

**Town Hall Meeting Room  
3715 Bridgeport Way West**

- 6:30 pm     **1.        CALL REGULAR MEETING TO ORDER**
  - 2.        ROLL CALL**
  - 3.        PLEDGE OF ALLEGIANCE – Councilmember Belleci**
  - 4.        APPROVAL OF MINUTES – November 7, 2016**
  - 5.        APPROVAL OF AGENDA**
  - 6:35 pm     **6.        PRESENTATION**  
              ▪ **Senator Steve O’Ban and Representative Christine Kilduff – 28<sup>th</sup> Legislative District**
  - 6:55 pm     **7.        PUBLIC COMMENTS** – (At this time, citizens have three minutes to address the Council on any matter not scheduled for Public Hearing or Council Consideration. State law prohibits the use of this forum to promote or oppose any candidate for public office or ballot measure. Public comments are limited to three minutes. Please provide your name and address for the record.)
  - 7:00 pm     **8A-        CONSENT AGENDA**  
**8D.        Motion: Approve or Amend the Consent Agenda as Proposed**
- The Consent Agenda consists of items considered routine or have been previously studied and discussed by Council and for which staff recommendation has been prepared. A Councilmember may request that an item be removed for the Consent Agenda so that the Council may consider the item separately. Items on the Consent Agenda are voted upon as one block and approved with one vote.

  - A. **Receive and File: Payroll and Claims.**
  - B. **Receive and File: Undergrounding Report.**
  - C. **Adopt a resolution approving an agreement between the City of University Place and University Place School District for a School Resource Officer.**
  - D. **Adopt a resolution approving a Lease of the University Place Senior Center to Community Connection Place, a Washington nonprofit corporation, and federal tax-exempt charitable organization.**
- 7:05 pm     **9.        COUNCIL COMMENTS/REPORTS**
  - RECESS TO STUDY SESSION** – (At this time, Council will have the opportunity to study and discuss business issues with staff prior to its consideration. Citizen comment is not taken at this time; however, citizens will have the opportunity to comment on the following item(s) at future Council meetings.)
  - 7:10 pm     **10.       UNIVERSITY PLACE REFUSE**  
**(FIRST STUDY FOR PASSAGE OF AN ORDINANCE.)**
  - 7:25 pm     **11.       PUBLIC WORKS CODE AMENDMENTS**  
**(FIRST STUDY FOR PASSAGE OF AN ORDINANCE.)**
  - 8:10 pm     **12.       LOT 12 PURCHASE AND DEVELOPMENT AGREEMENT**  
**(FIRST STUDY FOR ADOPTION OF A RESOLUTION.)**
  - 9:00 pm     **13.        ADJOURNMENT**

\*PRELIMINARY CITY COUNCIL AGENDA

December 5, 2016  
Regular Council Meeting

December 19, 2016  
Regular Council Meeting - CANCELLED

January 2, 2017  
HOLIDAY – New Year's Day

January 3, 2017  
Regular Council Meeting

**Preliminary City Council Agenda subject to change without notice\***  
Complete Agendas will be available 24 hours prior to scheduled meeting.  
To obtain Council Agendas, please visit [www.cityofup.com](http://www.cityofup.com).

**American Disability Act (ADA) Accommodations Provided Upon Advance Request**  
**Call the City Clerk at 253-566-5656**

# APPROVAL OF MINUTES

**CITY OF UNIVERSITY PLACE  
DRAFT MINUTES  
Regular Meeting of the City Council  
Monday, November 7, 2016  
City Hall, Windmill Village**

**1. CALL REGULAR MEETING TO ORDER**

Mayor Figueroa called the Regular Meeting to order at 6:30 p.m.

**2. ROLL CALL**

Roll call was taken by the City Clerk as follows:

Councilmember Belleci	Present
Councilmember Grassi	Present
Councilmember McCluskey	Present
Councilmember Nye	Present (Left at 7:45 p.m.)
Councilmember Worthington	Present
Mayor Pro Tem Keel	Excused
Mayor Figueroa	Present

Staff Present: City Manager Sugg, City Attorney Victor, Executive Director/ACM Faison, Deputy Finance Director Blaisdell, Public Works, Parks & Facilities Director Cooper, and City Clerk Genetia.

**MOTION:** By Councilmember Belleci, seconded by Councilmember Grassi, to excuse the absence of Mayor Pro Tem Keel.

**The motion carried.**

**3. PLEDGE OF ALLEGIANCE**

Councilmember Nye led the Pledge of Allegiance.

**4. APPROVAL OF MINUTES**

**MOTION:** By Councilmember Belleci, seconded by Councilmember McCluskey, to approve the minutes of October 17, 2016 as submitted.

**The motion carried.**

**5. APPROVAL OF AGENDA**

**MOTION:** By Councilmember Belleci, seconded by Councilmember Grassi, to approved the agenda.

**The motion carried.**

**6. PRESENTATION**

Certificate of Achievement for Excellence in Financial Reporting (CAFR) – City Manager Sugg called on Deputy Finance Director Blaisdell to accept the CAFR Award on behalf of the City. The Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management.

**7. PUBLIC COMMENTS** – The following individual provided public comment: *David Harrowe, 4616 79<sup>th</sup> Avenue Court West.*

**8. CONSENT AGENDA**

**MOTION:** By Councilmember Belleci, seconded by Councilmember Grassi, to approve the Consent Agenda as follows:

- A.** Receive and File: Payroll for the period ending 10/15/16, dated 10/20/16, in the total amount of Two Hundred Four Thousand Nine Hundred Thirty and 43/100 Dollars (\$204,930.43); Claims dated 10/31/16, check nos. 51978889 through 51978946, and wire no. 10192016, in the total amount of One Million Three Hundred Four Thousand Nine Hundred Thirty-Two and 07/100 Dollars (\$1,304,932.07).
- B.** Adopt a resolution adding Community Connection Place, Inc. as a City Partner under the City's Public Forum Policy. **(RESOLUTION NO. 820)**
- C.** Adopt a resolution requesting that the City Planning Commission review a City-initiated proposed rezone of the vacant residential parcels at the corner of 54<sup>th</sup> and Bridgeport Way, fronting Bridgeport Way and immediately adjacent to the U.P. Care Center to allow commercial use. **(RESOLUTION NO. 821)**

**The motion carried.**

**9. PUBLIC HEARING: ONE PERCENT PROPERTY TAX LEVY**

Staff Report – Deputy Finance Director Blaisdell presented the proposed ordinance that will impose a one percent (1%) increase in the regular property tax levy for 2017 in the amount of \$32,710.46, an average increase of 0.7893% from the previous year. The proposed 2017-2018 budget presented to Council on October 3, 2016 assumes a 1% increase in the City's ad valorem property tax in each year of the biennial budget.

Public Hearing - The following individuals provided comment on the matter: *David Harrowe, 4616 79<sup>th</sup> Avenue Court West; and Dennis Flann, 2623 Lemons Beach Road.*

**10. ONE PERCENT PROPERTY TAX LEVY**

Council Consideration - **MOTION:** By Councilmember Worthington, seconded by Councilmember McCluskey, to pass an ordinance relating to ad valorem property taxes, establishing the amounts to be raised in 2017 by taxation on the assessed valuation of property in the City of University Place, and setting the levy for the year 2017.

**The motion passed 5 to 1. Councilmember Nye voted no.**

**11. PUBLIC HEARING: PROPOSED 2017-2018 BIENNIAL BUDGET**

Staff Report - Deputy Finance Director Blaisdell provided a summary of the City's 2017-2018 revenue estimates and proposed biennial budget. A contingency amount of \$150,000 has been included in the 2017 budget for Council goals and priorities to be discussed and allocated during the Council retreat in January 2017. City reserves are 35% in 2017 and 48% in 2018 when calculated using the total operating budget – those numbers exceed the Council adopted range of between 5 to 15%. She indicated that the 2017-2018 proposed biennial budget is balanced and fits the conservative financial assumptions for the City's operating and capital budgets, Town Center, and debt management that supports a continuation of the 2016 core level of service to the community.

Public Comment – The following individual provided comment on the matter: *David Harrowe, 4616 79<sup>th</sup> Avenue Court West.*

## 12. 2017-2018 BIENNIAL BUDGET ADOPTION

Council Consideration - **MOTION:** By Councilmember Belleci, seconded by Councilmember Worthington, to pass an ordinance adopting the 2017-2018 Biennial Budget.

Roll Call Vote:

Councilmember Belleci	Yes
Councilmember Grassi	No
Councilmember McCluskey	Abstained
Councilmember Nye	No
Councilmember Worthington	Yes
Mayor Figueroa	Yes

**The motion failed.**

**MOTION:** By Councilmember McCluskey, seconded by Councilmember Worthington, to reconsider the passing of an ordinance adopting the 2017-2018 Biennial Budget.

Roll Call Vote:

Councilmember Belleci	Yes
Councilmember Grassi	Yes
Councilmember McCluskey	Yes
Councilmember Nye	Yes
Councilmember Worthington	Yes
Mayor Figueroa	Yes

**The motion carried.**

Council Consideration - **MOTION:** By Councilmember Belleci, seconded by Councilmember Worthington, to pass an ordinance adopting the 2017-2018 Biennial Budget.

**The motion passed 4 to 2. Councilmembers Grassi and Nye voted no.**

## 13. COUNCIL COMMENTS/REPORTS

Councilmember Worthington updated Council on Association of Washington Cities' work on its proposed legislative agenda.

Mayor Figueroa discussed the cancellation of the December 19, 2016 Council meeting. Council agreed to the cancellation of said meeting.

Councilmember Belleci informed the public of the UP for Art fall concert event on November 18 as well as the public hearing on the Regional Growth Center Subarea Planning.

The Council concluded its business meeting at 7:36 p.m. and recessed to study session at 7:46 p.m. after a ten-minute break.

## STUDY SESSION

## 14. COMMUNITY CONNECTION PLACE LEASE AGREEMENT

The Community Connection Place (CCP) board members and friends/supporters introduced themselves to Council. Mr. Chris Christian, Managing Director (?) of CCP presented the organization's plan and vision to establish a community center that would provide University Place residents with opportunities for education, recreation and social connection and proposes to continue and enhance senior services and youth

programs in University Place. Community Connection Place is seeking the opportunity to use and operate the Senior Center beginning in 2017 to help them realize their vision for the community.

City Attorney Victor presented a proposed lease agreement for the University Place Senior Center to Community Connection Place, a Washington non-profit and a federal tax-exempt charitable organization. The lease is for five years with an option to extend for an additional five years. He explained that the proposed lease was prepared to protect the City, make the City whole in terms of its costs, and meets the Community Development Block Grant (CDBG) national funding requirements, and gives CCP the greatest opportunity to succeed.

Discussion followed with regard to the lease provisions, Community Connection Place's financial foundation/financial viability, and CDBG's funding requirements. Staff proposed to meet with Community Connection Place to obtain additional information and to bring back a lease agreement with additional changes and information for council consideration.

## **15. ADJOURNMENT**

The meeting adjourned at 8:56 p.m. No other action was taken.

Submitted by,

Emy Genetia  
City Clerk

# APPROVAL OF CONSENT AGENDA

**Control No.: 57 Agenda of: 11/21/16**

**PREPAY**

**Claim of:** Payroll for Pay Period Ending 10/31/16

Check #	Date	Amount	Check #	Date	Amount
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11/04/16 117,734.69 DIRECT DEPOSIT

**EMPLOYEE NET 117,734.69**

318707	11/4/2016	339.50	IUOE LOCAL 612
318708	11/4/2016	4,629.46	IUOE LOCALS 302/612 TRUST FUND
318709	11/4/2016	173.30	MALAIER, TRUSTEE, MICHAEL G.
318710	11/4/2016	247.97	OHIO CHILD SUPPORT PMT CENTRAL

WIRE	11/4/2016	64,354.30	AWC EMPLOYEE BENEFIT TRUST
WIRE	11/4/2016	21,974.72	BANK OF AMERICA
WIRE	11/4/2016	18,798.40	- 106006, VANTAGEPOINT TRANSF
WIRE	11/4/2016	6,971.80	- 304197, VANTAGEPOINT TRANSF
WIRE	11/4/2016	4,259.22	- 800263, VANTAGEPOINT TRANSF
WIRE	11/4/2016	28,662.97	WA STATE DEPT OF RETIREMENT SY
WIRE	11/4/2016	2,337.78	UNUM LIFE INSURANCE COMPANY
WIRE	11/4/2016	789.07	UNUM LIFE INSURANCE COMPANY
WIRE	11/4/2016	944.58	PACIFIC SOURCE ADMINISTRATORS
WIRE	11/4/2016	6.25	PACIFIC SOURCE ADMINISTRATORS
WIRE	11/4/2016	2,788.11	- 106006 LOAN, VANTAGEPOINT
WIRE	11/4/2016	79.90	AFLAC INSURANCE
WIRE	11/4/2016	890.30	WA ST DEPT OF RETIREMENT SYS
WIRE	11/4/2016	519.91	- 304197 LOAN, VANTAGEPOINT TR
WIRE	11/4/2016	250.00	NATIONWIDE RETIREMENT SOLUTION

**BENEFIT/DEDUCTION AMOUNT 159,017.54**

**TOTAL AMOUNT 276,752.23**

**Preparer Certification:**

I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered or the labor performed as described herein and that the claim is a just, due and unpaid obligation against the above-named governmental unit, and that I am authorized to authenticate and certify to said claim.

Signed: (Signature on file.)  
Steve Sugg, City Manager

Date

City of University Place  
Voucher Approval Document

<b>Control No.:57</b>	<b>Agenda of:</b> 12/05/16	<b>PREPAY</b>
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**Claim of:** Payroll for Pay Period Ending 11/15/16

Check #	Date	Amount	Check #	Date	Amount	
318711	11/18/2016	92.35				
				11/18/2016	115,756.27	DIRECT DEPOSIT
				<b>EMPLOYEE NET</b>	<b>115,848.62</b>	
318712	11/18/2016	173.30				MALAIER, TRUSTEE, MICHAEL G.
318713	11/18/2016	247.97				OHIO CHILD SUPPORT PMT CENTRAL
WIRE	11/18/2016	22,261.05				BANK OF AMERICA
WIRE	11/18/2016	18,820.60				- 106006, VANTAGEPOINT TRANSF
WIRE	11/18/2016	6,971.80				- 304197, VANTAGEPOINT TRANSF
WIRE	11/18/2016	4,220.93				- 800263, VANTAGEPOINT TRANSF
WIRE	11/18/2016	28,353.51				WA STATE DEPT OF RETIREMENT SY
WIRE	11/18/2016	944.58				PACIFIC SOURCE ADMINISTRATORS
WIRE	11/18/2016	2,788.11				- 106006 LOAN, VANTAGEPOINT
WIRE	11/18/2016	94.20				AFLAC INSURANCE
WIRE	11/18/2016	890.30				WA ST DEPT OF RETIREMENT SYS
WIRE	11/18/2016	519.91				- 304197 LOAN, VANTAGEPOINT TR
WIRE	11/18/2016	250.00				NATIONWIDE RETIREMENT SOLUTION
						<b>BENEFIT/DEDUCTION AMOUNT</b>
						86,536.26
						<b>TOTAL AMOUNT</b>
						<b>202,384.88</b>

Preparer Certification:

I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered or the labor performed as described herein and that the claim is a just, due and unpaid obligation against the above-named governmental unit, and that I am authorized to authenticate and certify to said claim.

Signed:           (Signature on file.)            
Steve Sugg, City Manager

Date \_\_\_\_\_

FINAL CHECK LISTING  
CITY OF UNIVERSITY PLACE

Check Date: 11/15/16

Check Range: 51978950-51979011

Wire Transfers: 10252016, 4626956, 19297959

Claims Approval

I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered or the labor performed as described herein, that any advance payment is due and payable pursuant to a contract or is available as an option for full or partial fulfillment of a contractual obligation, and that the claim is a just, due and unpaid obligation against the City of University Place, and that I am authorized to authenticate and certify to said claim.

I also certify that the following list of checks were issued to replace previously issued checks that have not been presented to the bank for payment. The original check was voided and a replacement check issued.

Vendor Name

Replacement Check #

Original Check #

Auditing Officer: (Signature on file.)

Date: \_\_\_\_\_

Bank : bofa BANK OF AMERICA

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total	
4626956	10/25/2016	003049	DEPT OF LABOR & INDUSTRIES	3RDQTR16	10/25/2016	3RD QTR 16/VOLUNTEER HOUR	100.77	100.77
		Voucher: 41380						
10252016	11/15/2016	001126	BANK OF AMERICA	102516	10/25/2016	DT8 DUPLICATE LOOSE SNAP SI	66.00	66.00
		Voucher: 41361						
19297959	11/15/2016	002072	WA STATE DEPT OF REVENUE	OCT16	11/7/2016	OCT16/B&O TAX/SWM FEES	952.27	952.27
		Voucher: 41419						
51978947	10/26/2016	025769	KRAMER, JEANNE E.	021	10/17/2016	FALL2/PIANO & VOICE LESSONS	375.00	375.00
		Voucher: 41390						
51978949	11/4/2016	026041	BLONDIN, DOUGLAS C	ROW	10/30/2016	ROW PURCHASE/BRIDGEPORT	3,200.00	3,200.00
		Voucher: 41363						
51978950	11/15/2016	001004	ALARM WORKS NW	8251	11/1/2016	NOV16/ALARM MONITORING	358.00	358.00
		Voucher: 41356						
51978951	11/15/2016	001701	ALPINE PRODUCTS INC	TM-162997	10/24/2016	YELLOW DELINEATOR POST/TUI	498.75	498.75
		Voucher: 41357						
51978952	11/15/2016	001818	APEX ENGINEERING PLLC	201653724	10/14/2016	FINALIZATION OF REVISIONS/BF	496.61	496.61
		Voucher: 41358						
51978953	11/15/2016	025986	AUSTINCINA ARCHITECTS INC P	788	10/25/2016	CIVIC CENTER PROGRAMMING/I	1,051.56	1,051.56
		Voucher: 41359						
51978954	11/15/2016	023411	AUTOZONE, INC.	1164772010	11/3/2016	ENERGIZER BATTERY/IRRIGATI	19.67	19.67
		Voucher: 41360						
51978955	11/15/2016	002333	BANK OF AMERICA	548001400009914	10/22/2016	MASTERCARD/10-22-16	7,729.68	7,729.68
		Voucher: 41362						
51978956	11/15/2016	024104	BOERS, JEFF	APACONF/REC	10/25/2016	RECONCILIATION/APA CONF/PO	706.72	706.72
		Voucher: 41364						
51978957	11/15/2016	025146	BRIDGEPORT PLACE	DEPOSIT	10/24/2016	DEPOSIT/EMPLOYEE RECOGNIT	508.75	508.75
		Voucher: 41365						
51978958	11/15/2016	026040	CAMINOS, HOLLY	REIMB	10/28/2016	REIMB/OVERPAID PET LICENSE	63.25	63.25
		Voucher: 41366						
51978959	11/15/2016	025573	CANON FINANCIAL SERVICES	16608620	10/13/2016	OCT16/COPIER LEASE CHARGE	311.67	311.67
		Voucher: 41367						
51978960	11/15/2016	021821	CASCADE RECREATION INC.	7482	10/25/2016	PILOT ROCK XT/CB-6PC EXTRA	4,682.32	4,682.32
		Voucher: 41368						
51978961	11/15/2016	024627	CASE, LUELLA	REFUND	10/24/2016	REFUND/#5369 - CENTRALIA OU	20.00	20.00
		Voucher: 41369						

Bank : bofa BANK OF AMERICA

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Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
51978962	11/15/2016	003155	CDW.GOVERNMENT, INC.	FRB3439	10/14/2016	CISCO MERAKI MR42 CLOUD MA	770.25
		Voucher: 41370	FQM1370	10/12/2016	CISCO MERAKI CLOUD CONTR 3	213.76	984.01
51978963	11/15/2016	001152	CENTURYLINK	206-Z20-0051	10/20/2016	PHONES/CITY WIDE	2,400.00
		Voucher: 41371					2,400.00
51978964	11/15/2016	001152	CENTURYLINK	1391283036	10/23/2016	PHONES/LONG DISTANCE/INTEF	1,548.82
		Voucher: 41372					1,548.82
51978965	11/15/2016	025873	CERIUM NETWORKS, INC.	CERQ69205	10/28/2016	AVAYA IP OFFICE SUPPORT/CER	3,059.95
		Voucher: 41373					3,059.95
51978966	11/15/2016	025066	CHURCH OF CHRIST	REFUND	10/24/2016	REFUND/DEPOSIT/SR. CENTER	200.00
		Voucher: 41374					200.00
51978967	11/15/2016	003034	CITY OF FEDERAL WAY	1432	11/4/2016	LODGING & TRANSPORTATION/€	1,577.00
		Voucher: 41375					1,577.00

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Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
51978969	11/15/2016	001024 CITY OF TACOMA	100933758	10/19/2016	POWER/7203 44TH ST W	66.30	
	Voucher:	41376	100955347	11/1/2016	POWER/3715 BP WAY W #E HSE	65.41	
			100185134	10/19/2016	POWER/4401 67TH AVE W	54.73	
			100083115	10/21/2016	POWER/4000 67TH AVE W	51.20	
			100456986	10/28/2016	POWER/5918 HANNAH PIERCE F	48.76	
			100156353	11/1/2016	POWER/4720 BP WAY W	41.40	
			100256491	10/11/2016	POWER/7250 CIRQUE DR W	38.00	
			100533758	10/28/2016	POWER/5418 CIRQUE DR W	35.32	
			100165190	10/21/2016	POWER/3761 BP WAY W	34.49	
			100052902	11/1/2016	POWER/3715 BP W WAY W/HOU	28.33	
			100445063	11/1/2016	POWER/3715 BP WAY W, #E2	28.18	
			100955346	11/1/2016	POWER/3715 BP WAY W #D HSE	27.09	
			100079031	10/3/2016	POWER/3715 BP WAY W, #D4	19.00	
			100312905	10/3/2016	POWER/3715 BP WAY W, #A-3A	19.00	
			100802489	11/1/2016	POWER/3904 BP WAY W	12.78	
			100357178	10/10/2016	POWER/2620 BP WAY W	5.85	
			100086165	11/1/2016	POWER/7813 44TH ST W	3.72	
			100086155	11/1/2016	POWER/7801 40TH ST W	3.72	
			100068203	10/27/2016	POWER/3715 BP WAY W	1,524.83	
			100358203	10/11/2016	POWER/7150 CIRQUE DR W	1,400.34	
			100385145	10/21/2016	WATER/3800 74TH AVE W	1,269.40	
			100668520	10/17/2016	WATER/4200 GRANDVIEW DR W	1,220.13	
			100890034	9/29/2016	WATER/7299 57TH ST CT W	1,182.98	
			100939530	10/3/2016	POWER/3555 MARKET PL W	837.50	
			100668505	10/4/2016	WATER/8102 CHAMBERS CREEK	519.46	
			100890035	10/12/2016	WATER/8399 CIRQUE DR W	328.51	
			100668522	11/8/2016	WATER/8902 CHAMBERS CREEK	318.14	
			100668521	10/6/2016	WATER/3000 BP WAY W	284.10	
			100668525	10/24/2016	WATER/4499 ALAMEDA AVE W	259.51	
			100060658	10/25/2016	POWER/3510 67TH AVE W	230.12	
			100565439	10/21/2016	WATER/3761 BP WAY W	221.97	
			100668506	10/28/2016	WATER/5700 HANNAH PIERCE R	210.71	
			100386367	11/3/2016	POWER/7223 40TH ST W	195.70	
			100668502	10/11/2016	WATER/7820 CIRQUE DR W	187.05	
			100955345	11/1/2016	WATER/3715 BP WAY W	154.62	

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Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
			100892486	11/16/2016	POWER/6400 BP WAY W	99.49	
			100864411	10/21/2016	POWER/6730 40TH ST CT W	92.20	
			100963867	10/12/2016	4411 ELWOOD DR W/POWER	91.55	
			100696565	10/24/2016	POWER/4609 ALAMEDA AVE W	78.74	
			100573267	10/24/2016	POWER/4727 ALAMEDA AVE W	75.08	
			100975049	10/11/2016	WATER/6800 51ST ST. CT W	73.89	
			100104132	10/25/2016	POWER/3503 67TH AVE W	70.11	11,509.41
51978970	11/15/2016	001575 CITY TREASURER	110216	11/1/2016	WATER SERVICE/40TH ST W & 6	4,782.00	4,782.00
		Voucher: 41377					
51978971	11/15/2016	023782 COMPLETE OFFICE SOLUTIONS,	1446706-0	10/26/2016	FOLDER/POCKET/ATTORNEY OF	258.66	
		Voucher: 41378	1444871-0	10/21/2016	WIPES/PAPER/IT DEPT	193.49	
			C1425631-0	10/17/2016	CREDIT/PAPER	-13.65	438.50
51978972	11/15/2016	024347 COPIERS NORTHWEST, INC.	INV1458954	10/18/2016	JUL 15-OCT 14/OVERAGE CHARC	153.24	
		Voucher: 41379	INV1458563	10/17/2016	SEPT14-OCT13/CONTRACT OVE	111.28	
			INV1462184	10/25/2016	OCT22-NOV21/CONTRACT LEAS	105.46	
			INV1464571	10/31/2016	OCT28-NOV27/CONTRACT BASE	100.92	470.90
51978973	11/15/2016	001737 DON SMALL & SONS OIL DIST	CC105896	10/17/2016	BULK FUEL/PW SHOP	1,565.67	1,565.67
		Voucher: 41381					
51978974	11/15/2016	024894 FIGUEROA, JAVIER	REIMB	11/2/2016	REIMB/MILEAGE & PARKING/J.FI	83.95	83.95
		Voucher: 41382					
51978975	11/15/2016	001212 GRAY & OSBORNE INC	18	10/10/2016	SOUNDVIEW DR/BROOKSIDE W/	10,985.03	10,985.03
		Voucher: 41383					
51978976	11/15/2016	001406 GUARDIAN SECURITY GROUP	IN73506	10/21/2016	REKEY CYLINDER/KOBY/STAND,	64.09	64.09
		Voucher: 41384					
51978977	11/15/2016	001222 HOME DEPOT CREDIT SERVICES	S6035-3225-0105-0	10/28/2016	MISC REPAIR & MAINT SUPPLIE	364.07	364.07
		Voucher: 41385					
51978978	11/15/2016	022801 KATE MCDERMOTT	NOV16	11/1/2016	HEADLINES COPY/SEPT, OCT, N	1,007.50	1,007.50
		Voucher: 41386					
51978979	11/15/2016	021616 KELLEY IMAGING SYSTEMS	19605167	10/27/2016	LEASE/SHARP MX5111N COPIER	945.78	945.78
		Voucher: 41387					
51978980	11/15/2016	002278 KING LUMINAIRE COMPANY INC	21014	10/25/2016	TEXTURED DARK GREEN LIGHT	82,214.00	82,214.00
		Voucher: 41388					
51978981	11/15/2016	026033 KNOWBE4, INC.	INV-09568	10/20/2016	SUBSCRIPTION/SECURITY AWAF	2,019.94	2,019.94
		Voucher: 41389					

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Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
51978982	11/15/2016	001815	METROPOLITAN PARK DISTRICT 2016POOL	10/6/2016	POOL ADMISSIONS/2016 CAMP U	1,202.00	
	Voucher:	41391	2015POOL	10/6/2016	POOL ADMISSIONS/2015 CAMP U	735.00	1,937.00
51978983	11/15/2016	001378	MOUNTAIN MIST WATER 000931116	10/5/2016	#075361/BOTTLED WATER/CITY I	58.00	
	Voucher:	41392	000958595	10/19/2016	#075361/BOTTLED WATER/CITY I	51.50	
			000931115	10/5/2016	#075361/BOTTLED WATER/REC C	27.25	
			000931107	10/5/2016	#075361/BOTTLED WATER/PW SI	27.25	
			000931117	10/5/2016	#068332/BOTTLED WATER/CM O	17.47	
			000958594	10/19/2016	#068332/BOTTLED WATER/CM O	12.00	
			00923095C	10/10/2016	#068332/BOTTLED WATER/CM O	-1.00	
			00922536C	10/10/2016	#031650/BOTTLED WATER/SR CE	-1.00	
			00923406C	10/10/2016	#075361/BOTTLED WATER/CITY I	-3.30	
			000958580	10/19/2016	#075361/BOTTLED WATER/PW SI	18.50	206.67
51978984	11/15/2016	026042	NELSON, OLETA M. EASEMENT	11/8/2016	TEMP CONSTRUCTION EASEME	250.00	250.00
	Voucher:	41393					
51978985	11/15/2016	002089	OWEN EQUIPMENT CO. 00081805	10/27/2016	ROLLER CHAIN	58.75	58.75
	Voucher:	41394					
51978986	11/15/2016	024139	P.C.COMMUNITY NEWSPAPER GI8944	10/20/2016	OCT21 ISSUE DATE/UP PRESS C	1,846.15	1,846.15
	Voucher:	41395					
51978987	11/15/2016	026037	PENDLETON CONSULTING LLC OCT16	10/31/2016	UNIVERSITY PLACE POLICE PRC	3,350.40	
	Voucher:	41396	SEP16	9/30/2016	UNIVERSITY PLACE POLICE PRC	859.70	4,210.10
51978988	11/15/2016	001726	PHILIP S. PRETTYMAN 2016-10	10/27/2016	OCT27/HEARING EXAMINER SEF	90.00	90.00
	Voucher:	41397					
51978989	11/15/2016	001109	PIERCE COUNTY BUDGET & FIN/CI-222826	10/20/2016	OCT16/POLICE SERVICES	271,860.53	
	Voucher:	41398	CI-222828	10/20/2016	SEPT16/ANIMAL CONTROL/SHEL	9,773.53	
			CI-222962	10/26/2016	SEPT16/TRAFFIC OPERATIONS I	3,058.77	
			CI-222968	10/26/2016	SEPT16/BRIDGE ENGINEERING I	1,876.64	
			CI-222833	10/20/2016	NOV16/INET CHARGES/UPTV	253.00	286,822.47

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Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
51978990	11/15/2016	001588	PIERCE COUNTY SEWER	00664685	11/1/2016	SEWER/4951 GRANDVIEW DR W	176.86
	Voucher:	41399		00566276	11/1/2016	SEWER/3715 BP WAY W	134.19
				00000591	11/1/2016	SEWER/2534 GRANDVIEW DR W	76.00
				01576739	11/1/2016	SEWER/3609 MARKET PL W/RET	37.22
				01576712	11/1/2016	SEWER/3609 MARKET PL W/RET	37.22
				01576721	11/1/2016	SEWER/3609 MARKET PL W/RET	37.22
				01571443	11/1/2016	SEWER/7520 CIRQUE DR W	33.34
				00604682	11/1/2016	SEWER/2917 MORRISON RD W	25.58
				01633279	11/1/2016	SEWER/1902 SEAVIEW AVE W	17.83
				01512692	11/1/2016	SEWER/3555 MARKET PL W	17.83
							593.29
51978991	11/15/2016	001114	PITNEY BOWES GLOBAL FIN. SV	OCT16	11/1/2016	OCT16/ACCT19533470/POSTAGE	600.00
	Voucher:	41400					600.00
51978992	11/15/2016	025955	PMI TRUCKING	16810	10/24/2016	CONSTRUCT DUMP BODY/2016 I	48,526.56
	Voucher:	41401					48,526.56
51978993	11/15/2016	001161	PUGET SOUND ENERGY CORP	200017087624	10/28/2016	GAS/2534 GRANDVIEW DR W	173.34
	Voucher:	41402		200000971479	10/25/2016	GAS/4910 BRISTONWOOD DR W	94.90
				200014542258	10/27/2016	GAS/7450 MARKET SQ W	59.10
				220008861142	10/27/2016	GAS/3715 BP WAY W, #BLDG D1	38.27
							365.61
51978994	11/15/2016	026036	ROSCO DIVERSIFIED LLC	933	10/27/2016	NEW FAUCET/INSPECTION & RE	1,234.23
	Voucher:	41403					1,234.23
51978995	11/15/2016	001382	SAFEGUARD BUSINESS SYSTEM	031771563	10/24/2016	SPLIT DOUBLE WINDOW/BLANK	117.17
	Voucher:	41404					117.17
51978996	11/15/2016	026039	SHAW, JUDY	REFUND	10/26/2016	REFUND/#5443 & #5434-PIANO &	75.00
	Voucher:	41405					75.00
51978997	11/15/2016	025931	SLA CORPORATION	10182016-30	10/19/2016	SEPT20-OCT19/MONTHLY ESCH.	73.12
	Voucher:	41406					73.12
51978998	11/15/2016	025916	SPECIAL WEAPONS AND TRAPS	3	10/19/2016	TRAP BEAVER-LEACH CK/RELOC	145.00
	Voucher:	41407					145.00
51978999	11/15/2016	026029	STENDER, KURT	REIMB	10/24/2016	COACHING DISCOUNT/INDOOR	10.00
	Voucher:	41408					10.00
51979000	11/15/2016	002613	SUPERIOR LINEN SERVICE, INC.	85773	11/2/2016	OFFICE MAT RENTAL/PW SHOP	89.00
	Voucher:	41409					89.00
51979001	11/15/2016	025311	TACOMA WINSUPPLY, INC.	03204100	10/12/2016	MISC SUPPLIES	453.94
	Voucher:	41410		032267 00	10/25/2016	MISC SUPPLIES	131.17
							585.11

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Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
51979002	11/15/2016	002823	THOMPSON ELECTRICAL CONST1016-9069CW	11/2/2016	OCT16/STREET LIGHT REPAIRS	1,525.47	1,525.47
		Voucher: 41411					
51979003	11/15/2016	001326	TUCCI & SONS INC	2	11/3/2016 27TH ST/TIB IMPROVEMENTS	148,305.97	148,305.97
		Voucher: 41412					
51979004	11/15/2016	025832	U.S. BANK ST. PAUL	322299	10/10/2016 UNIPLTGOR12B/DEBT SERVICE I	323,143.51	
		Voucher: 41413		322642	10/10/2016 UNIPLTGOR12A/DEBT SERVICE I	298,575.00	
				322640	10/10/2016 UNILTGO09B/DEBT SERVICE PAY	245,071.00	
				323419	10/10/2016 UNIPLLTGO07C/DEBT SERVICE I	197,507.50	
				323416	10/10/2016 UNIPLGOREF05/DEBT SERVICE	637,343.75	
				324204	10/12/2016 UNILTGO16/DEBT SERVICE PAYM	472,250.55	2,173,891.31
51979005	11/15/2016	025749	USA FOOTBALL	2440254	9/30/2016 NFL FLAG JERSEY & BELT/FLAG	425.00	425.00
		Voucher: 41414					
51979006	11/15/2016	025399	VASSEY NURSERY, LLC	692219	11/3/2016 CUSTOM PLANTERS/SOIL/DELIV	942.15	942.15
		Voucher: 41415					
51979007	11/15/2016	025889	VORISE, KITTIE	REFUND	10/24/2016 REFUND/#5369 - CENTRALIA OU	10.00	
		Voucher: 41416		REFUND	10/25/2016 REFUND/#5368 - WA STATE HIST	6.00	16.00
51979008	11/15/2016	021677	WA ARCHITECTURAL HARDWARE16-131753		10/31/2016 RESTROOM DOOR INSTALL/KOE	42.74	42.74
		Voucher: 41417					
51979009	11/15/2016	001032	WA STATE	90112016100068	11/1/2016 OCT16/TELECOMMUNICATIONS	197.27	197.27
		Voucher: 41418					
51979010	11/15/2016	024399	WELLS FARGO FINANCIAL LEAS15003462352		10/23/2016 NOV19-DEC18/LEMARK PRINTEF	95.00	95.00
		Voucher: 41420					
51979011	11/15/2016	001781	WILLIAMS OIL FILTER SERVICE C228875		10/31/2016 HOSE ASSMLY/DUMP TRUCK W/	156.67	156.67
		Voucher: 41421					

**Sub total for BANK OF AMERICA: 2,820,794.45**

66 checks in this report.

Grand Total All Checks: 2,820,794.45

# Memo

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**DATE:** November 10, 2016  
**TO:** Steve Sugg, P.E., City Manager  
**FROM:** Jack Ecklund, P.E., Director of Engineering and Capital Projects  
**SUBJECT:** Utility Undergrounding

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One of City Council's goals for the current biennium was to study undergrounding of overhead utilities within the City. The Engineering Division conducted a current analysis, including costs of and available funding for, undergrounding overhead utility wires in the City, to determine whether any new information or opportunities have arisen since the last study of this issue.

The current evaluation includes an estimated cost per mile, an analysis of the total cost for all arterial streets and an estimated cost for the typical roadway project. In addition, the current analysis carefully reviews the applicability of any City restricted funds, as well as the availability of funding from non-City sources for such work. Based on this analysis, as described in detail below, the cost to the City ranges from 1.7 to 3 million dollars per mile, and there are no new or additional sources of funding.

## Background

The City's Franchise Agreement with Tacoma Public Utilities (TPU) stipulates that the City may request overhead powerlines to be relocated to underground in conjunction with a City roadway project. The costs of this undergrounding would be split equally between TPU and the City, provided the existing facilities are located within the City right-of-way and would need to be relocated to accommodate the roadway construction. Any costs to relocate or underground power facilities outside of the right-of-way would be fully the City's responsibility. In addition, any undergrounding requested by the City not associated with a street project would also be fully the City's responsibility.

## Cost Determination

An average cost per mile of undergrounding was evaluated using the cost history of similar projects. The average cost per mile of undergrounding was determined to be \$3,020,160. The City's portion of these costs would be \$1,774,080 per mile. This includes the portion of the work that would be split equally between TPU and the City as well as any work outside of the right-of-way which would be the City's responsibility. The costs are noted in Table 1 on the following page.

## Arterial Streets

In University Place, there are approximately 21 miles of overhead power lines along arterial streets. The total cost for undergrounding these lines is estimated at \$63.4 million. Should this work be performed in conjunction with a City street project, the City's estimated share would be \$37.2 million. The typical length of a City street project is one-half mile. Based on this typical length, undergrounding power lines would add around \$890,000 to a typical project cost.

<b>Table 1. Average Undergrounding Costs</b>		
	Cost per foot	Cost per mile
Undergrounding Cost Excluding Civil work	\$332.00	\$1,752,960.00
Civil Cost (trenching, survey, traffic control, restoration, etc.)	\$140.00	\$739,200.00
Subtotal Undergrounding Cost	\$472.00	\$2,492,160.00
<b>50/50 split (in conjunction with Street Project)</b>	<b>\$236.00</b>	<b>\$1,246,080.00</b>
Service conversions on private property(not subject to 50/50 split)	\$100.00	\$528,000.00
Total Undergrounding Cost	\$572.00	\$3,020,160.00
<b>Total Undergrounding Cost to UP in conjunction with Street project</b>	<b>\$336.00</b>	<b>\$1,774,080.00</b>

<b>Table 2. Estimated Cost of Undergrounding All Arterial Streets in University Place</b>		
	Miles	Cost
Total Undergrounding Cost	21	\$63,423,360.00
U.P. Share if Undergrounding with Street Project	21	\$37,255,680.00
U.P. Share for Average Capital Project (1/2 mile long)	0.5	\$887,040.00

## Funding

City street projects are typically funded 85% through state and federal transportation grants with the remainder primarily funded through surface water management funds (for storm drainage improvements). Neither of these funding sources, however, are generally eligible to be used for the undergrounding of utilities. Additional general fund dollars would need to be allocated to the individual capital project budgets in order to pay for any desired undergrounding. Utility Local Improvement Districts (ULID) may be formed that would assess the cost of undergrounding improvements to the nearby property owners. This process would require a 65% approval vote by the assessed properties and the dollar amount assessed could not exceed the resulting property value increase of the utility work. The process typically takes about a year to form and would typically take a significant subsidy by the City and TPU in order to meet the property value criteria. According to TPU, even with this subsidy, ULIDs are difficult to form and rarely have the required support from the potentially assessed property owners.

**Business of the City Council  
City of University Place, WA**

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**Proposed Council Action:**

Adopt a resolution approving an Agreement between the City of University Place and University Place School District for a School Resource Officer.

**Agenda No:** 8C  
**Dept. Origin:** City Attorney  
**For Agenda of:** November 21, 2016  
**Exhibits:** Resolution  
Proposed Agreement

**Concurred by Mayor:** \_\_\_\_\_  
**Approved by City Manager:** \_\_\_\_\_  
**Approved as to Form by City Atty.:** \_\_\_\_\_  
**Approved by Finance Director:** \_\_\_\_\_  
**Approved by Dept. Head:** \_\_\_\_\_

Expenditure Required: \$60,210.00	Amount Budgeted: \$60,210.00	Appropriation Required: \$0.00
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**SUMMARY / POLICY ISSUES**

Since shortly after incorporation, the City and the University Place School District have partnered in a School Resource Officer (SRO) program which places a police officer in schools during the school year. This has been a successful program for the City, School District and the community.

One key feature of our agreement with the U.P. School District is that our Police Department is allowed to utilize the SRO to supplement our patrol shift as necessary during the school year. Because of this right to utilize the SRO as a patrol officer, the City and School District split the cost of the SRO.

This agreement was studied extensively in 2015, and the 2016 agreement contains no material changes.

**RECOMMENDATION / MOTION**

**MOVE TO:** Adopt a resolution approving an Agreement between the City of University Place and University Place School District for a School Resource Officer.

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE  
APPROVING AN AGREEMENT BETWEEN THE CITY AND UNIVERSITY PLACE  
SCHOOL DISTRICT FOR A SCHOOL RESOURCE OFFICER**

WHEREAS, since shortly after incorporation, the City and the University Place School District have partnered in a School Resource Officer (SRO) program which places a police officer in schools during the school year; and

WHEREAS, in many jurisdictions, including University Place, assigning an officer to schools has many benefits, including addressing and deterring criminal conduct in schools, dealing with custody issues which occur in schools, and generally significantly reducing the need for patrol officers to respond to calls for service from schools, particularly high schools, which can generate a significant number of police calls; and

WHEREAS, to maximize the effectiveness of our patrol shifts, the SRO's school focus is very valuable in addressing most school calls and allowing patrol shifts to focus on other matters; and

WHEREAS, the proposed Agreement with the U.P. School District provides that the City's Police Department will be allowed to utilize the SRO to supplement the City's patrol shift as necessary during the school year; and

WHEREAS, because of this right to utilize the SRO as a patrol officer, the City and School District split the cost of the SRO; and

WHEREAS, the City Council and the City and School District administrations believe continuing the joint SRO program is in the best interests of the community,

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF UNIVERSITY PLACE,  
WASHINGTON, AS FOLLOWS:**

Section 1. Incorporation. The recitals are hereby incorporated herein as if set forth in full.

Section 2. Agreement Approved. The Agreement with University Place School District for a School Resource Officer is hereby approved.

Section 3. Effective Date. This Resolution shall be effective immediately upon adoption by the City Council.

**ADOPTED BY THE CITY COUNCIL ON NOVEMBER 21, 2016.**

\_\_\_\_\_  
Javier H. Figueroa, Mayor

**ATTEST:**

\_\_\_\_\_  
Emelita Genetia, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Steve Victor, City Attorney

**CITY OF UNIVERSITY PLACE AND UNIVERSITY PLACE SCHOOL DISTRICT  
SCHOOL RESOURCE OFFICER AGREEMENT**

THIS AGREEMENT is made by and between the City of University Place "City," and the University Place School District "School District."

**RECITALS:**

A. The City and School District agree that the placement of a police officer within schools during the school year is effective in promoting community safety.

B. For more than ten years, the City and School District have worked together to establish and maintain a successful School Resource Officer (SRO) program.

C. After reviewing and revising the SRO program, the City and School District find it in their best interest to continue the program through this Agreement.

**THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. The City and School District agree to continue the SRO program which involves the assignment of one Police Officer (the SRO) within the schools. The services provided by an SRO are described in Addendum A, attached. The City contracts separately with Pierce County for Police Services. The SRO will be a part of the University Place Police contingent under the City's contract with Pierce County. The SRO will remain an employee of Pierce County.

2. The delivery of SRO services, standards of performance, discipline of officers, supervision and control of SRO personnel, and other matters incidental to the performance of such services shall remain under the control of the City and shall be governed by the Contract, and its amendments, between the City and Pierce County for police services.

3. The City, through its contract with Pierce County, shall furnish and supply all labor, supervision, equipment, training and supplies, necessary for the SRO.

4. The School District shall not assume any liability for the direct payment of any salaries, wages, or other compensation to an SRO performing the services provided hereunder. Any overtime for the SRO requested by the School District will be billed to the School District by Pierce County at the County's actual costs for overtime. Off-duty employment agreements shall be between the School District and the SRO. Except as otherwise specified herein, the School District shall not be liable for compensation for wages or indemnity to any Pierce County employee for injury or sickness arising out of his/her employment under this Agreement.

5. Unless sooner terminated as provided for herein, this Agreement shall be effective September 1, 2016 to June 30, 2017. At the option of the City and the School District, this Agreement may be renewed by mutual written agreement.

6. The School District will participate in funding one (1) SRO for the duration of this Agreement in the amount of \$60,210, to be billed in ten monthly installments. The School District acknowledges that its portion of the cost of the SRO, as set forth above, is based on 50% of the total cost of the SRO for three quarters (¾) of the year (school year).

7. The City will invoice the District monthly for SRO services. The District shall remit payment to the City within thirty (30) days after receipt of an invoice.

8. In the City's discretion, the SRO may be assigned to staff patrol or necessary training on days when school is in session, with no adjustment in cost allocation between the parties.

9. As part of its compliance with all applicable laws and regulations relating to employee hiring, the parties agree that the County Civil Service Rules which prohibit discrimination on the basis of non-merit factors, shall for purpose of this Agreement, be read and understood by the School District. Furthermore, this Agreement shall be subject to all laws, rules, and regulations of the United States of America, State of Washington, the County of Pierce, and the City of University Place.

10. Either party may, in writing, request changes to this Agreement. Any and all agreed modifications must be in writing, signed by each of the parties, and affixed to this Agreement.

11. The City or the School District may terminate this Agreement in whole or in part whenever the City or the School District determines, in its sole discretion that such termination is in the best interests of the City or the School District. An equitable adjustment in the contract price will be made so that the School District pays only for the period in which service was provided. Termination of this Agreement by the City or School District at any time during its term, whether for default or convenience, shall not constitute a breach of contract by the City or School District. Each party agrees to give the other at least 30 days' prior written notice if it intends to terminate this Agreement.

12. In the event of litigation arising out of the construction or interpretation of any of the terms of this Agreement, the venue of such litigation shall be in the courts of the State of Washington, with venue in Pierce County. This Agreement shall be governed by the laws of the State of Washington.

13. Differences between the School District and the City arising under and by virtue of the contract documents, shall be brought to the attention of the City or School District at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken.

14. Laws involving confidentiality govern both the School District and the City. Both the School District and the City agree that its employees, subcontractors, and others shall maintain the confidentiality of all information provided by the other to the extent authorized to do so by the laws governing each. The federal Buckley Act governs the School District and the City understands that this act and other state and federal laws will restrict the issuance of certain information to the City. The School District likewise understands that certain intelligence information is to remain confidential and in the sole control of the City. Each agency agrees to respect the requirement imposed on the other and in the event of any judicial action being taken, to promptly notify the other of any attempt to seek disclosure of information.

15. The School District agrees to defend, indemnify and save harmless the City, its appointed and elective officers and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected or appointed officials or employees for damages because of personal or bodily injury, including death, at any time resulting therefrom, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the School District, its subcontractors, its successor or assigns, or its or their

agent, servants, or employees, the City, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its appointed or elected officials or employees. It is further provided that no liability shall attach to the City by reason of entering into this contract, except as expressly provided herein.

16. Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice shall be given by the School District to the City of University Place, Attention: City Manager, 3715 Bridgeport Way W. University Place, WA, 98466. Notice may be given by delivery to the City Clerk or by depositing in the US mail, first class, postage prepaid.

17. Except as set forth elsewhere in the agreement, for all purposes under this Agreement, except service of process, notice shall be given by the City to the Superintendent of the University Place School District, 3717 Grandview Drive W, University Place, WA 98466. Notice may be given by delivery or by depositing in the U.S. Mail, first class, postage prepaid.

18. If any term or condition of this Agreement or the application thereof to any persons(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given without the invalid term, condition, or application. The terms and conditions of this Agreement are declared severable.

19. Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

20. This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions, or understanding between the parties.

**IN WITNESS WHEREOF**, this Agreement has been executed by each party on the date set forth below:

**UNIVERSITY PLACE SCHOOL DISTRICT**

**CITY OF UNIVERSITY PLACE**

By: \_\_\_\_\_  
\_\_\_\_\_ *Print name*  
\_\_\_\_\_ *Title*

By: \_\_\_\_\_  
**Stephen P. Sugg**  
**City Manager**

**Approved as to form:**

\_\_\_\_\_  
**Steve Victor, City Attorney**

# City of University Place

## School Resource Officer Contract

### Exhibit A

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#### **Program Goal:**

The goals of the School Resource Officer (SRO) Program are:

- To improve the relationship between University Place Police and the University Place School District
- To promote and facilitate a reduction in crime and improve security at all eight UPSD schools and administration sites.
- To improve the quality of education in University Placed School District by providing support for school safety and security.
- To alleviate pressure on City police operations in the city by providing a dedicated staff person to handle crime and nuisance issues in and around UPSD schools.

#### **Program Benefits:**

The SRO Program should help reduce crimes in the schools and in the community. It will do so by intervening earlier in the delinquency pattern as well as offering a positive role model. The physical security of the schools will also be improved. The SRO will serve as a liaison between the University Place Police Department and school administrators, staff, parents and students in the University Place School District.

#### **SRO Duties:**

- Conduct preliminary investigations of crimes that have occurred on or off campus involving students from any school district and are reported at UPSD schools.
- Assist the University Place Police in conducting follow up investigations involving students of the University Place School District.
- Coordinate or provide training to school staff and students, upon request. Topics may include, but are not limited to, dangers of drug use (including marijuana), personal safety, cyber safety, overall crime prevention and emergency response.
- Provide assistance to all UPSD personnel on law enforcement concerns and assist with providing a solution.
- Maintain a close working relationship by sharing school information with other UPPD personnel on matters of mutual interest.
- Assist UPSD to identify safety issues and help resolve problems related to student behavior, safety concerns and security problems.

- Handle traffic complaints involving UPSD traffic problems and intervention with any problem student drivers, both on and off school property.
- Work with UPSD personnel on matters of concern and provide them with training to enhance school and personal security.
- Develop mentor relationships with students when possible
- Work flexible or adjusted shifts to accommodate school related events; evening meetings, presentations, athletic events, etc.
- SRO's will avoid vacation when school is in session and plan to take vacation when the schools are on break or outside of the school year.
- Work with schools to engage parents and students on ways to creatively and proactively address juvenile nuisance and criminal issues.
- Liaison with UPSD Director of Safety and Operations for districtwide disaster preparedness.
- Support UPSD administrators and families to resolve custody issues and parenting plan conflicts that impact a student's education.
- Assist UPSD administrators in their efforts to increase student attendance and decrease truancy
- Serve as a liaison with the court system and neighboring police departments as needed.
- Provide assistance to UPSD related to school security technology, procedures, training and response.
- Attend trainings related to SRO work with approval from the Chief of Police (?)

#### **School Duties:**

- Collaborate with UP Police on "early out" days to minimize impact of these early releases on the UP community
- Collaborate with city, county and regional groups to promote emergency preparedness. Provide the SRO with access to all UPSD sites.
- Provide the SRO with student and family information, as appropriate, to assist in the resolution of safety and/or criminal issues.
- Meet quarterly with the SRO and UP Police officials to discuss student health and safety concerns and other community problems involving youth, families and/or schools.

**Business of the City Council  
City of University Place, WA**

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**Proposed Council Action:**

Adopt a Resolution approving a Lease of the U.P. Senior Center to Community Connection Place, a Washington nonprofit corporation, and federal tax-exempt charitable organization

**Agenda No:** 8D  
**Dept. Origin:** City Council  
**For Agenda of:** November 21, 2016  
**Exhibits:** Memo, Resolution  
Draft Lease

**Concurred by Mayor:** \_\_\_\_\_  
**Approved by City Manager:** \_\_\_\_\_  
**Approved as to Form by City Atty.:** \_\_\_\_\_  
**Approved by Finance Director:** \_\_\_\_\_  
**Approved by Dept. Head:** \_\_\_\_\_

Expenditure Required: \$0.00	Amount Budgeted: \$0.00	Appropriation Required: \$0.00
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**SUMMARY / POLICY ISSUES**

Community Connection Place (CCP) is a Washington nonprofit corporation, and federally certified tax exempt charitable organization headquartered in University Place. Community Connection Place describes its long-term plan as the construction of a U.P. community center that will highlight education, fitness, creativity, and wellness. CCP describes its U.P. vision as a community of thriving children, active families, and engaged citizens.

With the recent conclusion of the City's recreational services program, Community Connection Place is seeking the opportunity to continue to operate the UP Senior Center beginning in 2017 and beyond. Community Connection Place proposes to continue existing programs and add new programs over time.

Due to a 1997 HUD Community Development Block Grant (CDBG), through November of 2022 use of the Senior Center facility must be consistent with at least one of the CDBG national objectives. Community Connection Place's proposed programming is consistent with the applicable national objectives.

The proposed Lease was prepared to protect the City, transfer all costs of operation and maintenance to Community Connection Place, and give Community Connection Place the greatest opportunity to succeed.

The proposed lease of the U.P. Senior Center to Community Connection Place allows the facility to continue in operation in 2017 and beyond by a University Place community based, and focused non-profit.

**RECOMMENDATION / MOTION**

**MOVE TO:** Adopt a Resolution approving a Lease of the U.P. Senior Center to Community Connection Place, a Washington nonprofit corporation, and federal tax-exempt charitable organization.

## Memo

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**DATE:** November 21, 2016

**TO:** City Council

**FROM:** Steve Victor, City Attorney  
Gary Cooper, Parks and Public Works Director

**CC:** Steve Sugg, City Manager

**SUBJECT:** CCP Senior Center Lease Questions

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At the November 7, 2016 study of the proposed lease of the U.P. Senior Center to Community Connection Place (CCP), Council Members asked a number of important questions which could only be answered by CCP. In order to seek answers to the questions, I and Director Cooper met with CCP's leadership and had a productive discussion. The following summarizes CCP's responses.

1. If the Lease is approved, when in 2017 might CCP begin providing services at the Senior Center?

*January 2, 2017*

2. Should the Lease include a "start-up" period of 60 or 90 days before CCP must begin to provide services at the Senior Center?

*CCP has plans and resources in place to begin basic operation on January 2, 2017, so a start-up period is not necessary.*

3. If the Lease is approved, are there licenses, certifications or agreements with other entities that CCP needs to secure to enable them to deliver services at the Senior Center?

*CCP is actively working with a number of service providers to deliver programming at the Senior Center, including Catholic Community Services, the current foot care provider, a yoga instructor, and others. With regard to funding, CCP has secured a letter from the Milgard Windows of Hope Foundation (attached) and is actively working to finalize that and other funding sources.*

4. If the Lease is approved, what type of Senior-specific services will CCP offer at the beginning of operation at the Senior Center?

*CCP's primary goal is to keep the doors of the Senior Center open in 2017 with core programming initially, including meals and foot care, and add other programming over the course of the year. Contingent upon CCP's ability to acquire the City's shuttles, the Trips & Tours program can be reactivated.*

5. If the Lease is approved, what other services does CCP intend to offer at the beginning of operation at the Senior Center?

*CCP intends to design and implement some intergenerational programs over the course of 2017.*

Based on the foregoing and the overall circumstances, the administration recommends approval of the Lease with CCP for the U.P. Senior Center.

# Windows of Hope Foundation

 A legacy of the Gary E. Milgard Family Foundation

1701 Commerce Street • Tacoma, WA 98402 • Phone (253) 274-0121 • Fax (253) 274-0478 • [www.garymilgardfamilyfoundations.org](http://www.garymilgardfamilyfoundations.org)

November 7, 2016

University Place Council  
3715 Bridgeport Way W  
University Place, WA 98466

Dear City of University Place City Council Members:

I am writing on behalf of the Windows of Hope Foundation, a legacy of the Gary E. Milgard Family Foundation to express our support for the Community Connection Place. We believe in CCP's vision for strengthening community in University Place and applaud the City for seeking a partnership with CCP.

With this letter, I am formally indicating that our intent is to provide financial support to Community Connection Place to help ensure the success of CCP's use of the Senior Center building. We want to make certain that the services currently being offered to seniors at this facility continue.

Thank you for working with CCP to invest in the future of our community.

Sincerely,



Christine Zemenak  
President and CEO

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE  
APPROVING A LEASE OF THE U.P. SENIOR CENTER TO COMMUNITY  
CONNECTION PLACE, A WASHINGTON NONPROFIT CORPORATION, AND  
FEDERAL TAX-EXEMPT CHARITABLE ORGANIZATION**

WHEREAS, Community Connection Place is a Washington nonprofit corporation, and federally certified tax exempt charitable organization headquartered in University Place; and

WHEREAS, Community Connection Place (CCP) describes its long-term plan as the construction of a U.P. community center that will highlight education, fitness, creativity, and wellness. CCP describes its U.P. vision as a community of thriving children, active families, and engaged citizens; and

WHEREAS, with the recent conclusion of the City's recreational services program, Community Connection Place is seeking the opportunity to continue to operate the UP Senior Center beginning in 2017 and beyond. Community Connection Place proposes to continue existing programs and add new programs over time; and

WHEREAS, due to a 1997 HUD Community Development Block Grant (CDBG), through November of 2022 use of the Senior Center facility must be consistent with at least one of the CDBG national objectives, and Community Connection Place's proposed programming is consistent with the applicable national objectives; and

WHEREAS, the proposed lease was prepared to protect the City, transfer all costs of operation and maintenance to Community Connection Place, and give Community Connection Place the greatest opportunity to succeed; and

WHEREAS, the proposed lease of the U.P. Senior Center to Community Connection Place allows the facility to continue in operation in 2017 and beyond by a University Place community based, and focused non-profit;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF UNIVERSITY PLACE,  
WASHINGTON, AS FOLLOWS:**

Section 1. Incorporation. The recitals are hereby incorporated herein as if set forth in full.

Section 2. Approval of Lease. The City Council of the City of University Place hereby approves the Lease of the U.P. Senior Center to Community Connection Place, a Washington nonprofit corporation, and federal tax-exempt Charitable Organization, substantially in the form attached hereto.

Section 3. Effective Date. This Resolution shall be effective immediately upon adoption by the City Council.

**ADOPTED BY THE CITY COUNCIL ON \_\_\_\_\_, 2016.**

\_\_\_\_\_  
Javier H. Figueroa, Mayor

**ATTEST:**

\_\_\_\_\_  
Emelita Genetia, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Steve Victor, City Attorney

**DRAFT  
LEASE AGREEMENT**

**University Place Senior Center**

THIS LEASE AGREEMENT (the "Lease") is entered into and effective as of this \_\_\_\_ day of \_\_\_\_\_, 2016 between City of University Place ("Landlord"), and Community Connection Place ("Tenant"). Landlord and Tenant agree as follows:

**1. LEASE SUMMARY**

**a. Leased Premises.** The leased real estate consists of a building commonly known as the University Place Senior Center, 2534 Grandview Drive West, University Place, Washington, and includes the building, parking area, and all other improvements, fixtures and equipment within the building and located on the land, hereafter referred to as the "Leased Premises."

**b. Lease Commencement Date.** The term of this Lease shall be for a period of five (5) years and shall commence on \_\_\_\_\_, 2017 (the "Lease Commencement Date"). By mutual written agreement, the parties may extend the Lease for one additional five (5) year period on the same terms and conditions.

**c. Lease Termination Date.** The term of this Lease shall terminate at midnight on the day that is five (5) years following the Lease Commencement Date, or ten (10) years following the Lease Commencement Date if the parties have agreed to extend the Lease for an additional (5) year period. Tenant shall have the right to terminate this Lease any time for any reason by providing thirty (30) days' written notice to Landlord.

**d. Base Rent.** The base rent shall be \$1.00 per month ("Base Rent"), plus all costs of operation ("Additional Rent") including but not limited to, leasehold excise tax determined to be due by the State of Washington, and any utility costs and taxes which cannot be transferred to the Tenant. Rent shall be payable at Landlord's address shown in Section 1(e) below, or to such other place designated in writing by Landlord.

**e. Notice and Payment Addresses**

Landlord Representative: City of University Place  
ATTN: Public Works/Parks Director  
4951 Grandview Drive W.  
University Place, WA 98467

Fax No.: 253.460-6497

Email: GCooper@CityofUP.com

Tenant Representative: Community Connection Place  
ATTN: \_\_\_\_\_

\_\_\_\_\_  
University Place, WA 98464

Fax No.: \_\_\_\_\_

Email: \_\_\_\_\_

## 2. PREMISES

a. **Lease of Premises.** Landlord leases to Tenant, and Tenant leases from Landlord, the Premises upon the terms specified in this Lease.

b. **Acceptance of Premises.** Tenant accepts the Premises in its AS IS condition. Except as specified elsewhere in this Lease, Landlord makes no representations or warranties to Tenant regarding the Premises, including the structural condition of the Premises or the condition of all mechanical, electrical, and other systems on the Premises. Tenant shall be responsible for performing any work necessary to bring the Premises into a condition satisfactory to Tenant. By signing this Lease, Tenant acknowledges that it has had an adequate opportunity to investigate the Premises; acknowledges responsibility for making any corrections, alterations and repairs to the Premises.

## 3. RENT

a. **Payment of Rent.** Starting on the Lease Commencement Date, Tenant shall pay Landlord without notice, demand, deduction or offset, in lawful money of the United States, the monthly Base Rent and Any Additional Rent due, stated in Section 1 in advance on or before the first day of each month during the Lease term beginning on the Lease Commencement Date.

Payments for any partial month at the beginning or end of the Lease shall be prorated. All payments due to Landlord under this Lease, including late fees and interest, shall also constitute Additional Rent, and upon failure of Tenant to pay any such costs, charges or expenses, Landlord shall have the same rights and remedies as are otherwise provided in this Lease for the failure of Tenant to pay Rent.

b. **Late Charges; Default Interest.** If any sums payable by Tenant to Landlord under this Lease are not received within five (5) business days after their due date, Tenant

shall pay Landlord an amount equal to five percent (5%) of the delinquent amount in addition to the amount due as Additional Rent. All delinquent sums payable by Tenant to Landlord and not paid within five (5) business days after their due date shall, at Landlord's option, bear interest at the rate of fifteen percent (15%) per annum, or the highest rate of interest allowable by law, whichever is less (the "Default Rate"). Interest on all delinquent amounts shall be calculated from the original due date to the date of payment.

c. **Less Than Full Payment.** Landlord's acceptance of less than the full amount of any payment due from Tenant shall not be deemed an accord and satisfaction or compromise of such payment unless Landlord specifically consents in writing to payment of such lesser sum as an accord and satisfaction or compromise of the amount which Landlord claims. Any portion that remains to be paid by Tenant shall be subject to the late charges and default interest provisions of this Section.

#### **4. USES**

The Premises shall be used in full compliance with the requirements of the Community Development Block Grant, Subgrantee Agreement effective November 4, 1997, by and between Pierce County and the City of University Place for the investment of FY97, Community Development Block Grant funds. No act shall be done on or around the Premises that is unlawful or that will increase the existing rate of insurance on the Premises, or cause the cancellation of any insurance on the Premises. Tenant shall not commit or allow to be committed any waste upon the Premises, or any public or private nuisance.

#### **5. COMPLIANCE WITH LAWS**

Tenant shall not cause or permit the Premises to be used in any way which violates any law, ordinance, or governmental regulation or order.

#### **6. UTILITIES AND SERVICES.**

Tenant shall furnish all utilities (including, but not limited to, telephone, internet, and cable service if available) and other services which Tenant requires with respect to the Premises, and shall pay, at Tenant's sole expense, the cost of all utilities separately metered to the Premises, and of all other utilities and other services which Tenant requires with respect to the Premises.

#### **7. TAXES**

Tenant shall pay any taxes, assessments, liens and license fees levied, assessed or imposed by any authority having the direct or indirect power to tax or assess any such liens, related to or required by Tenant's use of the Premises as well as any taxes on Tenant's personal property located on the Premises.

## **8. ALTERATIONS**

Tenant may make alterations, additions or improvements to the Premises only with the prior written consent of Landlord Representative. The term "alterations" shall not include the installation of shelves, movable partitions, Tenant's equipment, and trade fixtures that may be performed without damaging existing improvements or the structural integrity of the Premises, and Landlord Representative's consent shall not be required for Tenant's installation or removal of those items. Tenant shall perform all work at Tenant's expense and in compliance with all applicable laws and shall complete all alterations in accordance with plans and specifications approved by Landlord Representative, using contractors approved by Landlord Representative. Tenant shall pay, when due, all claims for labor or materials furnished to or for Tenant at or for use in the Premises, which claims are or may be secured by any mechanics' or materialmen's liens against the Premises or any interest therein. Tenant shall remove all alterations at the end of the Lease term unless Landlord Representative conditioned its consent upon Tenant leaving a specified alteration at the Premises, in which case Tenant shall not remove such alteration, and it shall become Landlord's property. Tenant shall immediately repair any damage to the Premises caused by removal of alterations.

## **9. REPAIRS AND MAINTENANCE; SURRENDER**

Tenant shall, at its sole expense, maintain the entire Premises in good condition and promptly make all non-structural repairs and replacements necessary to keep the Premises safe and in good condition.

Tenant shall not damage any demising wall or disturb the structural integrity of the Premises, and shall promptly repair any damage or injury done to any such demising walls or structural elements caused by Tenant or its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees. Notwithstanding anything in this Section to the contrary, Tenant shall not be responsible for any repairs to the Premises made necessary by the negligence or willful misconduct of Landlord or its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees therein. If Tenant fails to perform Tenant's obligations under this Section, Landlord Representative may, at Landlord Representative's option, enter upon the Premises after twenty-four (24) hours' prior notice to Tenant and put the same in good order, condition and repair and the cost thereof together with interest thereon at the default rate set forth in Section 3 - Rent shall be due and payable as additional rent to Landlord together with Tenant's next installment of Base Rent. Upon expiration of the Lease term, whether by lapse of time or otherwise, Tenant

shall promptly and peacefully surrender the Premises, together with all keys, to Landlord in as good condition as when received by Tenant from Landlord or as thereafter improved, reasonable wear and tear and insured casualty excepted.

#### **10. ACCESS AND RIGHT OF ENTRY**

After twenty-four (24) hours' notice from Landlord Representative (except in cases of emergency, when no notice shall be required), Tenant shall permit Landlord Representative and its agents, employees and contractors to enter the Premises at all reasonable times to make repairs, inspections, alterations or improvements, provided that Landlord Representative shall use reasonable efforts to minimize interference with Tenant's use and enjoyment of the Premises. This Section shall not impose any repair or other obligation upon Landlord not expressly stated elsewhere in this Lease.

#### **11. SIGNAGE AND VISIBILITY**

Tenant shall obtain Landlord Representative's written consent as to size, location, materials, method of attachment, and appearance, before installing any signs upon the Premises. Tenant shall install any approved signage at Tenant's sole expense and in compliance with all applicable laws. Tenant shall not damage or deface the Premises in installing or removing signage and shall repair any injury or damage to the Premises caused by such installation or removal.

#### **12. INSURANCE**

**a. Tenant's Liability Insurance.** During the Lease term, Tenant shall pay for and maintain commercial general liability insurance with broad form property damage and contractual liability endorsements. This policy shall name Landlord as an additional insured, and shall insure Tenant's activities and those of Tenant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, sub-tenants, or other licensees or invitees with respect to the Premises against loss, damage or liability for personal injury or bodily injury (including death) or loss or damage to property with a combined single limit of not less than \$2,000,000, and a deductible of not more than \$10,000. Tenant's insurance will be primary and noncontributory with any liability insurance carried by Landlord.

**b. Waiver of Subrogation.** Landlord and Tenant hereby release each other and any other tenant, their agents or employees, from responsibility for, and waive their entire claim of recovery for any loss or damage arising from any cause covered by property insurance required to be carried or otherwise carried by each of them. Each party shall provide notice to the property insurance carrier or carriers of this mutual waiver of subrogation, and shall cause its respective property insurance carriers to waive all rights of subrogation against the other. This waiver shall not apply to the extent of the deductible

amounts to any such property policies or to the extent of liabilities exceeding the limits of such policies.

### **13. INDEMNIFICATION**

**a. Indemnification by Tenant.** Tenant shall defend, indemnify, and hold Landlord harmless against all liabilities, damages, costs, and expenses, including attorneys' fees, for personal injury, bodily injury (including death) or property damage arising from any negligent or wrongful act or omission of Tenant or Tenant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, sub-tenants, or other licensees or invitees on or around the Premises, or arising from any breach of this Lease by Tenant.

**b. Indemnification by Landlord.** Landlord shall defend, indemnify and hold Tenant harmless against all liabilities, damages, costs, and expenses, including attorneys' fees, for personal injury, bodily injury (including death) or property damage arising from any negligent or wrongful act or omission of Landlord or Landlord's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees on or around the Premises, or arising from any breach of this Lease by Landlord.

**c. Waiver of Immunity.** Landlord and Tenant each specifically and expressly waive any immunity that each may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. Neither party's indemnity obligations under this Lease shall be limited by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under the Worker Compensation Acts, Disability Benefit Acts or other employee benefit acts.

**d. Exemption of Landlord from Liability.** Except to the extent of claims arising out of Landlord's gross negligence or intentional misconduct, Landlord shall not be liable for injury to Tenant's business or assets or any loss of income therefrom or for damage to any property of Tenant or of its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, sub-tenants or other licensees or invitees, or any other person in or about the Premises.

**e. Survival.** The provisions of this Section shall survive expiration or termination of this Lease.

## 14. LIENS

Tenant shall not subject the Landlord's assets to any liens or claims of lien. Tenant shall keep the Premises free from any liens created by or through Tenant. Tenant shall indemnify and hold Landlord harmless from liability for any such liens including, without limitation, liens arising from any alterations. If a lien is filed against the Premises by any person claiming by, through or under Tenant, Tenant shall, within ten (10) days after Landlord's demand, at Tenant's expense, either remove the lien or furnish to Landlord a bond in form and amount and issued by a surety satisfactory to Landlord, indemnifying Landlord and the Premises against all liabilities, costs and expenses, including attorneys' fees, which Landlord could reasonably incur as a result of such lien.

## 15. DEFAULT

The following occurrences shall each constitute a default (an "Event of Default"):

a. **Failure To Pay.** Failure by Tenant to pay any sum, including Rent, due under this Lease following five (5) days' notice from Landlord Representative of the failure to pay.

b. **Cessation of Senior Programs.** Tenant's ceasing to offer senior programs at the Leased Premises for at least fifteen (15) consecutive days.

c. Any violation of requirements of the Community Development Block Grant, Subgrantee Agreement effective November 4, 1997.

d. **Vacation/Abandonment.** Vacation by Tenant of the Premises (defined as an absence for at least fifteen (15) consecutive days without prior notice to Landlord Representative), or abandonment by Tenant of the Premises (defined as an absence of five (5) days or more while Tenant is in breach of some other term of this Lease). Tenant's vacation or abandonment of the Premises shall not be subject to any notice or right to cure.

e. **Insolvency.** Tenant's insolvency or bankruptcy (whether voluntary or involuntary); or appointment of a receiver, assignee or other liquidating officer for Tenant's business; provided, however, that in the event of any involuntary bankruptcy or other insolvency proceeding, the existence of such proceeding shall constitute an Event of Default only if such proceeding is not dismissed or vacated within sixty (60) days after its institution or commencement.

f. **Levy or Execution.** The taking of Tenant's interest in this Lease or the Premises, or any part thereof, by execution or other process of law directed against Tenant, or attachment of Tenant's interest in this Lease by any creditor of Tenant, if such attachment is not discharged within fifteen (15) days after being levied.

**g. Other Non-Monetary Defaults.** The breach by Tenant of any agreement, term or covenant of this Lease other than one requiring the payment of money and not otherwise enumerated in this Section or elsewhere in this Lease, which breach continues for a period of thirty (30) days after notice by Landlord Representative to Tenant of the breach.

**h. Failure to Take Possession.** Failure by Tenant to take possession of the Premises on the Lease Commencement Date.

**i.** Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event less than thirty (30) days after notice by Tenant to Landlord. If Landlord fails to cure any such default within the allotted time, Tenant's sole remedy shall be to seek actual money damages (but not consequential or punitive damages) for loss arising from Landlord's failure to discharge its obligations under this Lease. Nothing herein contained shall relieve Landlord from its duty to perform of any of its obligations to the standard prescribed in this Lease. Any notice periods granted herein shall be deemed to run concurrently with and not in addition to any default notice periods required by law.

## **16. REMEDIES**

Landlord shall have the following remedies upon an Event of Default. Landlord's rights and remedies under this Lease shall be cumulative, and none shall exclude any other right or remedy allowed by law.

**a. Termination of Lease.** The Lease shall terminate on the date specified in the notice of termination. Upon termination of this Lease, Tenant will remain liable to Landlord for damages in an amount equal to the Rent and other sums that would have been owed by Tenant under this Lease for the balance of the Lease term and any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under the Lease, or which in the ordinary course would be likely to result from the Event of Default.

**b. Waiver of Redemption Rights.** Tenant, for itself, and on behalf of any and all persons claiming through or under Tenant, including creditors of all kinds, hereby waives and surrenders all rights and privileges which they may have under any present or future law, to redeem the Premises or to have a continuance of this Lease for the Lease term, or any extension thereof.

**c. Nonpayment of Additional Rent.** All costs which Tenant is obligated to pay to Landlord pursuant to this Lease shall in the event of nonpayment be treated as if they were payments of Rent, and Landlord shall have the same rights it has with respect to nonpayment of Rent.

**d. Failure to Remove Property.** If Tenant fails to remove any of its property from the Premises at Landlord's request following an uncured Event of Default, Landlord may, at its option, remove and store the property at Tenant's expense and risk. If Tenant does not pay the storage cost within five (5) days of Landlord's request, Landlord may, at its option, have any or all of such property sold at public or private sale (and Landlord may become a purchaser at such sale), in such manner as Landlord deems proper, without notice to Tenant. Landlord shall apply the proceeds of such sale: (i) to the expense of such sale, including reasonable attorneys' fees actually incurred; (ii) to the payment of the costs or charges for storing such property; (iii) to the payment of any other sums of money which may then be or thereafter become due to Landlord from Tenant under any of the terms hereof; and (iv) the balance, if any, to Tenant. Nothing in this Section shall limit Landlord's right to sell Tenant's personal property as permitted by law or to foreclose Landlord's lien for unpaid rent.

## **17. NON-WAIVER**

Landlord's waiver of any breach of any provision contained in this Lease shall not be deemed to be a waiver of the same provision for subsequent acts of Tenant. The acceptance by Landlord of Rent or other amounts due by Tenant hereunder shall not be deemed to be a waiver of any previous breach by Tenant.

## **18. NOTICES**

All notices under this Lease shall be in writing and effective (i) when delivered in person or via overnight courier to the other party, (ii) three (3) days after being sent by registered or certified mail to the other party at the address set forth in Section 1; or (iii) upon confirmed transmission by facsimile to the other party at the facsimile numbers set forth in Section 1. The addresses for notices and payment of rent set forth in Section 1 may be modified by either party only by written notice delivered in conformance with this Section.

## **19. LANDLORD'S LIABILITY**

Anything in this Lease to the contrary notwithstanding, covenants, undertakings and agreements herein made on the part of Landlord are made and intended not as personal covenants, undertakings and agreements for the purpose of binding Landlord personally or the assets of Landlord but are made and intended for the purpose of binding only the Landlord's interest in the Premises, as the same may from time to time be encumbered. In no event shall Landlord or its employees and appointed and elected officials, as the case may be, ever be personally liable hereunder.

## 20. GENERAL

a. **Entire Agreement.** This Lease contains all of the covenants and agreements between Landlord and Tenant relating to the Premises. No prior or contemporaneous agreements or understandings pertaining to the Lease shall be valid or of any force or effect and the covenants and agreements of this Lease shall not be altered, modified or amended except in writing, signed by Landlord and Tenant.

b. **Severability.** Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision of this Lease.

c. **Force Majeure.** Time periods for either party's performance under any provisions of this Lease (excluding payment of Rent) shall be extended for periods of time during which the party's performance is prevented due to circumstances beyond such party's control, including without limitation, fires, floods, earthquakes, lockouts, strikes, embargoes, governmental regulations, acts of God, public enemy, war or other strife.

d. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Washington, with venue in Pierce County.

e. **No Light, Air or View Easement.** Tenant has not been granted an easement or other right for light, air or view to or from the Premises. Any diminution or shutting off of light, air or view by any structure which may be erected on or adjacent to the Premises shall in no way effect this Lease or the obligations of Tenant hereunder or impose any liability on Landlord.

f. **Authority of Parties.** Each party signing this Lease represents and warrants to the other that it has the authority to enter into this Lease, that the execution and delivery of this Lease has been duly authorized, and that upon such execution and delivery, this Lease shall be binding upon and enforceable against the party upon signing.

g. **Time.** "Day" as used herein means a calendar day and "business day" means any day on which commercial banks are generally open for business in the state where the Premises are situated. Any period of time which would otherwise end on a non-business day shall be extended to the next following business day. Time is of the essence of this Lease.

h. **No Waiver of Governmental Rights.** Nothing contained in this Lease shall require the Landlord to take any discretionary governmental action relating to development of the improvements to be constructed on the Premises as part of the Lease, including, but not limited to, zoning and land use decisions, permitting, or any other governmental approvals.

IN WITNESS WHEREOF this Lease has been executed the date and year first above written.

**LANDLORD:**

**TENANT:**

**CITY OF UNIVERSITY PLACE**

**COMMUNITY CONNECTION PLACE**

By: \_\_\_\_\_  
Stephen P. Sugg, City Manager

By: \_\_\_\_\_  
\_\_\_\_\_  
*Print name*                      *Title*

Approved as to form:

\_\_\_\_\_  
Steve Victor, City Attorney

# STUDY SESSION

**Business of the City Council  
City of University Place, WA**

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**Proposed Council Action:**

Pass an ordinance amending the Franchise Agreements with U.P. Refuse and Harold Lemay Enterprises to streamline the implementation of contractually required rate adjustments.

**Agenda No:** 10  
**Dept. Origin:** Human Resources  
**For Agenda of:** November 21, 2016  
**Exhibits:** Memo  
Proposed Ordinance

**Concurred by Mayor:** \_\_\_\_\_  
**Approved by City Manager:** \_\_\_\_\_  
**Approved as to Form by City Atty.:** \_\_\_\_\_  
**Approved by Finance Director:** \_\_\_\_\_  
**Approved by Dept. Head:** \_\_\_\_\_

Expenditure Required: \$0.00	Amount Budgeted: \$0.00	Appropriation Required: \$0.00
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**SUMMARY / POLICY ISSUES**

In an effort to make the annual refuse rate process more efficient, staff is recommending a slight contract amendment to the Franchise Agreements with U.P. Refuse and Harold Lemay Enterprises. Every year staff comes before Council to discuss franchise-allowed adjustments, specifically the CPI adjustment and the tipping fee pass-through. These allowed adjustments are currently written into the current Franchise Agreements, and therefore, the annual presentation to Council is not necessary.

The proposed amendment to each Franchise Agreement will significantly streamline the process and save both staff and Council time. The Franchisees may bring any other proposed changes to the Agreements at any time.

**RECOMMENDATION / MOTION**

**MOVE TO:** Pass an ordinance amending the Franchise Agreements with U.P. Refuse and Harold Lemay Enterprises to streamline the implementation of contractually required rate adjustments.

# Memo

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**DATE:** November 21, 2016  
**TO:** City Council  
**CC:** Steve Sugg, City Manager  
**FROM:** Lisa Petorak, Human Resources Manager  
**SUBJECT:** Contract language modification

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## Summary

In an effort to make the annual refuse rate process more efficient, staff is recommending a slight contract amendment. Annually, staff comes before Council and discusses franchise allowed adjustments, specifically the CPI adjustment and the tipping fee pass-through. These allowed adjustments are currently written into the current franchise agreements. While historically the City has presented to council on those specific increases, it is not required. RCW 35.21.157 only requires that:

A city that contracts for the collection of solid waste, or provides for the collection of solid waste directly, shall notify the public of each proposed rate increase for a solid waste handling service. The notice may be mailed to each affected ratepayer or published once a week for two consecutive weeks in a newspaper of general circulation in the collection area. The notice shall be available to affected ratepayers at least forty-five days prior to the proposed effective date of the rate increase.

## Contract Amendment Language

Section 17.2 of the Franchise Agreements states: "By December 31 of each year, the Company shall advise the City of any required adjustment in the Base Rates...to be effective on March 1 of the following year."

Section 17.3 of the Franchise Agreements states: "The Base Rates shall be adjusted by 70% of the...Index reported for June 30 of the preceding year..." The Seattle-Tacoma-Bremerton June to June CPI-U is the referenced index used annually.

Section 17.6 of the Franchise Agreement incorporates the Pierce County tipping fee per tonnage. Section 17.6 states:

If the disposal fees which are charged to the Company to dispose of the City's Solid Waste at the Designated Disposal Site are increased or decreased at any time, the Base Rates charged by the Company hereunder shall be charged in accordance with this Agreement. Such change shall be

sufficient to reflect and pass through any such disposal rate change and be effective on the same date the revised disposal rate takes effect.

In an effort to reconcile current franchise language and RCW 35.21.157, staff is proposing to change language in Section 17.3.3 to the following:

The increase under this Section 17.3 shall be made **automatically** each year to the Base Rates in effect at the time of the adjustment and shall be effective on March 1 of the year after the year of the Adjustment Date unless the Company elects, in writing, to defer an increase until the following year. Under no circumstances shall the increase in the Base Rates under this Section 17.3 in any year be more than 5% unless upon agreement with the City, the Company has deferred an increase from the preceding year. When the Company elects to realize an agreed-upon deferred increase to Base Rates under this Section 17.3 the applicable percentage increase in the Index for the year in which an increase in Base Rates was deferred shall be added to the percentage change in the Index for the following year to determine the adjustment to the Base Rates.

The only portion of this section that was changed was to allow for the CPI and tipping fee pass-through adjustment to be automatic. The rest of the Franchise Agreements will remain unchanged.

### **Special Requests**

Should either of the refuse companies have a request that falls outside the scope of the aforementioned CPI or pass through rates, those may and should be separately considered by the City.

### **Conclusion**

The CPI and the Tipping Fee are already allowed and provided for in both of the refuse Franchise Agreements. Staff is recommending to modify the language slightly to allow the streamlining of the process. This will create a more efficient process, while still ensuring that any special requests that remain outside of that scope are still reviewable by the City at any time.

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, AMENDING THE FRANCHISE AGREEMENTS WITH UNIVERSITY PLACE REFUSE SERVICES, INC., AND HAROLD LEMAY ENTERPRISES, INC. (DBA LAKEWOOD REFUSE) TO STREAMLINE THE IMPLEMENTATION OF CONTRACTUALLY REQUIRED RATE ADJUSTMENTS**

WHEREAS, the City of University Place has established a solid waste utility; and

WHEREAS, the City contracts with University Place Refuse Services, Inc. to provide solid waste services within University Place under an existing Franchise Agreement, and has granted a franchise to Harold LeMay Enterprises, Inc. (DBA Lakewood Refuse) to continue to provide solid waste services in areas it served prior to incorporation; and

WHEREAS, the Franchise Agreements contain certain automatic annual rate adjustments; and

WHEREAS, the City, University Place Refuse Services, Inc., and Harold LeMay Enterprises, Inc. (DBA Lakewood Refuse) desire to amend the Franchise Agreements to streamline the implementation of such contractually required rate adjustments; and

WHEREAS, this clarification does affect any material term of the Franchise Agreements;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, DOES ORDAIN AS FOLLOWS:**

Section 1. Amendment of Agreements. Section 17.3.3 of the Franchise Agreements with University Place Refuse Services, Inc., and Harold LeMay Enterprises, Inc. (DBA Lakewood Refuse) are hereby amended as described in Exhibits A and B.

Section 2. Severability. If any one or more sections, subsections or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

Section 3. Effective date. A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City. This Ordinance shall take effect five days after publication.

**PASSED BY THE CITY COUNCIL ON NOVEMBER 21, 2016**

\_\_\_\_\_  
Javier H. Figueroa, Mayor

**ATTEST:**

\_\_\_\_\_  
Emelita Genetia, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Steve Victor, City Attorney

Published:  
Effective Date:

**AMENDMENT TO FRANCHISE AGREEMENT**

This Amendment to Franchise Agreement amends the Agreement that was effective the 1st day of January, 2010, between the City of University Place, a Washington municipality ("City"), and University Place Refuse Service, Inc., a Washington corporation ("the Company").

The City wishes to update the contract language related to CPI increases as provided for under Section 17.3 of the Franchise Agreement. The City and the Company agree that Section 17.3.3 of the Franchise Agreement shall be amended to read:

**17.3.3** The increase under this Section 17.3 shall be made automatically each year to the Base Rates in effect at the time of the adjustment and shall be effective on March 1 of the year after the year of the Adjustment Date unless the Company elects, in writing, to defer an increase until the following year. Under no circumstances shall the increase in the Base Rates under this Section 17.3 in any year be more than 5% unless upon agreement with the City, the Company has deferred an increase from the preceding year. When the Company elects to realize an agreed-upon deferred increase to Base Rates under this Section 17.3 the applicable percentage increase in the Index for the year in which an increase in Base Rates was deferred shall be added to the percentage change in the Index for the following year to determine the adjustment to the Base Rates.

All other provisions of the Franchise Agreement of January 1, 2010, shall remain the same.

Executed on the dates written below.

COMPANY: UNIVERSITY PLACE REFUSE SERVICE, INC.  
CITY: CITY OF UNIVERSITY PLACE

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: 2601 S. 35<sup>th</sup> Street, #200  
Tacoma, WA 98402

By: \_\_\_\_\_  
Printed Name: Stephen P. Sugg  
Title: City Manager  
Address: 3715 Bridgeport Way W.  
University Place, WA 98466-4456

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Steve Victor, City Attorney

**AMENDMENT TO FRANCHISE AGREEMENT**

This Amendment to Franchise Agreement amends the Agreement that was effective the 1st day of January, 2010, between the City of University Place, a Washington municipality ("City"), and Harold Lemay Services, Inc., a Washington corporation ("the Company").

The City wishes to update the contract language related to CPI increases as provided for under Section 17.3 of the Franchise Agreement. The City and the Company agree that Section 17.3.3 of the Franchise Agreement shall be amended to read:

**17.3.3** The increase under this Section 17.3 shall be made automatically each year to the Base Rates in effect at the time of the adjustment and shall be effective on March 1 of the year after the year of the Adjustment Date unless the Company elects, in writing, to defer an increase until the following year. Under no circumstances shall the increase in the Base Rates under this Section 17.3 in any year be more than 5% unless upon agreement with the City, the Company has deferred an increase from the preceding year. When the Company elects to realize an agreed-upon deferred increase to Base Rates under this Section 17.3 the applicable percentage increase in the Index for the year in which an increase in Base Rates was deferred shall be added to the percentage change in the Index for the following year to determine the adjustment to the Base Rates.

All other provisions of the Franchise Agreement of January 1, 2010, shall remain the same.

Executed on the dates written below.

COMPANY: UNIVERSITY PLACE REFUSE SERVICE, INC.  
CITY: CITY OF UNIVERSITY PLACE

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: 2601 S. 35<sup>th</sup> Street, #200  
Tacoma, WA 98402

By: \_\_\_\_\_  
Printed Name: Stephen P. Sugg  
Title: City Manager  
Address: 3715 Bridgeport Way W.  
University Place, WA 98466-4456

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Steve Victor, City Attorney

**CITY of UNIVERSITY PLACE**  
 3715 Bridgeport Way West ♦ University Place, WA 98466  
 Phone (253) 566-5656 ♦ FAX (253) 460-2541  
**STAFF REPORT TO THE CITY COUNCIL**  
 SEPTEMBER 6, 2016

<b>2016 PUBLIC WORKS CODE AMENDMENTS</b>
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**PROPOSED AMENDMENTS:** The following chapters would be amended under this proposal. The italicized information denotes a description of the proposed change

<b>TITLE 13 PUBLIC WORKS CODE</b>	<b>Exhibit 1</b>
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[13.05.220](#) Definitions – *Definition of “Director” clarified*

[13.05.320](#) Adopted guidelines and regulations – *Additional design standards added*

[13.05.420](#) Modifications – *Expiration language added*

[13.05.425](#) Right of Entry – *Legal authority clarification*

[13.05.530](#) Right-of-way permits – *Clarification on provisions for annual right-of-way permits, permit fee waiver for work performed in conjunction with a City project, and proof of insurance provision added.*

[13.05.540](#) Temporary right-of-way permits – *Provision for “Open for Business” signs*

[13.05.630](#) Street use guarantee – *Provision for street use guarantee to cover multiple permits*

[13.05.630](#) Erosion and sediment control/street cleaning guarantee – *Allows exception from Engineer Certification requirement for projects disturbing less than 5 acres in non-critical areas*

[13.05.670](#) Insurance required – *Adds insurance provisions recommended by WCIA*

[13.20.120](#) Additional design standards – *Adds reference to the Design Standards and Guidelines for Streetscape Elements (relocated from UPMC 19.54 )*

[13.20.140](#) Development on substandard streets – *Reduces minimum substandard street width from 22 feet to 20 feet for minor developments in accordance with Fire Code Official recommendations with residential fire sprinkler provisions*

[13.20.210](#) Design – *Revised design table to allow for 5.5-ft planter strips in local streets*

[13.20.245](#) Driveways – *Clarification on driveway grade and material requirements, provision to provide relief from driveway separation and turn-around requirements on Neighborhood Collector Arterial Streets.*

[13.20.445](#) Pedestrian protection during construction (new section) – *Added reference to pedestrian protection required by the International Building Code*

[13.20.880](#) Temporary right-of-way signs, street banners and decorations – Clarification on temporary sign and banner sizes and allowed locations

[13.20.885](#) Temporary open during construction right-of way signs (new section) – Provisions for temporary “Open During Construction” signs

[13.25.120](#) Design standards – Addition of the Washington State Department of Ecology Stormwater Manual as an alternate design standard for storm water design

[13.25.210](#) Design – Provision to require low-impact development design to be considered when feasible

## **TITLE 19 ZONING**

## **Exhibit 2**

Chapters:

[19.54](#) Design Standards and Guidelines for Streetscape Elements – Deleted and moved to Title 13

## Chapter 13.05 ADMINISTRATION

### **13.05.220 Definitions and terms.**

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As used in this chapter:

“Director” means the City of University Place ~~Development Services~~ Director of Engineering or duly authorized representative.

### **13.05.320 Adopted guidelines and regulations.**

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B. Standards Adopted.

1. City of University Place Comprehensive Storm Drainage Plan.
2. Conditions and standards as set forth in the Pierce County Health Department regulations.
3. Conditions and standards as set forth in the Pierce Transit regulations.
4. Conditions and standards as set forth in the University Place Comprehensive Land Use Plan.
5. King County Surface Water Design Manual.
6. U.S. Department of Transportation Manual on Uniform Traffic Control Devices (MUTCD), as amended and approved by Washington State Department of Transportation.
7. WSDOT Construction Manual as amended and approved by Washington State Department of Transportation.
8. Conditions and standards adopted by the State of Washington, Department of Labor and Industries.
9. Traffic Engineering Handbook, Institute of Traffic Engineers.
10. Highway Capacity Manual, Transportation Research Board.
11. ITE Trip Generation Manual.
12. AASHTO, A Policy on Geometric Design of Highways and Streets.
13. King County Road Standards (for drainage structures, and appurtenances only).

14. Tacoma Electrical Code.

15. Roundabouts: An Informational Guide, Federal Highway Administration.

16. City of University Place Town Center ~~Overlay~~ Design Standards.

[17. City of University Place Community Commercial Design Standards](#)

[18. City of University Place Standards and Guidelines for Streetscape Elements](#)

[19. Washington State Department of Ecology Stormwater Management Manual for Western Washington](#)

[2017](#). University Place Municipal Code.

(Ord. 518 § 1, 2008; Ord. 395 § 3, 2003).

### **13.05.420 Modifications.**

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A. Criteria. The Director may modify the requirements of this code after submittal of an application and approval of associated information, plans, and/or design data provided by the applicant. The application and associated information shall demonstrate to the satisfaction of the Director and City Engineer that: (1) the requested modification is based upon sound engineering principles; (2) strict application of the requirements of this code would impose an undue hardship on the applicant; (3) that the requirements for safety, environmental considerations, function, appearance, and maintainability are fully met; (4) granting the modification adequately protects the public health, safety, and welfare; and (5) granting the modification is in the best interest of the public.

B. Application. All applications for modifications shall be on a form provided by the City. All modifications must be approved by the Director in writing prior to the start of construction.

C. Notification.

1. Whenever the Director determines that a proposed modification has the potential to negatively impact surrounding properties, all adjacent property owners will be notified in writing of the application. The Director shall notify abutting property owners of the due date for any written comments about the application. The applicant shall be furnished a copy of all written comments from abutting property owners that will be considered by the Director in making a decision. Abutting property owners shall be mailed a copy of the decision.

2. The Director may require the notification of additional property owners if he determines they have a potential to be negatively impacted.

3. All costs associated with public notification shall be borne by the applicant.

D. Fees. All fees associated with a modification application shall be in accordance with the Development Services Fee Resolution.

E. Expiration.

1. A modification application shall expire when the applicant fails to provide necessary documentation and/or correction necessary to issue a permit in compliance with this code within 180 days of a request to provide such documentation and/or correction. A modification application may be extended for a single period not exceeding 180 days provided the applicant submits a request in writing and demonstrates that circumstances beyond the control of the applicant have prevented completion of the request for documentation and/or correction.

2. An approved modification shall expire two years after permit issuance.

F. Extension of Modification. A modification approval may be extended for a period not exceeding 180 days provided the applicant submits a request in writing and demonstrates that circumstances beyond the control of the applicant have prevented completion of the work under the modification. No modification shall be extended more than once.

L. Suspension or Revocation. The Director may suspend or revoke any modification issued in error or on the basis of incorrect information supplied by the applicant. The Director may also suspend or revoke any modification when the applicant fails to comply with the provisions of the modification. Any modification applicant aggrieved by the Director's decision to suspend or revoke a permit may appeal this action as provided in this chapter.

(Ord. 518 § 1, 2008; Ord. 395 § 3, 2003).

**13.05.425 Right of entry.**

Upon proper presentation of credentials, the Director or any duly authorized representative may, with the consent of the owner or occupant of a building, development, or premises, or pursuant to a lawfully issued inspection warrant, enter any building, development, or premises to perform the duties imposed by this code. Any applicant for a permit shall, as a condition of the permit, consent to entry of the Director or any duly

authorized representative to inspect the building, development, or premises for compliance with the terms and conditions of the permit. In addition, the Director may enter any premises, with proper legal authorization, in the event of an imminent threat to the public health, safety, or welfare or to protect any persons or property.

(Ord. 518 § 1, 2008; Ord. 395 § 3, 2003).

### **13.05.530 Right-of-way permits.**

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A. Permit Required. A right-of-way permit is required before any person may cut or remove trees or other vegetation; grade or stockpile material; alter, construct, repair, remove, excavate, place, obstruct, damage or disturb any structure, utility, facility or improvement located in the public right-of-way; or commence any other activity that interferes with the free use of the public right-of-way. A ~~blanket~~ annual right-of-way permit for certain activities may be ~~obtained by utilities operating with a franchise~~ granted by the City. ~~The provisions for annual right-of-way permits are included in the annual right-of-way permit procedures.~~

B. Permit Exemptions. A right-of-way permit shall not be required for the activities listed below. Exemption from the permitting requirements of this section shall not constitute approval for any work done in violation of this code or any other City code.

1. Construction, improvement, maintenance, or repair of public roads or public storm drainage facilities when performed by the City.
2. Emergency sandbagging, diking, ditching, filling or similar work when done to protect life or property.
3. Any activity that the Director determines does not have the potential to significantly impact the right-of-way or the free use thereof. Any exemption granted under this section shall be issued in writing.

C. Permit Application. To obtain a right-of-way permit, an applicant shall file a written application on a form provided by the City. A permit application that does not comply with this section shall be ineligible for review. An application shall:

1. Identify and describe the work proposed to be covered by the permit.
2. Describe and locate the area where the proposed work is to be performed.
3. Indicate the use for which the work is intended.

4. Be accompanied by plans, diagrams, computations, specifications and other data required in subsection (D) of this section.

5. Be signed by the applicant, or the applicant's authorized agent.

6. Give such other data and information as may reasonably be required by the Director to carry out the objectives of this code and other provisions of the UPMC.

7. Pay the application fee. The permit fee may be waived if the work is done in conjunction with a city capital improvement project.

8. Proof of Insurance as required in UPMC 13.05.670.

I. Expiration. Except for annual right-of-way permits, Aall other right-of-way permits expire 180 days after permit issuance. The Director may extend the time for action by the applicant for a period not exceeding 180 days on written request by the applicant showing that circumstances beyond the control of the applicant have prevented work under the permit. No permit shall be extended more than once.

(Ord. 518 § 1, 2008; Ord. 395 § 3, 2003).

### **13.05.540 Temporary right-of-way sign permit.**

A. Permit Required. A temporary right-of-way sign permit is required to place any sign, street banner, or other decoration in, along, over, or across any public right-of-way. A temporary right-of-way sign permit may be issued only for placement of signs, street banners, or decorations to promote bona fide community events. A bona fide community event is a carnival, circus, exhibition, fair, farmers' market, festival, parade, holiday celebration, or other community or regional celebration or event that may be of interest to the entire City or a substantial portion thereof.

B. Permit Exemptions. A temporary right-of-way sign permit shall not be required for the following signs, street banners, or decorations. Exemption from the permitting requirements of this section does not constitute authorization to place any signs, street banners, or decorations in violation of the provisions of this code, the UPMC or other City ordinance.

1. Political signs regulated under Chapter [19.75](#) UPMC.

2. Advisory or regulatory signs installed under a right-of-way or site development permit.

3. Signs, street banners, or decorations of the City.

4. Public notice signs required by local and State law.

5. Temporary "Open During Construction" signs approved by the Director.

### **13.05.630 Street use guarantee.**

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A. A street use guarantee ensures compliance with right-of-way permit conditions and warranties the design, materials, and workmanship associated with the work performed in a right-of-way. All applicants performing work that will, or has the potential to, disturb, modify, or damage anything within the City right-of-way will be required to post a street use guarantee with the City.

B. Prior to issuance of a right-of-way permit the applicant shall submit a street use guarantee.

C. Street use guarantees shall be in the amount of \$5,000 unless the Director determines after a review of a permit that a lower or higher amount is appropriate.

D. When an Applicant has multiple right-of-way permits, a single street use guarantee in the amount of \$20,000 may be submitted in lieu of individual \$5,000 street use guarantees.

~~D~~E. The applicant shall be responsible to repair all defects resulting from the applicant's activity in the right-of-way. The applicant will not be relieved of this obligation until the right-of-way impacted by the applicant has remained free from defects for a consecutive period of two years. The applicant will be liable for any third party damages that result from a breach of these duties for the duration of the street use guarantee.

~~E~~F. During the period of the street use guarantee, City staff will periodically inspect the right-of-way impacted by the applicant. The City shall provide notice to the applicant when maintenance and/or repairs are necessary, specifying a reasonable timeframe within which such work is to be completed. In the event that the applicant does not complete such maintenance and/or repairs, the applicant will be in default subject to the provisions of this article, and the City may perform such work.

~~F~~G. If, on the basis of its inspections, the City determines that repairs must be performed immediately to prevent risk to person(s) or property, the City may make necessary repairs and the cost of those repairs shall be paid by the applicant upon demand. If the applicant fails to pay for the repairs by the time specified by the City, the applicant will be in default subject to the provisions of this article.

**GH.** The applicant shall pay for the inspections performed by the City during the duration of the street use guarantee. Inspection fees will be as specified in the development services fee resolution.

**HJ.** Release Procedures. Any release of the street use guarantee must be in writing to be effective. The City of University Place will release a street use guarantee only after each of the following have been met:

1. The right-of-way construction work completed by the applicant has remained free of defects for two consecutive years. This period can be reduced if the Director determines that the work associated with the right-of-way permit has been sufficiently completed and stabilized such that there is no further risk of damage to existing facilities.
2. The applicant or surety has requested in writing the release of the guarantee.
3. The applicant has paid all outstanding fees.

(Ord. 531 § 1 (Exh. A), 2008; Ord. 518 § 1, 2008; Ord. 395 § 3, 2003).

#### **13.05.640 Erosion and sediment control/street cleaning guarantee.**

D. Release Procedures. Any release of the erosion and sediment control/street cleaning guarantee must be in writing to be effective. The Director will release the erosion and sediment control/street cleaning guarantee only after each of the following have been met:

1. The applicant's engineer has submitted a certification that all disturbed areas within the site have been stabilized in conformance with the permit conditions and the UPMC. The certification shall be as prescribed in Article VIII of this chapter. For ~~single family and duplex building sites~~ with less than 5 acres of disturbed area, the City may waive the requirement for certification unless the site is located within a landslide and erosion hazard area.
2. The applicant has requested a final inspection of the site.
3. Any deficiencies identified by the City in the final inspection have been corrected.
4. The applicant or surety has requested in writing the release of the guarantee.
5. The applicant has paid all outstanding fees.

(Ord. 518 § 1, 2008; Ord. 395 § 3, 2003).

### **13.05.670 ~~Liability Insurance~~ required.**

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A. The Applicant shall procure and maintain for the duration of the Permit, insurance against claims for injuries to persons or damage to property which may arise from or in connection with operations or activities performed by or on the Applicant's behalf with the issuance of this Permit.

B. No limitation. Applicant's maintenance of insurance as required by the Permit shall not be construed to limit the liability of the Applicant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance. The Applicant shall obtain insurance of the type described below:

1. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover products liability. The City shall be named as an insured under the Applicant's Commercial General Liability insurance policy using ISO Additional Insured-State or Political Subdivisions-Permits CG 20 12 or a substitute endorsement providing equivalent coverage.

2. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

D. Minimum Amounts of Insurance. Applicant shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products- completed operations aggregate limit.

2. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

E. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Commercial General Liability insurance:

1. The Applicant's insurance coverage shall be primary insurance as respect to the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Applicant's insurance and shall not contribute with it.

2. The Applicant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

G. Verification of Coverage. Applicant shall furnish the City with original certificates and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of the Applicant before issuance of the Permit.

~~Repealed by Ord. 518.~~

(Ord. 395 § 3, 2003).

(Ord. 518 § 1, 2008; Ord. 395 § 3, 2003).

## Chapter 13.20 TRANSPORTATION

### 13.20.120 Additional design standards.

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The “City of University Place Design Standards and Guidelines for Streetscape Elements” are adopted by reference and contained in a separate City design manual titled “Design Standards and Guidelines for Streetscape Elements.”

~~UPMC Title 19 presents additional design standards that apply to certain transportation facilities. These include the Design Standards and Guidelines for Streetscape Elements adopted by reference in Chapter 19.54 UPMC.~~

These standards and guidelines apply to neighborhood collector streets and local streets associated with new development as well as qualifying modifications to existing development.

(Ord. 565 § 1 (Exh. A), 2010; Ord. 518 § 1, 2008; Ord. 395 § 3, 2003).

### 13.20.140 Developments on substandard streets.

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A. The applicant shall be required to construct improvements to bring substandard streets up to current City standards prior to final approval for any development that obtains access from substandard public or private streets. Such improvements shall be made from the point of access to the closest intersection of an arterial street. Street improvements may include but are not limited to curb and gutter, sidewalk, street lighting, traffic signal modification, relocation or installation, utility relocation, street widening, and resurfacing.

B. Exceptions.

1. Any development that does not generate additional vehicular traffic is exempt from the requirements of this section.
2. The construction of or modification to a single-family or duplex residential unit will require the access to be improved up to emergency vehicle access standards in Article III of this chapter.
3. The development of short subdivisions that accommodate no more than four dwelling units will require the substandard street to be improved up to 20~~2~~ feet of paved driving surface and five-foot gravel shoulders on each side of the street provided any new dwelling units are equipped with residential fire suppression sprinkler systems.

(Ord. 518 § 1, 2008; Ord. 395 § 3, 2003).

### 13.20.210 Design.

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D. Specific street design standards are provided in Table I, below.

**Table I. Street Design Standards**

Design Standard	Major Arterial	Secondary Arterial	Collector Arterial	Neighborhood Collector	Local Feeder Street	Neighborhood Street	Access Lane	Private Street	Alley
Right-of-Way Width	85'-89'	63'-67'	60'-67'	60'	60'	53'	40'	26'	<sup>10</sup> 20'-24'
<sup>1</sup> Parking Lanes	<sup>2</sup> None	<sup>2</sup> None	<sup>2</sup> None	<sup>2</sup> None	Both sides: 7' wide parallel	One side: 7' parallel	Not permitted	Optional one side: 8' parallel	Not permitted
Grade (min./max.)	0.7%/8%	0.7%/8%	0.7%/15%	0.7%/15%	0.7%/15%	0.7%/15%	0.7%/15%	0.7%/15%	0.7%/15%
Cement Concrete Curb and Gutter	Both sides	Both sides	Both sides	Both sides	Both sides	Both sides	Per storm system design	Per storm system design	Per storm system design
Sidewalks	<sup>3</sup> Both sides: 6'	<sup>3</sup> Both sides: 6'	<sup>3</sup> Both sides: 6'	Both sides: 6'	Both sides: 5'	Both sides: 5'	One side/variable walkway	<sup>4</sup> One side: 5'	N/A
Planter Strip Width (including curb)	Both sides: 4'-5.5'	Both sides: 4'-5.5'	Both sides: 5.5'	Both sides: 5.5'-8'	Both sides: <u>5.5' - 8'</u>	Both sides: <u>5.5' - 8'</u>	10' (includes pedestrian walkway)	N/A	<sup>10</sup> Both sides: 2'-4'

**Table I. Street Design Standards**

<b>Design Standard</b>	<b>Major Arterial</b>	<b>Secondary Arterial</b>	<b>Collector Arterial</b>	<b>Neighborhood Collector</b>	<b>Local Feeder Street</b>	<b>Neighborhood Street</b>	<b>Access Lane</b>	<b>Private Street</b>	<b>Alley</b>
Bike Facilities/Shoulders	Both sides: 5'	Both sides: 5'	Both sides: 5'	<sup>5</sup> On-street, striped: 5' to 6'	<sup>5</sup> On-street, shared use	On-street, shared use	On-street, shared use	N/A	N/A
Intersection Curb Radius (inside)	35'	35'	30'	<sup>6</sup> 10'-20'	<sup>6</sup> 10'-20'	20'	20'	20'	N/A
Centerline Radius <sup>7</sup> (minimum)	600'	600'	150'	150'	150'	As approved	As approved	As approved	As approved
Raised Landscape Median	8'-12'	8'-12'	<sup>8</sup> 8'-12'	None	None	None	None	None	None
Through Travel Lanes	Variable	Variable	2	2	2	2	2	2	1
Travel Lane Width	11'	11'	11'	11'	10'	10'	10'	<sup>9</sup> 10'	16'

1. Parking bays are required when parking is provided on one side of a street and may be required when parking is provided on both sides of a street.

2. Parking lanes on arterials may be allowed with approval from the Director. Parking bays may be required on arterial streets.

3. Sidewalks in commercial areas shall be 10 feet wide when required by the Director.

4. Not required for two or less dwelling units.

5. A paved shoulder/bike lane shall be required if the neighborhood collector or local feeder street has been designated as a bike route.

6. A typical minimum curb return radius of 10 to 15 feet should be used where:

- high pedestrian volumes are present or reasonably anticipated;
- volumes of turning vehicles are low;
- the width of the receiving intersection approach can accommodate a turning passenger vehicle without encroachment into the opposing lane;
- passenger vehicles constitute the majority of turning vehicles; bicycle and parking lanes create additional space to accommodate the effective turning radius of vehicles;
- low turning speeds are required or desired; and
- occasional encroachment of a turning school bus, moving van, fire truck or oversized delivery truck into an opposing lane is acceptable.

Curb radii will need to be larger than 15 feet where:

- occasional encroachment of a turning school bus, moving van, fire truck or oversized delivery truck into an opposing lane is not acceptable;
- curb extensions are proposed or might be added in the future; and
- receiving street does not have parking or bicycle lanes and the receiving lane is less than 12 feet in width.

In such cases where a minimum curb return radius larger than 15 feet is proposed, it should be demonstrated that pedestrian safety will not be compromised beyond that which is necessary to accommodate other transportation facility requirements.

7. This radius may be reduced with superelevation in conformance with AASHTO if approved by the Director. Maximum equals six percent.

8. May be reduced or eliminated if approved by the Director.

9. Pavement width and tract width shall increase eight feet for each parking lane desired.

10. Alley right-of-way, tract or width may vary depending on type of development being served and be reduced to the minimum dimension shown; provided, that at least 24 feet of separation will be maintained between garages with garage doors facing each other from opposite sides of the alley.

(Ord. 565 § 1 (Exh. A), 2010; Ord. 518 § 1, 2008; Ord. 395 § 3, 2003).

### **13.20.245 Driveways.**

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#### **A. General.**

1. Driveways and driveway approaches shall be constructed in accordance with the University Place Standard Notes and Details.

2. All abandoned driveway approaches on the same frontage shall be removed and the curbing and sidewalk or shoulder and ditch section shall be properly restored.

3. All driveway approaches at locations with curb and gutter shall be constructed of Portland cement concrete and shall be subject to the same testing and inspection requirements as curb, gutter, and sidewalk construction. ~~Approaches at other locations may be asphalt concrete.~~

4. All driveway approaches at locations without curb gutter or sidewalk, may be constructed with either Portland cement concrete, asphalt concrete, or pervious pavement. Approach grade at these locations shall not exceed 2% within the right-of-way in order to accommodate future sidewalk construction.

54. Shared driveways are permitted upon formal written agreement by both property owners and approval of the Director. The agreement shall be a recorded easement for both parcels of land specifying joint usage. Shared driveways shall be a minimum of 15 feet wide and paved along that portion which serves both parcels. Shared driveway width may be reduced within small lot and innovative housing developments to achieve design goals and reduce impervious surface consistent with the City's low impact development goals and objectives.

65. ~~Grade breaks, including the tie to the roadway, shall be constructed as smooth vertical curves.~~The maximum change in driveway grade shall be eight percent within any 10 feet of distance on a crest and 12 percent within any 10 feet of distance in a sag vertical curve. These grades may be exceeded with proper use of smooth vertical curbs in accordance with AASHTO guidelines.

~~76~~. No commercial driveway shall be allowed where backing onto a sidewalk or street will occur.

~~87~~. Driveway locations shall be unified whenever possible to create the fewest number of accesses onto a street.

~~98~~. Driveways that serve only one lot shall be located a minimum of seven and one-half feet from the property line where the driveway enters the right-of-way.

#### B. Arterial Streets.

1. No driveway may access an arterial street within 75 feet (measured along the arterial) of any other driveway access on either side of the street unless aligned directly opposite another driveway. This distance may be reduced to 35 feet for neighborhood collector arterial streets provided adequate sight distance is provided.

2. No driveway may access an arterial street within 150 feet of the nearest right-of-way line of an intersecting street. This distance may be reduced to 75 feet along neighborhood collector arterial streets provided adequate sight distance is provided.

3. Access to arterial streets may be limited to one driveway for each tract of property separately owned. Properties contiguous to each other and owned by the same person are considered to be one tract.

4. Driveways giving direct access onto arterials may be denied if alternate access is available.

5. Wherever a potential access exists to any property from both a public road and a private easement, the City may refuse access to the public road.

6. The Director and Pierce Transit will determine the minimum separation that will be allowed between an existing bus stop and a proposed driveway based on sight obstruction and vehicular and pedestrian traffic.

7. Residential driveways accessing arterial streets shall provide a turn-around for residential vehicles so these vehicles will not have to back out into the arterial. This may be waived along neighborhood collector arterial streets provided adequate sight distance is provided.

### **13.20.445 Pedestrian protection during construction**

Pedestrian protection during construction shall be provided in accordance with the International Building Code adopted by reference in UPMC 14.05.

### **13.20.880 Temporary right-of-way signs, street banners and decorations.**

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A. Signs, street banners, or decorations may be permitted in City right-of-way only to promote bona fide community events. A bona fide community event is a carnival, circus exhibition, fair, farmers' market, festival, fiesta, parade, holiday celebration, or other community or regional celebration or event that may be of interest to the entire City or a substantial portion thereof.

B. Any temporary right-of-way sign permit shall be subject to the following conditions:

1. Signs, street banners, or decorations shall not promote or advertise the sale of any product, service, or commodity except that 10 percent of a sign may contain sponsor information. The remaining 90 percent will contain information promoting the community event or celebration.
2. Signs, street banners, or decorations shall not advertise or promote any religious or political message, except that political signs are regulated under Chapter [19.75](#) UPMC.
3. The City may remove any sign, street banner, or decoration if it obstructs any traffic sign, interferes with the safe movement of traffic, or otherwise interferes with the public health, safety or welfare.

C. Additional Conditions for Signs. Additional conditions for temporary signs placed in the City right-of-way are as follows:

1. Signs in the right-of-way shall be located as close as possible to the outside edge of the right-of-way.
2. The size of temporary right-of-way signs shall be as set forth for temporary signs as provided in Chapter [19.75](#) UPMC, except for street banners which are regulated below.
3. No sign shall obstruct safe visibility for vehicular or pedestrian traffic, or obstruct the clear-view triangle as described in Article II of this chapter.
4. All temporary right-of-way signs must be removed within three working days after the expiration of the permit. If the applicant fails to remove the sign in the time required, the City

may remove the sign and the applicant will not be eligible for another temporary right-of-way sign permit for 12 months.

5. Signs subject to temporary sign permits shall not be placed in medians or roundabouts.

D. Additional Conditions for Street Banners and Decorations. Additional conditions for temporary street banners or decorations placed in the City right-of-way are as follows:

1. Street banners and decorations shall be mounted and removed only by authorized City personnel on City-owned street light poles or other City-owned facilities approved by the Director for that purpose.
2. No more than 10 City street light poles shall be affixed with street banners at any one time unless the banners are owned by the City.
3. No street banner or decoration shall obstruct safe visibility for vehicular or pedestrian traffic, or obstruct the clear-view triangle as described in Article II of this chapter.
4. Street banner or decoration shall not interfere with any planned City street banner or decoration.
5. No street banner or decoration may be hung across the traveled portion of any public right-of-way.
6. Street banners and decorations shall be constructed in accordance with the University Place Standard Notes and Details.

7. Banners shall be no greater than 24 square feet.

8. Banners subject to temporary sign permits shall not be placed in medians or roundabouts.

(Ord. 518 § 1, 2008; Ord. 395 § 3, 2003).

### **13.20.885 Temporary “open during construction” right-of-way signs**

A. The Director may allow temporary “open during construction” signs placed in front of businesses affected by a City capital facility project provided:

1. The sign(s) shall be no larger than 12 square feet.

2. The sign(s) may include limited promotional messaging for the associated business provided the primary message is "Business Open During Construction."
3. The signs must be removed immediately following the construction activity that affects that business.

## Chapter 13.25 SURFACE WATER MANAGEMENT

### **13.25.120 Design standards.**

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A. The King County Surface Water Design Manual (KCSWDM) and the King County Stormwater Pollution Prevention Manual and the portions of the King County Road Standards referenced therein are hereby adopted and incorporated fully into this chapter by this reference. The King County Surface Water Design Manual sets forth the drainage and erosion control requirements as supplemented herein. In these documents, all references to King County or the County shall be construed to refer to the City of University Place; all references to the King County Department of Development and Environmental Services (DDES) or the Water and Land Resources Division of the King County Department of Natural Resources (WLR) shall be hereby revised to read the City of University Place Engineering Department or such other department as the City Manager may designate to enforce this chapter.

B. The design standards shall be applied in the following hierarchy of precedence:

1. University Place Municipal Code;
2. King County Surface Water Design Manual;
3. King County Stormwater Pollution Prevention Manual;
4. King County Road Standards;
5. Washington State Department of Transportation (WSDOT) Standard Specifications for Road, Bridge, and Municipal Construction;
6. WSDOT Design Manual;
7. WSDOT Construction Manual.

C. The term “critical drainage area” in the King County Surface Water Design Manual shall have the meaning of “critical area” as defined in Chapter [13.05](#) UPMC, Article II, and classified in UPMC Title [17](#).

D. The term “landslide hazard drainage area” in the King County Surface Water Design Manual shall have the meaning of “landslide and erosion hazard area” as defined in Chapter [13.05](#) UPMC, Article II, and classified in UPMC Title [17](#).

E. A site development permit is added to the permits and approvals listed in Section 1.1.1 of the King County Surface Water Design Manual.

F. Core Requirement No. 3, "Impervious Surface Performance Exemption," of the KCSWPM is deleted and not in effect.

G. Core Requirement No. 5 provision for the allowance for projects in the residential zone that result in no more than four percent total impervious surface and no more than 15 percent pervious surface is deleted and not in effect.

H. Soil equality and depth criteria located in reference Section 4-A of the KCSWPM are hereby specifically adopted by reference as the sole criteria.

I. King County's approved method for modeling impervious area for rain garden credits in the KCSWDM is hereby specifically adopted by reference as the method for determining credits for Treatment under Minimum Requirement No. 6.

J. Department of Ecology Stormwater Manual Wetlands Provisions Adopted. Minimum Requirement No. 8 of Appendix 1 of the Washington State Department of Ecology Stormwater Manual and Ecology's Guide Sheets 1B and 2B are hereby adopted and incorporated herein fully by this reference.

[K. The Washington State Department of Ecology Stormwater Management Manual for Western Washington is accepted as an alternate design standard to the King County Surface Water Design Manual.](#)

(Ord. 555 §§ 1, 2, 2009; Ord. 518 § 1, 2008; Ord. 423 § 40, 2004; Ord. 395 § 3, 2003).

### **13.25.210 Design.**

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A. When a storm drainage report is required, it must include any relevant data from the City comprehensive storm water plan.

B. The Leach Creek and Chambers Creek Drainage Basins are hereby designated as conservation flow control areas as defined in the KCSWDM.

C. The Morrison Pothole Drainage Area (sub-basin within the North Day Island Drainage Basin) is hereby designated as a flood problem flow control area as defined in the KCSWDM.

D. All other drainage basins are hereby designated as basic flow control areas as defined in the KCSWDM.

E. Certain portions of the storm system on 27th Street West within the Day Island Waterway Basin have been identified as a conveyance system nuisance problem (Type 1 downstream problem) as defined in the KCSWDM. Additional flow control, as identified in the KCSWDM, or system improvements are required for development projects that are tributary to the deficient portions of the system.

F. The Crystal Springs Creek Drainage Basin has been identified to have a severe erosion problem (Type 2 downstream problem) as defined in the KCSWDM.

G. For the purpose of rainfall modeling, the City of University Place will be considered to have the same rainfall characteristics as the City of Federal Way.

H. Low-Impact-Development design techniques shall be incorporated into storm drainage system designs when feasible in accordance with the Department of Ecology Stormwater Management Manual for Western Washington and the King County Surface Water Design Manual.

(Ord. 531 § 1 (Exh. A), 2008; Ord. 518 § 1, 2008; Ord. 395 § 3, 2003).

## ~~Chapter 19.54 DESIGN STANDARDS AND GUIDELINES FOR STREETScape ELEMENTS~~

### ~~Sections:~~

~~19.54.010—Purpose.~~

~~19.54.020—Authority.~~

~~19.54.030—Applicability.~~

~~19.54.040—Review process.~~

~~19.54.050—Design standards and guidelines adopted.~~

### ~~19.54.010 Purpose.~~

~~The purpose of this chapter is to establish streetscape standards and guidelines, including sidewalk, landscaping and street tree requirements, for neighborhood collector arterial, local, neighborhood, and access lane streets, alleys and paseos.~~

~~(Ord. 607 § 1 (Exh. A), 2012; Ord. 559 § 7 (Exh. A), 2009).~~

### ~~19.54.020 Authority.~~

~~The provisions of this chapter shall augment and/or supersede existing regulations in this title and UPMC Title 13. When provisions included in these design standards and guidelines conflict with other requirements of this title or UPMC Title 13, these standards and guidelines shall apply unless otherwise provided.~~

~~(Ord. 607 § 1 (Exh. A), 2012; Ord. 559 § 7 (Exh. A), 2009).~~

### ~~19.54.030 Applicability.~~

~~The standards and guidelines adopted pursuant to this chapter shall apply to streetscape improvements required in conjunction with development that includes or requires the construction of new streets and pedestrian facilities or the modification of existing streets that are classified as neighborhood collector arterial, local feeder street, neighborhood street, access lane, alley, paseo and multi-use path.~~

~~(Ord. 607 § 1 (Exh. A), 2012; Ord. 559 § 7 (Exh. A), 2009).~~

### ~~19.54.040 Review process.~~

~~Site development permit review is required for development that is subject to compliance with the standards and guidelines adopted pursuant to UPMC 19.54.050.~~

~~(Ord. 607 § 1 (Exh. A), 2012; Ord. 559 § 7 (Exh. A), 2009).~~

### ~~19.54.050 Design standards and guidelines adopted.~~

~~The “City of University Place Design Standards and Guidelines for Streetscape Elements” are adopted by reference and contained in a separate City design manual titled “Design Standards and Guidelines for Streetscape Elements.”~~

~~(Ord. 607 § 1 (Exh. A), 2012; Ord. 566 § 3, 2010; Ord. 559 § 7 (Exh. A), 2009).~~

~~The provisions of this chapter shall augment and/or supersede existing regulations in this title and UPMC Title 13. When provisions included in these design standards and guidelines conflict with other requirements of this title or UPMC Title 13, these standards and guidelines shall apply unless otherwise provided.~~

~~(Ord. 607 § 1 (Exh. A), 2012; Ord. 559 § 7 (Exh. A), 2009).~~

**Business of the City Council  
City of University Place, WA**

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**Proposed Council Action:**

Adopt a Resolution approving a Development Agreement between the City of U.P. and SEB, Inc. for U.P. Town Center Lot 12 substantially in the form attached hereto.

**Agenda No:** 12  
**Dept. Origin:** City Attorney  
**For Agenda of:** November 21, 2016  
**Exhibits:** Resolution  
Development Agreement

**Concurred by Mayor:** \_\_\_\_\_  
**Approved by City Manager:** \_\_\_\_\_  
**Approved as to Form by City Atty.:** \_\_\_\_\_  
**Approved by Finance Director:** \_\_\_\_\_  
**Approved by Dept. Head:** \_\_\_\_\_

Expenditure Required: \$0.00	Amount Budgeted: \$0.00	Appropriation Required: \$0.00
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**SUMMARY / POLICY ISSUES**

The City Council has studied the proposed Development Agreement between the City and SEB, Inc. (Developer) for development of Lot 12. SEB, Inc. (Developer), is the developer of the Clearview 100 Mixed Use Building on Lot 8 of Town Center, and of the Latitude 47 Mixed Use Building and garage on the east side of Bridgeport Way within the Town Center Overlay Zone.

Under the Development Agreement, the City will convey Lot 12 to the Developer for the sum of \$865,245.00 (\$15.00 psf), and the Developer will complete a mixed use building with approximately 10,000 square feet of commercial retail space and approximately 125 market rate residential units. This is consistent with and in furtherance of the Town Center Plan. The other material terms and conditions of the draft Agreement are substantially unchanged from the previously approved Development Agreement with SEB for Town Center Lots 8 and 10. SEB has fully complied with and performed under the previous agreements.

It is in the best interests of the City of University Place to execute the Development Agreement and move forward with this Project.

**RECOMMENDATION / MOTION**

**MOVE TO:** Adopt a Resolution approving a Development Agreement between the City of U.P. and SEB, Inc. for U.P. Town Center Lot 12 substantially in the form attached hereto.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, APPROVING  
A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF UNIVERSITY PLACE AND  
SEB, INC. FOR UNIVERSITY PLACE TOWN CENTER LOT 12**

WHEREAS, the City has been engaged in a planning and development process for many years to create a visually attractive mixed-use town center to serve as the civic and commercial focal point of the community. In 1998, the City adopted a Comprehensive Plan and Land Use Map that called for the creation of a town center; and

WHEREAS, in 1999, following a series of public meetings, design workshops and public processes, the City adopted a Town Center Plan that established a vision for redevelopment of the City's central business area and which includes the following core objectives and strategies: (i) create a high quality comprehensive integrated retail, commercial and residential anchor for downtown University Place; (ii) create a special identity and gathering place for the City and its residents with access to downtown businesses; (iii) create a visually attractive and pedestrian oriented space in the downtown area; (iv) enhance public security and provide City residents with additional housing opportunities through the introduction of multi-family residential buildings in downtown; (v) encourage tourism; and (vi) revitalize the business district by creating a development which will improve the financial stability and general economic vitality of the City, preserve jobs, attract additional private investment in downtown and generate additional sales and property tax revenue for the City; and

WHEREAS, in 2002 and again in 2007, the City Council adopted a five-year Economic Development Strategic Action Plan; the Council also established an Economic Development Task Force to promote business growth and development within the City's business districts to ensure an economically sustainable future. The Economic Development Task Force and the Strategic Action Plan identifies as one of the goals of the City the creation of University Place Town Center, with a mix of residential, commercial, cultural, community, public and open spaces. The development concept for Town Center is a mixed-use neighborhood that creates an integrated retail and residential center in the City; and

WHEREAS, pursuant to Ordinance Nos. 409, 469, 470, and 532, the City amended its Comprehensive Plan to provide for a Town Center overlay zone, adopted design standards and guidelines for the overlay zone and established a Planned Action Area within the overlay zone. This area consisted of 24 lots of real property totaling approximately 31.7 acres of size located on the east and west sides of Bridgeport Way W. roughly between 35th Street and 38th Street. The City also adopted various amendments to its zoning code pertaining to height, density, setbacks and the application of design standards and guidelines in the overlay zone. The City completed and recorded a Binding Site Plan in 2007, which was amended in 2009, under Auditor's Recording No. 200909185003; and

WHEREAS, in furtherance of the Town Center Plan, the City, over the course of several years, acquired and currently owns certain lots located within the Town Center Planned Action Area which are depicted on the Binding Site Plan and referred to as Lots 1, 2, 3, 4, 7, 8, 9, 10, 11 and 12, and Tracts A & B, and the public right of way in and about the foregoing (the "Town Center Property"). The Town Center Property was acquired by the City specifically for the development of public facilities and private commercial uses to fulfill the goals of the Town Center Plan; and

WHEREAS, since acquiring the Town Center Property, the City has diligently pursued achievement of the goals of the Town Center Plan. The City has completed major site preparation work on Town Center Property to prepare it for public and private development including construction of utilities, podium decks, more than 500 stalls of structured public parking (the "Town Center Garage"), a public plaza, public open space and street and sidewalk improvements; and

WHEREAS, in 2006, the City entered into an Agreement with the Pierce County Rural Library District for development of a joint Library and Civic Building in Town Center. The new Library/Civic Building is complete and open; and

WHEREAS, pursuant to the goals of the Town Center Plan, the City has for several years sought to convey all or portions of Lots 1, 2, 3, 4, 7, 8, 10, 11 and 12, and Tracts A & B within the Town Center Property for private investment and development. The City has conducted public request for proposal processes and listed the properties with a commercial real estate broker. One key element of the City's vision is the development of quality mixed use multifamily residential facilities within Town Center; and

WHEREAS, Developer, SEB, Inc. is a developer and operator of quality multifamily residential facilities, who in 2011, entered into an Agreement with the City to develop the Clearview Mixed Use Building on Lot 8 of Town Center, and in 2013 entered into an Agreement with the City to develop the Latitude 47 Mixed Use Building and garage on Lot 10 of Town Center, and has fully complied with both Agreements; and

WHEREAS Developer now desires to acquire Lot 12 of the Town Center Property for the sum of \$865,245.00 to construct and operate an approximately 125-unit residential facility over approximately 10,000 square feet of commercial space. The construction and operation of such residential facilities by the Developer would be entirely consistent with, and assist in furthering the goals of, the Town Center Plan; and

WHEREAS, as described in greater detail in the Agreement, consideration from the Developer to the City for acquisition of the Property includes the obligation to construct the mixed use building on Lot 12. Additional consideration to the City is that the residential and commercial facility will bring desirable population density to Town Center which will assist in attracting and supporting other private development within Town Center;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, AS FOLLOWS:**

Section 1. Incorporation of Recitals. The recitals are hereby incorporated herein as if set forth in full.

Section 2. Legislative Determination of Consideration. The Council of the City of University Place has considered the proposed transaction, including the consideration to the City to be provided by SEB, Inc., of \$865,245.00, and accepting the terms of the Development Agreement all as described in the proposed Development Agreement, and hereby makes a legislative determination that the consideration for this Agreement is sufficient, appropriate and in the best interests of the public.

Section 3. Approval of Form of Documents. The City Council hereby approves execution of the Development Agreement in substantially the form of the documents accompanying this Resolution.

Section 4. Completion of Transaction. The City Manager is authorized to take and execute any additional measures or documents that may be necessary to complete this transaction, which are consistent with the approved form of documents attached to this Resolution, and this Resolution.

Section 5. Effective Date. This Resolution shall be effective immediately upon adoption by the City Council.

**ADOPTED BY THE CITY COUNCIL ON NOVEMBER 21, 2016.**

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Javier H. Figueroa, Mayor

**ATTEST:**

\_\_\_\_\_  
Emelita Genetia, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Steve Victor, City Attorney

**DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF UNIVERSITY PLACE AND  
SEB, INC.  
FOR DEVELOPMENT OF THE LOT 12 MIXED USE BUILDING**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is dated this \_\_\_\_\_ day of September, 2016 (the “Effective Date”), between the City of University Place (“City”), a Washington municipal corporation, acting in its proprietary capacity, and SEB, Inc., (the “Developer”), a Washington corporation and its assigns (hereinafter collectively referred to as “Parties”) and is made pursuant to the following recitals and the terms and conditions herein.

**RECITALS**

A. The City has been engaged in a planning and development process for many years to create a visually attractive mixed-use town center to serve as the civic and commercial focal point of the community. In 1998, the City adopted a Comprehensive Plan and Land Use Map that called for the creation of a town center.

B. In 1999, following a series of public meetings, design workshops and public processes, the City adopted a Town Center Plan that established a vision for redevelopment of the City’s central business area and which includes the following core objectives and strategies: (i) create a high quality comprehensive integrated retail, commercial and residential anchor for downtown University Place; (ii) create a special identity and gathering place for the City and its residents with access to downtown businesses; (iii) create a visually attractive and pedestrian oriented space in the downtown area; (iv) enhance public security and provide City residents with additional housing opportunities through the introduction of multi-family residential buildings in downtown; (v) encourage tourism; and (vi) revitalize the business district by creating a development which will improve the financial stability and general economic vitality of the City, preserve jobs, attract additional private investment in downtown and generate additional sales and property tax revenue for the City.

C. In 2002 and again in 2007, the City Council adopted a five-year Economic Development Strategic Action Plan; the Council also established an Economic Development Task Force to promote business growth and development within the City’s business districts to ensure an economically sustainable future. The Economic Development Task Force and the Strategic Action Plan identifies as one of the goals of the City the creation of University Place Town Center, with a mix of residential, commercial, cultural, community, public and open spaces. The development concept for Town Center is a mixed-use neighborhood that creates an integrated retail and residential center in the City.

D. Pursuant to Ordinance Nos. 409, 469, 470, and 532, the City amended its Comprehensive Plan to provide for a Town Center overlay zone, adopted design standards and guidelines for the overlay zone and established a Planned Action Area within the overlay zone. This area consisted of 24 lots of real property totaling approximately 31.7 acres of size located on the east and west sides of Bridgeport Way W. roughly between 35th Street and 38th Street. The City also adopted various amendments to its zoning code pertaining to height, density, setbacks and the application of design standards and guidelines in the overlay zone. The City completed and recorded a Binding Site Plan in 2007, which was amended in 2009, under Auditor's Recording No. 200909185003.

E. In furtherance of the Town Center Plan, the City, over the course of several years, acquired and currently owns certain lots located within the Town Center Planned Action Area which are depicted on the Binding Site Plan and referred to as Lots 1, 2, 3, 4, 7, 8, 9, 10, 11 and 12, and Tracts A & B, and the public right of way in and about the foregoing (the "Town Center Property"). The Town Center Property was acquired by the City specifically for the development of public facilities and private commercial uses to fulfill the goals of the Town Center Plan.

F. Since acquiring the Town Center Property, the City has diligently pursued achievement of the goals of the Town Center Plan. The City has completed major site preparation work on Town Center Property to prepare it for public and private development including construction of utilities, podium decks, more than 500 stalls of structured public parking (the "Town Center Garage"), a public plaza, public open space and street and sidewalk improvements.

G. In 2006, the City entered into an Agreement with the Pierce County Rural Library District for development of a joint Library and Civic Building in Town Center. The new Library/Civic Building is complete and open.

H. Pursuant to the goals of the Town Center Plan, the City has for several years sought to convey all or portions of Lots 1, 2, 3, 4, 7, 8, 10, 11 and 12, and Tracts A & B within the Town Center Property for private investment and development. The City has conducted public request for proposal processes and listed the properties with a commercial real estate broker. One key element of the City's vision is the development of quality mixed use multifamily residential facilities within Town Center.

I. Developer, SEB, Inc., is a developer and operator of quality multifamily residential facilities. The Developer desires to acquire Lot 12 of the Town Center Property, ("the Property"), to construct on Lot 12 and operate an approximately 125 unit residential facility over approximately 10,000 square feet of commercial space. The construction and operation of such residential facilities by the Developer would be entirely consistent with, and assist in furthering the goals of, the Town Center Plan.

J. As described in greater detail in the Agreement, consideration from the Developer to the City for acquisition of the Property includes payment in the amount of eight hundred sixty-five thousand, two hundred forty-five dollars (\$865,245.00), and the obligation to construct a mixed use building which will complement and further develop the Town Center core. Additional consideration to the City is that the residential and commercial facility will bring desirable population density to Town Center which will assist in attracting other private development. By Resolution No. \_\_\_\_\_ adopted \_\_\_\_\_, 2016, the University Place City Council considered and determined that the Developer was providing sufficient consideration for acquisition of the Property and approved the execution of this Agreement.

K. The Parties intend by this Agreement to set forth their mutual agreement and undertakings with regard to the Project.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual undertaking and promises contained herein, and the benefits to be realized by each party and in future consideration of the benefit to the general public by the creation and operation of the Project upon the Property, and as a direct benefit to the City and other valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals; Definitions. Each of the recitals set forth above is incorporated into this Agreement as though fully set forth herein. Capitalized terms not otherwise defined herein shall have the meaning set forth in Exhibit A attached hereto and by this reference incorporated herein.

2. Acquisition of Lot 12.

2.1 Acquisition by Developer. In consideration of their mutual covenants set forth in this Agreement, City agrees to convey to Developer, and Developer agrees to accept from City on the terms and conditions set forth in this Agreement, the "Property."

2.2 Consideration from Developer. The Developer will pay the City the sum of eight hundred sixty-five thousand, two hundred forty-five dollars (\$865,245.00) for the Lot 12 Property based upon \$15 per square foot (subject to a proportionate revision for any change in size of the Lot 12 area disclosed by the ALTA survey). In addition to payment of the purchase price herein, the Developer will construct a Mixed Use Building, including approximately 125 Market Rate Residential Units and approximately 10,000 square feet of retail space upon the Property, to complement and further development of the Town Center core. Developer will construct all street improvements on Larson Lane from the curb back to the property line immediately adjacent to the Lot, including sidewalk, hardscape, landscaping, street lighting, and street furniture. In addition, the Developer is responsible for any street improvements along Bridgeport Way required by Title 13 of the University Place Municipal Code in accordance with the Town Center Design Standards

for Bridgeport Way. . Additional consideration to the City is that the additional residential and commercial facilities will bring desirable population density to Town Center which will assist in attracting other private development.

2.3 Obligations of City. The City will relocate the water main that runs through the lot and construct the roadway portion of Larson Lane adjacent to the site. The City will construct curb and gutter along the north/east side of Larson Lane except at driveways and areas needed for construction access. Developer will be responsible to construct any additional curb and gutter along with any curb and gutter damaged by construction activities.

2.4 Developer Project Requirements. As more specifically described in Section 5 Development herein, Developer will construct the Mixed Use Building, including approximately 125 Market Rate Residential Units and approximately 10,000 square feet of retail space upon Lot 12. The Developer's Project will be completed within eighteen (18) months of Closing. For purposes of this Agreement "Market Rate Residential Units" shall mean apartments available without rent or income restrictions or rent subsidies. Any proposed change from Market Rate Residential Units during the life of the Project shall require prior approval of the City by Resolution of the University Place City Council.

2.5 Covenants, Conditions and Restrictions (CC&Rs). Developer agrees to subject its interests (and to obtain any Mortgagee's consent to subject its interests) in the Property to commercially reasonable Covenants, Conditions and Restrictions governing the University Place Town Center site ("CC&Rs"), which will include a prohibition on Developer having to join any merchants' association or pay any dues therefor, and to amendment(s) thereto from time to time if any such amendment is necessary to: (i) bring any provision into compliance with any applicable federal or state statute or regulation or judicial determination; (ii) enable any reputable title insurance company to issue title insurance coverage on the Property or any other property that is subject to such CC&Rs; (iii) enable any government agency other than the City or reputable private insurance company to insure or guarantee mortgage loans on the Property or any other property that is subject to such CC&Rs; or (iv) otherwise satisfy the requirements of any state or federal agency or state or federal regulations; provided, however, that in no event shall the CC&Rs or any amendment thereto prohibit or impair Developer's business operation or use of the Property as a multifamily residential facility or its integrated commercial space. Developer and Construction Lender shall each have the right to approve the CC&Rs, which approval shall not be unreasonably withheld.

2.6 Environmental Condition of the Property. City represents and warrants to the best of its knowledge that the Property is free of any contamination by hazardous and/or toxic materials ("Hazardous Substances") and that at the time of transfer of title there will be no conditions or circumstances related to the Property that could directly or indirectly impose or give rise to any costs or liability, contingent or otherwise, to Developer under any applicable Environmental Standards.

### 3. Developer's Review and Design and Permitting Period.

3.1 Review Period. Developer shall have thirty (30) calendar days from the execution of this Agreement to review the feasibility of the Property for development of both Project phases, including survey, property condition, environmental reports and zoning. In the event that Developer, in its sole and absolute discretion, is dissatisfied with any of the items above at any time during the Review period including any allowed extension(s), Developer shall be permitted to terminate the Agreement, in which event neither Party shall have any further obligation or liability to the other. All activities performed by Developer during the Review Period shall be at Developer's sole expense.

3.2 Title Review. Chicago Title and Escrow Company shall provide City Representative and Developer with a preliminary commitment for the Property ("Title Commitment") within twenty (20) days following the Effective Date of this Agreement, together with complete, legible copies of any exceptions identified in Schedule B thereof. Developer shall conduct its review of the Title Commitment in accordance with the following procedures:

3.2.1 Developer's Notice. Developer shall have fifteen (15) business days after receipt of the Title Commitment to notify City Representative of its approval or disapproval of each exception in Schedule B of the Title Commitment. Failure to deliver such notice by that date shall constitute Developer's approval of all exceptions in Schedule B.

3.2.2 City's Notice. City Representative shall have ten (10) business days after receipt of Developer's notification in which to notify Developer whether or not it elects to cure or remove any of the disapproved exceptions of which City Representative receives timely notice. City Representative's failure to so notify Developer shall constitute City Representative's election to not remove all such exceptions. City Representative shall remove all exceptions it elects to remove on or before the Closing Date.

3.2.3 Developer's Election. If City Representative does not elect to remove all exceptions disapproved by Developer, Developer may elect to terminate this Agreement by written notice to City Representative given within five (5) business days following City Representative's notice, in which event this Agreement shall automatically terminate, and neither Party hereto shall have any further rights or obligations under this Agreement. If Developer does not elect to terminate this Agreement within the time frame set forth herein, disapproved exceptions that City Representative has not elected to remove shall become Permitted Exceptions for the Property.

3.3 Design and Permitting Period. Developer shall have one hundred twenty (120) days from the expiration, or earlier waiver of the Review Period to design the Project and file a complete permit application for construction of the Lot 12 Mixed Use Building on the Property. In the event that Developer, in its sole and absolute discretion, is dissatisfied with any conditions, restrictions, limitations, mitigation measures or other matters affecting the feasibility of the Project in Developer's sole judgment at any time during the Design and Permitting period including any allowed extension(s), Developer shall be permitted to terminate the Agreement, in which event neither Party shall have any further obligation or liability to the other. All activities performed by Developer during the Design and Permitting Period shall be at Developer's sole expense.

3.4 Developer's Access. Developer and its authorized contractors, consultants and agents shall have access to the Property at all reasonable times during the Review Period and the Design and Permitting Period. Upon request by City, Developer shall provide City with a list of the contractors, consultants and agents, including contact information for each that Developer has engaged to perform any inspections. Before any soils sampling or other invasive testing, Developer shall submit a plan for such sampling for City's approval, which will not be unreasonably withheld, conditioned or delayed. Developer shall restore the Property, including filling test holes, to eliminate any damage to the Property caused by Developer, its contractors, consultants or agents in the conduct of the inspections; provided, however, Developer shall have no obligation to remediate any prior-existing defects or other conditions in or on the Property, including, without limitation, remediation of any existing Hazardous Substances. If Developer discovers any defects or conditions in or on the Property that create a dangerous condition, including the discovery of any Hazardous Substances, Developer shall promptly notify City of such defect or condition. Developer agrees to indemnify City and to hold City, City's agents and employees harmless from and against any and all losses, costs, damages, claims or liabilities including, but not limited to, construction, mechanic's and materialmen's liens and attorneys' fees, to the extent caused by Developer's entry upon the Property, including the conduct of Developer's Inspections, by Developer or its contractors, consultants or agents; provided, however, such indemnity obligations shall not apply to any and all losses, costs, damages, claims or liabilities to the extent caused by any existing environmental contamination in or on the Property that may be discovered or adversely impacted by Developer's conduct of its Inspections and such losses, costs, damages, claims or liabilities shall be the responsibility of the City.

#### 4. Closing of Acquisition.

4.1 Timing. Closing shall occur within twenty (20) days following the issuance of the first building permit for the Project.

4.2 Title to Property. Upon Closing, the City Representative shall execute and deliver to Developer a statutory warranty deed ("Deed") conveying fee title to the Property.

The conveyance of any interest in the Property and appurtenant rights shall be subject to the provisions of this Agreement.

4.3 Title Insurance. On the Closing Date, City Representative shall cause Chicago Title to issue to Developer an extended coverage Owner's Policy of Title Insurance ("Title Policy") insuring good and marketable fee simple title in Developer in the full amount of the purchase price herein, against any loss or damage by reason of defects in City's title, other than the Permitted Exceptions. The City shall pay the cost of standard coverage and Developer shall pay the cost of extended coverage or endorsements to the Title Policy. The City Representative shall sign any owner's affidavit or similar document required by Chicago Title to enable Developer to obtain extended coverage.

4.4 "AS-IS" Conveyance. By electing to proceed with the acquisition of the Property, Developer represents that it has had an opportunity to and has conducted a thorough investigation of the Property and is in all respects knowledgeable and familiar with the present condition and state of repair of the Property. Developer acknowledges that it is concluding the acquisition of the Property based solely upon Developer's inspection and investigation of the Property and that the Property is being conveyed to Developer in an "AS-IS" condition and state of repair, and with all faults, of any kind or nature and without any representations or warranties, express, implied or statutory, except that City owns the Property. IN PARTICULAR, BUT WITHOUT LIMITATION, CITY MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE PHYSICAL CONDITION OR VALUE OF THE PROPERTY, SOILS CONDITIONS, OR OTHER PHYSICAL CHARACTERISTICS OF ALL OR ANY PORTION OF THE PROPERTY OR THE SUITABILITY OF ALL OR ANY PORTION OF THE PROPERTY FOR DEVELOPER'S INTENDED DEVELOPMENT. CITY MAKES NO REPRESENTATION WHATSOEVER REGARDING THE FINANCIAL FEASIBILITY OF ALL OR ANY PORTION OF THE PROJECT. Upon recording of the statutory deed to the Property, Developer shall be deemed to have accepted the Property in its "AS-IS, WHERE-IS" condition and state of repair and does hereby waive and release and agrees to defend, indemnify and hold City, its officials, officers, employees and agents harmless from any and all damages, losses, liabilities, costs and expense whatsoever (including, without limitation, reasonable attorneys' fees and costs) and claims thereof, whether direct or indirect, known or unknown, foreseen or unforeseen, which may arise on account of or in any way arising out of or in connection with the physical or environmental condition of the Property or any Requirement of Law applicable thereto.

4.5 Receipt of City Disclosure Statement. Prior to execution of this Agreement, City Representative has provided Developer with a City Disclosure Statement in the form set forth in RCW 64.06.015. As provided by Washington law, the City Disclosure Statement is for disclosure only and shall not be considered a part of this Agreement, and does not constitute any representation or warranty by City.

4.6 Conditions Precedent to City's Obligation to Convey Property. The City's obligation to close the acquisition of the Property is subject to satisfaction of each of the following conditions which must be met to the reasonable satisfaction of the City Representative, and any or all of which may be waived by City Representative in writing at its option:

4.6.1 Compliance by Developer. Developer shall have performed, observed and complied with all of the material covenants, agreements, obligations and conditions required by this Agreement to be performed, observed and complied with by it prior to or as of the Closing Date.

4.6.2 Correctness of Representations and Warranties. The representations and warranties of Developer set forth in this Agreement shall be true and correct on and as of the Closing Date.

4.6.3 No Bankruptcy. Neither Developer nor any of its managing members/partners/directors: (a) has applied for or consented to the appointment of a receiver, custodian or trustee for it or any of its property, (b) has become insolvent, (c) has failed generally or admitted in writing its inability to pay its debts as they become due, (d) has consolidated, liquidated or dissolved, (e) has filed a petition or action for relief relating to any federal or state bankruptcy, reorganization, insolvency, moratorium or similar statute or any other law or laws for the relief of or relating to debtors, or (f) has made an assignment for the benefit of its creditors or entered into an agreement of composition with its creditors, nor (g) has a petition been filed by or against Developer under any federal or state bankruptcy, reorganization, insolvency, moratorium or similar statute, or any other law or laws for the relief of or relating to debtors.

The foregoing conditions are solely for the benefit of City. If any of the foregoing conditions are not met to the reasonable satisfaction of the City Representative prior to the Closing Date, or been waived in writing by the City Representative on or before the Closing Date, City Representative shall have the right, in his sole discretion, to terminate this Agreement at any time thereafter, upon written notice to Developer, whereupon this Agreement shall terminate, and except as otherwise expressly provided herein, neither Party hereto shall have any further rights, duties, liabilities or obligations to the other.

4.7 Conditions Precedent to Developer's Obligation to Acquire Property. Developer's obligation to close the acquisition of the Property is subject to satisfaction of each of the following conditions which must be met to the reasonable satisfaction of Developer, and any or all of which may be waived by Developer in writing at its option:

4.7.1 Compliance by City. City shall have performed, observed and complied with all of the covenants, agreements, obligations and conditions

required by this Agreement to be performed, observed and complied with by it prior to the Closing Date.

4.7.2 Correctness of Representations and Warranties. The representations and warranties of City set forth in this Agreement shall be true and correct on and as of the Closing Date.

4.7.2.1 City's Representations.

4.7.2.1.1 City is a municipal corporation duly organized and validly existing under the laws of the State of Washington and has full legal right, power and authority to own its property and carry on its business as now being conducted. All corporate action on the part of City necessary for the authorization, execution, delivery and performance of this Agreement has been duly taken. City has full power and authority to enter into, execute and deliver this Agreement and to perform its obligations under this Agreement.

4.7.2.1.2 This Agreement, when executed and delivered by City, and assuming it has been duly authorized, executed and delivered by Developer, will be the legal, valid and binding agreement of City, enforceable in accordance with its terms.

4.7.2.1.3 No consent, approval, permission, authorization, order or license of any person or any Governmental Body (except as described in the Agreement, and building and other permits necessary for construction) is necessary in connection with the execution, delivery and performance of this Agreement by City or any transaction contemplated hereby, except as may have already been obtained by City prior to the date of this Agreement. There is no provision in City's organizational documents which would be contravened by the execution and delivery of this Agreement or by the performance of any provision, condition, covenant or other term required to be performed by City under this Agreement.

4.7.2.1.4 There is no pending or threatened litigation, tax claim, action, dispute or other proceeding of any nature whatsoever affecting City or any officer, trustee or managerial member of City which could have a material adverse effect on the legal existence or powers of City or its financial conditions or operations or have a material adverse effect on the ability of City to perform its obligations under this Agreement and City is not in default with respect to any requirements of law that might result in any such effect.

4.7.2.2 Developer's Representations.

4.7.2.2.1 Developer is a corporation duly organized and validly existing under the laws of the State of Washington, and has the power to own its property and carry on its business as now being conducted. All actions on the part of Developer and all company or other actions on the part of its members necessary for the authorization, execution, delivery and performance of this Agreement have been duly taken. Developer has full power and authority to enter into, execute and deliver this Agreement and to perform its obligations under this Agreement.

4.7.2.2.2 This Agreement, when executed and delivered by Developer, and assuming it has been duly authorized, executed and delivered by City, will be the legal, valid and binding agreement of Developer, enforceable in accordance with its terms.

4.7.2.2.3 No consent, approval, permission, authorization, order or license of any person or of any Governmental Body (except as described in the Agreement, and building and other permits necessary for construction) is necessary in connection with the execution, delivery and performance of this Agreement by Developer or any transaction contemplated hereby, except as may have already been obtained by Developer prior to the date of this Agreement. There is no provision in Developer's organizational documents which would be contravened by the execution and delivery of this Agreement or by the performance of any provision, condition, covenant or other term required to be performed by Developer under this Agreement.

4.7.2.2.4 There is no pending or threatened litigation, tax claim, action, dispute or other proceeding of any nature whatsoever affecting Developer or any managing member or officer of Developer which could have a material adverse effect on the legal existence or powers of Developer or its financial conditions or operations or have a material adverse effect on the ability of Developer to perform its obligations under this Agreement and Developer is not in default with respect to any requirements of law that might result in any such effect.

4.7.2.3 Duration of Representations. Each of the foregoing representations and warranties shall expire and be of no further force or effect, unless either Party shall have made a claim based upon an alleged breach of such representations and warranties within seven (7) years following Final Completion of the Project. Nothing in this paragraph shall limit the term of the City's warranties under the Statutory Warranty Deed.

4.7.3 Condition of Property. City shall deliver sole and exclusive possession of the vacant Property to Developer at Closing (including removal of any visible debris) and not subject to any encumbrance not approved by Developer).

4.7.4 Title Policy. Chicago Title shall issue to Developer the Title Policy (or later date commitment) for the Property.

4.8 Closing Date. As used in this Agreement, "Closing" and "Closing Date" mean the date on which the Statutory Warranty Deed and any Easements required by this Agreement are recorded. Developer and City Representative shall place into escrow with Chicago Title all instruments and documents necessary to complete the acquisition of the Property in accordance with this Agreement. In the event either the City or Developer has been unable, despite its reasonable, good faith efforts to satisfy all of the conditions for Closing set forth in this Agreement by the Closing Date, then unless the City Representative and Developer agree to a further extension of the Closing Date, this Agreement shall automatically terminate, and except as otherwise expressly provided herein, neither Party hereto shall have any further rights, duties, liabilities or obligations to the other. If City is the party that is unable to perform all of its obligations hereunder at the Closing, City agrees also to reimburse Developer for all of its cost and expenses in preparing to close this transaction. If Developer is the party that is unable to perform all of its obligations hereunder at the Closing, City shall not have the right to sue Developer for specific performance.

4.8.1 Escrow. On or before the Closing Date, the following documents shall be delivered to Chicago Title, as Escrowee, each of which shall be in form and substance reasonably acceptable to the attorney for the other party:

4.8.1.1 By City. City Representative shall deliver the following original documents, duly executed and acknowledged by City:

- 4.8.1.1.1 The Deed.
- 4.8.1.1.2 Real Estate Excise Tax Affidavit.
- 4.8.1.1.3 FIRPTA Affidavit.
- 4.8.1.1.4 Owner's affidavit
- 4.8.1.1.5 Any easements required by this Agreement
- 4.8.1.1.6 Any and all such other documents as may be required by Chicago Title and/or consistent with the provisions of this Agreement.

4.8.1.2 By Developer. Developer shall deliver the following original documents, duly executed and acknowledged by Developer:

- 4.8.1.2.1 Real Estate Excise Tax Affidavit.
- 4.8.1.2.2 Any easements required by this Agreement
- 4.8.1.2.3 Any and all other documents and agreements as may be required by Chicago Title and/or consistent with the terms of this Agreement.

4.9 City's Closing Costs. In connection with the Closing, City shall pay the cost of the Title Policy with standard owner's coverage, all Survey costs, one-half of the Closing escrow fees, the cost of recording documents to clear City's title and City's attorneys' fees.

4.10 Developer's Closing Costs. In connection with the Closing, Developer shall pay the cost of the Title Policy to the extent in excess of the premium for standard owner's coverage (if Developer elects to obtain extended coverage), together with all endorsements to the Title Policy requested by Developer, one-half of the Closing escrow fees, all recording fees for the Deed, and Developer's attorneys' fees.

4.11 Prorations. All utilities and special assessments shall be prorated as of the Closing Date. Because City is exempt from property taxes, no proration of ad valorem property taxes is required; however, Developer shall be responsible for payment of all property taxes and all special assessments and local improvement district assessments which affect the Property, from and after the Closing Date. City represents that no special assessments or local improvement district assessments currently exist or are contemplated in connection with the Project.

4.12 Possession. Developer shall be entitled to sole and exclusive possession of the Property on the applicable Closing Date, free and clear of all liens, encumbrances and exceptions other than the Permitted Exceptions, and any liens, encumbrances or other exceptions arising through the actions of Developer or its agents, employees or consultants.

## 5. Development.

5.1 Developer's Completion of Construction. Developer shall commence construction of the Mixed Use Building within ninety (90) days of Closing, and will achieve substantial completion within eighteen (18) months of Closing, subject to extension as provided herein, or by mutual agreement, or due to Unavoidable Delay. This timeline represents the outside date for completion and shall not preclude the Developer and City Representative from agreeing to a shorter schedule.

5.2 Failure to Commence Construction. In the event Developer fails to commence construction of the Project within the time required by this Agreement, and any extension for Unavoidable Delay, City will have the right to reacquire the Property from Developer prior to the commencement of construction, together with all improvements thereon and appurtenances thereto, for a price equal to any cash paid by Developer at Closing, but not including impact fees or permit costs. Closing of the City's reacquisition shall occur within thirty (30) days following written notice and Developer will transfer title to the Property to City by statutory warranty deed, free and clear of all liens and encumbrances except Permitted Exceptions. Chicago Title, as Escrow Agent, shall conduct the Closing, and Closing costs and prorations shall be handled in the same

manner as provided in Section 4 Closing of Acquisition of this Agreement. If the City notifies Developer that it intends to reacquire the Property, but fails to close the reacquisition within sixty (60) days thereafter, City shall not be in default under this Agreement, but Developer shall have the right to convey the Property to another Developer expressly subject, however, to all of the terms, covenants, conditions and provisions set forth in this Agreement except the right to reacquire. If Developer commences construction of the Project within the time required by this Agreement, and any extension for Unavoidable Delay, or if the City fails to timely reacquire after giving notice as described above the City's right to reacquire the Property will terminate.

5.3 Certificate of Completion. Once Final Completion of the Project has occurred, Developer shall file a Notice of Completion with City. Within three (3) business days after receipt of the Notice of Completion, City shall inspect the Project and if City concurs that all improvements are complete consistent with this agreement and the building permit issued by the City, City shall furnish the Developer with a Certificate of Completion in substantially the form attached as Exhibit B. The Certificate of Completion shall be a conclusive determination that the Parties' agreements with respect to the Developer's construction obligations for the Project have been met. The Certificate shall be in a form that enables it to be recorded in the official records of Pierce County, Washington.

6. Project Easements.

In order to allow for construction of Developer's Project, the City and Developer will grant each other any necessary temporary and/or permanent easements prior to Closing.

7. Indemnification.

7.1 Developer's Indemnification of City. Developer shall protect, defend, indemnify, and save harmless City and its respective officers, officials, employees and agents (collectively, "City Indemnified Parties"), from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever arising out of or in any way resulting from Developer's officers, employees, agents, contractors and/or subcontractors of all tiers, acts or omissions, performance or failure to perform this Agreement. Developer's obligations under this Section shall include, but not be limited to:

7.1.1 The duty to promptly accept tender of defense and provide defense to City at Developer's own expense.

7.1.2 The duty to indemnify and defend City from any claim, demand and/or cause of action brought by or on behalf of any of Developer's employees or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of Developer's immunity under Washington's Industrial Insurance Act,

RCW Title 51, as respects City only, with a full and complete indemnity and defense of claims made by Developer's employees or agents. The Parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

7.1.3 In the event City incurs any judgment, award, and/or costs arising therefrom, including attorneys' fees, to enforce the provisions of this Section, all such fees, expenses, and costs shall be paid by Developer.

7.1.4 Notwithstanding the provisions contained above, Developer's obligation to indemnify City shall not extend to any claim, demand or cause of action to the extent caused by the negligence of City or breach of this Agreement by City.

7.2 City's Indemnification of Developer. City shall protect, defend, indemnify, and save harmless Developer and its respective officers, officials, employees and agents (collectively, "Developer Indemnified Parties"), from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever arising out of or in any way resulting from City's officers, employees, agents, contractors and/or subcontractors of all tiers, acts or omissions, performance or failure to perform this Agreement. City's obligations under this Section shall include, but not be limited to:

7.2.1 The duty to promptly accept tender of defense and provide defense to Developer at City's own expense.

7.2.2 The duty to indemnify and defend Developer from any claim, demand and/or cause of action brought by or on behalf of any of City's employees or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of City's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects Developer only, with a full and complete indemnity and defense of claims made by City's employees or agents. The Parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

7.2.3 In the event Developer incurs any judgment, award, and/or costs arising therefrom, including attorneys' fees, to enforce the provisions of this Section, all such fees, expenses, and costs shall be paid by City.

7.2.4 Notwithstanding the provisions contained above, City's obligation to indemnify Developer shall not extend to any claim, demand or cause of action to the extent caused by the negligence of Developer or breach of this Agreement by Developer.

7.3 Notice of Claim. Any person making a claim for indemnification pursuant to this Section (an "Indemnified Party") must give the Indemnifying Party written notice of such claim (an "Indemnification Claim Notice") promptly after the Indemnified Party

receives any written notice of any action, lawsuit, proceeding, investigation or other claim (a “proceeding”) against or involving the Indemnified Party, or otherwise discovers the liability, obligation or facts giving rise to such claim for indemnification; provided that the failure to notify or delay in notifying the Indemnifying Party will not relieve the Indemnifying Party of its obligations pursuant to this Section except to the extent that the Indemnifying Party’s ability to defend against such claim is actually prejudiced thereby. Such notice shall contain a description of the claim and the nature and amount of such loss (to the extent that the nature and amount of such loss is known at such time).

## 8. Insurance.

8.1 Developer Insurance. From and after the Closing Date and until the issuance of a Certificate of Completion for the Project, Developer shall maintain property insurance in builder’s risk form and shall maintain and shall cause each of its Contractors and/or subcontractors to maintain commercial general liability insurance, automobile liability insurance and worker’s compensation insurance as required under this Agreement. The cost of such insurance shall be paid by Developer and/or its General Contractor or its consultants. If at any time any of the policies required under this Agreement shall be or become unsatisfactory to City due to a change in form or substance, or if an insurance company issuing any such policy shall be or become unsatisfactory to City because it no longer meets the minimum rating or criteria set forth herein, Developer shall, upon notice to that effect from City, promptly obtain a new policy from a qualified insurer, and shall submit the same to City, with certificates and endorsements, for approval. The Developer shall provide the City with written notice of any policy cancellation for the Contractor or any of its subcontractors for this work within two days of its receipt of such notice.

8.1.1 Subcontractors. Developer shall include all Contractors and subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements from each Contractor and subcontractor. Insurance coverage provided by contractors and subcontractors as evidence of compliance with the insurance requirements of this Agreement shall be subject to all of the requirements stated herein.

8.1.2 Insurance Policy Requirements. Insurance policies required under this Agreement shall be issued by companies authorized to do business in the state of Washington with the following qualifications:

8.1.2.1 The companies must be rated no less than “A,” as to general policy holders rating and no less than “VII” as to financial category in accordance with the latest edition of Best’s Key Rating Guide, published by A.M. Best Company, Incorporated.

8.1.2.2 The policies shall name the City as an additional insured for liability purposes and as a loss payee.

8.1.2.3 The policies shall be issued as primary policies.

8.1.2.4 Each such policy or certificate of insurance mentioned and required in this Section shall have attached thereto (1) an endorsement that such policy shall not be canceled without at least thirty (30) days' prior written notice to the Developer and the City; (2) an endorsement to the effect that the insurance as to any one insured shall not be invalidated by any act or neglect of any other insured; (3) an endorsement pursuant to which the insurance carrier waives all rights of subrogation against the Parties hereto; and (4) an endorsement pursuant to which this insurance is primary and noncontributory.

8.1.3 The certificates of insurance and insurance policies shall be furnished to the Developer and the City prior to commencement of construction under this Agreement. The certificate(s) shall clearly indicate the insurance and the type, amount and classification, as required for strict compliance with this Section.

8.1.4 Cancellation of any insurance or non-payment by the Developer of any premium for any insurance policies required by this Agreement shall constitute an Event of Default under Section 11 of this Agreement, with a cure period of seven (7) calendar days. In addition to any other legal remedies, the City at its sole option after written notice may obtain such insurance and pay such premiums for which, together with costs and attorneys' fees, the Developer shall be liable to the City.

8.1.5 Adjustments. The types of policies, risks insured, coverage amounts, deductibles and endorsements may be adjusted from time to time as the Developer and City may mutually determine.

8.2 Other Insurance Provisions. In addition to the requirements set forth above, the insurance policies required by this Agreement are to contain or be endorsed to contain the following provisions where applicable:

8.2.1 The City Indemnified Parties are to be covered as additional insureds as respects:

8.2.1.1 Liability arising out of activities performed by or on behalf of Developer, its members, managers, employees, agents, contractors and/or subcontractors of all tiers in connection with this Agreement. Developer's insurance coverage shall be primary insurance as respects the City Indemnified Parties and shall include a severability of

interests (cross liability). Any insurance and/or self-insurance maintained by any of the City Indemnified Parties shall not contribute with Developer's insurance or benefit Developer in any way.

8.2.1.2 Developer's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

8.2.1.3 Each insurance policy shall be written on an "occurrence" form, excepting that insurance for professional liability, errors and omissions, when required, may be acceptable on a "claims made" form.

8.2.1.4 If coverage is approved (if approval is required above) and purchased on a "claims made" basis, Developer warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the work which is subject to said insurance.

8.2.1.5 By requiring such minimum insurance, City shall not be deemed to, or construed to, have assessed the risks that may be applicable to Developer under this Agreement. Developer shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits or broader coverage.

8.2.1.6 Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(ies). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Agreement.

8.2.2 Verification of Coverage. Developer shall furnish or cause its General Contractor(s) to furnish City with certificates of insurance and endorsements required by this Agreement. The certificates and endorsements for each policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms approved by City and are to be received and approved by City prior to the commencement of construction of the Project. City reserves the right to require complete certified copies of all required policies at any time.

9. Construction Liens. Upon Final Completion of the Project and upon City's request during the progress of the Project, Developer shall submit evidence that all payrolls, material bills and other indebtedness relating to the work have been paid. Developer

shall notify City upon the filing of any Lien or the service of any notice in connection with the Project, and shall remove or discharge any such Lien within thirty (30) days of filing.

#### 10. Damage and Destruction; Condemnation.

10.1 Damage and Destruction. In the event there is any damage or destruction to the Project prior to Final Completion, Developer shall give City prompt written notice thereof generally describing the nature and cause of such casualty and the extent of the damage or destruction to the Project. Developer shall cause reconstruction and restoration of the Project in accordance with the applicable Construction Documents and the provisions of this Agreement. All insurance proceeds which Developer may be entitled to receive prior to Final Completion of the Project with respect to damage or destruction shall be paid to the Construction Lender, or if there is no Construction Lender, a third party insurance trustee mutually acceptable to City and Developer who shall disburse insurance proceeds to reimburse Developer for the cost of restoration or repair in accordance with the terms, covenants, conditions, provisions and procedures set forth in the Construction Loan Documents or if there are no Construction Loans outstanding at the time of such damage or destruction in periodic installments based upon the percentage of completion and otherwise in accordance with standard commercial construction loan administration.

10.2 Condemnation. As used in this Agreement, the term “condemnation” refers to a taking by any public or governmental authority under power of eminent domain or any transfer in lieu thereof.

10.2.1 Condemnation Prior to Closing Date. In the event condemnation proceedings are threatened against a material portion of the Property prior to the Closing Date, either party shall have the right by giving written notice of such decision to the other within fifteen (15) days after receiving written notice of such condemnation proceedings to terminate this Agreement, and except as otherwise expressly provided herein, neither party shall have any further rights or obligations to the other under this Agreement and all condemnation awards payable to the property owner by reason of such condemnation, if any, shall be paid to City. If neither party elects to terminate this Agreement, the Agreement shall remain in full force and effect, Developer shall accept the Property affected thereby in its then condition and state of repair, and all condemnation awards payable to the property owner by reason of such condemnation, if any, shall be paid or assigned to Developer upon Closing.

10.2.2 Condemnation After Closing Date. In the event of a condemnation of the Property after the Closing Date, to the extent that the Project may still be constructed in accordance with the Construction Documents or may be constructed in accordance with the Construction Documents as modified by changes acceptable to Developer and the City, Developer shall proceed to construct the Project in accordance with the Construction Documents, as modified, if applicable.

## 11. Default.

11.1 The following events shall constitute a “Default” or an “Event of Default”:

11.1.1 The failure of either Party to keep, observe, or perform any of its duties or obligations under this Agreement; or

11.1.2 If Developer files a petition for bankruptcy or makes a general assignment for the benefit of Developer’s creditors, or if a receiver is appointed on account of Developer’s insolvency and any such petition or appointment is not dismissed within ninety (90) days.

11.2 City Remedies Upon Developer Event of Default. Upon any Event of Default by Developer, City shall give Developer written notice of the same, whereupon following receipt of such written notice Developer shall have thirty (30) days within which to commence all necessary action to cure any such Event of Default, (and if such cure is commenced, proceed to diligently and continuously prosecute such cure to completion within a reasonable period of time thereafter not to exceed sixty (60) days), except with respect to Events of Default for which a shorter cure period is stated herein. In the event Developer fails to cure such Event of Default within the time period set forth above, City shall be entitled to exercise the specific remedies identified in this Agreement for particular defaults by the Developer, and where no specific remedy is identified, the City may exercise one or more of the following remedies:

11.2.1 Prior to Closing on the Property. If Developer fails to perform any material obligation under this Agreement, City shall give the Developer written notice of same, whereupon following receipt of such written notice, Developer shall have thirty (30) days within which to commence all necessary action to cure any such failure (and if cure is commenced within such thirty (30) day period, proceed to diligently complete such cure within a reasonable period of time). In the event Developer fails to cure such default within the time period set forth herein and provided City is not in default hereunder, then City will have the right, as its sole and exclusive remedy, to terminate this Agreement, and except as otherwise expressly provided herein neither party shall thereafter have any further rights or obligations under this Agreement.

11.2.2 After Closing. With respect to a Developer Event of Default occurring after Closing, and provided City is not in default hereunder, the City may pursue any available legal remedy except specific performance.

11.3 Developer Remedies Upon City Default. Upon any Event of Default by City, Developer shall give City written notice of the same, whereupon following receipt of such written notice City shall have thirty (30) days within which to commence all necessary

action to cure any such Event of Default, (and if such cure is commenced, proceed to diligently and continuously prosecute such cure to completion within a reasonable period of time thereafter not to exceed 60 days), except with respect to Events of Default for which a shorter cure period is stated herein. In the event City fails to cure such Event of Default within the time period set forth above, Developer shall be entitled to exercise the specific remedies identified in this Agreement for particular defaults by the City, and where no specific remedy is identified, the Developer may exercise one or more of the following remedies:

11.3.1 Prior to Closing on Property. If City fails to perform any material obligation under this Agreement, Developer shall give the City written notice of same, whereupon following receipt of such written notice, City shall have thirty (30) days within which to commence all necessary action to cure any such failure (and if cure is commenced within such thirty (30) day period, proceed to diligently complete such cure within a reasonable period of time). In the event City fails to cure such default within the time period set forth herein and provided Developer is not in default hereunder, then Developer will have the right, as its sole and exclusive remedy, to terminate this Agreement, and except as otherwise expressly provided herein neither party shall thereafter have any further rights or obligations under this Agreement.

11.3.2 After Closing. With respect to a City Event of Default occurring after Closing, and provided Developer is not in default hereunder, the Developer may pursue any other available legal remedy except specific performance.

11.4 Limitation on Damages. Notwithstanding anything to the contrary set forth in this Agreement, City and Developer agree that the recovery by either party of any damages suffered or incurred by it as a result of any breach by the other party of any of its obligations under this Agreement shall be limited to the actual damages suffered or incurred by the non-breaching party of its obligations hereunder. In no event shall either party be liable to the other party for any consequential, exemplary, special, indirect, incidental or punitive damages (including any damages on account of lost profits or opportunities or business interruption and the like), whether by statute, in tort or under contract, under any indemnity provision or otherwise.

11.5 Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by the other party.

11.6 Waiver. Any waiver by either of the Parties of any breach of any covenant herein contained to be kept and performed by the other party shall not be deemed or considered as a continuing waiver, and shall not operate to bar or prevent the damaged

party from declaring a forfeiture for any succeeding breach, either of the same condition or covenant or otherwise.

12. Dispute Resolution. The Parties shall use good faith efforts to resolve all claims, disputes and other matters in question between the Parties arising out of or relating to this Agreement (each a “Matter in Dispute”) using the procedures set forth herein.

12.1 Senior Management. If a Matter in Dispute arises, the aggrieved party shall promptly notify the other party to this Agreement in writing of the dispute, but in any event within fifteen (15) days after the dispute arises. If the Parties shall have failed to resolve the Matter in Dispute within fifteen (15) days after delivery of such notice, each party shall nominate a senior administrator or manager within its organization with authority to bind such party to meet at a mutually agreed location to attempt to resolve the Matter in Dispute. Should the senior officers be unable to resolve the Matter in Dispute within fifteen (15) days of their nomination, the Parties shall submit the Matter in Dispute to Mediation as provided as a condition precedent to pursuing other alternative dispute procedures or litigation.

12.2 Mediation. If prior to completion of construction of the Project a Matter of Dispute arises between City and Developer, the Parties shall proceed in good faith to resolve such dispute as expeditiously as possible and shall cooperate so that the progress of design and construction of the Project is not delayed. If, however, the Parties are unable to resolve the dispute, they agree to utilize the mediation process contained herein, which will be nonbinding but a condition precedent to having said dispute decided in court by a judge or jury; provided, however, that the City and Developer may agree in writing to waive this condition.

12.2.1 Mediation Process. City or Developer, by delivering written notice to the other, may refer any dispute described above to any natural person not employed by either City or Developer or an affiliate of either who shall be approved by mutual agreement of City and Developer (“Mediator”).

12.2.2 Consideration of Disputes or Claims. Upon receipt by the Mediator of written notice of a dispute, either from City or Developer, the Mediator shall convene a hearing to review and consider the dispute. Both City and Developer shall be given the opportunity to present their evidence at this hearing. Both City and Developer are encouraged to provide exhibits, calculations and other pertinent material to the Mediator for review prior to the hearing.

12.2.3 Procedures. Upon the first referral to the Mediator of a Matter in Dispute hereunder, the Mediator shall, with the agreement of the Parties, establish procedures for the conduct of any hearings for consideration of disputes and claims. The conduct of the Mediator’s business shall, in general, be based on this Agreement.

Unless the City and Developer agree otherwise, the Mediator shall issue its recommendation as soon as possible but in any event not later than sixty (60) days following referral of the dispute to the Mediator.

12.2.4 Independence of Mediator. It is expressly understood that the Mediator is to act impartially and independently in the consideration of facts and conditions surrounding any dispute presented by City and Developer, and that the recommendations concerning any such dispute are advisory only. The Mediator's recommendations shall be based on the pertinent Agreement provisions, and the facts and circumstances involved in the dispute. The recommendations shall be furnished in writing to the Parties.

12.2.5 City's Responsibility. City shall furnish the Mediator one copy of all documents it might have, other than those furnished by the Developer, which are pertinent to the performance of the Mediator.

12.2.6 Developer Responsibility. Developer shall furnish the Mediator one copy of all documents it might have, other than those furnished by the City, which are pertinent to the performance of the Mediator.

12.2.7 Coordination. The Parties will coordinate to effectively assist the Mediator's operation.

12.2.8 Payment. The fees charged by the Mediator shall be shared equally by the Parties. Payments shall be full compensation for work performed, services rendered, and for all materials, supplies, travel, office assistance and support and incidentals necessary to serve. Payment for services rendered by the Mediator and for the Mediator's expenses shall be at the rate or rates established by the Mediator. The Mediator may submit invoices for payment for work completed not more often than once per month during the progress of the work. Such invoices shall be in a format approved by both Parties, and accompanied by a general description of activities performed during that period. The value of work accomplished for payment shall be established from the billing rate and hours expended by the Mediator. The invoiced amount shall be divided in half and clearly stated. A copy is to be sent to City and Developer for payment. Satisfactorily submitted invoices shall be paid within sixty (60) days.

12.3 Litigation. Only after the mediation has concluded, may either party seek resolution of the Matter in Dispute through litigation and for any such litigation, jurisdiction and venue shall thereafter be in the Superior Court of the State of Washington for Pierce County.

### 13. Miscellaneous.

13.1 Assignment. Developer shall not voluntarily or involuntarily sell, transfer, convey, assign or otherwise dispose of its rights under this Agreement, in whole or in part, without the prior written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, Developer may assign its rights and obligations under this Agreement to an entity in which Developer or its principals have an ownership interest and which is managed by Developer or its principals. City acknowledges that Developer may assign its rights under this Agreement to Construction Lender solely in connection with the Agreed Financing Plan for the Project. City and Developer further agree, if required by the Construction Lender, to enter into a commercially reasonable tri-party agreement giving the Construction Lender rights to receive notices and to cure defaults by the Developer, if any.

13.2 Burden and Benefit. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the successors and permitted assigns of the respective Parties hereto.

13.3 Neutral Authorship. In connection with the execution and delivery hereof, each party has been represented by counsel. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of both Parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

13.4 Terminology. All personal pronouns used in this Agreement, whether used in the masculine, feminine and neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

13.5 Complete Agreement; Amendment. This Agreement, together with the exhibits annexed hereto or referred to herein, is intended to be the entire agreement of the Parties with regard to the subject matter hereof and may only be amended with the written consent of both Parties.

13.6 Severability. Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

13.7 Relationship of Parties. Developer and City shall not be construed as joint venturers or general partners, and neither shall have the power to bind or obligate the other party except as set forth in this Agreement. Developer shall have no right or authority, express or implied, to commit or otherwise obligate City in any manner

whatsoever except to the extent specifically provided herein or specifically authorized in writing by City.

13.8 No Third Party Rights. The provisions of this Agreement are intended solely for the benefit of, and may only be enforced by, the Parties hereto and their respective successors and permitted assigns. None of the rights or obligations of the Parties herein set forth (or implied) is intended to confer any claim, cause of action, remedy, defense, legal justification, indemnity, contribution claim, set-off, or other right whatsoever upon or otherwise inure to the benefit of any contractor, architect, subcontractor, worker, supplier, mechanic, insurer, surety, guest, member of the public, or other third parties having dealings with either of the Parties hereto or involved, in any manner, in the Project.

13.9 Representatives.

13.9.1 Representatives of Developer. Developer shall designate a Project Manager for the Project who shall be the single point of contact for the City on all matters arising under this Agreement and shall promptly render decisions to avoid delay in the orderly process of design and construction of the Project. The Developer's Project Manager may be changed from time to time.

13.9.2 Representatives of City. The City Representative shall designate a Project Manager who shall be the single point of contact for the Developer on all matters arising under this Agreement and shall promptly render decisions to avoid delay in the orderly process of design and construction of the Project. The City's Project Manager may be changed from time to time.

13.10 Notices. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either party hereto by the other party, shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is addressed or in lieu of such personal service, three (3) days after it is deposited in the United States mail, first-class postage prepaid, certified or registered, return receipt requested, addressed as follows, or sent via facsimile transmission to the fax numbers set forth below, with machine confirmation of receipt followed by a "hard copy" mailed regular mail, within one (1) business day to the addresses listed as follows:

City:	City of University Place 3715 Bridgeport Way University Place, WA 98466
Attention:	City Manager
Facsimile:	253.460.2546
Developer:	SEB, Inc. 240 S. Stadium Way

Tacoma, WA 98402  
Attention: Steve Berg  
Facsimile: 253.428.8172

Either party may change its address for the purposes of this Section by giving written notice of such change to the other party in the manner provided in this Section.

13.11 Non Waiver of Governmental Rights. Nothing contained in this Agreement shall require the City to take any discretionary action relating to development of the improvements to be constructed on the Property as part of the Project, including, but not limited to, zoning and land use decisions, permitting, or any other governmental approvals.

13.12 Captions. The captions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement.

13.13 Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

13.14 Further Assurance. Each party hereto agrees that it will execute or furnish such documents and further assurances to the other or to proper authorities as may be necessary for the full implementation and consummation of this Agreement and the transactions contemplated hereby.

13.15 Authority. Each of the persons signing below represent and warrant that they have the requisite authority to bind the party on whose behalf they are signing.

13.16 Time is of the Essence. Time is of the essence of this Agreement. All periods of time referred to herein shall include Saturdays, Sundays and legal holidays in the State of Washington, except that if the last day of any period falls on any Saturday, Sunday or such holiday, the period shall be extended to the next business day.

13.17 Independent Contractor. Developer is acting under this Agreement as an independent contractor and nothing herein contained, or any acts of Developer or City, nor any other circumstances, shall be construed to establish Developer as an agent of City. Developer shall be responsible for each of Developer's employees or other persons performing services to be performed by Developer hereunder and for determining the manner and time of performance of all acts to be performed by Developer hereunder.

13.18 Attorneys' Fees. In the event of any litigation, arbitration or other proceeding brought to enforce or interpret or otherwise arising out of this Agreement, each party shall be responsible for payment of their own legal fees.

13.19 Survival of Provisions. Except as otherwise expressly provided herein, the covenants, representations, agreements, terms and provisions contained herein shall survive and shall not be deemed to have merged with or into the Deed.

13.20 Exhibits. The Exhibits hereto are made a part of and incorporated into this Agreement.

13.21 Conflicts of Interests. No member, official or employee of the City shall make any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

13.22 Non-Liability of City, Officials, Employees, and Agents. No member, official, employee or agent of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.

13.23 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington, without regard to principles of conflicts of laws, and venue of any action brought to enforce this Agreement shall lie exclusively in Pierce County, Washington. Jurisdiction shall lie with the Superior Court of the State of Washington. The Parties hereto consent to the jurisdiction of the Pierce County Superior Court and waive the right to file suit elsewhere.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.

CITY OF UNIVERSITY PLACE

SEB, INC.

\_\_\_\_\_  
Stephen P. Sugg, City Manager

\_\_\_\_\_  
Steve Berg, President

Attest:

\_\_\_\_\_  
Emelita Genetia, City Clerk

Approved as to form:

\_\_\_\_\_  
Steve Victor, City Attorney

## EXHIBIT "A"

### Definitions

The following terms within the Agreement are defined as follows:

"Council" means the University Place City Council.

"CC&Rs" means that certain Declarations of Covenants, Conditions & Restrictions to be recorded against the Property in the Official Records of Pierce County, Washington.

"Certificate of Completion" means a certificate issued by City to Developer pursuant to Section 5 Development of this Agreement.

"City Representative" means the City Manager of University Place or designee upon reasonable approval of Developer. Upon approval of this Agreement by the City Council, the City Representative for this Agreement shall be the City Manager and every reference to the City herein including but not limited to decisions of the City or actions to be taken at the discretion of the City shall mean a decision of the City Manager or at the discretion of the City Manager.

"Closing" and "Closing Date" mean the date on which the Bargain and Sale Deed and any Easements required by this Agreement are recorded.

"Commencement of Construction" means the date Developer executes and delivers to Developer's general contractor an authorization to proceed with the construction of any portion of the Project.

"Construction Lender" means the bank or other financial institution that provides financing to Developer to construct the Project.

"Effective Date" means the date set forth in the first paragraph of this Agreement.

"Environmental Standards" means all federal, state and local environmental laws and ordinances and all regulations promulgated thereunder, whether currently in effect or enacted or amended from time to time in the future

"Event(s) of Default" shall be as defined in Section 11 herein.

“Final Completion” means that each of the following items shall have occurred with respect to the Project:

- a. The City has issued all final unconditional certificates of occupancy for the Project.
- b. Each contractor shall have issued its “Certificate of Substantial Completion” together with its Affidavit of Payment of Debts and Claims, AIA Forms 706 and 706A together with final waivers and releases of lien from such materialmen, laborers, contractors and subcontractors.
- c. Architect shall have issued its Certificate of Final Completion and confirmed in writing that all Punch List items have been completed and that the Project is otherwise complete.
- d. The general contractor shall have issued a certificate that its scope of work for the Project has been finally completed in substantial accordance with the Construction Documents.

“Unavoidable Delay” (out of order alphabetically) means subject to the exclusions in subsection 2 of this definition, and as more specifically defined below, any act, event or condition that is beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Agreement, and that directly affects the performance of this Agreement, by materially expanding the scope of the obligations of either party hereunder, materially interfering with, or materially delaying the performance of the obligations of either party hereunder, to the extent that such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Agreement on the part of such party.

- a. Inclusions. Subject to the foregoing, Unavoidable Delay may include, but is not limited to, the following:
  - i. A change in law, except as otherwise provided in this Agreement;
  - ii. Naturally occurring events (except weather conditions reasonably anticipated for the City) occurring within a fifty (50)-mile radius of University Place and directly affecting the performance of this Agreement, such as landslides, underground movement, earthquakes, fires, tornadoes, floods, lightning, epidemics and other acts of God;
  - iii. Explosion, terrorism, sabotage or similar occurrence, war, blockade or insurrection, riot or civil disturbance occurring in the state of Washington and directly affecting the performance of obligations under this Agreement;

- iv. The failure of any subcontractor (other than the Developer or any affiliate) to furnish services, materials, chemicals or equipment on the dates agreed to, but only if such failure is the result of an event which would constitute an Unavoidable Delay event if it affected the Developer directly, and the Developer is not able after exercising all reasonable efforts to timely obtain substitutes;
  - v. The preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any material portion of the Property;
  - vi. A violation of Applicable Law by a person other than the affected party or its subcontractors.
- b. Exclusions. It is specifically understood that, without limitation, none of the following acts, events or circumstances shall constitute Unavoidable Delay:
- i. Any act, event or circumstance that would not have occurred but for the affected party's failure to comply with its obligations hereunder;
  - ii. Changes in economic conditions, including, but not limited to, changes in interest rates, inflation rates, wage rates, insurance premiums, commodity prices, currency values, exchange rates;
  - iii. Changes in the financial condition of the Developer, or its affiliates or subcontractors affecting the ability to perform their respective obligations under this Agreement;
  - iv. The consequences of error, neglect or omissions by the Developer, any subcontractor, any of their affiliates or any other person in performing its obligations under this Agreement;
  - v. Union or labor work rules, requirements or demands which have the effect of increasing the number of employees employed by the Developer or otherwise increasing the cost to the Developer of performing its obligations under this Agreement;
  - vi. Weather conditions reasonably anticipated for the City of University Place, Washington;
  - vii. Any act, event, circumstance or Change in Law occurring outside of the United States;
  - viii. Mechanical failure of equipment used or supplied by a Party to the extent not resulting from a condition that is listed in the "Inclusions" section of this definition;

- ix. Labor disputes involving employees of the Developer, its Affiliates, or its Subcontractors;
- x. Failure of the City in its governmental capacity to approve any design submittals due to its reasonable judgment that such submittal does not comply with the standard against which it is required to undertake the review;
- xi. Failure of any Party to secure intellectual property rights which are or may be necessary for the performance of its obligations under the Agreement.
- xii. The inability of any Party to secure financing.

“Improvements” means all buildings, structures, improvements and fixtures placed or constructed in, under or upon the Property and all access ways, pedestrian areas, public amenities, fences, paved areas, utility distribution facilities, lighting, signage and other infrastructure improvements to be built by Developer on the Property.

“Mortgagee” means the holder of a first mortgage or deed of trust (“Mortgage”) encumbering Developer’s interest in any portion of the Property, the proceeds of which are used to finance or refinance the construction of Improvements.

"Permitted Exceptions" means exceptions to title identified in the Title Policy approved or not disapproved by Developer within the time period set forth in this Agreement.

“Project” means the development of the Property, including construction of all Improvements and all related obligations of Developer under this Agreement.

"Property" means the real property located within Lot 12 of the University Place Town Center Property in University Place, Washington as identified in the Town Center Binding Site Plan.

“Substantial Completion” or “substantially complete” means the date on which all of the following have occurred: (i) the Improvements required to be developed by this Agreement are complete according to approved Plans, except for punchlist items that do not substantially prevent the use of the Improvements for their intended purposes; and (ii) the City Representative has issued a temporary or final certificate of occupancy for the building portions of the Improvements.

