

DEVELOPMENT AGREEMENT
for the
DEVELOPMENT OF THE PIERCE COUNTY SUMNER LIBIRARY

Parties: Pierce County Library and the City of Sumner
Tax Parcel Account Nos: 0520197014, 0520197015 and 0520193060
Date: XXXXX, 2024

This Development Agreement (“*Development Agreement*” or “*Agreement*”) regarding development of a new Pierce County Public Library in Sumner, is made by and between the **CITY OF SUMNER**, a Washington municipal corporation (“*City*”) and the **PIERCE COUNTY RURAL LIBRARY DISTRICT**, a Washington county library established pursuant to title 27.12 RCW (“*Library*”). The City and the Library shall be referred to as a “party” or collectively as the “parties” to this Agreement. The “Effective Date” of this Agreement shall be the later date of the parties’ execution of this Agreement.

I. RECITALS

A. RCW 36.70B.170 through .210 authorizes a governmental entity to enter into, as a proper exercise of its police power, a development agreement with an individual or entity having ownership or control of real property within its jurisdiction. The City has codified this police power authority in Sumner Municipal Code (“*SMC*” or “*City Code*”) 18.20.010 through .050.

B. The Library is the owner of approximately 1.67 acres of property in Sumner that is zoned General Commercial under the Sumner Municipal Code. The Property consists of parcel numbers 0520197014, 0520197015 and 0520193060 and is legally described on *Exhibit A* and depicted on *Exhibit B* (“*Library Site*”). The Library intends to develop the Property for use as a public library and the City hearing examiner may permit development of the Property in that zone for that use. The Library seeks confirmation of the development standards that will apply to development of the new public library.

C. The City issued a final Mitigated Determination of Non-Significance (MDNS), pursuant to the State Environmental Policy Act (SEPA) RCW 43.21C, on XXXXXX, 2024.

D. On XXXXXX, 2024, following a public hearing and completion of the State Environmental Policy Act (“SEPA”) review process, the City’s Hearing Examiner approved this Agreement and granted a Conditional Use Permit (CUP 2024-0007) for the use of the Library Site as a new public library.

E. The approval of this Agreement constitutes a land use decision under RCW Ch. 36.70C.

ACCORDINGLY, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

1. **Development.** Subject to subsection (2)(g), the Library may develop the Property after the Effective Date of this Agreement with new buildings, outdoor storage, parking, and other site improvements all for the purpose of providing library services to the residents of Sumner and Pierce County (“*Library Development Project*”). The future Development will require the issuance of building and other construction permits pursuant to the Sumner Municipal Code and the provisions of this Agreement. A conceptual plan for the Library Development Project is attached as Exhibit C.

2. **Development Standards.** Except as otherwise provided in this Agreement, the Library Development Project occurring subsequent to the Effective Date shall be governed by this section as well as those City Code provisions identified in subsection (g) that are in effect on the Effective Date.

(a) **Use.** The authorized uses on the property shall be limited to use as a public library and those principal and conditional uses permitted in the General Commercial zone, as identified in the Vested City Code.

(b) **Access.** (i) The requirements of SMC 18.43.100 are modified to relieve the Library from the obligation to grant and record an access corridor easement to permit ingress and egress from parcel 0520197013 and the Library may prevent vehicular ingress and egress from that parcel. The Library shall otherwise comply with the provisions of Chapter 18.43 SMC in effect at the time of the Effective Date.

(ii) If access by the public to the Library Site is provided over parcels 0520193076 and 7001640060 pursuant to recorded access easements, the Library agrees to maintain, restore, reconstruct, and generally keep the Easement Areas, described and depicted in Exhibit X, in good condition and repair so that the Easement Areas are safe for pedestrian and vehicular travel (including emergency vehicular travel). The Library shall cut, trim, remove and dispose of any vegetation on the Library Site that interferes with pedestrian and vehicular travel. Maintenance, restoration, and repair work shall be conducted in a good and work-manlike manner and expeditiously prosecuted to completion as not to unreasonably interfere with or hinder use of the Easement Areas. When the Library performs maintenance, repair, restoration, or clearing in the Easement Areas or on its servient property, it will make all reasonable accommodations to minimize interruption of travel over and use of the Areas, including performing, if necessary, the work in stages to insure that at all times a 12-foot drive-aisle is passable. The City assumes no responsibility for the maintenance, repair or restoration of the Easement Areas.

(iii) If access by the public to the Library Site is not granted by recorded easement over parcels 0520193076 and 7001640060, the requirements of 19.43 SMC are modified to allow public access to the Library Site from Main Street and to allow the Library to construct a driveway abutting the Main Street right-of-way. The driveway shall be constructed according to the requirements of the applicable provisions of the SMC and the Sumner Development Specifications and Standard Details. The Library shall

otherwise comply with the provisions of Chapter 18.43.SMC in effect at the time of the Effective Date.

(c) **Parking.** Based on the need for library patrons to quickly deposit borrowed books inside the Library building or in an exterior depository, on-street parking may be installed along the frontage of the Library Site. The on-street parking areas shall conform to the Sumner Development Specifications and Standard Details and the city's SEPA determinations.

(d) **Fence Height.** The City acknowledges and recognizes that SMC 18.12.080J(8) provides an exemption for fence heights associated with public facilities, including libraries. Such facilities are allowed fence heights necessary and appropriate for such facilities. The City, therefore, approves and consents to, and the Library agrees to install, 8-foot fences wherever SMC provisions require the installation of fencing for the Library Development Project. The fencing shall be installed according to the relevant SMC provisions and the Building Code.

(e) **Impact Fees.** The Library shall pay and City shall collect impact fees under Title 12 of the City Code as a condition of Development approvals, subject to the provisions of this Section. The fees (i.e. Park and Transportation) shall be calculated according to the City's current schedule of impact fees in effect on the Effective Date and for a 12-month period thereafter. Impact fees for building permits issued to the Library for the Library site after 12 months following the Effective Date shall be imposed and paid by Library per the then-current schedule of impact fees as it may be amended from time to time.

(g) **Vesting.** The Library Development Project shall vest to the Effective Date of this Development Agreement (the "*Vesting Date*"), as described more particularly below under Section 5. Such vesting shall extend for 5 years from the Effective Date, subject to the reservation of the authority of the City set forth under Section (g)(iii) below.

i. ***Vested City Code.*** Except as otherwise expressly set forth under this Development Agreement, the Vested Codes ("*Vested City Code*") shall consist of the codes, rules, regulations, officially adopted policies, standards and specifications applicable to the Library Development in effect on the Effective Date. The following SMC chapters and titles shall be the Vested City Codes under this Agreement: SMC Ch. 12.02 and the City of Sumner Development Specifications and Standard Details, Ch. 12.24, Ch. 12.36, Ch 12.38, Ch. 12.42, Ch. 13.28, Ch. 13.30, Ch. 13.36, Ch. 13.48 Ch.15.34, Ch.15.52; Title 16, Ch. 18.02, C.18.04, Ch.18.16 Ch 18.30, Ch. 18.32, Ch.18.41. Ch.18.42, Ch. 18.43, Ch. 18.44, Ch. 18.48, Ch. 18.50, Ch. 18.54, Ch. 18.56, and the City of Sumner Comprehensive Plan, including the Comprehensive Plan Land Use Designation of Public-Private Utilities and Facilities on the School Site.

In addition to the above laws, the Library Development shall be subject and vested to the versions of the International Building Code, International Fire Code, and other building construction codes, such as the Seismic Code, including any fees associated thereunder, in effect in the City at the time of the Library's submittal of a complete building permit application.

A complete copy of the Vested City Code is included as Exhibit D, which shall not be included in the recorded copy of this Agreement but shall be available on file at the Auburn Department of Community Development.

Notwithstanding the foregoing, Developer acknowledges that the Library Development contemplated by this Agreement shall be subject to all other city, state, and federal rules, regulations, and code provisions, including any amendments thereto, that are not identified in this section.

ii. **Project Approval.** Without limiting the foregoing, the Library shall have the right to develop the Library Development Project according to the terms and conditions of the following:

(a) the terms and conditions of this Development Agreement;

(b) the Mitigated Determination of Non-Significance under SEPA, RCW Ch. 43.21C, for the Library Development Project issued by the City on XXXXXXXXXX_, 2024; and

(c) the terms and conditions of approval of the CUP 2024-0007 issued by the City Hearing Examiner by decision dated XXXXXXXXXX, 2024, and which approval and CUP shall be deemed extended concurrent with the Term of this Agreement.

iii. **Exemptions.** Amendments, additions, increases or other changes to the following plans, policies, laws, ordinances, regulations, fees and monetary charges adopted by the City following the Effective Date are exempt from the vesting provided in this Agreement:

(a) Permit application, permit review, and inspection fees applicable to any application for development;

(b) Water, sewer and stormwater connection charges, general facility charges, and monthly service charges, as the Council may from time to time adopt and/or amend; and

(c) Impact fees imposed under Title 3 of the SMC, except as otherwise specifically provided in this Agreement;

(d) The City's authority to require additional SEPA review and/or mitigation under Ch. 43.21C and Ch. 197-11 WAC in connection with applications for development approvals; provided however that the Library Development Project shall be vested to the City's substantive SEPA policies and regulations in effect on the Effective Date;

(e) Any law, ordinance, rule, regulation or policy adopted by the City pursuant to RCW 36.70B.170(4), following written notice to the Library and an opportunity

to be heard, that the City deems necessary to address a serious threat to public health and safety;

(f) Procedural ordinances or regulations of the City which are not substantive, relating to hearing bodies, notices, applications, findings, records, hearings, reports, recommendations and appeals and any other matter of procedure;

(g) Any plans, polices, ordinances, regulations or Vested City Code that the City must change, or the City reasonably determines to be necessary to change, to comply with, the requirements of any state or federal law or the directive of any state or federal agency or court in order to avoid being in violation of state or federal law or to preserve the City's eligibility to receive shared revenues, grants, or other funding, but only to the extent necessary to comply with such state or federal law, directive, or order. To the extent that the City can comply with such state or federal law, order, or directive by adopting changes to plans, polices, ordinances or regulations that apply prospectively, this exemption shall not apply to permit retroactive changes to the terms, conditions or Vested City Code provisions to which the Library Development Project is vested under this Agreement;

(h) Taxes of any nature of general applicability throughout the City.

iv. ***Subsequent Code Amendments.*** If mutually agreed by the Library and City, the Library may develop the Property in accordance with one or more amendments to the Vested City Code adopted after the Effective Date, without the obligation to comply with other subsequently adopted City Code provisions. The City's decision whether to agree to application of such amendments to the Vested City Code may be made administratively by the City's City Manager. Any such agreement must apply the entirety of an amended City Code section or chapter, as applicable, which shall apply to all future Development from the time of such Code amendment through the Term of this Agreement.

4. **Historic Space.** In consideration for the mutual promises of and certainty provided by this Agreement, the Library agrees to execute a services agreement for the creation and maintenance of "historic space(s)" within the Library for exhibiting Sumner community information and city history. The Historic Space Service Agreement is attached to this agreement as Exhibit D and is incorporated herein.

5. **Term.** This Agreement shall remain in effect for 5 years from the Effective Date ("Term") provided it is not earlier terminated pursuant to this section. The Agreement shall earlier terminate if the Library has not performed the following two conditions within three years from the Effective Date:

(a) Submit to the City a full and complete building permit application for the Library Development Project, as identified in CUP 2024-007; and

(b) Publish a request for bids for the Library Development Project, as identified in CUP 2024-0007.

6. **Effective Date.** The “Effective Date” of this Agreement shall be the later date of the parties’ execution of this Agreement. Provided, however, in the event of any judicial appeal by a third party of this Agreement in accordance with the Sumner Municipal Code, the Effective Date shall be extended to the date that any such appeal is concluded by mandate to Superior Court upon conclusion of all appellate review. The Library agrees to be solely responsible for, and liable for all risk associated with, and to defend, hold harmless and indemnify the City from and against any and all liability, damages, costs or expenses, including attorney's fees, in the event the Library undertakes any construction activities during any such appeal.

Any request for an extension of the Term under this Development Agreement shall be subject to submittal of a Type VI Land Use Application under SMC Ch. 18.56, as of the Effective Date of this Development Agreement, and shall be processed for review and determination before the City Council, at a public hearing in accordance with SMC Ch. 18.20, as of the Effective Date of this Development Agreement. In no event shall an extension of the Term be for a period of greater than three (3) years.

6. **Conforming structures, improvements and uses.** Amendments to the City Code during the Term of this Agreement shall not be deemed to create nonconforming structures, improvements, or uses. Structures, improvements and uses that are consistent with this Agreement shall be considered conforming, and such uses may continue and such structures and improvements may be maintained, repaired, remodeled and replaced, consistent with the standards in Section 2 and the Vested Code, for the Term of this Agreement.

7. **Amendments.** The Library may apply for amendments to this Agreement. “Minor Amendments” are those that do not increase the gross floor area of potential Development by more than 10% or do not significantly increase the environmental impacts of development on the Property, unless those impacts are mitigated to a level that is less than significant. Minor Amendments may include, but are not limited to,

- Deviations from development standards in addition to those provided in Section 2.
- An alteration of the alignment or configuration of a building or facility that does not decrease any setback or materially increase any off-site impacts;
- Any change that does not increase the impervious surface area nor create any significant increase in any off-site impacts or detrimentally impact the surrounding community;
- Any change that does not increase impacts on the transportation network;
- Any change that would allow issuance of an Addendum to the MDNS under the SEPA rules and regulations (RCW ch. 43.21C and WAC ch. 197-11).

Minor Amendments relating to zoning and land use shall be approved administratively by the City Manager and Minor Amendments related to engineering standards by the City’s Public Works Director. The City shall render a decision on such request for a Minor Amendment not more than twenty (20) days after delivery of said Minor Amendment application to the City.

All other amendments are Major Amendments and shall require submittal of a written application by the Library, as a Type VI Application, and shall require review, a public hearing, and recommendation by the Hearing Examiner, and review, public hearing, and approval by the City Council by Ordinance, to the extent required under SMC 18.20 as of the Effective Date of this Development Agreement.

8. **Default and Remedies.**

(a) **Default.** Subject to the notice and opportunity to cure provided in this section, any failure by a Party to perform any material action required under this Agreement shall constitute a default, unless such failure is compelled by order of a court.

(b) **Dispute Resolution.** In the event of any dispute under and prior to any claim of default under this Agreement, the parties, upon the written request of the other party, shall first meet not more than seven (7) business days from the date of such request to seek, in good faith, to resolve such dispute. The City shall direct the appropriate department director or staff member with information relating to such dispute and the Library shall direct the project manager, consultant, and/or an appropriate staff member with adequate technical information or expertise related to such dispute to attend such meeting.

(c) **Notice and Opportunity to Cure.** Except as expressly provided otherwise in this Agreement, no party shall be in default under this Agreement unless it has failed to perform as required under this Agreement for a period of thirty (30) days after written notice of default from the other Party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then commencement of the cure within thirty days and diligent prosecution to completion of the cure shall be deemed a cure.

(d) **Rights of Non-Defaulting Party.** Except as set forth herein, a party not in default under this Agreement shall have all rights and remedies provided by law or equity, including without limitation damages, specific performance, or writs to compel performance or require action consistent with this Agreement.

(e) **Attorneys' Fees.** In any action to enforce or determine a party's rights under, this Agreement, the prevailing party shall be entitled to attorney's fees and costs and other professional fees and all other fees and expenses actually incurred and reasonably necessary in connection therewith.

9. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be deemed delivered on the date of hand delivery of the notice or the date that is three days after mailing of the notice by certified or registered mail, return receipt, postage prepaid, to the parties at the addresses set forth below:

If to Owner: Gretchen Caserotti
Executive Director

3005 112th St E Tacoma, WA 98446

If to City: Jason Wilson
City Administrator
1104 Maple Street
Sumner, WA 98390
jasonw@sumnerwa.gov

The Parties, by notice given, may designate any further or different address to which subsequent notices are to be sent.

10. **Specific Performance.** The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and should be available to all parties.

11. **Third Party Beneficiaries.** There are no third-party beneficiaries of this Agreement and no party other than the Owner and the City shall be entitled to enforce this Agreement.

12. **Mutual Drafting.** Both the City and Owner have participated fully in the drafting of this Agreement, and the rule of construction of ambiguities against the drafter shall not apply to either Party.

13. **Covenant Running with the Land.** All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law. Each covenant to do or refrain from doing some act on the Property hereunder, (a) is for the benefit of such properties and is a burden upon the Property, (b) runs with the Property, and (c) is binding upon each successive owner during its ownership of Property or any portion thereof, and each person having any interest therein derived in any manner through any owner of the property or any portion thereof, and shall benefit such party and the Property hereunder, and each other person succeeding to an interest in such Property.

14. **Recording.** This Agreement shall be recorded with the Office of the Pierce County Recorder.

15. **Entire Agreement.** This Agreement represents the entire agreement of the Parties with respect to the subject matter of this Agreement. There are no other agreements, oral or written, except as expressly set forth in this Agreement. This Agreement supersedes all previous agreements, oral or written, except as expressly set forth in this Agreement. This Agreement may be modified only by a written instrument duly executed by the Parties following the amendment process described in Paragraph 7 of this Agreement.

16. **Authority.** The obligations to dedicate property, implement mitigation measures, make impact fee or other payments, or to fund or to provide services, infrastructure, or other facilities agreed to by Library in this Agreement are made pursuant to, authorized by and/or are consistent with applicable law, including without limitation RCW 43.21C.060, WAC 197-11-

350, RCW 36.70B.170(4), RCW 82.02.020 and the Washington State and United States Constitutions. Each Party represents and warrants that it has the power and authority, and is duly authorized, to enter into this Agreement on the terms and conditions herein stated, and to deliver and perform its obligations under this Agreement.

17. **Counterparts.** This Agreement may be executed in counterparts, with each Party sending a .pdf of its signature to the other Party by electronic mail transmission. This Agreement, when fully executed and signature pages exchanged as provided herein shall be effective as the original document.

18. **Exhibits.** This Agreement includes the following Exhibits, which are incorporated by reference:

- a. Exhibit A: Legal description of Property.
- b. Exhibit B: Depiction of Property.
- c. Exhibit C: Sumner Library Plans
- d. Exhibit D: Historic Space Service Agreement

19. **Indemnification.** Library releases and agrees to defend, indemnify and hold harmless the City and all of its elected and appointed officials and its employees from all liability, claims, causes of action, fees (including reasonable attorneys' and expert fees), penalties, appeals and costs, including but not limited to the costs of defense of any claim or appeal brought by a third party, arising in connection with the approval of or otherwise relating to this Agreement or any Development under this Agreement, except to the extent resulting from the sole negligence of the City or its officers, agents or employees in performance of this Agreement, and except in connection with any action by either Party to enforce this Agreement or in connection with any other matter in which the Library and City are adverse.

20. **Interpretation.** The parties intend this Agreement to be interpreted to the full extent authorized by law as an exercise of the City's authority to enter into development agreements pursuant to RCW 36.70B.170 – .210, except that this Agreement shall be construed to exclude from the scope of this Agreement actions taken by the City through its police power authority, as defined by the Washington State constitution and general law, and other actions that are prohibited by law from being subject to a mutual agreement with consideration.

21. **Non-Enforcement Not Waiver.** Failure by any one of the parties to enforce this entire Agreement or any provision of it with regard to any provision contained herein shall not be construed as a waiver by that party of any right to do so.

22. **City Council Authority.** This Agreement shall be subject to approval by no less than a majority vote of the City Council of the City of Sumner. Absent such approval, this Agreement shall be void and of no further force or effect.

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

Name (printed or typed):

My appointment expires: _____

EXHIBT A

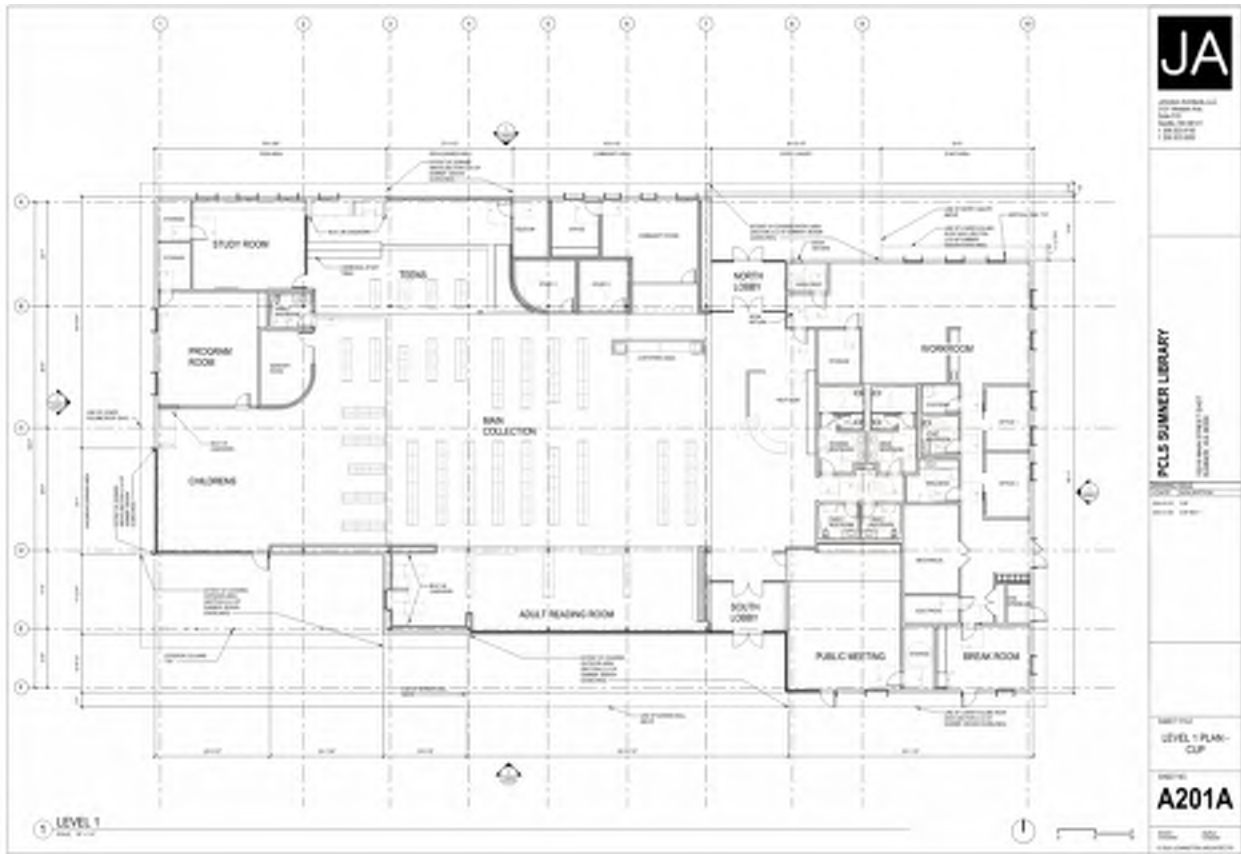
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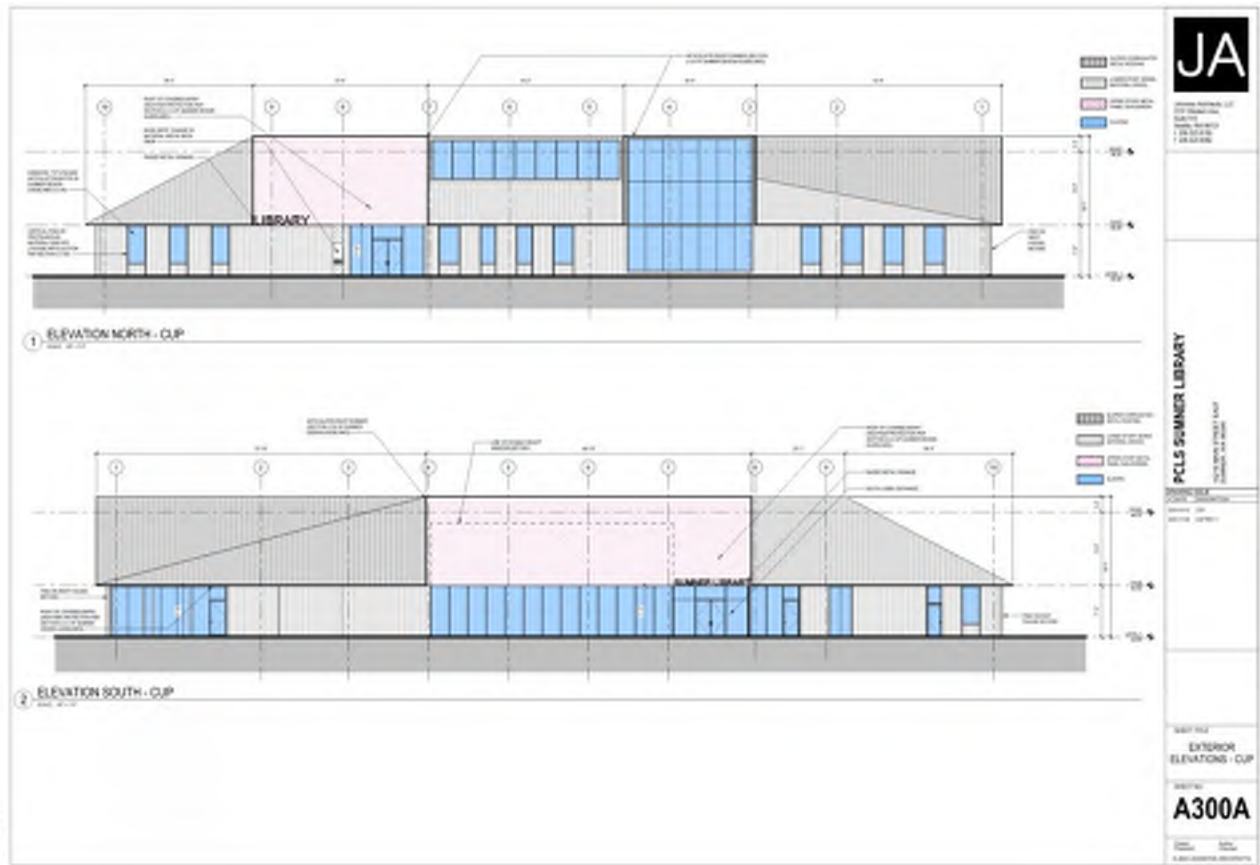
Section 19 Township 20 Range 05 Quarter 33 : L 2 OF SHORT PLAT 81-06-30-0321 OUT OF 3-098

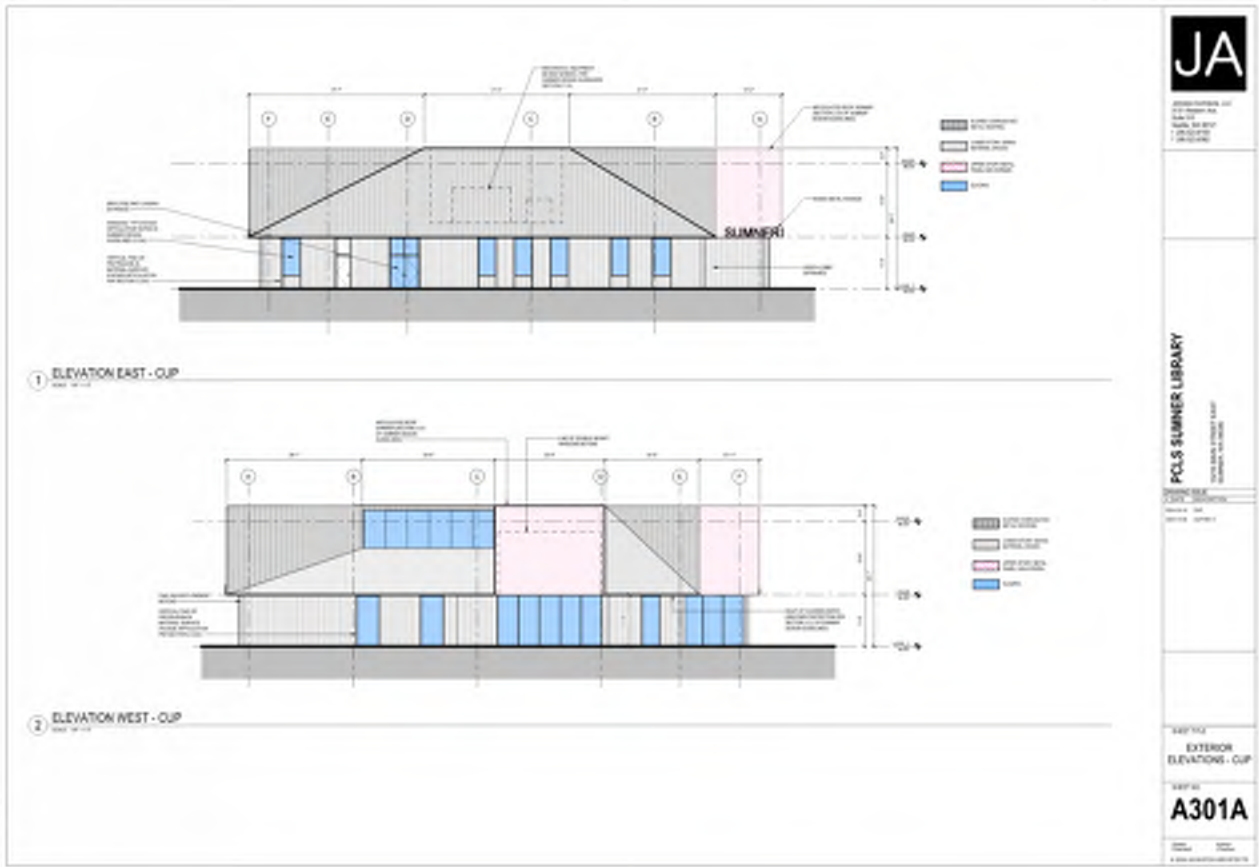
SEG R-0553 DL EMS

Section 19 Township 20 Range 05 Quarter 33 : L 3 OF SHORT PLAT 81-06-30-0321 OUT OF 3-098

SEG R-0553 DL EMS









NORTH ENTRY RENDERING



NORTHWEST CORNER RENDERING



SOUTHWEST CORNER RENDERING



SOUTH ENTRY RENDERING

JA

JOHN ANDERSON ARCHITECTS
 1111 S. BROADWAY
 SUITE 100
 CHARLOTTE, NC 28202
 TEL: 704.375.1000
 WWW.JAARCHITECTS.COM

PCUS SUMMER LIBRARY

ARCHITECT: JOHN ANDERSON ARCHITECTS
 DATE: 08/2018

SCALE: 1/8" = 1'-0"

DATE: 08/2018

ARCHITECT
EXTERIOR VIEWS -
CUP

A990A

DATE: 08/2018
 SCALE: 1/8" = 1'-0"

EXHIBIT D

This exhibit is a draft agreement that is under discussion by the Parties. The substance of the final agreement shall be by mutual agreement of the Parties.

LIBRARY HISTORIC SPACE SERVICES AGREEMENT

THIS SERVICES AGREEMENT (the “*Agreement*”), regarding historic displays at the future Pierce County Public Library in Sumner, is entered into as of _____, 2024 (the “*Effective Date*”) by and between the **CITY OF SUMNER**, a Washington municipal corporation (“*City*”) and the **PIERCE COUNTY RURAL LIBRARY DISTRICT**, a Washington county library established pursuant to title 27.12 RCW (“*Library*”). The City and the Library shall be referred to as a “party” or collectively as the “parties” to this Agreement.

I. RECITALS

II. TERMS AND CONDITIONS

1. **Historic Space.** In consideration for the mutual promises of and certainty provided by the Development Agreement for the development of the Pierce County Sumner Library, the Library agrees to create and maintain a “historic space(s)” at the Sumner Library property for exhibiting Sumner city history information. As the City lacks a public history museum, the purpose of the space is to provide historic information about the city and/or its residents similar to the information provided by the White River Valley Museum except focused on Sumner and its resident or the inhabitants of the vicinity prior to Sumner’s incorporation. The Library’s performance of its obligation is subject to the following terms and conditions.
 - a) The Library shall identify the location of the space. The location may be a single location or several locations and may be either inside or outside the Library building, at the Library’s discretion.
 - b) The locations and content of the exhibits may be fixed, or may change or rotate over time, no less frequently than once a year if the exhibit is not permanent. If the content of the exhibit(s) is fixed for more than a year, the City shall approve the content.
 - c) Library property may not lack a historic display or exhibit for more than two months cumulatively per calendar year.
 - d) If a location consists of a wall, the exhibit space shall be no smaller than 48” x 48”. If the historic space includes a cabinet, it shall be no smaller than 48” x 18”

x 36". If the historic space is an outside display, it shall be no smaller than 100 square feet.

- e) Any exhibit may consist of different mediums, including audio. Any exhibit may be targeted to either adults or children.
 - f) With the Library's consent, which consent shall not be unreasonably withheld, and at least 30 days notice to the Library, the City may control the content and presentation of the historic space display. If the City provides the content of any display space, the City shall do so at its expense and risk. If the City's display is a temporary exhibit, it will comply with the Library's exhibit schedule to create and show the exhibit in the Historic Space. Unless the City selects the content of the exhibit space, the Library shall be responsible for selecting, assembling, installing, and displaying the historic space content at its sole expense and risk. For any display, the City shall in good faith make itself available to assist the Library with the content of displays in the Historic Space(s), including providing topic suggestions to the Library, providing sources of information, and providing design review and suggestions.
- 2. Term.** The term of this Agreement shall commence on the Effective Date and shall expire on the fiftieth anniversary (the "*Term*"). The obligations contained in section X shall be effective six months after the City issues the Library a certificate of occupancy and shall remain effective for the Term.
- 3. Force majeure.** In the event that a Party is prevented or delayed, directly or indirectly, from the performance of any of its respective obligations hereunder by a Force Majeure Event, then: (a) such Party shall be excused from the performance of such obligations for so long as, and to the extent that, the Force Majeure Event prevents or delays such performance; (b) such failure shall not be deemed to be a breach or default of this Agreement.
- (a) Definition "Force Majeure Event" means any event or circumstance (or combination thereof) and the continuing effects of any such event or circumstance (whether or not such event or circumstance was foreseeable or foreseen by the Parties) that temporarily delays or prevents performance by the Party of any of its respective obligations under this Agreement, but only to the extent that and for so long as: (a) the event or circumstance is beyond the reasonable control of the Party; (b) despite the exercise of reasonable diligence, the event or circumstance cannot be prevented, avoided or stopped by the Party; and (c) the Party has taken all reasonable measures to avoid the effect of the event or circumstance on the Party's ability to perform its obligations hereunder and to mitigate the consequences of the event or circumstance.
- (b) Scope. Force Majeure Events include the following, to the extent the requirements set forth in this section are satisfied: (a) acts of God of any and all kind, including volcanic eruption, landslide, earthquake, flood, lightning, tornado or other unusually severe storm or environmental conditions, perils of the sea, fire or any other acts of nature or natural disaster; (b) accidents, damage or loss of any and all kind, including explosions,

epidemics, pandemics, quarantine or criminal or terrorist acts; (c) strike or labor disturbances or difficulties of any and all kind, including labor or material shortage; (d) act of war (whether declared or undeclared), acts of public enemies, armed conflicts, act of foreign enemy, acts of terrorism (whether domestic or foreign, state-sponsored or otherwise), riot, civil commotion, blockade, insurrection, civil disturbance, revolution or sabotage.

(c) **Insufficient Funding.** Notwithstanding the foregoing, the insufficiency of funds, financial inability to perform or changes in a Party's cost of performing its obligations hereunder shall in no event be considered or constitute a Force Majeure Event.

(d) **Reservation of Rights.** Suspension of any obligation as a result of a Force Majeure Event shall not affect any rights or obligations which may have accrued prior to such suspension or, if the Force Majeure Event affects only some rights and obligations of the Affected Party, any other rights or obligations of the Party.

(d) **Force Majeure Procedures.** Following the occurrence of a Force Majeure Event, the Party shall provide prompt notice to the other Party of the Force Majeure Event, give an estimate of its expected duration and the probable impact on the performance by the Party of its obligations hereunder, exercise all reasonable efforts to continue to perform its obligations hereunder; expeditiously act to correct or cure the Force Majeure Event to the extent such action is within the power of the Party; exercise all reasonable efforts to mitigate or limit damages to the other Party to the extent such action will not adversely affect its own interests; and provide prompt notice to the other Party of the cessation of the Force Majeure Event and the resumption by the Affected Party of the performance of its obligations hereunder.

4. Default and Remedies.

(a) **Default.** Any failure by a Party to perform any material action required under this Agreement shall constitute a default, unless such failure is compelled by order of a court, subject to the notice and opportunity to cure provided in this section.

(b) **Dispute Resolution.** In the event of any dispute under and prior to any claim of default under this Agreement, the parties, upon the written request of the other party, shall first meet not more than seven (7) business days from the date of such request to seek, in good faith, to resolve such dispute. The City shall direct the appropriate department director or staff member with information relating to such dispute and the Library shall direct an appropriate staff member with adequate technical information or expertise related to such dispute to attend such meeting.

(c) **Notice and Opportunity to Cure.** Except as expressly provided otherwise in this Agreement, no party shall be in default under this Agreement unless it has failed to perform as required under this Agreement for a period of thirty (30) days after written notice of default from the other Party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then

commencement of the cure within thirty days and diligent prosecution to completion of the cure shall be deemed a cure.

(d) **Rights of Non-Defaulting Party.** Except as set forth herein, a party not in default under this Agreement shall have all rights and remedies provided by law or equity, including without limitation damages, specific performance, or writs to compel performance or require action consistent with this Agreement.

(e) **Attorneys' Fees.** In any action to enforce or determine a party's rights under, this Agreement, the prevailing party shall be entitled to attorney's fees and costs and other professional fees and all other fees and expenses actually incurred and reasonably necessary in connection therewith.

5. **Indemnification.** The Library shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the Library's performance of this Agreement, except as stated in other sections of this Agreement and for that portion of any injuries or damages caused by the City's sole negligence.

6. **Severability.** Any provision of this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions of this Agreement, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. In the event any such provision of this Agreement is so held invalid, the Parties shall, within seven (7) Days of such holding, commence to renegotiate in good faith new provisions to restore this Agreement as nearly as possible to its original intent and effect.

7. **No Assignment.** No Party will assign or otherwise transfer this Agreement or its rights and obligations hereunder without the other Party's advanced written consent. Any attempt to do so is void.

8. **Amendment.** Except as provided herein, no amendment or variation of the provisions of this Agreement shall be binding upon the Parties hereto unless evidenced in a writing which indicates that such writing is intended to amend the terms of this Agreement and is signed by duly authorized officers or representatives of each Party.

9. **Third Party Beneficiaries.** There are no third-party beneficiaries of this Agreement and no party other than the Library and the City shall be entitled to enforce this Agreement.

10. **Mutual Drafting.** Both the City and Library have participated fully in the drafting of this Agreement, and the rule of construction of ambiguities against the drafter shall not apply to either Party.

11. **Entire Agreement.** This Agreement represents the entire agreement of the Parties with respect to the subject matter of this Agreement. There are no other agreements, oral or written, except as expressly set forth in this Agreement. This Agreement supersedes all previous agreements, oral or written, except as expressly set forth in this Agreement.

12. Non-Enforcement Not Waiver. Failure by any one of the parties to enforce this entire Agreement or any provision of it with regard to any provision contained herein shall not be construed as a waiver by that party of any right to do so.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year set forth hereinbelow.

PIERCE COUNTY RURAL LIBRARY DISTRICT, a county library municipal corporation

CITY OF SUMNER, a Washington municipal corporation

By: _____

By: _____
Kathy Hayden_____

Its:

Its: Mayor

Date: _____

Date: _____

ATTEST:

Michelle Converse, City Clerk

Approved as to form:

Approved as to form:

Andrea Marquez, City Attorney

[acknowledgements continued on next page]