



Pierce County

Department of Facilities Management

1102 Broadway  
Columbia Bank Bldg., Suite 302  
Tacoma, Washington 98402  
(253) 798-7223 • FAX (253) 798-7401  
<http://www.co.pierce.wa.us/>



BRET M. CARLSTAD  
Director

**June 4, 2018**

Mark Howlett, P.E. Public Works Director/City Engineer  
City of Milton  
1000 Laurel Street  
Milton, WA 98354

RE: Ballot Drop Box Property Use Agreement: City of Milton/Pierce County

Please find enclosed a fully signed original of the Ballot Drop Box Property Use Agreement for your files. I also sent you a pdf of the Agreement via email today.

Thanks again for your efforts,

Rick Tackett  
Real Property Management  
(253) 798-6200

enc.



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

This Ballot Drop Box Property Use Agreement ("Agreement") is made and entered into as of the Effective Date (defined in Section 22 below) by and between CITY OF MILTON, a Washington municipal corporation ("City of Milton") and PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington ("Pierce County"). City of Milton and Pierce County may hereinafter be referred to collectively as "Parties" or individually as a "Party."

### **RECITALS**

WHEREAS City of Milton owns the real property consisting of land and improvements collectively and commonly known as Milton Activity Center, 1000 Laurel Street, Milton, WA and legally described in attached **Exhibit A** ("Subject Property"); and

WHEREAS Pierce County has secured funds in its 2018 budget to purchase, install, use and maintain a ballot drop box of the type and nature schematically depicted in attached **Exhibit B** ("Drop Box") in various locations throughout Pierce County to collect ballots cast by voters in general and special elections conducted by the Pierce County Auditor pursuant to Chapter 29A of the Revised Code of Washington; and

WHEREAS City of Milton desires to make available to Pierce County for the installation, use and maintenance of the Drop Box that certain portion of the Subject Property graphically depicted in attached **Exhibit C** ("Premises"); and

WHEREAS the Parties agree that it is in their mutual interest and in the best interest of the general public that a Drop Box be located upon the Subject Property to encourage and facilitate voting by local residents.

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

### **A G R E E M E N T**

- 1. Incorporation of Recitals.** The above recitals are true and correct and are incorporated herein by this reference as if fully set forth.
- 2. Grant of Use Right.** City of Milton hereby grants to Pierce County, and Pierce County hereby accepts from City of Milton, the right to use the Subject Property and Premises upon the terms, covenants and conditions set forth in this Agreement.

**3. Use Period.** Pierce County's right to use the Subject Property and Premises under this Agreement shall commence on the Effective Date and expire midnight on December 31, 2028 ("Use Period") and shall thereafter automatically renew for successive periods of one (1) year each beginning January 1 and ending December 31 (each a "Renewal Period") unless earlier terminated as provided hereinbelow.

**4. Acceptance.** Pierce County has inspected the Subject Property and Premises and has determined to its complete satisfaction the same are suitable for the uses described in Section 5.1 below.

**5. Use of Subject Property and Premises; Change of Location/Removal.**

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

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

**5.3 Change of Location/Removal.** If during the Use Period or any Renewal Period City of Milton determines the Drop Box is no longer compatible with its use and occupancy of the Subject Property, it may require Pierce County to either: (a) move the Drop Box to a newly-designated location upon the Subject Property, whereupon City of Milton shall reimburse Pierce County for the documented, reasonable cost of such move and for restoring the previous location to the condition required in Section 17 below. Upon completion of such move, the newly-designated location shall for all purposes hereunder become the "Premises" and Exhibit C shall be amended as necessary to depict the same; or (b) remove the Drop Box from the Subject Property, whereupon City of Milton shall reimburse Pierce County for the documented, reasonable cost of moving the box to a new location and for restoring the previous location to the condition required in Section 17 below. The foregoing notwithstanding, Pierce County shall not be required to move or remove the Drop Box during the six (6) month period between June 1 and November 30.

**6. Pierce County's Responsibilities.** In addition to any other responsibilities expressly set forth in this Agreement, Pierce County agrees to:

**6.1 Installation.** Install the Drop Box in good and workmanlike manner in accordance with the manufacturer's specifications and with all laws, rules, regulations, ordinances, permits and requirements of all governmental agencies having jurisdiction.

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

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

**7. City of Milton's Responsibilities.** In addition to any other responsibilities expressly set forth in this Agreement, City of Milton agrees to:

**7.1 Exercise Due Care.** Exercise due care and caution with respect to the Drop Box while conducting its business operations in and about the Subject Property and shall, at its sole cost and expense, repair any and all damage to the Drop Box caused by the negligent or willful conduct of its elected or appointed officials, contractors, servants, agents or employees.

**7.2 Notification.** Notify Pierce County immediately if City of Milton becomes aware that: (a) the Drop Box has been breached, damaged, vandalized or defaced in any way; and/or (b) any threat is made with respect to the Drop Box.

**7.3 Public Access.** Ensure the general public has reasonable access to the Drop Box twenty-four (24) hours per day, seven (7) days per week for purposes of casting election ballots.

**8. Indemnification.** Pierce County shall indemnify, defend, and hold City of Milton harmless from all claims, liabilities, costs, attorney fees and expenses of any kind, type or nature whatsoever arising out of or in any way relating to: (a) Pierce County's use of the Subject Property and/or the Premises pursuant to this Agreement, specifically including, without limitation, any use of and/or entry onto the Subject Property by any member of the public in relation to the Drop Box; (b) any activity, work or thing done, permitted or suffered by Pierce County in or about the Subject Property and/or the Premises; (c) any breach or default in the performance of any obligation to be performed by Pierce County under this Agreement; or (d) any act or omission of Pierce County or of its elected or appointed officials, contractors, servants, agents or employees caused by negligence or willful misconduct and then only to the extent of its or their

proportionate share of liability. Pierce County's obligation to indemnify City of Milton under this Section 8 includes an obligation to indemnify for losses resulting from death or injury to Pierce County's elected or appointed officials, contractors, servants, agents or employees, and Pierce County hereby waives any and all immunities it now has or hereafter may have under Title 51 RCW (Industrial Insurance), or other worker's compensation, disability benefit or other similar act that would otherwise be applicable in the case of such a claim and further acknowledges that such waiver was mutually negotiated by the Parties as required by RCW 4.24.115.

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

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

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

To City of Milton: City of Milton  
Attn: Shanna Styron-Sherrell, Mayor  
Mark Howlett, PE, Public Works Director/City Engineer  
1000 Laurel Street  
Milton, WA 98354  
Telephone: (253) 922-8733 (main)  
253-517-2705 (Styron-Sherrell)  
(253) 831-4271(Howlett)  
Email: mhowlett@cityofmilton.net (Howlett)  
sstyronsherrell@cityofmilton.net (Styron-Sherrell)

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

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

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

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

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

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

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

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

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

**17. Vacation of Premises.** Upon expiration or earlier termination of the Agreement, Pierce County shall: (a) remove the Drop Box and any associated mounting hardware from the Premises; and (b) restore the Premises to substantially the same condition existing on the Effective Date, reasonable wear and tear excepted, and leave the same in a neat, clean, safe and sanitary condition. If Pierce County fails to complete

the removal and/or restoration required under this Section 17, City of Milton may cause such work to be completed and charge the documented, reasonable cost thereof to Pierce County.

**18. Cost of Performance.** Except as otherwise expressly provided in this Agreement, all covenants and agreements to be performed by either Party shall be performed at that Party's sole cost and expense.

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

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

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

- Exhibit A** - Legal Description of Subject Property
- Exhibit B** - Schematic Depiction of Drop Box
- Exhibit C** - Graphic Depiction of Premises

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

***[SIGNATURES & ACKNOWLEDGEMENTS APPEAR ON FOLLOWING PAGES]***



**PIERCE COUNTY SIGNATURE PAGE**

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

APPROVED AS TO LEGAL FORM ONLY:

By: DHP 4/6/18  
Deputy Prosecuting Attorney Date

RECOMMENDED:

By: Henry Robinson 5/24/18  
Director, Budget and Finance Date

By: Cindy Hartman for Julie Anderson 5/18/18  
Pierce County Auditor Date

FINAL ACTION:

By: [Signature] 5/29/18  
Pierce County Executive Date

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

THIS IS TO CERTIFY that on this 29 day of May, 2018, before me personally appeared BRUCE F. DAMMEIER, to me known to be the Executive of Pierce County, Washington, a municipal corporation and political subdivision of the state of Washington, described in and that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument on behalf of said municipal corporation.

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

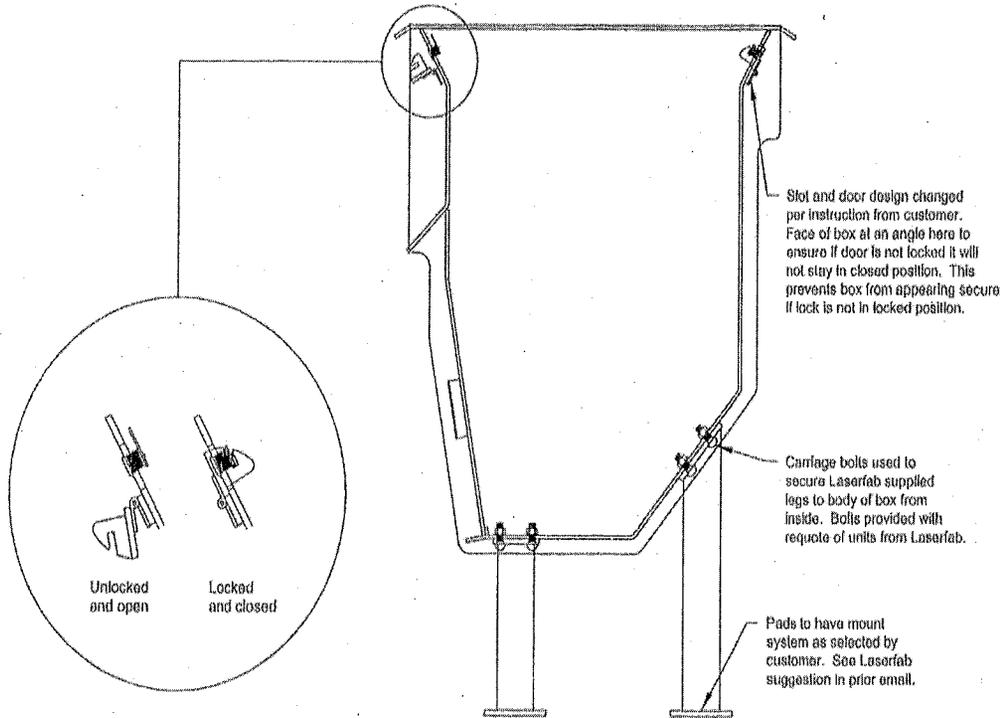
Constance B Perry  
Name: Constance B Perry  
Notary Public in and for the State of  
Washington, residing at: Tacoma  
My Appointment Expires: 4-16-2020



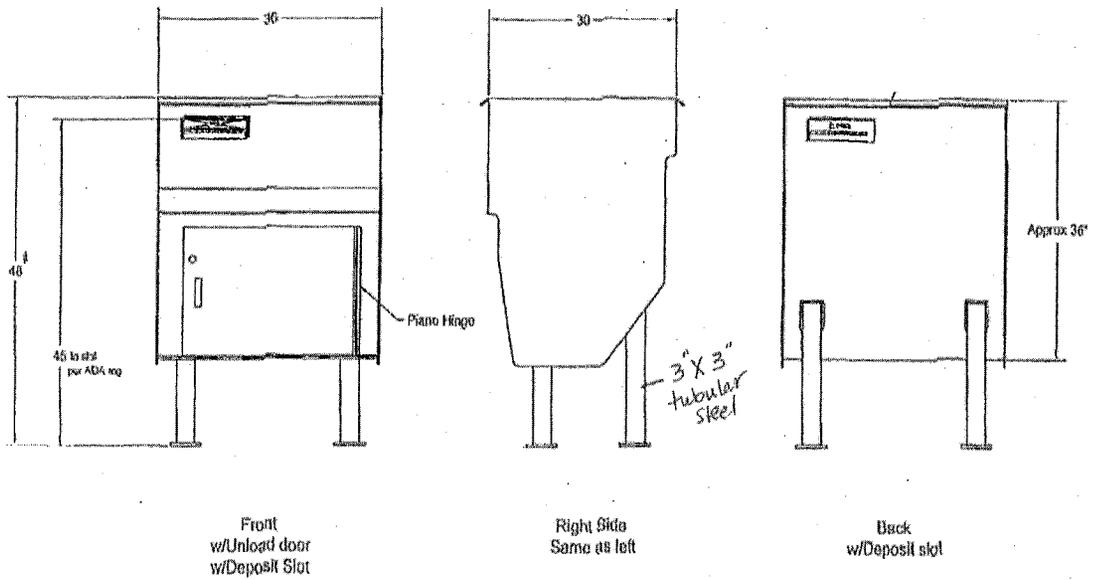
**EXHIBIT A**  
**(Legal Description of Subject Property)**

Section 05 Township 20 Range 04 Quarter 42 MILTON: MILTON L 8 THRU 10 B 11  
(TOWN HALL COMPLEX "P") (DCWJES8-9-83)

## EXHIBIT B (Schematic Depiction of Drop Box)



**EXHIBIT B**  
**(Schematic Depiction of Drop Box - Continued)**



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

**EXHIBIT B**  
**(Schematic Depiction of Drop Box - Continued)**

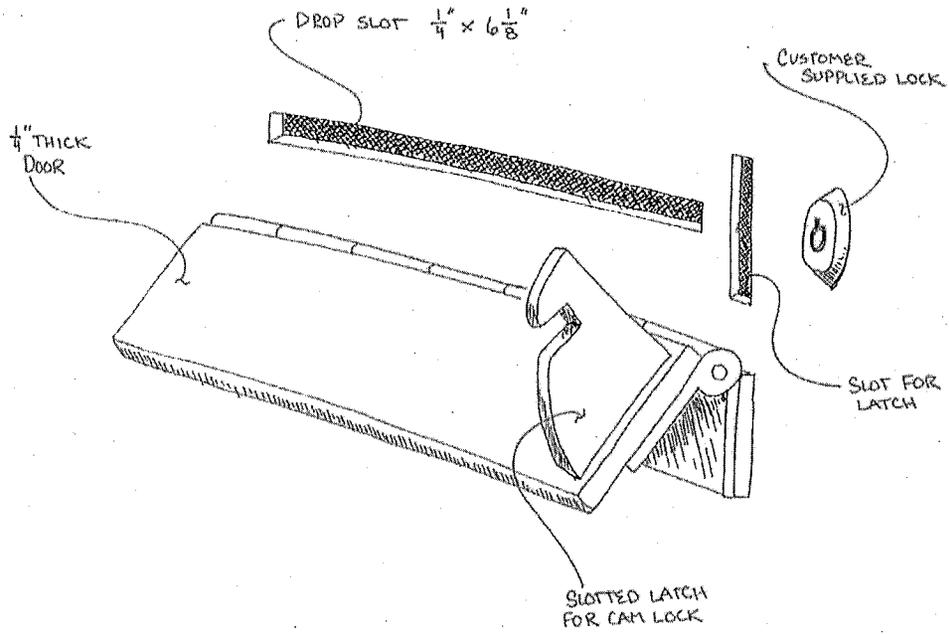


EXHIBIT C  
(Graphic Depiction of Premises)

