



# City of Tukwila

Washington

Ordinance No. 2233

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, ADOPTING BY REFERENCE A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF TUKWILA AND LA PIANTA LLC FOR THE TUKWILA SOUTH DEVELOPMENT; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the "Tukwila South Project" comprises approximately 512 acres of real property, and La Pianta LLC owns or controls approximately 503 of those acres, which is known as the "Tukwila South Property," generally located between the boundaries of South 178th Street/South 180th Street on the north; South 204th Street on the south; Orillia Road and Interstate 5 on the west; and the Green River on the east; and

WHEREAS, the Tukwila South Property is located within an Urban Growth Area and is appropriate for urban development pursuant to the Growth Management Act and the City's adopted Comprehensive Plan; and

WHEREAS, La Pianta intends to develop the Tukwila South Property consistent with the Tukwila South Master Plan, which envisions the creation of a major new employment and housing base on the Tukwila South Property; and

WHEREAS, the City Council accordingly desires to enter into a Development Agreement with La Pianta LLC for the Tukwila South development; and

WHEREAS, a public hearing was held for this Development Agreement on May 18, 2009;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

**Section 1. Development Agreement Adopted.** The City of Tukwila hereby adopts the "Development Agreement by and between the City of Tukwila and La Pianta LLC, for the Tukwila South Development," a copy of which is attached hereto as "Exhibit A" and by this reference fully incorporated herein.

**Section 2. Severability.** If any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

**Section 3. Effective Date.** This ordinance or a summary thereof shall be published in the official newspaper of the City, and shall take effect and be in full force five days after passage and publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Special Meeting thereof this 8<sup>TH</sup> day of JUNE, 2009.

ATTEST/AUTHENTICATED:

Christy O'Flaherty  
Christy O'Flaherty, CMC, City Clerk

Jim Haggerton  
Jim Haggerton, Mayor

APPROVED AS TO FORM BY:

[Signature]  
Office of the City Attorney

Filed with the City Clerk: 6-3-09  
Passed by the City Council: 6-8-09  
Published: 6-15-09  
Effective Date: 6-20-09  
Ordinance Number: 2233

Attachment: Exhibit A -- Development Agreement

SUMMARY OF  
Ordinance No. 2233

City of Tukwila, Washington

On June 8, 2009 the City Council of the City of Tukwila, Washington, adopted Ordinance No. 2233, the main points of which are summarized by its title as follows:

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, ADOPTING BY REFERENCE A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF TUKWILA AND LA PIANTA LLC FOR THE TUKWILA SOUTH DEVELOPMENT; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

The full text of this ordinance will be mailed upon request.

Approved by the City Council at a Special Meeting thereof on June 8, 2009.

  
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Christy O'Flaherty, CMC, City Clerk

Published Seattle Times: June 15, 2009.

**DEVELOPMENT AGREEMENT BY AND  
BETWEEN THE CITY OF TUKWILA  
AND LA PIANTA LLC, FOR THE  
TUKWILA SOUTH DEVELOPMENT**

09-100  
Council Approval 6/08/09  
By Ordinance No. 2233

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this 10th day of June, 2009, by and between the CITY OF TUKWILA (“CITY”), a non-charter, optional code Washington municipal corporation, and LA PIANTA LLC, a Washington limited liability company (“La Pianta”).

**I. RECITALS**

WHEREAS, the Washington State Legislature has authorized the execution of development agreements between a local government and a person having ownership or control of real property within its jurisdiction and between a local government and a person owning real property outside its boundaries as part of a proposed annexation, pursuant to RCW 36.70B.170 through RCW 36.70B.210.

WHEREAS, the “Tukwila South Project” (hereinafter defined) comprises approximately 512 acres of real property, which site is shown on the vicinity map attached hereto as Exhibit 1, and La Pianta owns or controls approximately 503 of those acres, which is known as the “Tukwila South Property” and legally described in Exhibit 2. The Tukwila South Project is generally located between the boundaries of South 178<sup>th</sup> Street/South 180<sup>th</sup> Street on the north; South 204<sup>th</sup> Street on the south; Orillia Road and Interstate-5 on the west; and the Green River on the east. Approximately 259 acres will be annexed to the City pursuant to this Agreement.

WHEREAS, the Tukwila South Property is located within an Urban Growth Area and is appropriate for urban development pursuant to the Growth Management Act, and the City’s adopted Comprehensive Plan. The City will provide public services to the Tukwila South Property, with the exception of power and water.

WHEREAS, La Pianta intends to develop the Tukwila South Property consistent with the Tukwila South Master Plan (“Master Plan”). The Master Plan envisions the creation of a major new employment and housing base on the Tukwila South Property. The plan calls for approximately ten million square feet of development that would be accommodated in a combination of campus style research and office environments with a mix of other supporting uses such as retail, residential, commercial, hotel and flex tech (“Tukwila South Project”). The Tukwila South Project will use the topographic and environmental constraints of the site to define the limits of its development area, as shown on Exhibit 3 (“Development Areas” and “Non-Development Areas”). The Tukwila South Project includes the extension of Southcenter Parkway in an alignment along the west edge of the valley floor (“Southcenter Parkway Project”); thus, functioning as the major transportation arterial through the site. The Tukwila South Project will also contain an integrated, internal circulation system of streets, sidewalks and pedestrian connections that link its various developments and will serve vehicles, cyclists and pedestrians.

WHEREAS, La Pianta's goals for the Tukwila South Project are for a return on investment, quality public infrastructure and service, certainty regarding the costs and flexibility in how and when it develops. The City's goals in the development of the Tukwila South Property include implementing its comprehensive plan, producing positive economic impacts to the City and promoting environmental quality, mitigating financial risk for City funds, and mitigation of project impacts.

WHEREAS, a development agreement must be approved by ordinance or resolution after a public hearing.

WHEREAS, a public hearing for this Development Agreement was held on May 18, 2009 and the City Council approved this Development Agreement by Ordinance No. 2233 on June 8, 2009.

WHEREAS, this Agreement constitutes a final land use action pursuant to RCW 36.70C.020 and is subject to review pursuant to RCW 36.70C.101 et seq.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and the long-term benefit to both the City and La Pianta, the parties hereby agree as follows:

## II. AGREEMENT

### 1. Project Description.

The master-planned development to be sited on the Tukwila South Property in accordance with the terms and conditions of this Agreement as well as other applicable development regulations is called the "Tukwila South Project." As used in this Agreement, the term Tukwila South Project (or "Project") means the proposed development of the Tukwila South Property with a mix of uses, types and density of development, public and private infrastructure and amenities consistent with the Tukwila South Master Plan and this Agreement.

### 2. Zoning Approvals.

2.1 Comprehensive Plan Designation. The Tukwila South Property is described within the "Tukwila South" element of the City's 1995 Comprehensive Land Use Plan, as amended ("Comprehensive Plan"). This includes both the portion of the property currently located within the City limits and the portion within the City's Potential Annexation Area ("PAA"). The City's Comprehensive Plan provides for use of a master plan in the Tukwila South district to guide and authorize development. La Pianta has submitted a Master Plan which identifies its development proposal. The City's Comprehensive Plan contemplates an overlay district for the property subject to the Tukwila South Master Plan.

2.2 Master Plan Approval. In accordance with the City's Comprehensive Plan and TMC 18.40.075, the City approved the Tukwila South Master Plan on June 8, 2009. This Master Plan covers approximately 512 contiguous acres and provides the vision and framework for the creation of a "campus-type environment" focused on office and research facilities for emerging technology industries, along with a mix of supporting retail, residential, commercial and flex-tech and hotel uses. The Master Plan is attached as Exhibit 4 to this Agreement and incorporated by this reference. The first phase of the Master Plan implementation will involve grading the entire site and installation of street and utility infrastructure. The approved Master Plan will remain in effect for the Term of this Agreement. The Master Plan may not be amended or superseded without the consent of both parties. In addition, any amendment to the master plan must follow the process for such amendments that is in effect at the time of the request.

2.3 Sensitive Areas Overlay and Master Plan. The City Council approved the designation of Tukwila South Property as a Sensitive Area Master Plan Overlay district on June 8, 2009. La Pianta has submitted for City review a Sensitive Areas Master Plan ("SAMP") for the Tukwila South Property. The Department of Ecology ("DOE") has issued a Section 401 water quality certification for the Tukwila South Property (Certification Order No. 2877, dated November 7, 2005) (the "401 Certification"). Pursuant to TMC 18.45.160.G.8, the City will review the SAMP to ensure it conforms to the conditions of the 401 Certification. If the SAMP conforms to the conditions of the 401 Certification and TMC 18.45.160, the Director of Community Development will take action to approve the proposed SAMP, pursuant to TMC 18.45.160.G, within 30 calendar days after the effective date of the annexation. The Sensitive Areas Overlay and associated SAMP require mitigation of impacts to sensitive areas associated with the Tukwila South Project through build-out.

2.4 Land Use Permit Process. The above referenced plans will be implemented in phases by a series of Land Use Permit Process applications. These include but are not limited to, applications for clearing and grading permits, tree permits, building permits, shoreline substantial development permits, development permits, design review approvals, conditional use permits, planned residential developments, and such other permits and approvals described in Chapter 18.104 of the TMC and necessary to authorize development and implementation of the Master Plan approval. The Land Use Permit process requires the applicant to demonstrate consistency with the requirements of the approved Master Plan, as implemented through the Tukwila South Overlay District described in Section 2.5 below. All land use fees not specifically addressed in this Agreement will be paid at the time of permit application or when otherwise due.

2.5 Application of Tukwila South Overlay District. Consistent with the Comprehensive Plan, the City has amended the Tukwila Municipal Code ("TMC") to adopt the Tukwila South Overlay District as Chapter 18.40, a copy of which is attached hereto as Exhibit 5. The purpose of the Tukwila South Overlay District is to encourage innovative uses, sites and comprehensive planning of large land parcels through a master plan. The Tukwila South Overlay contains the development regulations, including commercial design guidelines, that will apply to the Tukwila South Property. The City agrees to apply the Tukwila South Overlay District regulations to the portion of the Tukwila South Property within its PAA, after that area is annexed to the City.

2.6 Shoreline Map Amendment. The City, by ordinance, has pre-designated a portion of the Tukwila South Project as “Tukwila Urban” under its Shoreline Master Program/Plan, TMC Chapter 18.44 (“SMP”). Upon completion of the annexation, the City shall, consistent with this development regulation, amend its SMP map to include the Tukwila South Property as urban. It is understood by the parties that this amendment is subject to the approval of the State Department of Ecology. The parties agree that this map designation does not vest La Pianta to any shoreline regulations under the SMP.

### **3. Allowable Development.**

3.1 Maximum Allowable Development. Except as otherwise provided herein, the maximum allowable development in the Development Area of the Tukwila South Project shall be limited to a maximum development (including any mix of buildings and permitted uses) that does not generate more than 10,166 Net New Trips (as defined below) from onsite development and is limited to 10.3 million square feet of new building floor area (“Allowable Development”). For the purposes of determining Allowable Development, new “building floor area” shall include new floor area generating vehicle trips, but shall not include floor area that does not generate vehicle trips, such as parking areas and mechanical space.

3.2 Site Clearing, Grading and Coverage. Subject to the limitations of Section 3.5 below, (i) up to 100% of the Development Area, outside of sensitive area or shoreline buffers, may be cleared and graded, and (ii) in the Development Area, up to 85% of the developable area served by each stormwater facility may be covered with impervious surfaces.

3.3 Limit on Certain Uses. The following uses in the Tukwila South Project will be subject to the restrictions set forth in this Section 3.3:

- (a) Movie theaters with three (3) or fewer screens shall be a permitted use. Movie theaters with more than three (3) screens shall be treated as special permission uses (TMC 18.41.060).
- (b) Regional malls shall be a prohibited use. For purposes of this Agreement, “Regional Mall” shall mean an independent, retail complex of at least 500,000 square feet of building floor area (as that term is defined in Section 3.1 above) containing privately-owned indoor and outdoor walkways for shoppers traveling to and from multiple retail uses. The square footage limitation under this definition shall be applied on a project-by-project basis, and shall not be applied to the Tukwila South Property as a whole.
- (c) No warehouse uses will be allowed in the Tukwila South Project beyond what is in existence at the time of execution of this Agreement, and redevelopment of existing warehouses to warehouse use will not be permitted. Notwithstanding the foregoing, with respect to existing warehouse uses and buildings, La Pianta shall be entitled to undertake normal maintenance and repair, reconstruction in the

event of casualty and condemnation, modifications necessary to meet current code requirements, and for each building, a one-time “minor expansion” (not exceeding 5% of building floor area). The City shall require special permission uses (TMC 18.41.060). approval for such “minor expansions”.

3.4 Expansion Areas. Several parcels that are not currently owned by La Pianta are located within the Project boundaries and are more particularly described and depicted in Exhibit 6. These parcels were included within the 512 acres analyzed in the Tukwila South EIS (hereinafter defined). The Tukwila South Overlay District regulations shall apply to these parcels if they are acquired and developed by La Pianta during the Term of this Agreement. Another parcel owned by La Pianta, hereinafter referred to as the “Arnold Parcel”, also described in Exhibit 6, was not studied as part of the Tukwila South EIS. La Pianta and the City acknowledge that the Tukwila South Overlay District regulations shall apply to the Arnold Parcel, but that additional environmental review may be necessary when La Pianta elects to develop the Arnold Parcel. In the event that La Pianta desires to develop an Expansion Area under the Development Agreement, La Pianta shall provide (i) written notice to the City, (ii) evidence of its ownership or control of the Expansion Area(s) in question or the agreement by La Pianta and the owner(s) of the Expansion Area in question to subject such area to the terms of the Agreement, and (iii) evidence that no further additional environmental analysis is required beyond that covered in the Tukwila South EIS for the development proposed.

3.5 Floodplain Development Review. Development in any areas of the Tukwila South Property lying within a 100-year floodplain, as designated by the Federal Emergency Management Agency (“FEMA”), shall be subject: (i) to review by the City and/or agencies with jurisdiction to ensure that such development will not result in a “take” of any endangered species in violation of federal law; and (ii) to all laws and regulations governing development within such FEMA-designated 100-year floodplains that are in effect at the time of a complete development application (the “Floodplain Regulations”).

The clearing and grading permit for initial, overall site development for the Tukwila South Project (“Clearing and Grading Permit”) shall be executed in accordance with the Floodplain Regulations, as applicable. Upon completion of the clearing and grading, subject to the Clearing and Grading Permit, and the Levee Modification, as defined herein, La Pianta will prepare for review by the City a Letter of Map Revision (“LOMR”). The City shall forward the LOMR to FEMA for review and when the LOMR is approved by FEMA, future building applications will not be subject to the Floodplain Regulations.

#### **4. Parties Obligations Under this Agreement.**

This Agreement establishes certain roles and responsibilities for the development of the Tukwila South Project, including but not limited to City commitments for partial funding and construction of certain public infrastructure improvements benefiting the Tukwila South Project, as well as the community at large, and La Pianta commitments to participate in the funding of certain public improvements, to fund all private aspects of the development and to develop the Tukwila South Property consistent with all applicable land use policies and regulations.

4.1 Annexation. Upon execution of this Agreement, La Pianta shall submit a signed 60% petition for annexation to the City of Tukwila for the portion of the Tukwila South Property located within the PAA. The City will take all steps necessary to consider the annexation in a timely manner after submittal of a signed 60% petition. In the event that La Pianta fails to submit the 60% petition, the City may terminate this Agreement upon giving 14 days notice to La Pianta. Should the annexation fail to occur by December 31, 2009 (the "Outside Annexation Date"), this Agreement will terminate and all obligations herein will be extinguished. The Outside Annexation Date shall automatically be extended for the period of any review of the annexation by the Boundary Review Board, if jurisdiction is taken, and/or the courts. For purposes of this Agreement, the "effective date of the annexation" hereunder shall be the date on which the ordinance of annexation of the Tukwila South Property adopted by the City Council is effective, final and unappealable.

4.2 Levee Modification and 404 Permit Approval. The City has submitted to the U.S. Army Corps of Engineers, Seattle District ("ACOE") an application for modification of the levee system in the Tukwila South Property which will, among other things, permit the removal of the existing cross-levee structure at South 196<sup>th</sup> Street (the "Levee Modification"). La Pianta has submitted to ACOE an application for a Section 404 permit under the Clean Water Act, to permit the grading, filling and development of the Tukwila South Property as contemplated in the Tukwila South Master Plan (the "404 Permit"). The parties will take all reasonable steps necessary to secure from the ACOE the issuance of the Levee Modification and the 404 Permit in a timely manner. If either the Levee Modification or the 404 Permit has not been issued by the Corps, and all appeal periods having passed with no appeals filed, by June 30, 2010 (the "Outside Approval Date"), this Agreement will terminate and all obligations herein will be extinguished. The Outside Approval Date may be extended by mutual agreement of the parties. As provided herein, the parties will place in the Escrow (as established under Section 4.8.4.6 below) all documents, payments and other undertakings required to be delivered prior to the Outside Approval Date. Upon approval of the Levee Modification and issuance of the 404 Permit, the Escrow Agent (hereinafter defined) shall be instructed to release, deliver or record, as appropriate, all sums and documents held in escrow unless expressly provided otherwise in this Agreement.

The City shall incur no costs for the maintenance of the new levee constructed as a result of the Levee Modification. Failure of La Pianta to secure maintenance for the levee prior to issuance of the Clearing and Grading Permit, shall result in denial of said permit.

#### 4.3 Southcenter Parkway Project.

4.3.1 Southcenter Parkway Project Design. The City shall, using grant funds secured for this Project, promptly complete the final design of the extension and relocation of Southcenter Parkway from S. 180<sup>th</sup> Street to S. 200<sup>th</sup> Street ("Southcenter Parkway Project" or "SCP Project"), including necessary sewer, water, stormwater, natural gas, power and telecommunications utility system improvements associated with this roadway improvement project (the "Final Design Plans"), as documented in the 90% drawings completed by David



Evans and Associates dated September 2005 (the “90% drawings”) and on file with the City. The City may use up to \$300,000 of the grant funds identified in Section 4.3.7 below for the purpose of completing the Final Design Plans; any costs to complete the Final Design Plans in excess of \$300,000 shall be borne by the City. The Southcenter Parkway Project will provide additional access to the Tukwila Urban Center and the Tukwila South Project. Except as set forth in this subsection, the Final Design Plans shall not materially deviate from the 90% drawings without the written consent of both parties. For the purposes of this Section, the Final Design Plans shall be deemed to “materially deviate” from the 90% drawings if the Final Design Plans include modifications to the 90% drawings that will result in a construction cost increase in the aggregate of more than \$250,000. The Southcenter Parkway Project will not include the relocated South 178<sup>th</sup> Street improvements or the bike lanes as specified on the 90% drawings.

4.3.2 Land Dedication for Southcenter Parkway Project. La Pianta agrees to dedicate, at no cost to the City, the land necessary to construct the Southcenter Parkway as depicted in Exhibit 7. La Pianta waives all credit for this dedication of land against any traffic impact fee assessed for the Project. In addition, La Pianta agrees to waive any claim for just compensation pursuant to RCW 8.12 and any claims under the Washington and Federal Constitutions in connection with the dedication of this right-of-way. La Pianta shall deliver a signed but undated statutory warranty deed (free of all encumbrances and easements unacceptable to the City) for this land and a signed and dated right of way easement encumbering the same property described in the deed, in commercially reasonable form acceptable to the City, to the Escrow no later than 5 days after the effective date of the annexation specified in Section 4.1. Upon receipt, the City shall record the right of way easement and retain the undated deed in Escrow until the City is prepared to vacate Frager Road/Southcenter Parkway as provided in Section 4.10. Simultaneously with the transfer of the properties described in Section 4.10, the City shall cause the deed delivered by La Pianta into Escrow to be dated and recorded. If the deed and the right of way easement are not delivered in the time specified by this Section, this Agreement will terminate. For the purpose of the real estate excise tax, the City acknowledges that the transfer of property pursuant to this section shall be for a “public use in connection with the development of real property” as provided under WAC 458-61A-205.

4.3.3. Planning and Design Work. La Pianta has provided the following planning and design services in connection with the Southcenter Parkway Project:

- (i) Geotechnical reports and information;
- (ii) Survey, topographical maps;
- (iii) As-built survey of utilities;
- (iv) Legal description of final right-of-way;
- (v) Plans and designs for wetland and stream mitigation, including plans for land, cost of restoration, permitting, on-going maintenance and monitoring;
- (vi) 30% design work; and
- (vii) Plans and designs for temporary stormwater detention and treatment for Southcenter Parkway Project during construction, and permanent

stormwater detention and water quality facilities for Southcenter Parkway and South 200<sup>th</sup> Street as more particularly described in Sections 4.3.5 and 5.4.

4.3.4 Highline/PSE/Southcenter Parkway Costs. La Pianta shall obtain power and gas utility service for the Tukwila South Project from Puget Sound Energy (“PSE”) and water service from the Highline Water District (“Highline”). La Pianta shall pay for all costs related to the design and construction of Highline Water systems and PSE systems for the Tukwila South Project (not including costs for which PSE and Highline are responsible for undergrounding and relocation of existing systems, as described herein). The City shall cause Highline to relocate its existing water system facilities pursuant to its franchise agreement with the City. The City shall cause PSE to relocate and underground existing power and gas system facilities pursuant to its franchise agreement with the City and applicable tariff. Any costs or fees assessed to the City by those utilities for invoking either of the franchise terms discussed in this Section shall be paid to the City by La Pianta within 30 days of invoice.

4.3.4.1 Highline Water. The City will include the work for the relocation and upgrade of the Highline Water system utilities in its SCP Project bid as a bid additive (the “Highline Work”). The Highline Work will be accounted for and invoiced separately from the SCP Project. The City shall enter into an agreement with Highline pursuant to which Highline shall reimburse the City for the cost of the Highline Work. La Pianta shall enter into a separate agreement with Highline pursuant to which La Pianta shall reimburse Highline for La Pianta’s portion of the costs of the Highline Work. Pursuant to Section 4.8.4 of this Agreement, La Pianta shall provide the City with a letter of credit in the amount of 110% of La Pianta’s portion of the estimated cost of the Highline Work as security for payment of those associated costs. In the event that Highline fails to reimburse the City, pursuant to the terms of the agreement between the City and Highline, for La Pianta’s portion of the cost of the Highline Work, the City may draw upon the letter of credit as provided in Section 4.8.4. In addition, La Pianta shall provide the City with a copy of La Pianta’s agreement with Highline and evidence of timely payments to Highline thereunder.

4.3.4.2 PSE. The City will exclude the work for the PSE power and gas utilities from the SCP Project bid. PSE will provide the specifications for such power and gas utility work to serve the Tukwila South Project (the “PSE Work”), which will be constructed in coordination with the SCP Project. The PSE Work will be conducted by third parties on behalf of PSE. The bid documents and the final construction contract for the SCP Project shall include a “cooperation clause,” requiring cooperation and communication between the City (and the City’s contractor on the SCP Project), La Pianta LLC and PSE or PSE’s designees and contractors undertaking the PSE Work. La Pianta shall indemnify and defend the City against delay claims made by the City’s contractor for the SCP Project because of the PSE Work. La Pianta shall pay (i) PSE directly for La Pianta’s share of the cost of the PSE Work in accordance with PSE Tariff Schedule 85, and (ii) the City directly for the City’s share of the cost of the PSE Work in accordance with PSE Tariff Schedule 74. La Pianta’s obligation under this Section 4.3.4.2 shall be secured by an irrevocable standby letter of credit in the amount of 110% of the City’s estimated share of the PSE Work, naming the City as beneficiary as provided in Section

4.8.4. In the event that La Pianta fails to pay the amount due under this Section 4.3.4.2 within thirty (30) days of demand by the City, the City may draw upon the letter of credit as provided in Section 4.8.4.

4.3.5 Southcenter Parkway Storm Drainage. La Pianta shall provide, at no cost to the City, sufficient capacity for all drainage from the Southcenter Parkway Project within the regional storm drainage facilities more particularly described in Section 5.4 to be constructed by La Pianta as part of the permanent stormwater drainage facilities for the Tukwila South Project. La Pianta shall provide easements granting the City the right to discharge stormwater from Southcenter Parkway and South 200<sup>th</sup> Street to La Pianta's regional stormwater facilities. La Pianta covenants that the regional stormwater facilities will be sized to accommodate stormwater run-off from the Tukwila South Project, including Southcenter Parkway, South 200<sup>th</sup> Street and all other development proposed as part of the Tukwila South Project. The stormwater system includes a "South Facility" and a "North Facility", both as defined in Section 5.4 below.

4.3.5.1 South Facility. Easements and stormwater facilities for the South Facility may, at the discretion of La Pianta, be temporary, provided however, that except as provided in Section 4.3.5.3 below, La Pianta shall: (i) provide permanent, no-cost easement and stormwater facilities in the South Facility prior to the issuance of the first construction permit for a new building development in the Tukwila South Project; and (ii) ensure that the South Facility will be operational and ready for use prior to the completion of the Southcenter Parkway Project.

4.3.5.2 North Facility. At La Pianta's option, stormwater to be treated in the North Facility may be piped to the South Facility for treatment and discharge on an interim basis. The development of the North Facility shall occur prior to the date on which the capacity of the South Facility is fully utilized.

4.3.5.3 WSDOT/FHWA Approval. Immediately upon execution of this Agreement, the City shall amend its submissions to WSDOT/FHWA to describe the storm drainage plan for the Southcenter Parkway Project that is more particularly set forth in Section 5.4, and shall request approval for such change. La Pianta shall cooperate in good faith to provide all necessary documentation reasonably necessary to secure WSDOT's approval of such stormwater plan for Southcenter Parkway. In the event that the stormwater plan for Southcenter Parkway described in Section 5.4 is not approved by WSDOT/FHWA, the City shall construct the stormwater ponds described in its original proposal to WSDOT, for treating and detaining stormwater runoff from Southcenter Parkway and South 200<sup>th</sup> Street. In such case, La Pianta shall, within thirty (30) days of the City's written demand therefore, grant at no cost to the City temporary easements necessary to construct the stormwater ponds needed to accommodate the stormwater run-off from Southcenter Parkway and South 200<sup>th</sup> Street that was described in the City's original SCP Project proposal to WSDOT. The easement agreements shall provide that at such time La Pianta completes the South Facility and it is available to accommodate the run-off from Southcenter Parkway and South 200<sup>th</sup> Street, the temporary easements shall terminate and shall be replaced by permanent easements to the South Facility.

4.3.6 Southcenter Parkway Bidding/Construction. Upon the issuance of the 404 Permit contemplated in Section 4.2, the City shall be responsible for the bidding and construction of Southcenter Parkway ("Southcenter Parkway Project"). The City shall request formal bids from contractors for the construction of the Southcenter Parkway Project as soon as all necessary approvals and permits have been received. This Agreement is premised on the assumption that the project costs for the Southcenter Parkway Project (including the up to \$300,000 allocated to completion of the Final Design Plans under Section 4.3.1 above) will not exceed available financing in the amount of \$26,800,928 ("Construction Cost Cap"). The total project cost of the Southcenter Parkway Project ("Total Project Cost") shall be the lowest responsible bid received by the City, and shall allow and include up to a 15% construction management allowance and a 15% project contingency allowance. For the purpose of determining whether the Total Project Cost exceeds the Construction Cost Cap, the Total Project Cost shall not include the costs for the Highline Work and PSE Work (which costs shall be paid by La Pianta and the utilities as provided in Section 4.2.4), and shall not include the City's costs for its employees in connection with or related to the management and/or supervision of the construction of the Southcenter Parkway Project, which costs the City shall bear. The City shall use commercially reasonable efforts to minimize the Total Project Cost of the Southcenter Parkway Project. For purposes of this Agreement, "commercially reasonable efforts" means the actions normally taken to reduce costs for any City project.

If the Total Project Cost exceeds the Construction Cost Cap, the City shall have no obligation to construct the Southcenter Parkway Project unless La Pianta gives written notice as provided herein to the City that La Pianta shall pay such difference ("Project Cost Differential"). In such case, the City shall send written notice to La Pianta of the Project Cost Differential, and La Pianta shall, within 15 days of receipt thereof, give the City written notice of whether La Pianta elects to pay the Project Cost Differential. If La Pianta elects to pay the Project Cost Differential, then La Pianta must provide the City cash security for such amount ("Cash Security") also within the 15 days. Provided that La Pianta timely provides the City such notice and Cash Security, the City shall promptly execute a construction contract for the Southcenter Parkway Project. If La Pianta does not timely provide the City with the notice and/or the cash security, the City shall reject all bids and this Agreement shall immediately terminate without further action required by any party.

If La Pianta pays the Project Cost Differential, the City agrees to utilize the funds within the Construction Cost Cap prior to utilizing the Cash Security. Should any Cash Security remain after completion of the Southcenter Parkway Project, said remainder shall be refunded to La Pianta within thirty (30) days after final acceptance of the Southcenter Parkway Project. In the event of cost overruns in excess of the Total Project Cost (including Cash Security for the Project Cost Differential), the City shall promptly notify La Pianta, and La Pianta shall provide additional Cash Security equal to or greater than the amount of any overruns within ten (10) days of invoice. Upon completion of the Southcenter Parkway Project, if state or federal auditors identify any charges that fall outside the scope of work, excluding mutually agreeable change orders and agreed to modifications to the scope of work, for the Southcenter Parkway Project, La Pianta shall be entitled to a refund for those sums identified within thirty (30) days after completion of said audit(s).

4.3.7 Southcenter Parkway Financing. The City shall use \$18,530,345.00 in state and federal grant money secured for the cost of design and construction of Southcenter Parkway Project. The City shall also utilize limited tax general obligation debt (“General Obligation Bonds”) or other financing mechanisms to finance up to \$8,250,000.00 dollars toward the construction of the Southcenter Parkway Project. In the event that any state or federal grant funds are withdrawn from the Southcenter Parkway Project prior to the Outside Approval Date (as defined in Section 4.2), the parties will use best efforts to seek replacement grant funds (“Replacement Funds”). If the parties are unable to secure commitments for such Replacement Funds by December 31, 2010, then this Agreement will immediately terminate, all obligations hereunder will be extinguished, and the Escrow shall be terminated.

In the event that any additional state or federal grant funds, debt or credit enhancements, including but not limited to interest rate reductions, tax credits or reimbursements, and which are not Replacement Funds, are provided to the Southcenter Parkway Project, the parties shall equally share the economic benefit of such additional measures.

4.3.8 Closure of Southcenter Parkway and Frager Road. The City shall close the existing Southcenter Parkway and Frager Road from South 180<sup>th</sup> Street to South 200<sup>th</sup> Street during the construction phase of the Southcenter Parkway Project, except for local traffic, and agrees that La Pianta can use the roadway for project purposes, without compensation to the City or the need for issuance of right-of-way permits, provided that La Pianta maintains the roadway during that period of time and La Pianta’s use does not unreasonably interfere with use for local traffic. La Pianta shall ensure that local traffic may access their properties from the north access point to Tukwila South. The City acknowledges that a certain portion of Frager Road and the existing stormwater pond near South 200<sup>th</sup> Street shall be permanently closed and removed upon issuance of a grading permit to La Pianta for the purpose of constructing the “Green River Off-Channel Habitat Area.” Provided that WSDOT approval for stormwater plan is granted pursuant to Section 4.3.5.3, the City shall permit La Pianta to use said portions of the right of way and existing detention pond for such purpose prior to conveying ownership of such parcels to La Pianta pursuant to Sections 4.10 and 4.11, provided however, La Pianta shall indemnify and hold the City harmless for any claims or damages because of or arising out of La Pianta’s use or possession of this land, except to the extent caused by the negligence of the City, its employees or agents.

Before commencing the construction of the Green River Off Channel Habitat Area, La Pianta shall provide temporary detention of stormwater from South 200<sup>th</sup> Street in place of the removed stormwater pond until the South Facility is complete and operational.

4.4 Sanitary Sewer System. As outlined in the Tukwila South EIS, additional sewer capacity may be required to serve the Tukwila South Project, as the Project develops. Sewer Lift Station #2 may need to be upgraded to create sufficient pumping capacity; and the force sewer main along Andover Park West from Minkler Ave to Strander Blvd (the “Force Sewer Main”) may need to be upgraded to provide sufficient capacity to carry the additional flows generated by the Tukwila South Project. If at any time during the Term of this Agreement, a capacity analysis of the system shows that any of the Sewer Lift Station #2, the Force Sewer Main, or any other facility within the City’s sanitary sewer system necessary to provide service to the Tukwila

South Property (each a “Facility”) is at 80% or more of its capacity, then the City shall promptly initiate its standard process of planning, financing and construction for improvement to the Facility (or more than one) necessary to provide adequate sanitary sewer service to accommodate the Allowable Development. The City will finance the construction of the Facility through bonds or any other source of City capital funding and/or through connection fees, sewer rates or other charges to be paid by all the benefited ratepayers. If the City elects to form a Utility Local Improvement District (“ULID”) or other special district to pay for the Facility, La Pianta shall execute a No Protest ULID Agreement for the formation of an ULID to provide improvements to the sanitary sewer system as outlined herein. The No Protest agreement shall be in a form acceptable to the City. La Pianta shall be responsible for paying citywide sewer system connection charges and fees at the time of each building permit application, subject to the terms of any applicable No Protest Agreement as described herein and La Pianta’s participation in any ULID or special district assessment.

Construction of the initial Southcenter Parkway sewer line serving the Tukwila South Property will be included in the cost of the Southcenter Parkway Project, and therefore a portion of the cost of the sewer improvements will be funded by sources other than the City. La Pianta or Parcel Builders (hereinafter defined) shall pay sewer connection charges based on the total project cost. Each sewer connection charge paid by La Pianta or a Parcel Builder for the initial Southcenter Parkway sewer line shall be credited to La Pianta as O&M Revenue pursuant to Section 4.8.3.

#### 4.5 Parks and Open Space.

4.5.1 Bike/Pedestrian Trail. Within thirty (30) days of the effective date of the annexation, La Pianta shall donate to the City an easement for a north-south trail system through the Tukwila South Property from S. 180<sup>th</sup> Street to S. 204<sup>th</sup> Street, provided however, that the City shall not permit the public to use the easement area until the later of: (i) three (3) years after the conveyance of the easement, or (ii) completion of initial site grading and the Green River Off Channel Habitat Area, but not later than four (4) years after the conveyance of the easement. The width of the easement shall be at a minimum 14 feet or such greater width as may be required under the City’s Shoreline Master Program. The easement shall be delivered into the Escrow. The bike/pedestrian trail shall be located along the Green River within the crown of the levee. When the new levee is constructed, as contemplated by this Agreement, the easements will be revised to follow the crown of the new levee configuration. La Pianta waives any credit for this donation against any future park impact fee assessed against the Project and waives all claims for just compensation pursuant to RCW 8.12 and State and Federal Constitutions. La Pianta shall not be responsible for costs of construction or maintenance of any improvements within the trail easement.

La Pianta will develop and submit to the City for approval a plan for trails and bike/pedestrian connections within the Tukwila South Property. The Plan will identify the general goals and objectives of a system of pedestrian connections for the Tukwila South Property and will identify possible locations for eight (8) 14 foot wide pedestrian corridors and connections from the bike/pedestrian trail described above through the Tukwila South Property,



in locations approved by La Pianta, to off-site pedestrian trails and City rights-of-way. The eight locations will include the City's existing trail connection points at South 180<sup>th</sup> Street, South 200<sup>th</sup> Street and South 204<sup>th</sup> Street. La Pianta will complete this plan and submit it for approval to the Parks and Recreation Director by December 31, 2011.

4.5.2 Green River Pedestrian Bridge. La Pianta shall be responsible for \$500,000.00 toward the cost of construction of a pedestrian bridge across the Green River to the Green River Trail and Briscoe Park (the "Bridge"). Any additional cost for this bridge project and all permitting obligations shall be the responsibility of the City. Within thirty (30) days of the date the City notifies La Pianta that the City will make application for a grant or grants for any portion of the cost of construction of the Bridge, La Pianta shall provide to the City a letter of credit in the amount of \$500,000 pursuant to Section 4.8.4.3 of this Agreement. The letter of credit shall have a term of one (1) year (or less than one year in the initial year, as set forth in Section 4.8.4.4) and shall be renewed until the \$500,000 payment is made to the City. In the event that La Pianta fails to pay \$500,000 to the City within thirty (30) days of the date the City notifies La Pianta that any grant(s) have been awarded to the City, which grants, together with other funds available to the City, will underwrite the full cost of construction of the Bridge, the City may draw upon the letter of credit as provided in Section 4.8.4. The City will use best efforts to obtain full funding to provide the additional funding necessary to complete construction of the Bridge project. If the City is unable to obtain grant funding for construction of the Bridge within five (5) years of the date of this Agreement, then La Pianta shall pay \$500,000 in cash to the City within thirty (30) days after such date, or the City may thereafter draw upon the letter of credit as provided in Section 4.8.4. If the City is unable to secure adequate funding for the Bridge, the City may utilize the \$500,000.00 for general park facilities within the Tukwila South area. La Pianta waives credit for this donation against any future park impact fee assessed for the Tukwila South Project and waives any claim for just compensation pursuant to RCW 8.12 and the State and Federal Constitutions. The City and La Pianta acknowledge that construction of the Bridge will occur after December 31, 2012 when significant development has occurred within the Tukwila South Project. Prior to commencement of construction of the Bridge project, La Pianta shall grant to the City an easement in commercially reasonable form on a portion of the Tukwila South Property for the purpose of installing and maintaining bridge supports and touchdowns (the "Bridge Easement"). The area of the Bridge Easement shall not exceed 3,000 square feet and shall be located subject to mutual agreement of the parties, provided such location shall be within the river buffer of the City's Shoreline Master Program. If the City has obtained funding and is commencing construction of the bridge, La Pianta shall grant the Bridge Easement within thirty (30) days of the City's request.

4.5.3 Donation of Levee Easements. La Pianta will grant permanent easements, at no cost to the City, on property under its ownership, to the City of Tukwila for improvements to the City's levee system on the west side of the Green River. The easements will be sized to accommodate (i) an overall slope gradient of 2.5:1 on the river side of the levee from S. 196<sup>th</sup> Street to S. 204<sup>th</sup> Street; (ii) a slope gradient of 2:1 on the landward side of the levee from S. 196<sup>th</sup> Street to S. 204<sup>th</sup> Street and on both sides of the levee from S. 180<sup>th</sup> Street to S. 196<sup>th</sup> Street and (iii) a 14-foot-wide levee crown. In each case, the easement area to be granted will

commence at the waterside toe of the existing levee. If levee improvements are made before redevelopment in the existing Segale Business Park, the levee improvements shall not unreasonably interfere with La Pianta's use of the existing Segale Business Park. "Unreasonably interferes" shall be deemed to include, without limitation, any restriction on the use of the existing buildings or the paved areas around them. If it is determined that additional easement area is needed, the City will negotiate with La Pianta or take necessary legal action to acquire the additional easement. The easements referenced in this section shall be delivered to the Escrow within thirty (30) days of the effective date of the annexation.

#### 4.6 Fire Service.

4.6.1 Voluntary Fire Impact Fee. Pursuant to RCW 82.02.020, La Pianta agrees to voluntarily pay a fire service mitigation fee of \$0.50 per square foot for commercial/industrial development and \$500.00 per dwelling unit for residential development. If the City adopts a fire impact fee pursuant to RCW 82.02 or other enabling legislation, those impact fees will apply to the Tukwila South Project, replacing the fee set forth above, and will be assessed at the time of building permit issuance. In either case, La Pianta will not be assessed an impact fee for new development which replaces existing building square footage, currently served by Tukwila Fire, if redeveloped.

4.6.2 Donation of Land for Fire Station. La Pianta shall donate to the City up to three (3) acres of undeveloped land along Southcenter Parkway south of South 180<sup>th</sup> Street for future use as a fire station. The location of the specific property must be mutually acceptable and the property shall meet the following criteria of the City: (1) Able to accommodate a 25,000 gsf building, parking and outdoor storage (more specific detail will be provided by the City's architect no later than 180 days after execution of this Agreement); (2) level topography; (3) rectilinear site; (4) clear title (i.e., subject to liens and encumbrances approved by the City, created under this Agreement, or which are not inconsistent with the City's intended use); (5) soils capable of bearing the load of the proposed fire station without shoring, bracing, piling, or other extraordinary construction methods, and containing no hazardous substances; (6) direct access onto an arterial street; (7) located in the vicinity of S. 180<sup>th</sup> Street, but outside the shoreline environment. La Pianta shall transfer such property to the City in its as-is, where-is condition, without warranties other than good title. No credit will be given against any fire impact fee for this land donation. The parcel will be identified and agreed upon, and the deed therefore shall be delivered to the Escrow, prior to the City Council's adoption of the ordinance vacating existing Frager Road, as provided in Section 4.11 below. La Pianta will be responsible for all closing and escrow costs associated with this land donation. La Pianta waives any credit for this land donation against any fire impact fee assessed under the Tukwila Municipal Code. For the purpose of the real estate excise tax, the City acknowledges that the transfer of property pursuant to this section shall be for a "public use in connection with the development of real property" as provided under WAC 458-61A-205. The City agrees to cooperate with La Pianta to implement modifications to the boundaries of the fire station parcel (prior to commencement of construction of the fire station) to promote logical development of adjacent lands by La Pianta, as long as such modifications are consistent with the parameters set forth above.



4.7 Impact Fees. Nothing in this Agreement shall preclude the City from assessing duly enacted impact fees to this Project at the time of building permit issuance.

4.8 City Revenues and Costs; La Pianta Financial Guarantees.

4.8.1 Operations and Maintenance Services. Pursuant to the protocols set forth in Section 4.8.3, the City will track the following revenue generated from the Tukwila South Property (including all use and development thereon): sales tax, real estate excise taxes, utility taxes, franchise fees, business license revenues, commercial parking taxes, hotel/motel tax, admission tax, where those taxes and/or fees are paid by the owners of property or businesses developed as part of the Tukwila South Project (collectively, the "O&M Revenue"); provided, however, that if the Washington State Department of Revenue begins to report liquor excise taxes, motor vehicle excise taxes and/or fire insurance premium taxes in such a way that they can be identified as having been generated from the Tukwila South Property, then each of those taxes that is so reported shall be included in O&M Revenue. The O&M Revenue will not include any property tax revenue from the Tukwila South Property, or any revenue from any business or land use existing or in operation on any portion of the Tukwila South Property as of the date of this Agreement.

The City will also track expenditures related to providing operations and maintenance public services to new development within the Project and pre-construction expenses related to the Project, including without limitation, the provision of police, fire, public works and parks services allocable to new development at Tukwila South, the pro-rata capital costs for such services (not covered by impact fees), and the pro-rata operations and maintenance expenses related to the Southcenter Parkway Project once completed (collectively, the "O&M Expenses"). The City covenants to use commercially reasonable efforts to minimize the O&M Expenses during the Term of this Agreement (i.e., the same efforts the City uses to minimize its O&M Expenses city-wide).

On or before March 31, 2010 and each March 31 thereafter, the City shall provide to La Pianta an Annual Statement (hereinafter defined). If for any year the Annual Statement shows that O&M Expenses have exceeded O&M Revenue, La Pianta shall pay the difference to the City within thirty (30) days of receipt of the Annual Statement ("O&M Guarantee"). If for any year the Annual Statement shows that O&M Revenue has exceeded O&M Expenses, the City is not prohibited from using the excess funds for general City purposes.

If La Pianta requests an audit of an Annual Statement pursuant to Section 4.8.3, it shall nonetheless pay to the City any amount shown to be due by the Annual Statement within thirty (30) days of receipt of the Annual Statement, and if the audit shows an error in the Annual Statement then the City shall refund to La Pianta any sums it has paid that were not due pursuant to this Section 4.8.1, or La Pianta shall make any additional payment due, in either case within thirty (30) days of the Accountant's decision.

La Pianta's total obligation under this section 4.8.1 shall be limited to \$12,000,000.

4.8.2 General Obligation Bonds and Increased Property Tax Revenues.

Pursuant to the protocols set forth in Section 4.8.3, the City shall track the Increased Property Tax Revenues from the Tukwila South Property. For the purposes of this section, "Increased Property Tax Revenues" shall mean the property tax revenue attributable to that property annexed to the City of Tukwila pursuant to this Agreement.

If any Annual Statement shows that the Increased Property Tax Revenue in that year is less than the annual debt service for the General Obligation Bonds in that year ("Debt Service Shortfall"), then La Pianta shall pay to the City within thirty (30) days of receipt of the Annual Statement a sum equal to the Debt Service Shortfall. However, notwithstanding the foregoing, (a) the City shall be responsible for debt service on the first \$6,000,000 of bonds, and (b) La Pianta's yearly obligation under this Section 4.8.2 shall not in any year exceed a sum equal to the difference between the total annual debt service on the General Obligation Bonds in that year minus the debt service on \$6,000,000 of those bonds in that year. If, for any year, the Annual Statement shows that Increased Property Tax Revenue has exceeded the City's annual debt service for the General Obligation Bonds in that year, the City is not prohibited from using the excess funds for general City purposes.

For example, if the City issues General Obligation Bonds totaling \$7,000,000, the City will be responsible for the first six-sevenths of the debt service (\$6,000,000 divided by \$7,000,000) in each year, whether or not the Increased Property Tax Revenues are sufficient to fully provide for that portion of the debt service. If there is no Debt Service Shortfall in a given year, the City will be responsible for all of the debt service in that year. If, in this example, however, there is a Debt Service Shortfall in a year, then for that year La Pianta will be responsible for the Debt Service Shortfall up to one-seventh of the debt service on those General Obligation Bonds and must make a shortfall payment to the City in that amount. In no event will the City issue more than \$8.25 million of General Obligation Bonds.

If La Pianta requests an audit of an Annual Statement pursuant to Section 4.8.3, it shall nonetheless pay to the City any amount shown to be due by the Annual Statement within thirty (30) days of receipt of the Annual Statement, and if the audit shows an error in the Annual Statement then the City shall refund to La Pianta any sums it has paid that were not due pursuant to this Section 4.8.2, or La Pianta shall make any additional payment due, in either case within thirty (30) days of the Accountant's decision.

4.8.3 Project Revenue/City Expenditures – Protocols. Within thirty (30) days of execution of this Agreement, the parties will meet and confer regarding the development of accounting protocols for tracking Project revenue and City expenditures related to the Tukwila South Project, as required under this Section 4.8. Within thirty (30) days of said meeting, the parties shall retain the services of a mutually agreeable certified public accountant with expertise in municipal accounting (the "Accountant"). With the assistance of the parties, the Accountant will develop protocols for tracking revenue and expenditures consistent with the terms of this Section 4.8. The protocols will be developed and will be reduced to writing in the form of a memorandum of understanding signed by both parties within one hundred eighty (180) days of

the retention of the Accountant. Each party will share equally the cost for the Accountant's services outlined in this section. In the event that the parties do not execute the memorandum of understanding documenting the accounting protocols within one hundred eighty (180) days of the retention of the Accountant, this Agreement shall terminate.

On or before March 31, 2010 and each March 31 thereafter, the City shall prepare a statement ("Annual Statement") showing the O&M Revenue, O&M Expenses, O&M Guarantee, the Increased Property Tax Revenues, the annual debt service for the General Obligation Bonds, any Debt Service Shortfall, and the portion of any Debt Service Shortfall which La Pianta has guaranteed under the terms of this Agreement, consistent with the protocols set forth in the memorandum of understanding. If La Pianta questions the City's determination of any of the items set forth in the Annual Statement for the prior calendar year, La Pianta may request an audit of the disputed matter from the Accountant who developed the protocols, or his or her designee. Within thirty (30) days of La Pianta's request, the Accountant shall review the Annual Statement and La Pianta's dispute therewith, and render a decision based on generally accepted governmental accounting practices, the protocols, and the terms of this Agreement. The Accountant's decision shall be final and binding on the parties, excepting manifest error by the Accountant. The parties agree to cooperate in good faith with the Accountant concerning any requests for information or documentation to resolve the issue. If there is a variance of 10% or more between the Accountant's decision and the City's determination of revenue or expenditures, the City shall pay the cost of the audit. If the variance is less than 10%, La Pianta shall pay the cost of the audit.

#### 4.8.4 Security for La Pianta's Financial Guarantees.

##### 4.8.4.1 O&M Guarantee.

###### 4.8.4.1.1 O&M Collateral.

La Pianta's obligation under Section 4.8.1 (not to exceed \$12,000,000) shall be secured during the Term of this Agreement by collateral comprised of: (i) an irrevocable standby letter of credit naming the City as beneficiary ("O&M LC"), and (ii) a first-lien deed of trust on Building No. 931 located in Segale Business Park, which is currently occupied by Qwest Communications Corporation ("O&M Deed of Trust"). If La Pianta fails to pay timely any amount due under Section 4.8.1, the City may draw upon the O&M LC and/or foreclose on the O&M Deed of Trust as provided in this Section 4.8.4.

###### 4.8.4.1.2 O&M LC.

(a) The O&M LC shall be in the form, and meet the requirements, set forth in Section 4.8.4.4 below. The O&M LC shall be in the sum of \$6,000,000 and shall be delivered to the Escrow Agent following Boundary Review Board action on the annexation described in Section 4.1 but no later than 10 days before the date on which the City Council is scheduled to take final action on the annexation at a public meeting. To the extent La Pianta makes any payments to the City under the O&M Guarantee, then the amount of

the letter of credit shall be reduced by 50% of the total of such payments, and the credits set forth in Section 4.4, except that the amount of the O&M LC shall not be less than \$2,000,000 at any time during the Term. The amount of the O&M LC shall be determined annually pursuant to the foregoing upon renewal. If a longer term O&M LC is provided, the amount shall be recalculated annually on the anniversary of the initial issuance date and may be adjusted at that time. If La Pianta is not required to make any payments to the City under the O&M Guarantee, then at any time, and from time to time, during the last five (5) years of the Term, the parties may agree to a reasonable reduction in the amount of the O&M LC, taking into consideration the remaining Term of this Agreement, the historical receipt of O&M Revenue by the City, the likely obligation of La Pianta pursuant to the O&M Guarantee, the security provided under the O&M Deed of Trust, and all other relevant factors.

(b) Failure of La Pianta to provide and maintain the O&M LC at the time and in the amount required by this Section 4.8.4.1, where such failure continues after written notice from the City specifying the nature of the default and 20 days' opportunity to cure, shall entitle the City to accelerate that portion of the O&M Guarantee obligation represented by the amount of the O&M LC, draw on the O&M LC, and deposit the amount drawn ("O&M Deposit") into an escrow account with the Escrow Agent described in Section 4.8.4.6 (the "Escrow Agent"), except that in the case of a failure to provide a replacement of the O&M LC no later than 15 days prior to its stated expiration, no notice and opportunity to cure shall be required prior to a City draw on the O&M LC. The City may subsequently draw upon the O&M Deposit if La Pianta shall default on its obligations under the O&M Guarantee. If the City shall draw on the O&M Deposit at any time during the Term of this Agreement, La Pianta shall, within 30 days of notice by the City, restore the O&M Deposit to the amount required at the time the O&M Deposit was established. Upon expiration of the Term, any remaining funds held in the escrow account, including any remaining accrued interest, shall be released to La Pianta. La Pianta's obligation to provide the O&M LC, and the City's remedy for failure to provide the O&M LC, shall not be subject to the Dispute Resolution Process set forth in Section 7 of this Agreement.

#### 4.8.4.1.3 O&M Deed of Trust.

(a) The remaining \$6,000,000 of La Pianta's total potential liability under the O&M Guarantee shall be secured by the O&M Deed of Trust. The O&M Deed of Trust shall be in the form attached to this Agreement as Exhibit 8 and shall be delivered to the City at the same time that the O&M LC is delivered to the Escrow Agent. La Pianta shall have the right, to substitute as security from time to time one or more deeds of trust in the same or similar form on other real estate acceptable to the City in the exercise of reasonable discretion, so long as the unencumbered value of the substituted collateral is equal to or greater than \$9,000,000 as shown by a current appraisal performed by a neutral appraiser having no less than 10 years' experience appraising commercial property in the area in which the real estate is located, with appraisal cost shared equally between the parties. Any permitted substitute deed of trust given under this Section 4.8 shall be delivered to the City in an escrow arrangement (the cost of which shall be paid by La Pianta) that provides for delivery and recording of the substitute deed of trust simultaneously with release of the original deed of trust.

Substituted collateral must be located in the State of Washington, shall have an appraised value of nine million dollars (\$9,000,000) or more, shall be income producing, shall be improved by structures of a quality that is the same as or similar to the improvements existing on the land encumbered by the initial deed of trust, and shall be of a character suitable as collateral for a substantial commercial loan from a recognized commercial real estate lender. The City shall not have the right to unreasonably reject proposed substitute collateral, and the characteristics listed in the previous sentence will be relevant in determining reasonableness of a City rejection.

(b) In the event of a default that entitles the City to foreclose on the O&M Deed of Trust, then the O&M Deed of Trust shall provide that there shall be no default entitling the City to foreclose the O&M Deed of Trust until (1) La Pianta shall have failed after notice and 20 days to cure to pay the sum(s) required under the terms of this Agreement, (2) the City has drawn on the letter of credit (or cash deposit) securing the obligation in default to the maximum amount of the letter of credit (or cash deposit) and has applied the sum(s) so drawn to the obligation in default, and (3) there remains outstanding an additional sum due under the terms of this Agreement for which the deed of trust has been granted as security.

#### 4.8.4.2 Southcenter Parkway Project General Obligation Bonds Guarantee.

La Pianta's obligation pursuant to Section 4.8.2 of this Agreement to guarantee a portion of the General Obligation Bonds (the "Bond Guarantee") shall be secured during the Term of this Agreement by a separate irrevocable standby letter of credit naming the City as beneficiary ("SCPW LC"). The amount of the SCPW LC shall be determined annually as of January 1 of each calendar year during the Term of this Agreement, and shall initially be in the amount of \$185,000, and, upon issuance of the General Obligation Bonds, shall be adjusted to an amount equal to twice the average annual debt service on the Bonds for that portion of the General Obligation Bonds that exceeds \$6,000,000. The SCPW LC shall be delivered to the Escrow Agent before the date on which the City awards the contract for construction of the Southcenter Parkway Project. If La Pianta fails to pay timely any amount due under Section 4.8.2, the City may draw upon the letter of credit as provided in this Section 4.8.4.

Failure of La Pianta to provide and maintain the SCPW LC at the time and in the amount required by this Section 4.8.4.2, where such failure continues after written notice from the City specifying the nature of the default and 20 days' opportunity to cure, shall entitle the City to accelerate that portion of the Bond Guarantee that is represented by the amount of the SCPW LC, draw on the SCPW LC, and deposit the amount drawn ("SCPW Deposit") into an escrow account with the Escrow Agent, except that in the case of a failure to provide a replacement of the SCPW LC no later than 15 days prior to its stated expiration, no notice and opportunity to cure shall be required prior to a City draw on the SCPW LC. The City may subsequently draw upon the SCPW Deposit if La Pianta shall default on its obligation under the Bond Guarantee. If the City shall draw on the SCPW Deposit at any time during the Term of this Agreement, La Pianta shall, within 30 days of notice by the City, restore the SCPW Deposit to the amount required at the time the SCPW Deposit was established. Upon expiration of the Term, any remaining funds held in the escrow account, including any remaining accrued interest, shall be released to La Pianta. La Pianta's obligation to provide the SCPW LC, and the City's

remedy for failure to provide the SCPW LC, shall not be subject to the Dispute Resolution Process set forth in Section 7 of this Agreement.

#### 4.8.4.3 Other Secured Obligations.

For each of the remaining obligations of La Pianta under this Agreement for which security is required specifically, (i) the letter of credit required pursuant to Section 4.3.4.1 in the amount of 110% of La Pianta's portion of the Highline Work (the "Highline Work LC"), (ii) the letter of credit required pursuant to Section 4.3.4.2 in the amount of 110% of the City's share of the cost of the PSE Work in accordance with PSE Tariff Schedule 74 (the "PSE Work LC"), and (iii) the letter of credit required pursuant to Section 4.5.2 in the amount of \$500,000 (the "Bridge LC"), La Pianta shall provide to the City an irrevocable standby letter of credit naming the City as beneficiary. The Highline Work LC and the PSE Work LC shall be delivered to the Escrow Agent at the same time that the SCPW LC is delivered, which shall be prior to the award of the construction contract for the Southcenter Parkway Project. The Bridge LC shall be delivered to the Escrow Agent no later than thirty (30) days after the date the City notifies La Pianta that the City will make application for a grant or grants for any cost of constructing a pedestrian bridge across the Green River to connect Tukwila South to Briscoe Park. Only upon La Pianta paying the amount due in fulfillment of an obligation secured by one of the foregoing letters of credit, the City shall release the letter of credit for that obligation, and La Pianta's obligation to provide that letter of credit shall terminate.

Failure of La Pianta to provide and maintain any letter of credit at the time and in the amount required by this Section 4.8.4.3, where such failure continues after written notice from the City specifying the nature of the default and 30 days' opportunity to cure, shall constitute a default with respect to the obligation secured by that letter of credit ("Secured Obligation in Default"), except that in the case of a failure to provide a replacement letter of credit no later than 15 days prior to its stated expiration, no notice and opportunity to cure shall be required prior to a City draw on the letter of credit for which no replacement has been delivered. The default shall entitle the City to draw on the letter of credit securing the Secured Obligation in Default, and deposit the amount drawn into an escrow account with the Escrow Agent. The City may subsequently draw upon that deposit if La Pianta shall default in the obligation so secured. Upon expiration of the Term or fulfillment of the obligation so secured (whichever shall first occur), any remaining funds held in the escrow account, including any remaining accrued interest, shall be released to La Pianta. La Pianta's obligation to provide any letter of credit under this Section 4.8.4.3, and the City's remedy for failure to provide a letter of credit under this Section 4.8.4.3, shall not be subject to the Dispute Resolution Process set forth in Section 7 of this Agreement.

#### 4.8.4.4 General Terms and Conditions for the Letters of Credit.

Each letter of credit provided under this Section 4.8.4 (including the O&M LC, the SCPW LC and each letter of credit provided pursuant to Section 4.8.4.3) shall be in form substantially similar to Exhibit 9. Each letter of credit shall be issued by Bank of America or, at La Pianta's option, another financial institution having a branch in the State of Washington that

is reasonably acceptable to the City; provided, however, that the City shall not withhold its consent to any institution having a long term debt rating of at least A from Standard and Poor's Corporation, or at least Aa3 from Moody's Investors Service. Each letter of credit shall have at least a one-year term (except that any initial letter of credit may have a shorter term so that when all letters of credit have been issued they will expire simultaneously), and La Pianta shall provide the City with a replacement letter of credit 15 days prior to the expiration of the respective letter of credit, or within 90 days after the downgrade of an existing letter of credit below the long term debt rating set forth above. Each letter of credit shall provide that it will be honored by presentation or at sight at an office of the issuer upon presentation of a certificate signed by the City stating that (i) La Pianta has defaulted on an obligation under this Agreement that is secured by the letter of credit and (ii) the City is entitled to draw on the letter of credit. If any letter of credit is drawn by the City because of La Pianta's failure to provide a replacement letter of credit 15 days prior to the expiration of the existing letter of credit, or within 90 days after the downgrade of an existing letter of credit below the long term debt rating set forth above (each draw resulting in a "Deposit" pursuant to the terms of this Section 4.8), then within five (5) after delivery to the Escrow Agent of a replacement letter of credit that complies with the requirements of this Section 4.8, the resulting Deposit shall be refunded to La Pianta except to the extent (if any) that the City shall have drawn upon the Deposit pursuant to the terms of this Agreement.

#### 4.8.4.5 Specific Remedy under Section 4.8.4.

The City shall have the right to specific performance of La Pianta's obligations under this Section 4.8.4.

#### 4.8.4.6 Escrow and Escrow Agent.

An escrow shall be established as set forth herein (the "Escrow"). The Escrow Agent initially shall be The Bank of New York Mellon Trust, N.A. The Escrow Agent shall hold funds as provided in Section 4.8.4.1.2 and in this Section 4.8.4.6, and various deeds and easements as provided in this Agreement, pursuant to a written escrow agreement among the Escrow Agent, La Pianta and the City to be agreed by the parties within one hundred twenty (120) days after full execution of this Agreement. The Escrow Agent selected by the parties may be replaced by another financial institution with trust powers that has a branch in Seattle, Washington, selected by the City and approved by La Pianta (which approval shall not be unreasonably withheld). The Escrow Agent shall hold each of the letters of credit on behalf of the City and shall receive deposits of amounts and deliveries of documents as set forth in this Agreement. Upon the direction of the City, the Escrow Agent shall present and make draws on the letters of credit described in Section 4.8.4.1.1, Section 4.8.4.2 and Section 4.8.4.3. The Escrow Agreement shall also provide that the Escrow Agent shall, with or without direction from the City, draw the full amount of any letter of credit that is not replaced or extended on or before the date that is 15 days prior to the expiry date of that letter of credit. Upon any such withdrawal, the Escrow Agent will hold the amount drawn as an O&M Deposit, an SCPW Deposit or a deposit made pursuant to Section 4.8.4.3 and apply such amounts on deposit consistent with this Agreement. If this Agreement is not terminated following the Outside



Approval Date (as defined in Section 4.2 above), the Escrow Agent shall deliver all deeds and easements in the Escrow to the City for recording, with the exception of the deed to the fire station parcel pursuant to Section 4.6.2, which shall be delivered to the City at its request following adoption of the ordinance vacating existing Frager Road. The parties shall share equally the cost of the Escrow Agent for services performed pursuant to this Agreement.

4.9 Grading Permit Review. The City will complete review and issue a determination regarding La Pianta's Clearing and Grading permit application for the Tukwila South Project within 30 days of determining that such application is complete for areas outside of the shoreline jurisdiction. For areas within the shoreline jurisdiction, La Pianta shall submit a Shoreline Substantial Development Permit along with the Clearing and Grading Permit. The City will promptly review the Shoreline Substantial Development Permit, and forward its decision to the Department of Ecology for review. The City will complete review of the Clearing and Grading permit application within thirty (30) days and issue a decision after the expiration of the Department of Ecology's review period for the Shoreline Substantial Development permit. La Pianta shall segregate the Clearing and Grading permit application into separate applications for those portions of the Tukwila South Project inside and outside the 200-foot shoreline environment, respectively, and the City shall review and issue such separate permits independently. These grading permit applications shall not operate to vest La Pianta to the SMP or any Floodplain Regulations.

4.10 South 178<sup>th</sup> Street Project. The Administration of the City shall recommend to the City Council that the realignment of South 178<sup>th</sup> Street, as depicted in the 90% construction drawings, be added to the City's Capital Improvement Plan.

4.11 Vacation of Frager Road/Southcenter Parkway and the City Triangular Parcel. Pursuant to RCW 35.79.010, the City has by resolution initiated a vacation of (i) that portion of Frager Road/Southcenter Parkway described in Exhibit 7, attached hereto, and (ii) the "City Triangular Parcel," which is more particularly described in Exhibit 6 of this Agreement. The City agrees that there will be no remaining public use or benefit to that portion of Frager Road/Southcenter Parkway described in Exhibit 7 and the City Triangular Parcel, following dedication of the Southcenter Parkway right-of-way as set forth in Section 4.3.2 above. Therefore, the City shall, simultaneous with La Pianta's dedication of the Southcenter Parkway right-of-way set forth in Section 4.3.2 above, vacate Frager Road/Southcenter Parkway and the City Triangular Parcel at no cost to La Pianta and the other adjoining landowners, as applicable. The conveyance of the property to La Pianta pursuant to the vacation will occur within thirty (30) days after the completion of the Southcenter Parkway Project.

4.12 Transfer of the City Detention Pond. The City hereby determines that there is no remaining public use or benefit to the following property and shall transfer to La Pianta, free and clear of all encumbrances and for no additional consideration, in its as-is, where-is condition, the "City Detention Pond," which is more particularly described in Exhibit 6 of this Agreement. Subject to the terms set forth in Section 4.2.5, the City shall convey the City Detention Pond within thirty (30) days of the completion of the annexation. The City shall undertake all



necessary actions required to declare said parcel surplus, and convey the parcel to La Pianta in the manner required by law.

## **5. Development Under This Agreement.**

The Tukwila South Project will be developed under the jurisdiction of the City pursuant to the terms and conditions of this Agreement. This Agreement sets forth the development standards, mitigation measures, and other conditions of development for the Project. Proper operation and maintenance of surface water management systems, adequate sewer service capacity, adequate public safety facilities and services, and adequate transportation facilities will be fully satisfied through La Pianta's compliance with the requirements of this Agreement. Provided La Pianta satisfies its obligations under this Agreement as such obligations may arise, the City shall provide on a timely basis the necessary City public infrastructure specified in this Agreement needed to support build-out of the Project, subject to the condition of securing the necessary funds to construct such improvements and City Council approval for such improvements.

5.1 Native Growth Protection Areas (NGPA). No development shall be permitted to occur in a Native Growth Protection Area except trails, the Orillia Road Connector and utilities, including, but not limited to, electrical transmission lines, placement of which must be approved by the City; water and sewer system lines; access roads for levy maintenance. Clearing limitations within NGPA areas shall be those identified in the existing Tukwila Municipal Code, subject to the provisions of this Section 5.1. Clearing and ground disturbing activities associated with mitigation activities are permitted, with City permits. Once the Sensitive Areas Master Plan is implemented and mitigation areas are enhanced, restored, or created, NGPAs shall be left permanently in an undisturbed vegetated state and shall not be cleared or improved except as necessary to (1) prune or remove dead or diseased trees, and vegetation reasonably adjacent to developed areas of the Tukwila South Property, (2) remove invasive or exotic vegetation, (3) prune or remove trees or other vegetation presenting a threat to life or safety or growing over roadways, levees, drainage ditches, trails, or other corridors that must be kept clear, or (4) maintain mitigation areas; or (5) permit the work expressly described in this Section 5.1. For the purposes of this Agreement, the NGPAs on the Tukwila South Property are identified in Exhibit 3 attached hereto.

5.2 Vesting of Development Regulations. The proposed development as described in this Agreement shall vest to the following development regulations in effect on the date of execution of this Agreement (the "Development Regulations") for the Term of this Agreement:

The Tukwila Comprehensive Plan (Ord No. 2070 adopted November 22, 2004, as amended by Ordinance 2218 adopted December 15, 2008); the Tukwila Zoning Ordinance (Title 18, TMC); the Tukwila Subdivision Ordinance (Title 17, TMC); Shoreline Master Program designations and pre-designations, transportation concurrency regulations; stormwater, surface water treatment and quality, and surface water retention and detention design standards and ordinances (including the requirement of the NPDES permit effective February 2007); SEPA regulations and substantive SEPA policies.

Development of the Property shall not be subject, during the Term of this Agreement, to any amendments to, or replacements of, the Development Regulations listed above. These are rights vested under state law for purposes of RCW 36.70A.300 (3)(a). In accordance with Section 3.5 above, La Pianta will comply with the provisions of the SMP and the Floodplain Regulations in effect on the date of each complete development permit application.

5.2.1 Police Power/Pre-emption. Nothing herein relieves La Pianta of any obligations it may have during the Term to comply with state or federal laws or regulations of any kind, including but not limited to those related to storm, surface water and floodplain management. The proposed development shall not be vested against the application of development standards that are imposed by virtue of state or federal pre-emption of the City's regulatory authority. As provided by RCW 36.70B.170(4), the proposed development shall not vest against new development regulations to the extent the new regulations are required by a serious threat to public health and safety.

5.2.2 International Codes. The International Building Code, International Fire Code, and other construction codes in effect in the State of Washington as of the date of the filing of a complete application for a building permit shall apply to all new development and the redevelopment or modification of existing development.

5.2.3 Scope of Vesting. The vesting described herein shall apply for fifteen (15) years from the effective date of the annexation provided in Section 4.1 (the "Term" of the Agreement). For those development standards not specifically enumerated in this section or in Section 5.2.1, the Land Use Process approvals shall be governed by the City codes and standards in effect upon the date of complete application.

5.2.4 FEMA. La Pianta is obligated to comply with applicable FEMA National Flood Insurance Program regulations that are in effect at the date of any building, grading or clearing permit application.

5.2.5 Optional Regulations. During the Term of this Agreement, La Pianta may at its option develop the Property or portions thereof in accordance with new code provisions or generally applicable standards for that subject adopted after the date of execution of this Agreement, without the obligation to bring other portions of the Property into conformance with newly-adopted codes or regulations.

### 5.3 Transportation.

5.3.1 Concurrency Approval. Pursuant to TMC 9.48 and TMC 21.04, the City has determined that the Tukwila South Project, up to the Trip Ceiling (hereinafter defined), meets the City's standards for transportation concurrency approval and mitigates significant adverse impacts to the City's transportation system; provided that the Tukwila South Project must be developed in compliance with the terms of this Agreement, including compliance with requirements that La Pianta pay transportation impact fees applicable at the time of building permit issuance.

5.3.2 Trip Ceiling for Tukwila South Project. New development within the Tukwila South Project under this Agreement is limited to new development generating net new p.m. peak hour vehicle trips (inbound and outbound) (“Net New Trips”) not exceeding the Trip Ceiling. New development within the project exceeding the Trip Ceiling shall be subject to mitigation and concurrency requirements applicable at the time of application. The number of Net New Trips for the Project for which full mitigation and concurrency approval is established under this Agreement (the “Trip Ceiling”) shall be 10,166 Net New Trips from new development, comprising not more than 2,646 Net New Trips inbound to the Project and not more than 7,520 Net New Trips outbound from the Project. The methodology for determining Net New Trips for any phase of the Tukwila South Project (including assumed values for trip generation and percentages for trip reductions) shall be as set forth in the Transportation Impact Study incorporated in the Tukwila South EIS for the Tukwila South Project. Trip counts shall be estimated at the perimeter of the Project site; trips internal to the Project shall not count against the Trip Ceiling. Transportation impact fees shall apply only to the Net New Trips allocated to the proposed new development. Subject to the provisions of this Agreement, these 10,166 Net New Trips shall be reserved by the City for use by La Pianta hereunder for the Term of this Agreement. If La Pianta is in compliance with the requirements of this Section, La Pianta will only be required to produce a trip generation study for each development project in order to identify the associated Net New Trips for that project.

(a) Construction of Orillia Road Connector. La Pianta shall construct at its own expense a new 4-lane arterial connector between Orillia Road S. and Southcenter Parkway Extension (“Orillia Road Connector”). La Pianta shall complete construction of the Orillia Road Connector within 6 years of the time 7500 Net New Trips are generated by the Project (the “Orillia Road Completion Date”). After the Orillia Road Completion Date, no Net New Trips from the remainder of the Trip Ceiling may be used by La Pianta until this improvement is completed and accepted by the City. La Pianta shall, at its own cost, obtain all state, federal, and local permits and approvals required for the Orillia Road Connector. Subject to applicable laws and ordinances and the terms and conditions of this Development Agreement, the City agrees to cooperate with La Pianta in obtaining such permits and approvals. The Orillia Road Connector will consist of four lanes. A diagram of the Orillia Road improvement is attached hereto as Exhibit 10.

(b) If the Orillia Road Connection, required hereunder cannot be constructed within the time frame set out herein for reasons outside the control of La Pianta, then if La Pianta desires to continue with new development absent the construction of either of this improvement, La Pianta may, as an alternative to construction of the Orillia Road Connector (i) reduce or defer the amount of development proposed in the Project; (ii) implement Transportation Demand Management (TDM) strategies and/or (iii) construct other transportation system improvements (“Alternative Mitigation”). The City shall approve such Alternative Mitigation if, with such Alternative Mitigation in place, the Project passes a test under the City’s transportation concurrency requirements, applying the requirements of TMC 9.48 and the City’s traffic concurrency ordinance. Provided that under no circumstance can the cap of 10.3 million square feet of new building floor area (as that term is defined in Section 3.1) be exceeded by implementing TDM strategies or Alternative Mitigation measures.

5.3.3 Credit for Existing Trips. As described in the Tukwila South EIS, the existing development on the Project site generates a total of 1,241 p.m. peak hour vehicle trips (298 trips inbound and 943 trips outbound) (“Existing Development Trips”). Existing Development Trips shall not count against the Trip Ceiling, and are not subject to impact fees hereunder. Existing Development Trips may be used as a credit against trip generation from new development to the extent existing uses are permanently discontinued and/or existing structures are removed (“Credit Trips”). The existing development and Existing Development Trips are set forth in Exhibit 11. La Pianta may allocate available Credit Trips to the proposed new individual development, as development occurs.

5.3.4 No Additional Transportation Concurrency or SEPA Review Required. Since the City has determined compliance with the mitigation requirements identified in this Agreement satisfies transportation concurrency and substantive SEPA requirements for the Tukwila South Project, no additional SEPA review or transportation concurrency review shall be required for development that is within the Trip Ceiling for the Term of this Agreement, except additional SEPA review may occur as set forth in Section 6.2 below.

#### 5.4 Stormwater Regulation.

5.4.1 Description of Surface Water Control Facilities. The surface water control facilities for the Project shall include:

5.4.1.1 Parcel storm drains. Parcel storm drains will provide collection and conveyance of runoff from individual development parcels to a primary trunk storm drain within Southcenter Parkway from S. 180<sup>th</sup> Street to S. 200<sup>th</sup> Street (the “Trunk Storm Drain”).

5.4.1.2 Trunk storm drain. The Trunk Storm Drain will drain into two detention/water quality facilities - the North Basin (“North Facility”) and the South Basin (“South Facility”), and are more particularly described in Section 5.4.1.3. The North Basin will outflow into the S. 180<sup>th</sup> Street Pump station, which will route stormwater either to the Green River or into the P-17 Drainage Basin. The South Basin will outflow into the Green River. Emergency overflow of the South Basin will be discharged to Johnson Creek.

5.4.1.3 Water quality treatment and detention facilities. The stormwater control system includes two major water quality treatment and runoff control facilities (one each in the north and south portions of the site). Each facility shall be constructed as a combined water quality/detention ponds and sized to meet the water quality treatment and runoff control requirements for the area being served, including the Expansion Areas.

The South Facility shall provide at least Level 1 flow control as defined in the 2005 King County SWDM. The North Facility shall control the peak flow magnitude of runoff to at or below 75% of the designed pumping capacity of the S. 180<sup>th</sup> Street Pump Station. Both the North and South Facilities will be open ponds, and a preliminary design of the facilities are set forth in the Tukwila South EIS. The water quality/detention facilities will operate to

provide the required level of downstream peak flow control. The detention facilities will include a dead storage component for water quality and a live storage component representing the required detention volumes. The site development phasing may include phased construction of detention and water quality facilities or the use of temporary facilities for the early site development. Temporary use of the South Facility may also be used for site development within the North Basin, provided that such use does not exceed the capacity of the South Facility.

5.4.2 Stormwater Standards. This Section specifies the surface water management standards applicable to the Tukwila South Project during the Term of the Agreement, including the existing Segale Business Park and the proposed Expansion Areas.

5.4.2.1 Vested Design Standards for Surface Water Control Facilities. City of Tukwila Development Guidelines and Design and Construction Standards (Second Edition, Revision 1, 2005) and the 1998 King County SWDM provide the approved methods for the analysis and design of the surface water management components for the Project during the Term of this Agreement, except for the South Facility where conservation flow control is required under the 2005 King County SWDM, and except for those modifications listed in Table 1 (the "Stormwater Standards"). Where not otherwise specified, design standards of the 1998 King County SWDM will apply. The Stormwater Standards supersede any other applicable TMC, SWDM, and basin/water quality plan requirements during the Term of this Agreement. The Stormwater Standards include the Code Modifications specified in Table 1. Furthermore, some adjustments in the natural location of discharge (including minor inter-subbasin diversions of runoff) will be permitted as a result of changes in development area drainage collection, detention, treatment, and outfall locations. Other adjustments from the applicable SWDM, design standards or other applicable surface water management regulations may be requested during the site plan review process and evaluated in accordance with the criteria in TMC 18.41D.090. Nothing herein shall relieve La Pianta from any obligation to comply with applicable state and federal stormwater regulations currently in effect or adopted in the future.

**TABLE 1. Code Modifications**

SWDM Manual Section / TMC	SWDM Manual / TMC – Reference Text	Code Modifications	Rationale
SWDM Core Requirement #1	<p><b>Discharge at the Natural Location</b></p> <ul style="list-style-type: none"> <li>“All surface and storm water runoff from a proposed project that proposes to construct new, or modify existing drainage facilities must be discharged at the natural location so as not to be diverted onto, or away from, the adjacent downstream property...”</li> </ul>	<ul style="list-style-type: none"> <li>During development, minor changes to natural drainage shed boundaries and tributary areas are inevitable due to grading of roadways etc.</li> <li>Interpretation that existing discharge points to the Green River do not constitute separate “natural” discharge points</li> </ul>	<ul style="list-style-type: none"> <li>Other minor on-site sub-basin routing through detention ponds and discharges to on-site wetlands etc. are not formal variances from core requirement #1 but shall be reviewed during the preliminary plat technical review or the detailed engineering drainage review.</li> <li>The existing discharge points are man-installed culverts through the levee system. The Green River is a “managed” flow system and is a direct receiving water above and below the project site. Proposed future discharge points from post developed basins will not pose an adverse impact to the River.</li> </ul>
SWDM Core Requirement #3	<p><b>Flow Control</b></p> <ul style="list-style-type: none"> <li>Level 1 flow control identified for the Site area of Tukwila South</li> </ul>	<ul style="list-style-type: none"> <li>The Manual prescribed Level 1 flow control is not proposed for the North Basin runoff.</li> </ul>	<ul style="list-style-type: none"> <li>All runoff from the North Basin drains to City stormwater pump stations. The control of runoff and stormwater detention design is geared to the capacity of these existing pump stations. This is not specifically listed in the Manual as an allowed exemption.</li> </ul>
SWDM Core Requirement #8	<p><b>Basic Water Quality Treatment Design</b></p> <ul style="list-style-type: none"> <li>Water quality design flow per KCSWDM Sec. 6.2.1</li> </ul>	<ul style="list-style-type: none"> <li>Sizing methods utilizing the HSPF model from the project Master Drainage Plan</li> </ul>	<ul style="list-style-type: none"> <li>Would best meet the intent of the design standard by utilizing continuous simulation and historic data.</li> </ul>
TMC 14.30 Storm Water Management	<p><b>TMC 14.30.070 Standards requires that all activities be undertaken in accordance with the 1998 King County Surface Water Design Manual</b></p>	<ul style="list-style-type: none"> <li>All facilities would be in accordance with the 1998 King County Surface Water Design Manual, unless site constraints or other provisions such as LID require variation to design specifics.</li> </ul>	<ul style="list-style-type: none"> <li>To allow for maximum flexibility of the site, and acknowledging the site design particulars, adequate water quality and detention will be provided, but may vary from Manual design specifics.</li> </ul>

5.4.2.2 Grading Ordinance Design Standard Modifications. The following exceptions from Grading Ordinance No. 2062 shall apply to the Project during the Term of this Agreement:

- a. A significant tree survey and tree replacement plan are not required.
- b. Slope grading - Slope stability and slope grading limitations shall be evaluated within site development areas based on geotechnical evaluation and applicable codes.
- c. A vegetative restoration plan is not required except for the wetland mitigation portions of the NGPAs.
- d. Project notification and permanent NGPA signs are required.
- e. Points of drainage discharge are not limited to the nearest practicable drainageway - Required methods of managing natural discharge from springs, streams, or other natural sources are to be defined in the approved Master Stormwater Infrastructure Plan (hereinafter defined).
- f. Proposed modifications to surface water management provisions are governed by TMC 18.41D.090.
- g. Any construction activities, including site grading and building, during wet or dry seasons shall be allowed provided such activities meet with the stormwater quality requirements set forth in the NPDES Permit.

5.4.2.3 Impervious Area Limitations. In the “Development Area”, up to 85% of the developable area served by each stormwater facility may be covered with impervious surfaces, unless otherwise altered with City approval in the design phase. Expansion Areas described in Section 3.4 of the Development Agreement are included in the impervious area calculations. The sizing of surface water control facilities may be adjusted to reflect actual land use impervious areas in final design as indicated in the final approved Master Stormwater Infrastructure Plan.

5.4.2.4 TESCP and NPDES Requirements for all Construction. Temporary Erosion and Sedimentation Control Plans (“TESCPs”) will use SWDM Best Management Practices (“BMPs”) to minimize the extent of soils disturbance in contact with surface runoff during construction, and to maximize disturbed soil stabilization/cover practices to reduce erosion potential. This will apply to both dry and wet season construction. The TESCPs will be developed to comply with *Core Requirement No. 5 and Appendix D* of the SWDM, and Department of Ecology requirements as identified in the NPDES Permit. The TESCPs will be implemented in Project grading permits, which shall be submitted for City review and approval. Multiple TESCPs will be required to accommodate the phasing of site development. La Pianta shall comply with all project inspection requirements concerning surface water TESC plans that are set forth in the NPDES Permit.

5.4.3 Stormwater Infrastructure Development.

5.4.3.1 La Pianta Obligations. La Pianta shall implement the following stormwater mitigation conditions at its sole expense, in accordance with the timing requirements set forth below:

<b>Mitigation Measures</b>	<b>Timing</b>
1. A temporary stormwater treatment system shall be installed per the requirements of the 1998 King County SWDM during the first construction season. Prior to its completion, all stormwater from construction or cleared areas shall be retained on site.	During the first construction season.
2. Install a long-term construction stormwater polymer treatment system.	Constructed and operational prior to the start of any discharges from the site.
3. Construct the elevation of the separating berm between the Green River and the Green River Off Channel Habitat Area excavation to prevent Green River inflow to the excavation during the high flow season.	During the first construction season and prior to first wet season construction activities.
4. Install a sediment curtain or similar measures to minimize sediment release to the Green River when the separating berm between the Green River Off Channel Habitat Area and the river is removed.	Installation before breaching the berm adjacent to the off-channel habitat restoration project, during a time window defined in the Hydraulic Project Approval (HPA) for the project.
5. Prepare and implement the SAMP wetland mitigation plan to compensate for the filling of low-value wetlands.	Approval of SAMP plan by the Department of Community Development Director prior to the start of site mass grading during the first construction season; wetland mitigation construction will start the first year of construction and be complete during the third year of construction.
6. Prepare and implement a fisheries mitigation plan pursuant to the SAMP.	Approval of the SAMP plan by the Department of Community Development Director prior to the start of site mass grading during the first construction season; mitigation construction will start the first year of construction and be complete during the third year of construction.



7. Construct a temporary North Facility and the South Facility as part of the permanent stormwater management system.	Approval of the temporary North and permanent South Facilities plans shall occur prior to the start of site grading during the first construction season.
8. Prepare a Master Stormwater Infrastructure Plan.	Approval shall be obtained prior to start of utility work.

5.4.3.2 City Obligations. During construction of the Southcenter Parkway Project, the City shall install stormwater conveyance infrastructure, including the Trunk Storm Drain, within Southcenter Parkway to connect to the North Facility and the South Facility.

5.4.4 Master Stormwater Infrastructure Plan. Master Stormwater Infrastructure Plan. La Pianta shall prepare and submit as part of the Tukwila South Project’s application for a Clearing and Grading Permit, a Master Stormwater Infrastructure Plan for Tukwila South. The plan shall substantially comply with all the criteria of Section 5.4 of this Agreement including this Section 5.4.4, and be consistent with the Stormwater Standards of this Agreement and shall address the Tukwila South Project’s compliance with the eight core requirements and five special requirements specified in Section 1.1.2.4 of the 1998 King County Surface Water Design Manual - Large Site Drainage Review. The City shall review the Stormwater Infrastructure Plan and may require changes if necessary to ensure overall compliance. Issuance of the Clearing and Grading Permit shall be governed by Section 4.9 herein, and approval of a final Master Stormwater Infrastructure Plan shall not be required prior to issuance of the Clearing and Grading Permit.

5.4.5 Monitoring. Monitoring shall be performed as required under the 401 Certification and the NPDES permit for construction discharge issued and administered by the Washington Department of Ecology, and for Total Suspended Solids (“TSS”) as shown in Table 2.

**TABLE 2  
NORTH AND SOUTH FACILITIES  
TOTAL SUSPENDED SOLIDS (TSS) MONITORING PLAN**

<b>Plan Element</b>	<b>Implementation</b>	<b>Comments</b>
<b>Objective</b>	Report Facility water quality performance to the City as estimated by TSS monitoring (used as performance measure in the 1998 SWDM).	
<b>Monitoring Start for Each Facility</b>	Upon 70% buildout in the catchment served by each Facility	Begin monitoring when there is sufficient buildout to generate TSS, but not while active construction influence persists (construction discharge to be monitored under NPDES permit requirements).

<b>Plan Element</b>	<b>Implementation</b>	<b>Comments</b>
<b>Monitoring Frequency</b>	<ul style="list-style-type: none"> <li>○ Five times per year</li> <li>○ During storms exceeding ¼ inch of rain in 24 hours</li> <li>○ Four times during Oct 1 through March 30 (wetter season)</li> <li>○ One time during May 1 through Sept 30 (drier season)</li> </ul>	Collect samples under a range of conditions through the year, but concentrating on the wetter season when the majority of discharge volume will occur.
<b>Monitoring Duration</b>	Three consecutive years per Facility	
<b>Monitoring Method</b>	Grab samples at Facility outlet during active rainfall	Samples analyzed at a Washington Certified analytical laboratory
<b>Criterion</b>	TSS (cumulative average during the monitoring for each Facility) shall be lower than 20 mg/L	The 1998 King County SWDM's treatment goal is to remove 80% of TSS for flows or volumes up to and including the WW design flow or volume. Flows and volumes in excess of the WQ design flow or volume can be routed around the WQ facility or can be passed through untreated. The monitoring plan assumes that the inflow WQ will be between 30 to 100 mg/L TSS and therefore proposes a criterion of 20 mg/L (80% removal of the upper estimate).
<b>Reporting</b>	Once annually to the City	Within 60 days of last wet season result from the analytical laboratory.
<b>Response to Data</b>	The water quality performance data shall be provided to the City for its use in making future decisions on stormwater management. If the data indicates that the North and South Facilities are not functioning properly due to improper construction or lack of required maintenance by La Pianta, then La Pianta shall remedy such condition promptly at its expense.	

## 6. SEPA Compliance.

6.1 Prior SEPA Documents. Development within the Project areas as contemplated in this Agreement has been addressed and analyzed in prior environmental documents, including but not limited to environmental impact documents prepared for Tukwila's Comprehensive Plan and the Tukwila South environmental impact statement (collectively, the "SEPA Documents"). The SEPA documents shall constitute compliance to the fullest extent possible under SEPA for all Implementing Approvals. For purposes of this Agreement, an "Implementing Approval" means a land use approval or permit subsequent to the execution of this Agreement which implements or otherwise is consistent with this Agreement, including but not limited to plats, short plats, binding site plans, site development permits, grading and building permits and utility permits. Subject to the provisions of this Section, no further SEPA review is required, and no additional substantive SEPA mitigation measures are required beyond those set forth in this Agreement.

6.2 Further SEPA Review Limited. Except as set forth herein, no further SEPA review shall be required for the Project. The City may require additional SEPA review based only the following conditions:

- (a) An Implementing Approval or requested modification materially exceeds the Project Envelope (hereinafter defined) and governing Development Regulations; or
- (b) The City concludes (pursuant to SEPA, SEPA Rules, and City SEPA regulations) that substantial changes have been made to the Tukwila South Project so that, as mitigated, it is likely to have significant adverse impacts not previously analyzed in a SEPA environmental document, and which impacts cannot be mitigated below a level of significance by applicable local, state or federal regulations; or
- (c) The City concludes (pursuant to SEPA, SEPA Rules, and City SEPA regulations) that there is new information indicating probable significant adverse environmental impacts of the Tukwila South Project not previously analyzed in a SEPA environmental document which cannot be mitigated below a level of significance by applicable local, state or federal regulations.

For purposes of this Agreement, "Project Envelope" means the level and range of development (including maximum structure height, floor area, bulk and use) analyzed within one of the alternatives reviewed in the Tukwila South EIS and any subsequent addenda or SEPA Documents which may be issued by the City. The Project Envelope includes all of the physical aspects of a general development plan, individual project, or other on-site or off-site physical improvements as disclosed and analyzed in

the Tukwila South EIS. As used herein, “materially exceeds” means the proposal, as mitigated, is likely to have significant adverse impacts not previously analyzed in the SEPA Documents or any other SEPA environmental document prepared for property within the Tukwila South Project area and which impacts cannot be mitigated below a level of significance by applicable local, state or federal regulations.

6.3 Written Notice. If the City determines at any time during the Term that it intends to require additional SEPA review for any Implementing Approval, the City shall give La Pianta written notice thereof and provide La Pianta an opportunity to modify the Implementing Approval application so as to render such additional SEPA review unnecessary.

## 7. Dispute Resolution Process.

7.1 The parties shall use their best efforts to resolve disputes arising out of or related to this Agreement using good faith negotiations by engaging in the following dispute escalation process should any such disputes arise:

- (a) Level One – La Pianta’s project manager and a City staff member appropriate to the nature of the dispute (selected from among the City’s Deputy Director of DCD, Building Official, Fire Marshall or City Engineer, or a designee of any of the foregoing identified by the Administration)) shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) calendar days after referral of that dispute to Level One, either party may refer the dispute to Level Two.
- (b) Level Two – La Pianta’s principal and the City’s Community Development Director or Public Works Director (or a designee of either of the foregoing identified by the Administration) shall meet to discuss and attempt to resolve the dispute, in a timely manner. If they cannot resolve the dispute within fourteen (14) business days after referral of that dispute to Level Two, either party may refer the dispute to Level Three.
- (c) Level Three – La Pianta’s principal (or designee) and the Mayor and the City Administrator (or the City Administrator’s designee) shall meet to discuss and attempt to resolve the dispute in a timely manner. Counsel for the parties shall be permitted to attend Level Three meetings.

7.2 Except as otherwise specified in this Agreement, in the event the dispute is not resolved at Level Three within fourteen (14) calendar days after referral of that dispute to Level Three, either party may refer the dispute to binding arbitration, as set

forth herein. At all times prior to resolution of the dispute, the parties shall continue to perform and make any required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute.

7.3 In the event that a dispute is referred to binding arbitration, the parties agree to the following procedure:

- (a) Binding arbitration between the parties pursuant to this Section shall be governed by the rules and procedures set forth in this Section.
- (b) Within seven (7) calendar days of the date the dispute is referred to binding arbitration, each party shall provide the other party with the names of three neutral arbitrators having significant experience in the subject matter of the dispute and in arbitrating disputes. The parties will thereafter attempt in good faith to select an arbitrator from this panel of six candidates.
- (c) If the parties to the dispute are unable to agree upon a single arbitrator within twenty-eight (28) calendar days of the date the dispute is referred to binding arbitration, then each party shall designate one arbitrator from its panel of three, the two arbitrators selected in that manner will choose a third arbitrator from among the remaining panel members, and this third arbitrator so selected would act as the single arbitrator for the dispute.
- (d) Upon selection of the arbitrator, said arbitrator shall determine the question(s) raised within fourteen (14) calendar days, unless a different period of time is otherwise agreed upon by the parties in writing, provided that issues of arbitrability may not be decided by the arbitrator. Said arbitrator shall then give both parties reasonable notice of the time (which time shall be within thirty (30) calendar days of the arbitrator's determination of the questions raised, unless a different period of time is otherwise agreed upon by the parties), and place of hearing evidence and argument; take such evidence as the arbitrator deems relevant, with witnesses required to be sworn; and hear arguments of counsel or others.
- (e) After consideration of all evidence, testimony and arguments, said single arbitrator shall, within thirty (30) days of completion of the hearing, promptly state such decision or award in writing. Said decision or award shall be final, binding, and conclusive on all parties to the arbitration when delivered to them, except as provided in Subsection 7.3(h). Until the arbitrator issues the first decision or award upon any question submitted for the arbitration, performance

under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

- (f) La Pianta and the City shall share equally the compensation, costs, and expenses of the arbitrators, but each shall be responsible for their own fees and expenses of its own witnesses, exhibits, and counsel. La Pianta and the City shall pay the compensation, costs and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators in equal shares.
- (g) The arbitrator shall have the authority to enter awards of equitable remedies consistent with the obligations of the City and La Pianta under this Agreement.
- (h) The arbitrator shall not have the authority to enter any award, the satisfaction of which by the party to be bound, would be impermissible under any law, regulation, or funding agreement to which the bound party is subject. The determination of any such impermissibility shall be made by a court of competent jurisdiction within the State of Washington and under the laws of the State of Washington. Any such determination shall be appealable.

7.4 This dispute resolution process will not apply to the following disputes: (i) disputes regarding the accounting of Project revenues and City expenditures; and (ii) disputes concerning the letters of credit. Any disputes regarding revenues/expenditures must utilize the dispute resolution process outlined in Section 4.8.3. Issues of arbitrability of a dispute shall be determined by the Presiding Judge, King County Superior Court.

7.5 Nothing in this Section 7 shall preclude either party from seeking injunctive or equitable relief prior to the initiation or completion of this dispute resolution process.

**8. Modifications to Agreement.** This Agreement contains all terms, conditions and provisions agreed upon by the parties hereto, and shall not be modified except by written amendment executed by both parties. Amendments to this Agreement that materially modify the intent and policy of the Agreement must be approved by the City Council. Other amendments may be approved by the City Mayor.

**9. General Provisions.**

9.1 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington.

9.2 Recording. This Agreement or a memorandum thereof shall be recorded against the Tukwila South Property as a covenant running with the land and shall be binding on La Pianta, its heirs, successors and assigns until this Agreement expires on its own terms pursuant to Section 5.2.3.

9.3 Agreement Binding on Successors; Respective Obligations of La Pianta and Parcel Builders. This Agreement shall be binding upon and shall inure to the benefit of the heirs, successors and assigns of La Pianta, and upon the City, except as limited and conditioned in this Agreement. La Pianta's general duties and obligations under this Agreement for the Tukwila South Project are not intended to be delegated to Parcel Builders unless a particular duty or obligation, specifically and directly related to the Development Parcel in question, is expressly imposed by the City as a term or condition of an Implementing Approval for that Parcel.

9.4 Parcel Builders' Obligations; Notice to City re Parcel Builder; Declaration of Covenants for Tukwila South Project. The parties acknowledge that development of the Tukwila South Project may involve transfer of undeveloped or partially-developed development parcels in the Tukwila South Property or the Expansion Areas, each a "Development Parcel," to one or more Parcel Builders. Those Parcel Builders will in turn own, develop and/or occupy portions of the Tukwila South Property and buildings thereon as part of the Tukwila South Project. Parcel Builders shall be obligated with respect to all conditions of Implementing Approvals applicable to their respective Development Parcels, unless such an obligation is specifically identified in this Agreement or in the Implementing Approval as that of La Pianta. For purposes of this Agreement, a "Parcel Builder" shall mean an owner or lessee of all or a portion of the Development Area authorized for development pursuant to this Agreement, or a successor or assign of an owner or lessee, who develops and/or occupies portions of the Tukwila South Property or an Expansion Area, or develops and/or occupies buildings thereon as part of the Tukwila South Project, provided however, that building tenants shall be excluded from this definition.

9.5 Interpretation; Severability.

9.5.1 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 et seq., and this Agreement shall be construed to exclude from the scope of this Agreement and to reserve to the City, only that police power authority which is prohibited by law from being subject to a mutual agreement with consideration. If a Tukwila South Development Standard conflicts with an otherwise applicable provision of the Tukwila Municipal Code, the Tukwila South Development Standard shall control.

9.5.2 Severability. If any provisions of this Agreement are determined to be unenforceable or invalid in a final decree or judgment by a court of law, then the remainder of this Agreement not decreed or adjudged unenforceable or invalid shall remain unaffected and in full force and effect. In that event, this Agreement shall thereafter be modified, as provided immediately hereafter, to implement the intent of the parties to the maximum extent allowable under law. The parties shall diligently seek to agree to modify the Agreement consistent with the final court determination, and no party shall undertake any actions inconsistent with the intent of this Agreement until the modification to this Agreement has been completed. If the parties do not mutually agree to modifications within forty-five (45) days after the final court determination, then either party may initiate the arbitration process under Section 7 for determination of the modifications that will implement the intent of this Agreement and the final court decision.

9.6 Authority. Each party respectively 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.

9.7 Exhibits and Appendices Incorporated. Exhibits 1 through 11 are incorporated herein by this reference as if fully set forth.

9.8 Headings. The headings in this Agreement are inserted for reference only and shall not be construed to expand, limit or otherwise modify the terms and conditions of this Agreement.

9.9 Time of the Essence. Time is of the essence of this Agreement and of every provision hereof. Unless otherwise set forth in this Agreement, the reference to "days" shall mean calendar days. If any time for action occurs on a weekend or legal holiday in the State of Washington, then the time period shall be extended automatically to the next business day.

9.10 Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein and this Agreement supersedes all previous agreements, oral or written.

9.11 Default and Remedies.

9.11.1 Cures Taking More Than Thirty Days. 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 any 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 such time period and the diligent prosecution to completion of the cure shall be deemed a cure.

9.11.2 Rights of Non-Defaulting Party. 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.

9.11.3 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.

9.12 Relief Against Defaulting Party or Portion of Tukwila South Property. In recognition of the anticipated transfers by La Pianta of parcels of the Tukwila South Property to Parcel Builders, remedies under this Agreement shall be tailored to the Tukwila South Property or parties as provided below.

9.12.1 Relief Limited to Affected Development Parcel. Any claimed default shall relate as specifically as possible to the portion or Development Parcel of the Tukwila South Property involved, and any remedy against any party shall be limited to the extent possible to the owners of such portion or Development Parcel of the Tukwila South Property.

9.12.2 Relief Limited to Affected Owner. To the extent possible, the City shall seek only those remedies that do not adversely affect the rights, duties or obligations of any other nondefaulting owner of portions of the Tukwila South Property under this Agreement, and shall seek to utilize the severability provisions set forth in this Agreement.

9.13 Term. The Term of this Agreement shall be as set forth in Section 5.2.3 above. Until such time as the City revises the comprehensive plan or development regulations which apply to Tukwila South during the Term of this Agreement, the goals of the comprehensive plan and the development regulations to which the project vests will continue to apply to the Tukwila South Property following the expiration of this Agreement.

9.14 No Third-Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement. Parcel Builders in Tukwila South shall be deemed to be successors under this provision.

9.15 Interpretation. This Agreement has been reviewed and revised by legal counsel for both parties, and no presumption or rule construing ambiguity against the drafter of the document shall apply to the interpretation or enforcement of this Agreement.

9.16 Notice. All communications, notices, and demands of any kind that a party under this Agreement requires or desires to give to any other party shall be in writing and either (i) delivered personally, (ii) sent by facsimile transmission with an additional copy mailed first class, or (iii) deposited in the U.S. mail, certified mail postage prepaid, return receipt requested, and addressed as follows:

If to the City: City of Tukwila  
6200 Southcenter Boulevard  
Tukwila, Washington 98188  
Attn: Mayor's Office and  
Director of Public Works and  
Director of Community Development

If to La Pianta: La Pianta LLC  
P.O. Box 88028  
Tukwila, Washington 98138-2028  
Attn: Mr. Mark A. Segale

Notice by hand delivery or facsimile shall be effective upon receipt, provided that notice by facsimile shall be accompanied by mailed notice as set forth herein and shall be evidenced by a machine-printed confirmation of successful transmission. If deposited in the mail, certified mail, return receipt requested, notice shall be deemed delivered forty-eight (48) hours after deposited. Any party at any time by notice to the other party may designate a different address or person to which such notice or communication shall be given.

9.17 Delays. If either party is delayed in the performance of its obligations under this Agreement due to Force Majeure, then performance of those obligations shall be excused for the period of delay. For purposes of this Agreement, economic downturns, loss in value of La Pianta assets, inability to obtain or retain financing, do not constitute a force majeure event.

9.18 Payments. Any payments made pursuant to the terms of this Agreement shall be made within thirty days of invoice, unless otherwise specified in the Agreement. Any late payments shall be subject to interest charges at the rate of 12% per annum.

9.19 Indemnification. Except as otherwise specifically provided elsewhere in this Agreement and any exhibits hereto, each party shall protect, defend, indemnify and hold harmless the other party and their officers, agents, and employees, or any of them,

from and against any and all claims, actions, suits liability, loss, costs, expenses, and damages of any nature whatsoever, which are caused by or result from any negligent act or omission of the party's own officers, agents, and employees in performing services pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against a party, the party whose negligent action or omissions gave rise to the claim shall defend the other party at the indemnifying party's sole cost and expense; and if final judgment be rendered against the other party and its officers, agents, and employees or jointly the parties and their respective officers, agents, and employees, the parties whose actions or omissions gave rise to the claim shall satisfy the same; provided that, in the event of concurrent negligence, each party shall indemnify and hold the other parties harmless only to the extent of that party's negligence. The indemnification to the City hereunder shall be for the benefit of the City as an entity, and not for members of the general public.

9.20 Tukwila South Project is a Private Undertaking. The Tukwila South Project is a private development and the City has no interest therein except as authorized in the exercise of its governmental functions.

In Witness Whereof, the parties have caused this Agreement to be executed, effective on the day and year set forth on the first page hereof.

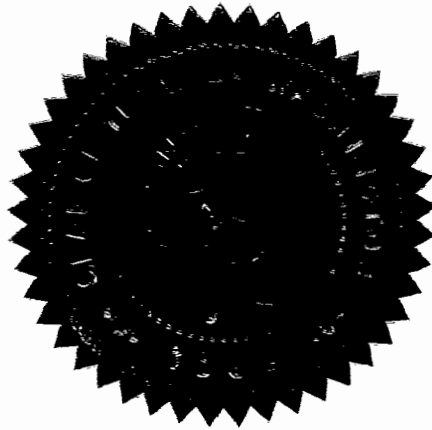
**CITY OF TUKWILA, a Washington municipal corporation**

By: *Jim Haggerton*  
Jim Haggerton, Mayor

Date: 6-10-09

ATTEST:

*Christy O'Flaherty*  
Christy O'Flaherty, City Clerk



APPROVED AS TO FORM:

*[Signature]*  
City Attorney

**La Pianta LLC, a Washington limited liability corporation**

By: Metro Land Development, Inc.,  
Its: Manager

By: *M.A. Segale*  
M.A. Segale, President

Date: 6-10-09

**Exhibits 1 to 11 of the Development Agreement  
adopted by Ordinance 2233 can be found in a  
separate Laserfiche file titled:**

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**Ord 2233 Exhibits 1 to 11**