counterparts. This Agreement may be signed in one or more counterparts, which taken together shall constitute the complete agreement between the Parties, and signatures to this Agreement by the Parties transmitted via facsimile shall be acceptable and binding.

15. Prior Agreements. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned herein and no prior agreement, letter of intent, negotiation or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Agreement may be amended or added to, except by an agreement in writing signed by the Parties or their respective successors in interest.

16. Attorney Fees and Costs. If either Party requires the services of an attorney in connection with enforcing the terms of this Agreement, whether or not suit is brought, or in the event suit is brought for the recovery of any sums due under this Agreement or for the breach of any term, covenant or condition hereof, the substantially prevailing Party shall be entitled to reasonable attorney fees and all costs incurred in connection therewith, including, without limitation, the fees of experts and professionals, whether at trial, on appeal or without resort to suit.

17. Vacation of Premises. Upon expiration or earlier termination of the Agreement, Pierce County shall: (a) remove the Drop Box and any associated mounting hardware from the Premises; and (b) leave the Premises in a neat, clean, safe and sanitary condition. If Pierce County fails to complete the removal and/or site remediation required under this Section 17, City of Roy may cause such work to be completed and charge the documented, reasonable cost thereof to Pierce County.

18. Cost of Performance. Except as otherwise expressly provided in this Agreement, all covenants and agreements to be performed by Pierce County shall be performed at its sole cost and expense.

19. **Severability.** Any provision of this Agreement that proves to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof, and such other provisions shall remain in full force and effect.

20. **Governing Law; Venue.** This Agreement shall be governed by and construed and interpreted in accordance with the laws of the state of Washington. The venue of any action between the Parties relating to the subject matter of this Agreement shall be in the superior court for Pierce County, Washington.

21. **Effective Date.** "Effective Date" means the date the Pierce County Executive (who shall be the last person to sign) shall have signed this Agreement as indicated opposite her name below.

[SIGNATURES & ACKNOWLEDGEMENTS APPEAR ON FOLLOWING PAGES]

PIERCE COUNTY SIGNATURE PAGE

PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington:

APPROVED AS TO LEGAL FORM ONLY:

By: [Signature] 2/18/15
Deputy Prosecuting Attorney Date

RECOMMENDED:

By: [Signature] 3/9/15
Director, Budget and Finance Date

By: [Signature] 03.11.15
Pierce County Auditor Date

FINAL ACTION:

By: [Signature] 3/17/15
Pierce County Executive Date

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

THIS IS TO CERTIFY that on this 17 day of March, 2015, before me personally appeared PAT MCCARTHY, to me known to be the Executive of Pierce County, Washington, a municipal corporation and political subdivision of the state of Washington, described in and that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute the said instrument on behalf of said municipal corporation.

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

[Signature]
Name: Constance B Perry
Notary Public in and for the State of
Washington, residing at: Tacoma
My Appointment Expires: 4-16-2016



EXHIBIT A
(Legal Description of Subject Property)

Section 34 Township 18 Range 02 Quarter 32 MCNAUGHTS JAMES 1ST ADD:
MCNAUGHTS JAMES 1ST ADD L 5 B 3 TOG/W WLY 1/2 VAC ALLEY
ABUTTING THEREOF AS PER ORD #481 APPROX 7,200 SQ FT DC12-04-95SG

EXHIBIT B
(Schematic Depiction of Drop Box)

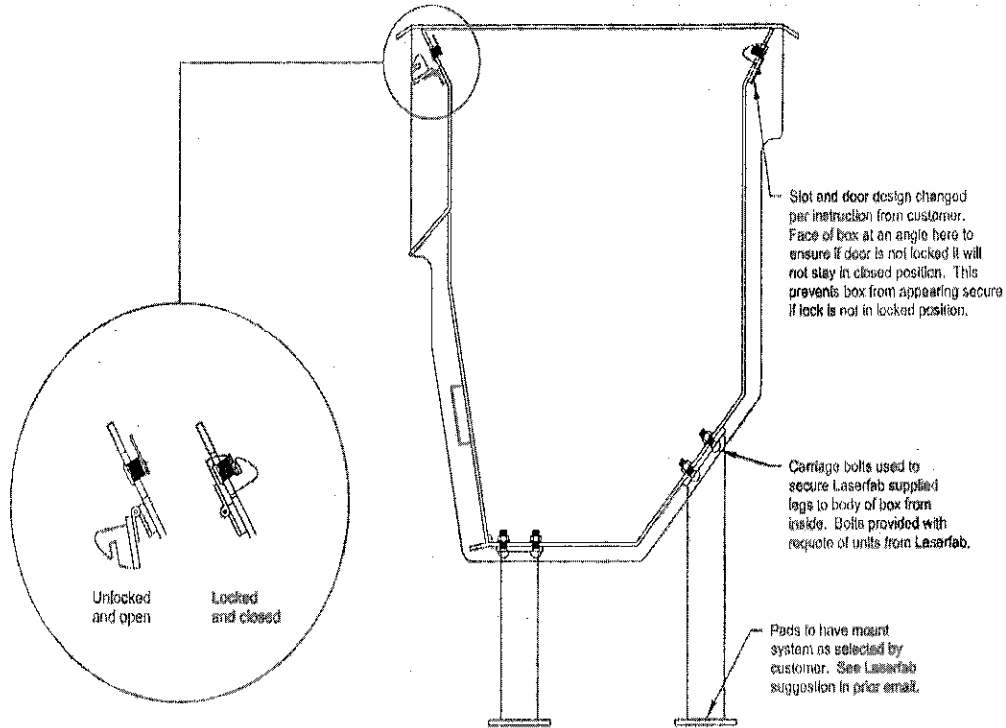
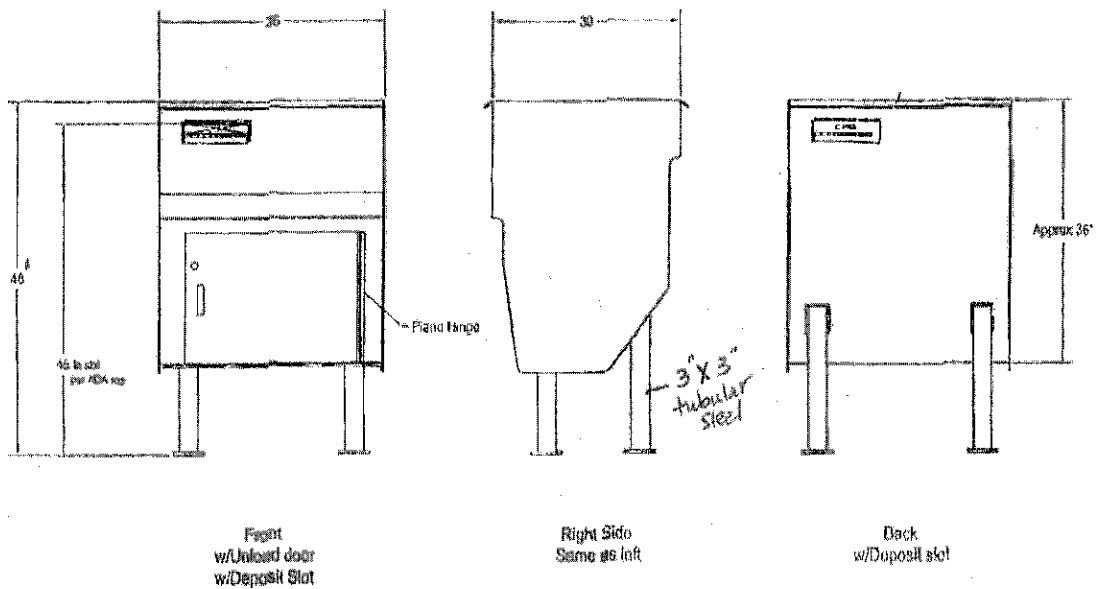


EXHIBIT B
(Schematic Depiction of Drop Box - Continued)



All components are 1/4" Steel Construction
 36" Dual Version Shown

EXHIBIT B
(Schematic Depiction of Drop Box - Continued)

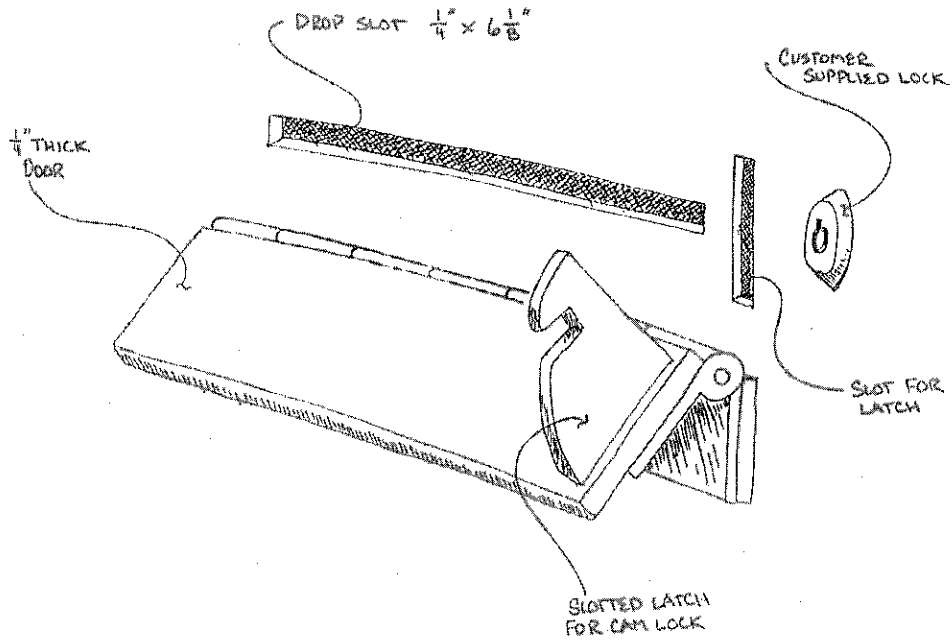
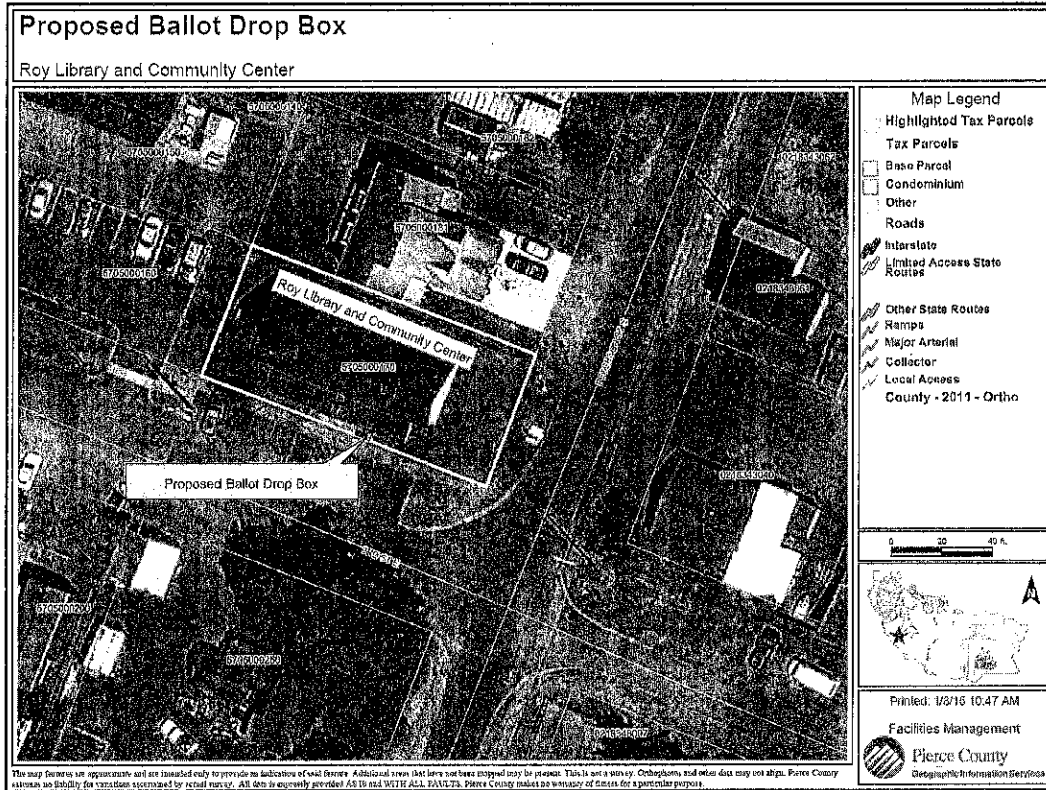


EXHIBIT C (Depiction of Premises)



**FIRST AMENDMENT
TO
BALLOT DROP BOX PROPERTY USE AGREEMENT
(Pierce County Auditor)**

This First Amendment to Ballot Drop Box Property Use Agreement ("First Amendment") is made and entered into by and between the CITY OF ROY, a Washington non-charter code city ("City of Roy") and PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington ("Pierce County"). City of Roy and Pierce County may hereinafter be referred to collectively as "Parties" or individually as a "Party."

RECITALS

WHEREAS City of Roy and Pierce County have entered into that certain Ballot Drop Box Property Use Agreement ("Agreement") dated March 17, 2015 pursuant to which City of Roy granted to Pierce County and Pierce County accepted from City of Roy the right to use that certain parcel of real property legally described therein ("Original Site") for placement of a ballot drop box; and

WHEREAS since the effective date of the Agreement City of Roy has, pursuant to an Order for Immediate Possession and Use entered in Pierce County Superior Court Cause No. 15-2-05649-8, acquired the legal right to possess and use that certain parcel of real property legally described in Section 2 below ("Alternate Site"); and

WHEREAS since the effective date of the Agreement the Parties have mutually agreed that the ballot drop box would better serve the citizens of City of Roy if placed upon the Alternate Site rather than the Original Site; and

WHEREAS City of Roy and Pierce County now desire to amend the terms of the Agreement to provide for placement of the ballot drop box on the Alternate Site in accordance with this First Amendment.

NOW, THEREFORE, for and in consideration the terms, covenants and conditions set forth below, City of Roy and Pierce County hereby agree as follows.

A G R E E M E N T

- 1. Incorporation of Recitals.** The above recitals are true and correct and are incorporated herein by this reference as if fully set forth.
- 2. Replacement of Exhibit A -- Legal Description.** Exhibit A to the Agreement containing the legal description of the Original Site is hereby deleted in its entirety and replaced with New Exhibit A attached hereto to reflect the legal description of the Alternate Site.

3. Replacement of Exhibit C -- Depiction of Premises. Exhibit C to the Agreement depicting the portion of the Original Site comprising the Premises is hereby deleted in its entirety and replaced with attached New Exhibit C depicting the portion of the Alternate Site comprising the Premises.

4. Construction. This First Amendment was negotiated under circumstances in which each Party had the opportunity to seek the assistance of their own legal counsel and shall be construed according to its fair meaning and not strictly for or against either Party.

5. Authority. Each Party represents and warrants to the other that it has the power and authority to execute this First Amendment and that there are no third-party approvals required to execute this First Amendment or to comply with the terms and conditions set forth herein.

6. Ratification and Confirmation. The Agreement, except as amended by this First Amendment, is hereby ratified and confirmed in all respects and shall remain in full force and effect in accordance with its original terms and conditions.

7. Exhibits. The following exhibits are attached hereto and by this reference incorporated herein as if fully set forth:

New Exhibit A	-	Legal Description of Alternative Site
New Exhibit B	-	Depiction of Premises

8. Effective Date of First Amendment. The Effective Date hereof shall be the date the Pierce County Executive (who shall be the last person to sign) shall have executed this First Amendment as indicated opposite her name below.

[SIGNATURES & ACKNOWLEDGEMENTS APPEAR ON FOLLOWING PAGES]

CITY OF ROY SIGNATURE PAGE

CITY OF ROY, a Washington non-charter city:

By: Karen Yates 5/11/15
Karen Yates, Mayor Date

PIERCE COUNTY SIGNATURE PAGE

PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington:

APPROVED AS TO LEGAL FORM ONLY:

By: Donna Masumth 7.29.15
Deputy Prosecuting Attorney Date

RECOMMENDED:

By: Gary Robinson 8/31/15
Director, Budget and Finance Date

By: [Signature] 07-30-15
Pierce County Auditor Date

FINAL ACTION:

By: _____
Pierce County Executive

NEW EXHIBIT A
(Legal Description of Alternate Site)

Section 34 Township 18 Range 02 Quarter 32 MCNAUGHTS JAMES 1ST ADD:
MCNAUGHTS JAMES 1ST ADD L 4 B 3 SUBJ TO SIDEWALK EASE
TOG/W ELY 1/2 VAC ALLEY ABUTT THEREOF AS PER ORD #481
APPROX 7,200 SQ FT DC12-04-95SG

NEW EXHIBIT C (Depiction of Premises)

