

INTERAGENCY AGREEMENT

BETWEEN

Department of Commerce

AND

Seattle College District VI

This Agreement is made and entered into by and between the Department of Commerce, referred to as Commerce, located at 1011 Plum Street SE, P.O. Box 42525, Olympia, WA 98504-2525 and Seattle College District VI, referred to as the College, located at 1500 Harvard Avenue, Seattle, WA 98122 and is issued pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW.

1. PURPOSE

The purpose of this Agreement is for Commerce to provide rent, operating expense, tenant improvements, and parking to the College during its tenancy at the Pacific Tower, tax parcel number 2829600110, with a common street address of 1200 12th Avenue South, Seattle, Washington.

2. STATEMENT OF WORK

Commerce shall furnish the necessary funds and service(s) and otherwise do all things necessary for or incidental to the performance of work set forth below:

RECITALS

- A. The Washington State Legislature, pursuant to the 2013-2014 operating budget for the State of Washington, directed Commerce to enter into a 30-year real property lease with the Pacific Hospital Preservation and Development Authority ("PHPDA"), a public corporation chartered by the City of Seattle, for approximately 205,000 net rentable square feet of the Pacific Tower building located in Seattle, Washington.
- B. Commerce and PHPDA entered into a Tower and Adjacent Property Lease Agreement (Lease) dated November 12, 2013, pursuant to which Commerce may sublease space within Pacific Tower to accomplish the Legislature's direction to create a community healthcare, education and innovation center with College as the anchor subtenant of that center.

- C. The Washington State Legislature provided Commerce \$4.85 million for the 2013-2015 biennium “solely for purposes of creating and operating a community health care and education and innovation center at the Pacific Medical Center in Seattle. Amounts provided in this subsection must be used for lease, maintenance, operations, and other required related expenses for Seattle community colleges allied health programs and other related uses identified by the department of commerce.” 3 ESSB 5034, Section 128(19).
- D. The Washington State Legislature further provided Commerce with a \$20 million capital appropriation “solely for predesign, design, renovation, and other development or transition costs necessary for Pacific Tower to be used for community college health career training programs, offices for the department of commerce or other appropriate state agencies, and other nonprofit community uses, including community meeting and training facilities. Funds may be allotted only after a memorandum of understanding containing the lease provisions and a plan for construction management has been executed between the state of Washington and the Pacific hospital preservation and development authority.” 3 ESSB 5035, Section 1080.
- E. The parties understand the legislative intent for the above-referenced operating budget appropriation (3 ESSB 5034, Section 128(19)) and capital budget appropriation (3 ESSB 5035, Section 1080) to be to ensure that the College could occupy and use the Pacific Tower facility at no additional operating expense to the College for rent, utilities, and common area charges.
- F. The Washington State Legislature provided Commerce with a carry-forward in Commerce’s base budget for the 2015-2017 biennium, of those funds originally appropriated in 3 ESSB 5034, Section 128(19). The parties understand the legislative intent for the 2015-2017 biennium funding is to ensure that the College could occupy and use the Pacific Tower facility at no additional operating expense to the College for rent, utilities, and common area charges.
- G. Commerce and the College (collectively the “Parties”) have entered into a Pacific Tower Sublease Agreement dated as of November 12, 2013, pursuant to which the College has subleased approximately 85,000 square feet of Pacific Tower (the “College Sublease”). The Lease and the College Sublease were assigned by Commerce to the Foundation for Seattle Community Colleges (“Foundation”); the Foundation further assigned the Lease and College Sublease to effectuate a

tax credit transaction by and among the Foundation and related entities to obtain additional funds for completion of renovation of Pacific Medical Tower; and the ultimate assignee of the Lease Agreement was to the Pacific Tower Master Tenant, LLC.

- H. Under the terms of the College Sublease the College has a first right of offer to rent any other suite in the Pacific Tower when another tenant terminates their occupancy. The College has exercised that right on Suite 140 at the Pacific Tower, effective January 1st of 2019.
- I. Commerce included a request for additional funding for the Pacific Tower in its biennial budget to cover the added cost of a triple net rent agreement for Suite 140. Commerce received full funding of the Commerce request for the Pacific Tower in the 2019 supplemental operating budget and the 2019-2021 operating budget.

UNDERSTANDING

The Parties agree as follows:

1. **RENT & OPERATING EXPENSES.** Pursuant to the Legislative direction referenced above, the Parties agree that appropriated funds for College's sublease expenses (base rent, common area costs, and operating expenses) shall be transferred to the College from the operating budget appropriation (3 ESSB 5034, Section 128(19)) on a monthly basis by the Commerce for payment of the College's sublease expenses as set forth in the sublease and the lease for Suite 140. Commerce's base budget for the 2015-2017 biennium includes a carry-forward of those funds originally appropriated in 3 ESSB 5034, Section 128(19).
2. **2015-2017 RENT & OPERATING EXPENSES.** Pursuant to the Legislative direction referenced above, the Parties agree that during the 2015-2017 biennium all funds for College's sublease expenses shall be transferred to College on a monthly basis. Amounts sufficient to cover such expenses will be transferred by Commerce to College, and College shall promptly pay monthly sublease expenses to Master Tenant LLC.
3. **CAPITAL BUDGET PRIORITY.** Commerce agrees to use or authorize at least \$16.1 million of the above-referenced capital appropriation carried over (3 ESSB 5035, Section 1080) to make improvements required to prepare the Pacific Tower for

occupancy, build out of common areas used by College, and build out instruction space for College within the premises subleased by College. Commerce will cooperate with the College's efforts to supplement the capital budget appropriation for the College's tenant improvement needs.

4. **INSURANCE.** Both Commerce and College have liability insurance through the State of Washington's risk management program which includes self-insurance and excess liability coverage. Accordingly, the Parties agree that, between them, the liability insurance obligations set forth in the sublease agreement shall be satisfied by College providing to Commerce a certificate of self-insurance from the State of Washington's Office of Risk Management. Third party claims shall be the responsibility of the party involved. The Parties each shall provide their own insurance for personal property.
5. **PARKING.** College shall be allotted, without charge, 41 percent of the West Garage parking space. The allocation of the space shall be determined by Commerce. In the event that College charges for parking or is remunerated in any fashion, such sums shall be provided, without reduction, to Commerce. In the event that Commerce secures additional parking rights for Pacific Tower, Commerce shall offer College the opportunity for additional parking; provided, however, that College's cost for such parking shall be no greater than Commerce's total costs for such parking (including acquisition and all related costs).

PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this Agreement shall commence on January 1, 2013, and be completed on June 30, 2030, unless terminated sooner as provided in this Agreement, or extended through a properly executed amendment. The parties agree to meet in good faith to negotiate an extension of this Agreement should the College's tenancy at the Pacific Tower be extended beyond the completion date.

COMPENSATION

In no event shall either party seek compensation for work performed under this Agreement.

FUNDING CONTINGENCY

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to completion of the work in this Agreement, the Commerce may:

- A. Terminate this Agreement with 30 days' advance notice. If this Agreement is terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.
- B. Renegotiate the terms of the Agreement under those new funding limitations and conditions,
- C. After a review of project expenditures and deliverable status, extend the end date of this Agreement and postpone deliverables or portions of deliverables, or
- D. Pursue such other alternative as the parties mutually agree to writing.¹

AMENDMENT

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

ASSIGNMENT

The work to be provided under this Agreement, and any claim arising under this Agreement, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

ASSURANCES

The parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable federal, state and local laws, rules, and regulations as they currently exist or as amended.

¹ If the agreement is non-financial, remove clauses 5 – 8.

CONTRACT MANAGEMENT

The contract manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

The Contract Manager for the Department of Commerce is:	The Contract Manager for <u>the Seattle College District VI</u> is:
Tony Hanson, Managing Director <hr/> Department of Commerce 1011 Plum Street SE, P.O. Box 42525, Olympia, WA 98504-2525 <hr/> Phone: (360) 725-3005 E-Mail: tony.hanson@commerce.wa.gov	Jennifer Strother, Interim Vice Chancellor for Finance and Operations <hr/> Seattle College District VI 1500 Harvard Avenue, Seattle, WA 98122 <hr/> Phone: (206) 934.2026 E-Mail: Jennifer.strother@seattlecolleges.edu

DISPUTES

In the event that a dispute arises under this Agreement, either of the parties may request intervention by the Governor, as provided by chapter 43.17.330 RCW, in which event the Governor's process will control.

The cost of resolution will be borne as allocated by the Dispute Board or the Governor.

GOVERNING LAW AND VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought under this Agreement shall be in Superior Court for Thurston County.

INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

MAINTENANCE OF RECORDS

- A. The parties to this Agreement shall each maintain books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the service(s) described herein. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration of agreement. The Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.
- B. If any litigation, claim or audit is started before the expiration of the six-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- C. Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available any confidential information to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties. However, the parties acknowledge that State Agencies are subject to chapter 42.56 RCW, the Public Records Act.

ORDER OF PRECEDENCE

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable state and federal statutes, and local laws, rules and regulations;
- B. Statement of Work;
- C. Exhibits and Appendices – list separately; and
- D. Any other provisions of the agreement, including materials incorporated by reference.

RESPONSIBILITIES OF THE PARTIES

Each party to this Agreement hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omissions on the part of itself, its employees, its officers, and its agents. Neither party assumes any responsibility to the other party for the consequences of any claim, act, or omission of any person, agency, firm, or corporation not a part to this Agreement.

SEVERABILITY

If any term or condition of this Agreement is held invalid, such invalidity shall not affect the validity of the other terms or conditions of this Agreement.

SITE SECURITY

Each party to this agreement (“Agency”) will ensure that while on the other Agency premises its agents, employees, or Subcontractors shall comply with the other Agency’s security policies and regulations.

SUBCONTRACTING

- A. “Subcontractor” means one not in the employment of a party to this Agreement, who is performing all or part of those services under this Agreement under a separate contract with a party to this Agreement. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

- B. Except as otherwise provided in the Agreement, the (State Agency Abbreviation) shall not subcontract any of the contracted services without the prior approval of the Agency. The (State Agency Abbreviation) is responsible to ensure that all terms, conditions, assurances and certifications set forth in this Agreement are included in any and all Subcontracts. Any failure of (State Agency Abbreviation) or its Subcontractors to perform the obligations of this Agreement shall not discharge (State Agency Abbreviation) from its obligations under this Agreement.

TERMINATION FOR CAUSE

If for any cause either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

TERMINATION FOR CONVENIENCE

Both parties may agree to terminate this Agreement by mutual agreement. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

WAIVER

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement. Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by personnel authorized to bind each of the parties.

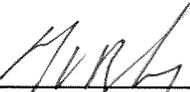
ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement.

State of Washington
Department of Commerce

State of Washington
Seattle College District VI



(Signature) 6/15/2019
(Date)



(Signature) 6.19.19
(Date)

Mark Barkley, Assistant Director

Dr. Shouan Pan, Chancellor

Approved as to form:
Office of the Attorney General
State of Washington
Sandra C. Adix
Assistant Attorney General
Dated: August 10, 2015