

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 McCluskey
 4. APPROVAL OF MINUTES – January 20, 2018 and February 5, 2018
 5. APPROVAL OF AGENDA
- 6:35 pm
6. PUBLIC COMMENTS – (Citizens wishing to address the Council will be given three minutes to comment on any matters not scheduled for Public Hearing or Council Consideration. Specific concerns raised at this time will be addressed by City staff after the meeting. State law prohibits the use of this forum to promote or oppose candidates for public office or ballot measure. Please provide your name and address for the record.)
- 6:40 pm
- 7A. - CONSENT AGENDA
 - 7B. 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 from 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. Adopt a resolution approving the extension of the Interlocal Agreement between the City of University Place, the City of Lakewood and Pierce County for planning the Chambers Creek Canyon Trail project.
- 6:45 pm
8. CITY MANAGER & COUNCIL COMMENTS/REPORTS - (Report items/topics of interest from outside designated agencies represented by Council members, e.g., AWC, PRSC, Pierce Transit, RCC, etc, and follow-ups on items of interest to Council and the community.)
- 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.)
- 6:55 pm
9. DEVELOPMENT SERVICES FEES
(FIRST STUDY FOR PASSAGE OF A RESOLUTION)
- 7:55 pm
10. TOWN CENTER LOT 3 DEVELOPMENT AGREEMENT
(FIRST STUDY FOR PASSAGE OF A RESOLUTION)
- 9:00 pm
11. ADJOURNMENT

*PRELIMINARY CITY COUNCIL AGENDA

March 5, 2018

Regular Council Meeting

March 19, 2018

Regular Council Meeting

April 2, 2018

Regular Council Meeting

April 16, 2018

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.

**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
Special Meeting of the City Council
Saturday, January 20, 2018
Pebble Beach Room, Fircrest Golf Club**

CALL MEETING TO ORDER

Mayor Keel called the meeting to order at 8:30 a.m.

Attendance was noted as follows: Mayor Keel, Mayor Pro Tem Belleci, Councilmember McCluskey, Councilmember Figueroa, Councilmember Nye, Councilmember Worthington, Councilmember Grassi, City Manager Sugg, Executive Director/ACM Craig, Executive Director/ACM Faison, City Attorney Kaser, Public Works, Parks & Facilities Director Cooper, Police Chief Blair, and Communications /I.T. Manager Seesz.

Guests: Michael Pendleton (Michael Pendleton Consulting, LLC) and Ali Modares, PhD. (University of Washington, Tacoma)

MAYOR'S REMARKS – VISION AND LEADERSHIP ROLE

Mayor Keel went over the agenda for the morning and afternoon sessions. He thanked the Council for electing him and shared his perspective on his role as Mayor as well as his goals over the next two years.

ASSIGNMENT OF COUNCIL ROLES

- Election of Finance Chair: A motion was made by Mayor Keel, seconded by Councilmember Nye, to elect Councilmember Worthington as Finance Chair. Councilmember Worthington was named as the new Finance Chair for the next two years.
- Introduction of Michael Pendleton: Mayor Keel then introduced Michael Pendleton of Michael Pendleton Consulting, LLC as the meeting facilitator. Mr. Pendleton provided a short background on his work experience and went on to discuss the retreat ground rules.
- Committees and Representative Assignments for 2018/2019: Council reviewed current outside agency assignments and designated representatives for the next two years.
- Council Subcommittee for Commission Interviews: Mayor Pro Tem Belleci, Councilmember Worthington, and Councilmember McCluskey (Chair) were appointed to the Council subcommittee for 2018.

COUNCIL NORMS

- Overview and Procedural Changes - Mr. Pendleton led the discussion on how Council can work together and create respect for differences. Council discussed procedural changes to agenda setting process, building the agenda topics, submission and prioritization of legislative proposals, clean-up/update of Council Rules, public comment follow-up, review time for packet materials/early agenda packet release date (Wednesdays), citizen follow-up process, timeline when legislative proposals moved forward (3-month window), formalized communication as to why an agenda item is moved, concerns about micro-managing staff's response.

At 10:00 a.m. Council took a 15-minute break. The meeting resumed at 10:15 a.m.

- Travel/Training Policy Proposal - Executive Director Faison provided an overview of the proposed travel/training policy for Council consideration. The following list highlights major points discussed:

- Need bigger budget.

- Requiring a report to Council of the whole – timing and per diem impacts/costs.
- Provide every Council member a budget, with a higher amount for Mayor and Mayor Pro Tem.
- The advantages/necessity of “being seen” representing the City.
- Need to treat all council members equally and provide designated budget.

Executive Director Faison will come back with a resolution for Council consideration.

REVIEW OF 2017-2018 COUNCIL GOALS - City Manager Sugg presented Council with a revised list of the 2017-2018 Goals and Outcomes and reviewed each goal and next steps towards completion.

The City Council took a lunch break at 12:15 p.m. The meeting resumed at 1:00 p.m.

Mayor Keel framed the afternoon’s theme and direction. He presented his Notional Plan showing a high-level timeline, plans and deliverables.

BUILDING COMMUNITY: NEXT 20 YEARS - City Manager Sugg made a presentation on the framework of redevelopment to allow for capacity to accommodate growth in population, housing, and employment within the City over the next 20 years.

SOUTH SOUND ALLIANCE – Dr. Ali Modares made a presentation about his new proposed South Sound Alliance. He presented demographic and economic information detailing how the City of University Place fits in with the region’s strategic picture.

At 2:45 p.m., Council took a 15-minute break. The meeting resumed at 3:00 p.m.

COMMUNICATIONS

Communications/I.T. Manager Seesz presented an overview on communications print options identified for implementation: Option A – U.P. color/2 page mailer to be printed monthly for 11 issues @ \$51,000/year; Option B – U.P. color/page mailer to be printed monthly for 11 issues @ \$55,000/year; Option C – Headlines to be printed bi-monthly (6 issues) @ \$49,000/year; and Option D – U.P. Magazine to be printed quarterly for 4 issues @ \$54,000/year. She indicated that each option includes an electronic version that will be available on or from the City’s website which will be scalable and viewable from a mobile device.

Discussion led to Council consensus to proceed with the electronic format, augmented by postcards and special reports to highlight immediate information that need community input or may cause impact such as road projects, etc.

A demo presentation was made by IEG7on CRM System, a citizen engagement software.

Staff will be scheduling a follow-up study to discuss more information regarding the bigger I.T. and communications picture.

WRAP-UP

Councilmember Figueroa requested that a presentation by Mike Lonegran be scheduled on the agenda. He also informed Council that he will be submitting a travel request for a Chamber of Commerce trip to Washington D.C. in May. Councilmember McCluskey also referenced a similar request for this year’s National League of Cities conference.

ADJOURNMENT - The meeting adjourned at 4:55 p.m. No other action was taken.

Submitted by,

Mariza Craig
Executive Director/Assistant City Manager

**CITY OF UNIVERSITY PLACE
DRAFT MINUTES
Regular Meeting of the City Council
Monday, February 5, 2018
City Hall, Windmill Village**

1. CALL REGULAR MEETING TO ORDER

Mayor Keel 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 Figueroa	Present
Councilmember Grassi	Present
Councilmember McCluskey	Present
Councilmember Nye	Present
Councilmember Worthington	Present
Mayor Pro Tem Belleci	Present
Mayor Keel	Present

Staff Present: City Manager Sugg, City Attorney Kaser, Engineering and Capital Projects Director Ecklund, NPDES Coordinator Smith, and City Clerk Genetia.

3. PLEDGE OF ALLEGIANCE

Councilmember Grassi led Council in the Pledge of Allegiance.

4. APPROVAL OF MINUTES

MOTION: By Councilmember Figueroa, seconded by Mayor Pro Tem Belleci, to approve the minutes of the January 16, 2018 meeting as submitted.

The motion carried.

5. APPROVAL OF AGENDA

Councilmember Worthington requested to amend the agenda to include a legislative proposal on House Bill 2880 and Senate Bill 6487 as Item 8A under Council Consideration.

MOTION: By Councilmember Worthington, seconded by Mayor Keel, to approve the agenda as amended.

The motion carried.

6. PUBLIC COMMENTS – The following individuals provided comment: Lee and Kathie Schriver, 7015 53rd Street West; and Troy Jella, 4402 61st Avenue West.

7. CONSENT AGENDA

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

A. Receive and File: Payroll for the period ending 01/15/18, dated 01/19/18, in the total amount of Two Hundred Forty Thousand Four Hundred Six and 33/100 Dollars (\$240,406.33); Claims dated 01/12/18 (2017 invoices), check nos. 51980846 through 51980885, in the total amount of One Ninety Thousand

Seven Hundred Fifty-Four and 04/100 Dollars (\$190,754.04); Claims dated 01/17/18 (2018 invoices), check nos. 51980886 through 51980905, in the total amount of Sixty-Seven Thousand Two Hundred Eighteen and 41/100 Dollars (\$67,218.41); Claims dated 01/31/18 (2017 invoices), check nos. 51980907 through 51980933, in the total amount of Four Hundred Thirteen Thousand Three Hundred Twenty-Five and 75/100 Dollars (\$413,325.75); Claims dated 01/31/18 (2018 invoices), check nos. 51980906, 51980934 through 51980905, in the total amount of One Hundred Thousand Four Hundred Five and 04/100 Dollars (\$100,405.04); and Claims dated 01/31/18, wire transfers 296384 and 1192018, in the total amount of Five Hundred One and 75/100 Dollars (\$501.75).

B. Receive and File: 2018-2019 Council Assignments.

The motion carried.

COUNCIL CONSIDERATION

8A. LEGISLATIVE PROPOSAL: RESOLUTION OPPOSING HB 2880 AND SB 6487

Staff Report – City Attorney Kaser presented a legislative proposal submitted by Councilmember Worthington and Mayor Keel. The legislative proposal calls for the City Council to adopt a resolution opposing House Bill 2880 and Senate Bill 6487. House Bill 2880 and Senate Bill 6487 allow property owners located in a city or town to petition for annexation into another city or town without the approval of the city or town from which the territory would be taken, prior to June 30, 2021, if certain conditions are met. Under current state law, cities conduct annexations through a petition-based process involving direct vote of the annexed area, legislative approval of the area affected, or both. House Bill 2880 and Senate Bill 6487 would change this traditional balance and create a provision that allows property to be annexed from one city or town to another without approval from the legislative body of the city or town from which the territory would be taken. He indicated that both bills passed out of their respective policy committees, and are currently in the rules committees of both chambers.

Councilmember Worthington expressed his concerns about the principles of this process and how it sets a dangerous precedent that allows for a city to annex another without a public engaged process. Mayor Keel agrees and indicated that the Association of Washington Cities opposes the bills as well.

Public Comment – The following individual provided comment: Dennis Flann, 2623 Lemons Beach Road.

Council Consideration – **MOTION:** By Councilmember Worthington, seconded by Mayor Pro Tem Belleci to adopt a resolution opposing House Bill 2880 and Senate Bill 6487 regarding annexation without approval from the local governing body or its residents.

The motion carried. (RESOLUTION NO. 854)

8B. COUNCIL DISCUSSION: 2019-2020 COUNCIL GOAL SETTING PREPARATION

Mayor Keel asked for Council's input on the 2019-2020 Council Goals setting meeting. Council consented to hold this single topic special meeting on a Monday, date to be determined by the Mayor and Mayor Pro Tem.

8. CITY MANAGER & COUNCIL COMMENTS/REPORTS

City Manager Sugg reported on the gateway signs that have been installed within the City. He also informed Council of upcoming community events.

Mayor Pro Tem Belleci reminded the Council and staff of the upcoming Pierce County Regional Council general assembly meeting.

Mayor Keel highlighted future Council agenda topics. He also reported on Pierce Transit's service improvement efforts under discussion.

Councilmember Figueroa commented on the public comment process.

Councilmember Grassi expressed his thoughts on the process as well, stating that Council should strive to make the public feel as they have been heard.

STUDY SESSION

9. STORMWATER MANAGEMENT PROGRAM UPDATES

Engineering and Capital Projects Director Ecklund presented the 2018 updates to the City's Stormwater Management Program (SWMP). He indicated that the City is required to develop, implement, and annually update its Stormwater Management Program as a condition of its NPDES Phase II permit. The program lists the components, actions and activities the City is conducting to meet the required elements in (1) public education and outreach, (2) public involvement and participation, (3) illicit discharge detection and elimination, (4) controlling runoff from new development, redevelopment and construction sites, (5) pollution prevention and operations and maintenance for municipal operations, (6) monitoring, and (7) reporting requirements. The updates to the 2018 SWMP are minimal and were highlighted in the written staff report.

A public hearing on this matter is scheduled on March 19, 2018.

10. ADJOURNMENT

The meeting adjourned at 7:51 p.m. No other action was taken.

Submitted by,

Emy Genetia
City Clerk

APPROVAL OF CONSENT AGENDA

City of University Place
Voucher Approval Document

Control No.: 5 Agenda of: 02/20/18	PREPAY
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Claim of: Payroll for Pay Period Ending 1/31/2018

Check #	Date	Amount	Check #	Date	Amount
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02/05/18 117,366.92 DIRECT DEPOSIT

EMPLOYEE NET 117,366.92

318801	02/05/18	389.18	IUOE LOCAL 612
318802	02/05/18	6,415.14	IUOE LOCALS 302/612 TRUST FUND
WIRE	02/05/18	65,156.33	AWC EMPLOYEE BENEFIT TRUST
WIRE	02/05/18	22,592.71	BANK OF AMERICA
WIRE	02/05/18	20,281.28	- 106006, VANTAGEPOINT TRANSF
WIRE	02/05/18	7,677.98	- 304197, VANTAGEPOINT TRANSF
WIRE	02/05/18	4,513.66	- 800263, VANTAGEPOINT TRANSF
WIRE	02/05/18	28,912.08	PACIFIC SOURCE ADMINISTRATORS
WIRE	02/05/18	2,135.16	WA STATE DEPT OF RETIREMENT SY
WIRE	02/05/18	740.68	UNUM LIFE INSURANCE COMPANY
WIRE	02/05/18	1,008.74	UNUM LIFE INSURANCE COMPANY
WIRE	02/05/18	6.25	- 705544, VANTAGEPOINT TRANSF
WIRE	02/05/18	229.17	- 106006 LOAN, VANTAGEPOINT
WIRE	02/05/18	2,757.33	AFLAC INSURANCE
WIRE	02/05/18	94.20	WA ST DEPT OF RETIREMENT SYS
WIRE	02/05/18	940.30	- 304197 LOAN, VANTAGEPOINT TR
WIRE	02/05/18	519.91	NATIONWIDE RETIREMENT SOLUTION

BENEFIT/DEDUCTION AMOUNT 164,370.10

TOTAL AMOUNT 281,737.02

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: 02/15/2018 (2018 Invoices)

Check Range: 51980973 - 51980997

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	
51980973	2/15/2018	003064	ARBOR DAY FOUNDATION	18DUES	1/18/2018	2018 MEMBERSHIP DUES/DEBBI	15.00	15.00
		Voucher: 43394						
51980974	2/15/2018	023411	AUTOZONE, INC.	4190691843	1/31/2018	WIPER SWITCH REPAIR/TRUCK4	29.72	
		Voucher: 43395		1164087053	1/25/2018	FUNNEL	5.48	35.20
51980975	2/6/2018	001024	CITY OF TACOMA	100939530	1/4/2018	POWER/3555 MARKET PLACE W	1,498.41	
		Voucher: 43396		100955345	1/4/2018	WATER/3715 BP WAY W	289.54	
				100312900	1/4/2018	POWER/3715 BP WAY W #E3	204.37	
				100955347	1/4/2018	POWER/3715 BP WAY W, #E HSE	126.86	
				100495884	1/4/2018	POWER/3625 DREXLER DR	116.83	
				100302273	1/4/2018	POWER/3715 BP WAY W #D2	109.44	
				100668506	1/2/2018	WATER/5700 HANNAH PIERCE R	105.49	
				100565439	1/25/2018	WATER/3761 BP WAY W	92.91	
				100897062	1/4/2018	WATER/3600 DREXLER DR W	78.65	
				100312961	1/4/2018	POWER/3715 BP WAY W #A3	64.74	
				100714386	1/4/2018	POWER/3609 MARKET PL W #20	52.79	
				100165190	1/25/2018	POWER/3761 BP WAY W	34.74	
				100615001	1/24/2018	POWER/2247 E DAY ISLAND BLV	4.86	2,779.63
51980976	2/15/2018	001108	CITY OF UNIVERSITY PLACE	JAN18	2/2/2018	PETTY CASH FUND REIMBURSE	47.86	47.86
		Voucher: 43397						
51980977	2/15/2018	023782	COMPLETE OFFICE SOLUTIONS,	1638925-0	1/9/2018	CHAIRMAT	47.69	
		Voucher: 43398		1643094-0	1/17/2018	AAG BOOK	27.98	
				1643094-1	1/19/2018	AAG PLANNER	16.01	
				1646632-0	1/24/2018	STENO PAD	13.11	
				C1610423-0	1/9/2018	CREDIT/AAG PLANNER	-19.08	85.71
51980978	2/15/2018	002066	CONSOLIDATED ELECTR.DIST.C	(8541-453355	1/31/2018	REFLECTOR/LED MODULES/BLA	630.87	
		Voucher: 43399		8541-453422	1/31/2018	HPS LAMP/STREET LIGHTS	382.93	
				8541-453531	2/1/2018	HPS LAMP/STREET LIGHTS	153.26	1,167.06
51980979	2/15/2018	026148	DDK DESIGNS, LLC	197	1/22/2018	MANHOLE LID LIFTER/FILTER C/	681.38	681.38
		Voucher: 43400						
51980980	2/15/2018	023065	ECONOMIC DEVELOPMENT BOA	IT2018-664071-8	1/17/2018	EDB ANNUAL MEETING 2018/664	890.00	890.00
		Voucher: 43401						
51980981	2/15/2018	001890	FIRCREST GOLF CLUB	0118-020	1/20/2018	COUNCIL RETREAT/REMAINING	1,178.03	1,178.03
		Voucher: 43402						

Bank : bofa BANK OF AMERICA

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Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
51980982	2/15/2018	001406	GUARDIAN SECURITY GROUP IN77917	1/24/2018	FIT KEY TO LOCK/CIVIC BUILDIN	86.48	86.48
		Voucher: 43403					
51980983	2/15/2018	026150	HILL, DANA	ROW	2/1/2018	TEMPORARY CONSTRUCTION E	800.00
		Voucher: 43404					
51980984	2/15/2018	025710	HODGE PRODUCTS INC	0397240-IN	1/24/2018	PADLOCKS/STREET & SWM USE	736.94
		Voucher: 43405					
51980985	2/15/2018	001374	INTERWEST METALS, INC.	16614	1/23/2018	SURPLUS/CHROM ROUND/TAMF	119.44
		Voucher: 43406					
51980986	2/6/2018	003197	INT'L ASSN OF CHIEFS OF POLIC1001300275	12/29/2017	2018 IACP MEMBERSHIP/M.BLAII	150.00	150.00
		Voucher: 43407					
51980987	2/15/2018	001243	LLOYD ENTERPRISES INC	3304314	1/10/2018	CONCRETE MIX W/REBAR	594.98
		Voucher: 43408					
51980988	2/15/2018	001378	MOUNTAIN MIST WATER	001838851	1/11/2018	#075361/BOTTLED WATER/CITY I	61.90
		Voucher: 43409		001865106	1/25/2018	#075361/BOTTLED WATER/CITY I	50.36
				001838844	1/11/2018	#075361/BOTTLED WATER/PW SI	22.88
				001838852	1/11/2018	#068332/BOTTLED WATER/CM O	18.49
				001865098	1/25/2018	#075361/BOTTLED WATER/PW SI	14.09
				001865107	1/25/2018	#068332/BOTTLED WATER/CM O	12.99
							180.71
51980989	2/15/2018	003178	OWENS PRESS, INC.	26389	1/13/2018	SCHOOL WALKING & BIKING BR	6,962.17
		Voucher: 43410					
51980990	2/15/2018	026037	PENDLETON CONSULTING LLC	JAN18	1/24/2018	JAN18/FACILITATOR/COUNCIL RI	4,338.40
		Voucher: 43411					
51980991	2/6/2018	001161	PUGET SOUND ENERGY CORP	300000009641	1/29/2018	GAS/3715 BP WAY W, #D2 & #A3	259.64
		Voucher: 43412		200000971479	1/25/2018	GAS/4910 BRISTONWOOD DR W	247.13
				200014542258	1/29/2018	GAS/7450 MARKET SQ W	214.14
				300000010987	1/29/2018	GAS/3715 BP WAY W, #E2	48.37
				220014491314	1/29/2018	GAS/3715 BP WAY W #E1	40.89
				220008861142	1/29/2018	GAS/3715 BP WAY W, #BLDG D1	38.98
							849.15
51980992	2/15/2018	001295	RANGLES SAND & GRAVEL INC	390659	1/24/2018	HAND SELECTED ROCK/SPALL F	216.94
		Voucher: 43413					
51980993	2/15/2018	025311	TACOMA WINSUPPLY, INC.	043222 00	1/22/2018	HOSE NOZZLE	105.48
		Voucher: 43414					
51980994	2/15/2018	002823	THOMPSON ELECTRICAL CONST0118-1376W	1/23/2018	JAN18/REPLACE LIGHT POLE LA	614.67	614.67
		Voucher: 43415					

Bank : bofa BANK OF AMERICA

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Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
51980995	2/6/2018	001331	UNIVERSITY PLACE REFUSE SV,1998995	1/24/2018	FEB18/BILLING PERIOD/REFUSE	4,268.70	
	Voucher:	43416	1001173	1/24/2018	FEB18/BILLING PERIOD/COMPAC	633.91	4,902.61
51980996	2/6/2018	001446	WA RECREATION & PARK ASSN 2995	1/30/2018	SPRING CPSI COURSE & TEST/C	649.00	
	Voucher:	43417	2975	1/24/2018	2018 RISK MNGMT SCHOOL/T.WI	329.00	978.00
51980997	2/15/2018	024194	WEST SOUND WORKFORCE,INC.35512	1/22/2018	SHANE CONLEY/WW 01-21	1,062.00	1,062.00
	Voucher:	43418					
Sub total for BANK OF AMERICA:							29,577.84

25 checks in this report.

Grand Total All Checks: 29,577.84

FINAL CHECK LISTING
CITY OF UNIVERSITY PLACE

Check Date: 2/15/2018 (2017 Invoices)

Check Range: 51980998-51981007

Wire Transfer: 5492008, 86418

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.

<u>Vendor Name</u>	<u>Replacement Check #</u>	<u>Original Check #</u>
WA ST Dept. of Revenue	86418 (Wire Transfer)	51981006

Auditing Officer: (Signature on file.)

Date: _____

Bank : bofa BANK OF AMERICA

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
5492008	2/15/2018	003049	DEPT OF LABOR & INDUSTRIES 4THQTR17	1/26/2018	4THQTR17/VOLUNTEER HOURS	13.64	13.64
		Voucher: 43422					
51980972	1/30/2018	022590	WA STATE DEPT OF TRANSPORTREFUND	1/30/2018	REFUND/OVERPAYMENT PROJE	1,756.61	1,756.61
		Voucher: 43429					
51980998	2/15/2018	025986	AUSTINCINA ARCHITECTS INC P1285-DEC17	1/25/2018	CITY HALL TI/ARCHITECURAL SE	3,169.97	
		Voucher: 43419	1286	1/25/2018	CIVIC BLDG/RESTROOM DESIGN	280.00	3,449.97
51980999	2/9/2018	026126	BEYLER CONSULTING LLC 2017-2214	12/31/2017	PRELIMINARY BOUNDARY SURV	1,312.50	1,312.50
		Voucher: 43420					
51981000	2/15/2018	001024	CITY OF TACOMA	100110228	1/4/2018	POWER/3715 BP WAY W #B5	1,812.53
		Voucher: 43421		100612293	2/1/2018	POWER/5103 BP WAY W	393.34
				100892483	2/1/2018	POWER/5400 BP WAY W	239.61
				100079031	1/4/2018	POWER/3715 BP WAY W	201.55
				100890034	2/1/2018	WATER/7299 57TH ST CT W	193.92
				100142834	1/4/2018	WATER/3715 BP WAY W	169.52
				100751205	2/5/2018	WATER/3555 MARKET PLACE WE	169.52
				100125070	2/1/2018	POWER/5370 BP WAY W	120.96
				100851341	2/1/2018	POWER/6420 CHAMBERS CREEK	101.90
				100980359	2/1/2018	WATER/6799 CHAMBERS CK RD	96.97
				100105615	1/4/2018	POWER/3503 BP WAY W	71.81
				100156353	1/4/2018	POWER/4720 BP WAY W	55.85
				100955346	1/4/2018	POWER/3715 BP WAY W, #D HSE	45.60
				100093125	1/26/2018	POWER/8513 33RD ST W #A	43.92
				100312960	1/4/2018	POWER/3715 BP WAY W #A2	35.59
				100079046	1/4/2018	POWER/3715 BP WAY W #D5	35.12
				100052902	1/4/2018	POWER/ 3715 BP WAY W/#A HSE	34.11
				100737837	2/1/2018	POWER/5702 BP WAY W	26.19
				100802489	1/4/2018	POWER/3904 BP WAY W	17.62
				100086165	1/4/2018	POWER/7813 44TH ST W	6.50
				100086155	1/4/2018	POWER/7801 40TH ST W	6.50
							3,878.63
51981001	2/15/2018	026152	ENTERPRISE HOLDINGS, INC 3002290086	1/29/2018	CLAIM # 11951180/DAMAGE/REN	1,294.26	1,294.26
		Voucher: 43423					
51981002	2/15/2018	026099	MAYES TESTING ENGINEERS INC TA03154	1/3/2018	TESTING & INSPECTION/S 56TH	376.00	376.00
		Voucher: 43424					

Bank : bofa BANK OF AMERICA

(Continued)

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total	
51981003	2/15/2018	021895	MCCAIN INC	INV0226883	12/26/2017	FLASHER/DUAL CIRCUIT/YELLO'	652.81	652.81
		Voucher: 43425						
51981004	2/15/2018	001109	PIERCE COUNTY BUDGET & FIN/CI-244539	CI-244577	1/29/2018	2017/VOTER MAINTENANCE CH/	62,669.32	
		Voucher: 43426		CI-245495	12/31/2017	DEC17/TRAFFIC SIGNAL MAINT/	6,959.07	
					2/7/2018	4THQTR17/LIQUOR EXCISE & PF	2,118.17	71,746.56
51981005	2/15/2018	003165	RAINIER COMMUNICATIONS CEN4THQTR17	4THQTR17	1/31/2018	COMCAST/4THQTR17/PEG FEES	9,344.49	
		Voucher: 43427		4THQTR17	1/30/2018	CLICK/4THQTR17/PEG FEES	1,898.50	11,242.99
51981006	2/15/2018	001664	WA STATE DEPT OF REVENUE	4THQTR17	1/31/2018	4THQTR17/LEASEHOLD EXCISE	188.32	188.32
		Voucher: 43428						
51981007	2/15/2018	001345	WA STATE TREASURER	4THQTR17	1/26/2018	4THQTR17/BUILDING CODE FEE	288.00	288.00
		Voucher: 43430						
Sub total for BANK OF AMERICA:								96,200.29

12 checks in this report.

Grand Total All Checks: 96,200.29

Bank : bofa BANK OF AMERICA

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total	
86418	2/9/2018	001664	WA STATE DEPT OF REVENUE	4THQTR17	1/31/2018	4THQTR17/LEASEHOLD EXCISE	188.32	188.32
	Voucher:	43431						
Sub total for BANK OF AMERICA:							188.32	

1 checks in this report.

Grand Total All Checks: 188.32

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

Proposed Council Action:

Adopt a resolution approving the extension of the Interlocal Agreement between the City of University Place, the City of Lakewood and Pierce County for planning the Chambers Creek Canyon Trail project.

Agenda No: 7B
Dept. Origin: Public Works, Parks & Facilities
For Agenda of: February 20, 2018
Exhibits: Resolution, Memo, Interlocal 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 cities of University Place and Lakewood and Pierce County are jointly working on the design and development of the proposed Chambers Creek Canyon Trail. Having trails in the Chambers Creek and Leach Creek Canyons have long been a goal of the City. Identified at the first City visioning workshop held shortly after incorporation, proposed trail alignments were depicted in the Chambers Creek Master Site Plan and the City's first Parks Recreation and Open Space Plan, both adopted in 1997.

In 2013, the City of University Place, in cooperation with the City of Lakewood and Pierce County held a public open house, surveyed a trail alignment and developed a draft trail implementation plan. Staff from the three jurisdictions determined that the next logical step would be to develop an interlocal agreement.

In 2014, the County adopted the Pierce County 2014 Parks, Recreation, and Open Space Plan ("County PROS Plan") in which the lower portion of the Trail is identified as a proposed Regional Trail and the upper portion as a Regional Trail Link. The County PROS Plan indicates trail development is a high priority and includes capital improvements for the Trail. The City of Lakewood adopted the Lakewood Legacy Plan, a long range strategic parks, recreation and open space plan, which emphasized creating safe access to open space through a connected system of urban, non-motorized trails. The Chambers Creek properties were identified as important regional assets.

In 2015, the Parties entered an Interlocal Agreement for Cooperative Planning, Design, and Construction of the Chambers Creek Canyon Trail.

In 2017, the Parties submitted a joint grant application to the Recreation Trails Program (RTP) to fund construction of a pedestrian bridge over Chambers Creek just west of Kobayashi Park and released a Preliminary Design Report for the Chambers Creek Canyon Trail. The Design Report defines a final trail alignment with cost estimates for Chambers Creek Canyon including trail surfacing, bridge and boardwalk location. City staff developed the attached Interlocal Agreement with the purpose of continuing to work collaboratively on trail between the Chambers Creek Road Trailhead and Kobayashi Park/Phillips Road, including trail connections to street ends on both sides of the canyon, boardwalks crossing sensitive areas in the canyon, and two pedestrian bridge crossing between the north and south side of the canyon.

RECOMMENDATION / MOTION

MOVE TO: Adopt a resolution approving the extension of the Interlocal Agreement between the City of University Place, the City of Lakewood and Pierce County for planning the Chambers Creek Canyon Trail project.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, APPROVING THE EXTENSION OF THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF UNIVERSITY PLACE, CITY OF LAKEWOOD AND PIERCE COUNTY FOR PLANNING THE CHAMBERS CREEK TRAIL PROJECT

WHEREAS, the cities of University Place and Lakewood and Pierce County are jointly working on the design and development of the proposed Chamber Creek Canyon Trail. Having trails in the Chambers Creek and Leach Creek Canyons have long been a goal of the City, which was identified at the first City visioning workshop held shortly after incorporation, proposed trail alignments were depicted in the Chambers Creek Master Site Plan and the City's first Parks Recreation and Open Space Plan, both adopted in 1997; and

WHEREAS, in 2013 the City of University Place in cooperation with the City of Lakewood and Pierce County held a public open house, surveyed a trail alignment and developed a draft trail implementation plan. Staff from the three jurisdictions determined that the next logical step would be to develop an interlocal agreement; and

WHEREAS, City staff developed the attached Interlocal Agreement with the purpose of establishing a framework for the parties to cooperate and participate in the planning, designing and permitting work for the Trail, boardwalk and bridges and associated Trail connections and amenities as necessary, and to collaboratively seek grants and other funding sources for the Trail located between the Chambers Creek Road Trailhead and Kobayashi Park/Phillips Road; and

WHEREAS, by Resolution No. 750, the City of University Place agreed to partner with the City of Lakewood and Pierce County via an Interlocal Agreement on the foregoing topics and by its term, the Interlocal Agreement has expired. The City desires to continue this partnership.

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

Section 1. Interlocal Agreement Extension Approved. The proposed extension of the Interlocal Agreement between the City of University Place, City of Lakewood and Pierce County for Planning the Chambers Creek Trail is hereby approved substantially in the form attached hereto.

Section 2. Effective Date. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL AT AN OPEN PUBLIC MEETING ON FEBRUARY 20, 2018.

Kent Keel, Mayor

ATTEST:

Emy Genetia, City Clerk

APPROVED AS TO FORM:

Matthew S. Kaser, City Attorney

Memo

DATE: February 15, 2018
TO: City Council
FROM: Gary Cooper, Director of Public Works & Parks
SUBJECT: Chambers Creek Trail – Interlocal Agreement Extension

The cities of University Place, Lakewood and Pierce County are jointly working on the design and development of the proposed Chamber Creek Canyon Trail. Trails in the Chambers Creek and Leach Creek Canyons have long been a goal of the City. Identified at the first city visioning workshop held shortly after incorporation proposed trail alignments were depicted in the Chambers Creek Master Site Plan and the City's first Parks Recreation and Open space Plan both adopted in 1997. In 2012 the City Council adopted 2013 and 2014 Council Goals including the goal of developing a plan for the Chambers Creek and Leach Creek trails and to begin construction.

In 2013, the City of University Place in cooperation with the City of Lakewood and Pierce County held a public open house, surveyed a trail alignment and developed a draft trail implementation plan. Staff from the three jurisdictions determined the next logical step would be to develop an interlocal agreement.

In 2014, City of University Place City Council approved Resolution No. 750, establishing the interlocal agreement between the City of University Place, City of Lakewood and Pierce County for planning the Chambers Creek Trail project. Term for this agreement was three years and set to expire December 31, 2017.

The purpose of establishing the interlocal agreement was to allow the Parties to cooperate and participate in the planning, design and permitting work for the trail, boardwalk and bridges and associated trail connections and amenities as necessary, and to collaboratively seek grants and other funding sources for the Trail located between the Chambers Creek Road Trailhead and Kobayashi Park/Phillips Road.

During the period of this first interlocal agreement the partners completed the design and planning of the trail which was adopted by all three Councils, submitted a successful grant application for one bridge, held three public meetings, four volunteer work parties improving existing trails.

Next step is a five year extension of interlocal agreement to allow partners to continue to jointly working on submitting additional grant applications and trail improvement projects.

**INTERLOCAL AGREEMENT FOR COOPERATIVE PLANNING,
DESIGN AND CONSTRUCTION OF THE CHAMBERS CREEK CANYON TRAIL**

THIS INTERLOCAL AGREEMENT (hereinafter referred to as this "Agreement") is made and entered into this _____ day of, 2018, by and between the City of University Place, (hereinafter also referred to as "UP"), City of Lakewood (hereinafter also referred to as "Lakewood"), and Pierce County (hereinafter also referred to as "County"); collectively referred to in this Agreement as the "Parties" and singularly referred to as a "Party."

BACKGROUND

- A. The County and the cities of Lakewood and UP own certain real property in Chambers Creek Canyon where the north side of the canyon lies in UP and the south side of the canyon lies in Lakewood. The dividing line between the two cities is the center line of Chambers Creek.
- B. In 1997, following an extensive public process, the County adopted the Chambers Creek Properties Master Site Plan which included a proposed trail extending from an existing trailhead on Chambers Creek Road at the west end of the trail up the canyon on both the north and south sides.
- C. In June of 1997 the City of University Place adopted its first Parks, Recreation and Open Space Plan ("UP PROS Plan") citing the Chambers Creek Properties Master Site Plan and describing the Chambers Creek Canyon Trail in detail. The Trail is identified as a future component of the UP park system in the 2007 and 2014 UP PROS Plan updates.
- D. On June 19, 2000, the County, UP and Lakewood entered into a Joint Procedural Agreement to facilitate and develop the Chambers Creek Properties, including a trail in Chambers Creek Canyon ("Trail").
- E. In 2004, with the help of the Washington State Recreation and Conservation Office and Pierce County Conservation Futures, UP purchased the Kobayashi property, which is proposed to be the location of the eastern end of the Trail.
- F. On August 6, 2012 the UP City Council adopted Resolution 696, Council Goals for 2013 – 2014. Included within the 2013 – 2014 Goal of improving parks and recreation, the City Council listed as desired outcomes: To develop an implementation plan for the development of the Leach Creek/Chambers Creek Trail and commence construction of the Phase 1 Leach Creek/Chambers Creek Trail (funding dependent).
- G. On January 29, 2013, the County, UP and Lakewood jointly held a Trail open house attended by 80 people from surrounding communities where there was broad support for development of the Trail.
- H. In April 2013, the County provided UP with a right to access its properties for the purpose of surveying a proposed trail alignment.

- I. On November 26, 2013 the County, UP and Lakewood staff completed the Draft Chambers Creek Canyon Trail Plan attached hereto as Exhibit A and agreed the next step in trail implementation would be to enter into an interlocal agreement for the planning and design of the Trail.
- J. In February 2014, the County adopted the Pierce County 2014 Parks, Recreation, and Open Space Plan (“County PROS Plan”) in which the lower portion of the Trail is identified as a proposed Regional Trail and the upper portion as a Regional Trail Link. The County PROS Plan indicates trail development is a high priority and includes capital improvements for the Trail.
- K. On March 3, 2014, the City of Lakewood adopted the Lakewood Legacy Plan, a long range strategic parks, recreation and open space plan, which emphasized creating safe access to open space through a connected system of urban, non-motorized trails. The Chambers Creek properties were identified as important regional assets.
- L. In February 2015, the Parties entered an Interlocal Agreement for Cooperative Planning, Design, and Construction of the Chambers Creek Canyon Trail.
- M. In January 2017, the Parties submitted a joint grant application to the Recreation Trails Program (RTP) to fund construction of a pedestrian bridge over Chambers Creek just west of Kobayashi Park.
- N. In February 2017, the Parties released a Preliminary Design Report for the Chambers Creek Canyon Trail. The Design Report defines a final trail alignment with cost estimates for Chambers Creek Canyon including trail surfacing, bridge and boardwalk location, and trailhead designs and locations. The Design Report was jointly funded by the three Parties.
- O. The Parties have mutually determined that the public interest would be best served by the Parties to continue to work collaboratively on the Trail between the Chambers Creek Road Trailhead and Kobayashi Park/Phillips Road, including trail connections to street ends on both sides of the canyon, boardwalks crossing sensitive areas in the canyon, and two pedestrian bridge crossings between the north and south sides of the canyon.
- P. This Agreement is entered into pursuant to RCW 39.34 (Interlocal Cooperation Act). The Parties represent that under state law, including but not limited to RCW 35.75, RCW 36.34.340, RCW 36.75.060, RCW 36.89.030, RCW 47.01.260 and RCW 67.20.010, they each have authority to perform the services, activities, and undertakings contemplated herein.

NOW, THEREFORE, the Parties agree as follows:

TERMS AND CONDITIONS

- 1. INCORPORATION OF RECITALS. Each of the recitals set forth above is incorporated into this Agreement as though fully set forth herein.
- 2. PURPOSE. The Purpose of this Agreement is to establish a framework for the Parties to cooperate and participate in the planning, design and permitting work for the Trail,

boardwalk and bridges and associated trail connections and amenities as necessary, and to collaboratively seek grants and other funding sources for the Trail located between the Chambers Creek Road Trailhead and Kobayashi Park/Phillips Road.

3. PARTIES' ROLES. The Parties' roles are as follows:

3.1 University Place. In accordance with the Joint Procedural Agreement, UP will act as the lead agency and provide the project management necessary for planning, design and permitting work of the trail, boardwalk and bridges and associated Trail connections and amenities as necessary. UP will participate in funding and the grant application process, and will provide right-of-access to lands it owns in the canyon as set forth more fully below. As the lead agency, University Place will be advised and informed by the Designated Representatives identified in Section 5.

3.2 Lakewood. Lakewood will cooperate and participate in the planning, design and permitting work for the Trail, boardwalk and bridges and associated Trail connections and amenities as necessary. Lakewood will participate in funding and the grant application process.

3.3 Pierce County. Pierce County will cooperate and participate in the planning, design, and permitting work for the Trail, boardwalk and bridges and associated Trail connections and amenities as necessary. The County will participate in funding, the grant application process and provide right-of-access to lands it owns in the canyon as set forth more fully below.

3.4 This Agreement covers the planning, design and permitting work on this project leading to construction of the Trail. This Agreement is not intended to address all of the construction, operation and maintenance phases of the Trail project. If grants and other funding resources become available and are awarded for construction of the Trail, boardwalks, bridges, Trail connections and amenities, the Parties fully contemplate that further amendments to this Agreement will be necessary to further define roles and responsibilities regarding the construction, operation and maintenance of the Trail and its components.

4. TERM. The term of this Agreement shall be five (5) years, commencing on the 1st day of _____ 2018, and terminating on the 31st day of December 2022, unless sooner terminated as provided in Section 9 or extended by amendment as provided in section 14.

5. DESIGNATED REPRESENTATIVES

City of University Place:

Gary Cooper, Director
Parks and Public Works
City of University Place
4951 Grandview Drive West
University Place, WA 98467

City of Lakewood:

Mary Dodsworth, Director
Parks, Recreation and Community Services
City of Lakewood
6000 Main Street S.W.
Lakewood, WA 98499-5027

Phone: 253.460.6494

Phone: 253-859-2489

Pierce County:

Roxanne Miles, Director
Parks and Recreation Services
Pierce County
9112 Lakewood Drive S.W.
Lakewood, WA 98499-3998
Phone: 253-798-4007

6. RELATIONSHIPS AMONG THE PARTIES.

6.1 Finance of Trail Design or Development. The Parties anticipate that they will each voluntarily contribute capital improvement program ("CIP") or other funds toward the final design, permitting, or development of the Trail project, in amounts to be determined later. Nothing in this Agreement obligates any Party to fund any aspect of the Trail project contemplated herein. However, once a Party voluntarily commits to contribute particular funds towards the Trail project, then such Party will be obligated to contribute such funds unless and until the Parties mutually negotiate another outcome. Parties that commit to contribute funds toward Trail design and development are termed "Funding Parties" for purposes of this Agreement.

6.2 Manner of Collecting, Holding, and Accounting for Money. A lead agency will be designated by mutual agreement of the Parties for each funded project for the design, permitting, and construction of the Trail. The lead agency will provide budget and accounting documentation to Funding Parties. The lead agency's budget and accounting documentation will be consistent with generally accepted accounting principles as well as any additional guidance provided by the Parties through the Designated Representatives. During the project, the lead agency will invoice the Funding Parties in advance of actual expenditures, on a quarterly basis or such other basis as the Parties may decide. The invoice will show the sum total of funds requested for the coming quarter or other period, each Funding Party's share of that total, and will identify the proposed expenditures by cost category, activity code or such other criteria as the Parties may agree upon. The Funding Parties will provide funds to the lead agency within thirty (30) calendar days of invoice receipt. The lead agency will deposit the funds in a CIP account, from which they may expend funds on the Trail project.

The lead agency will also prepare and distribute to all Parties, on a quarterly basis or such other basis as the Parties may decide, a receipt or accounting statement showing the actual expenditures from the immediate preceding quarter and the current account balance, if any. Furthermore, the lead agency will cooperate with

individual Parties to meet any other specific accounting or bookkeeping requirements they may have.

- 6.3 Parties' Options Not Limited. Nothing in this Agreement shall limit the Parties' legal rights or remedies, or their broader freedom to creatively resolve the contingencies addressed in this section or other contingencies not contemplated in this Agreement; PROVIDED, that the Parties shall attempt to work cooperatively in good faith through the Designated Representatives as set forth above; and provided further, that in the event of a dispute they shall first utilize the dispute resolution process set forth in Section 9 below.

7. RIGHT OF ENTRY

- 7.1 County-Granted Right of Entry: The County hereby grants UP and Lakewood, their employees, agents, contractors and consultants an irrevocable right to enter and use the real property described as tax parcels 0220224001, 0220271001, 0220271008, 0220271011, 0220271013, 0220271045, 0220271064, 0220272012, 0220272030, 0220275015, 0220275016, 0220275017, 0220281037, 0220281040, 0220281041, 0220282015, 0220282016, 0220283013, 0220285023, 0220291009, 0220294019, 0220294020, 0220294023, 0220294024, 9085900590, 0220282009, 0220272029, 0220282019, 0220291020, 6430493940, and any abutting County road Right-of-Way ("Property") for the purpose of planning, design and permitting work for the Trail, boardwalk and bridges and associated Trail connections and amenities as necessary, and to collaboratively seek grants and other funding sources for the Trail located between the Chambers Creek Road Trailhead and Kobayashi Park/Phillips Road.
- 7.2 UP-Granted Right of Entry: UP hereby grants to the County and Lakewood, their employees, agents, contractors and consultants an irrevocable right to enter and use the real property described as tax parcels 0220271072, 0220271069, 0220281034, 4002910220, 4002640190 and any abutting City road Right-of-Way ("Property") for the purpose of planning, design and permitting work for the Trail, boardwalk and bridges and associated Trail connections and amenities as necessary, and to collaboratively seek grants and other funding sources for the Trail located between the Chambers Creek Road Trailhead and Kobayashi Park/Phillips Road.
- 7.3 Lakewood-Granted Right of Entry: Lakewood hereby grants to the County and UP, their employees, agents, contractors and consultants an irrevocable right to enter and use any abutting City road Right-of-Way ("Property") for the purpose of planning, design and permitting work for the Trail, boardwalk and bridges and associated Trail connections and amenities as necessary, and to collaboratively seek grants and other funding sources for the Trail located between the Chambers Creek Road Trailhead and Kobayashi Park/Phillips Road.

- 7.4 Maintenance of Properties: These rights of entry shall commence on the date of this Agreement and shall expire on December 31, 2022 unless earlier terminated or extended by the grantees. Prior to its expiration, all grantees will return the property to a condition reasonably comparable to the condition of the Property prior to the effective date of this Agreement, except to the extent that changes to the condition of the Property did not occur as a result of an act of any grantee, its employees, agents, contractors, or consultants. Gates will be secured, and fences, if temporarily removed, shall be replaced. All excavations shall be filled and leveled. There shall be no cutting or removal of paved surfaces without prior notice and written approval by the appropriate grantors.
- 7.5 Access: Access will typically be by foot, light duty truck or car along common access ways or trails and with prior notice in a manner mutually agreed upon. No vehicles larger than a light duty pick-up truck shall be permitted on the Property without prior notice and written approval by the appropriate grantor. All grantees understand the Property includes an active trail used by the general public and the rights herein granted shall at all times be exercised in a manner that does not unreasonably interfere with the use of the Property by the grantors.

8. HOLD HARMLESS AND INDEMNITY AGREEMENT

Each party (the Indemnitor) agrees to defend, indemnify and save harmless each other (the Indemnitees), their board or council members, officers, agents 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 for damages, penalties or other relief based upon the Indemnitor's alleged negligence, or wrongful conduct, except for the injuries, penalties and damages caused by the sole negligence or wrongful conduct of the Indemnitor. Such claims for damages or other relief include, but are not limited to, those for personal or bodily injury including death from such injury, property damage, torts, defamation, penalties imposed by any agency of the state or federal government for failure to comply with applicable law in the performance of this Agreement. If the claim, suit or action involves concurrent negligence of the Parties, the indemnity provisions provided herein shall be applicable only to the extent of the percentage of each party's negligence. It is further and expressly understood that the indemnification provided herein constitutes each party's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Agreement.

9. TERMINATION. This Agreement is subject to termination based upon the following:

- 9.1 Necessity. In the event that any of the parties determines that termination of this Agreement is necessary due to lack of funding or any other reason that justifies termination, one of the parties shall give the other Parties thirty (30) days' written notice of termination of this Agreement. Upon termination of the Agreement, all Parties shall be released from any future funding or other obligations related to this Agreement.

- 9.2 Default. By reason of a breach of this Agreement by a Party, the other Parties may terminate this Agreement; provided that written notice specifying the breach, and thirty (30) days to cure the breach is given, and thereafter, in the absence of a substantial cure, the dispute resolution procedures set forth in Section 11 below are followed. The notice and dispute resolution requirements do not apply where protection of the public's health, welfare, or safety requires immediate termination.
- 9.3 Lack of Appropriation. Any Party's obligation under this Agreement that may extend beyond the current appropriation year is expressly conditioned upon that Party's legislative appropriation of sufficient funds to support the activities described in this Agreement. If the Party's legislative body does not appropriate sufficient funds for those purposes, then that Party's participation under this Agreement shall terminate automatically at the end of the current appropriation year.
- 9.4 Public Convenience. Any Party may withdraw from the Agreement for public convenience upon thirty (30) calendar days' written notice, provided that to the extent each Party has obligated itself to provide funding for the Trail project, that funding obligation shall survive the termination of the Agreement and funding shall continue to be provided by the Party until the end of the Party's current appropriation year, after which the Party shall have no further funding obligation to the Trail project.
- 9.5 Account Close-Out If Project Abandoned. If, for any reason, the Trail project is abandoned or otherwise terminated before the Trail design, permitting, or construction is completed, then the lead agency for each project will settle up all remaining obligations, close out the project account, liquidate or return personal property consistent with applicable surplus requirements, provide a final account summary to the other Funding Parties, and return any unspent funds on a prorated basis that reflects each Funding Party's relative contribution to the project.
10. **NO SEPARATE ENTITY CREATED.** This Agreement does not create any separate legal or administrative entity. This Agreement shall be administered by the Public Works, Parks & Facilities Director for the City of University Place, the Parks, Recreation and Community Services Director for the City of Lakewood, and the Director of Parks and Recreation Services for Pierce County. There shall be no joint financing or jointly acquired or held assets and the Agreement will terminate as described herein.
11. **DISPUTE RESOLUTION.** Unless otherwise specified, disputes regarding any matter contained herein shall be referred to the City Managers or their designees for the Cities of University Place and Lakewood and to the Pierce County Executive or designee for Pierce County for mediation and/or settlement. Any controversy or claim arising out of, or relative to this Agreement or the alleged breach thereof that cannot be resolved by the Lakewood and University Place City Managers and the Pierce County Executive or their designees may be submitted to a mediator to resolve disputes should the Parties agree to

utilize the services of a mediator. The cost of mediating a dispute shall be borne equally by all the Parties.

12. NOTICE. Any written notice, which is required or permitted regarding this Agreement, shall be given by U.S. first-class mail or by personal delivery to the designated representative of the Party which is the intended recipient of the notice at its address as set forth in Section 5 – Designated Representatives.
13. ENTIRE AGREEMENT. This Agreement contains the Parties' entire understanding with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein.
14. AMENDMENTS IN WRITING. Any amendment or modification of this Agreement must be in writing and executed by the Parties agreeing thereto.
15. NO CONTINUING WAIVER OF DEFAULT. The waiver of any default under any provision of this Agreement must be in writing to be valid and shall not constitute a waiver of any other default, whether of the same or of any other provision.
16. LEGISLATIVE APPROVAL. The Interlocal Cooperation Act, Chapter 39.34 RCW, requires that this Agreement be approved by the Parties' legislative bodies prior to execution. The Parties hereby affirm their intent to use their best efforts to seek timely approval of the Agreement by their respective legislative bodies.
17. APPLICABLE LAW. This Agreement shall be construed under the laws of the State of Washington.
18. VENUE. Venue for any lawsuit arising out of this Agreement or for any action to enforce any term of this Agreement shall be Pierce County, Washington.
19. EXECUTION IN COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed an original.
20. ASSIGNABILITY; TERMS AND CONDITIONS BINDING ON SUCCESSORS AND ASSIGNS. Any or all of the rights and obligations of a Party to this Agreement may be assigned and delegated to other persons, firms, or corporations only with the express written consent of the other Parties. This Agreement shall be binding on such approved assignees and delegates.
21. NO THIRD PARTY BENEFICIARIES. Nothing in this Agreement shall create or be construed to create any rights, duties, obligations, or cause of action in any person not a party to it.
22. NO RESTRICTION ON POLICE POWERS. Nothing in this Agreement shall diminish any of the Parties' governmental or police powers.

23. SEVERABILITY. If any provision of this Agreement is deemed unlawful or unenforceable, such provision shall be fully severable, and the remainder of this Agreement shall be in full force and effect with the automatic addition of a provision as similar in its terms to such illegal or unenforceable provision as may be possible to make such provision legal and enforceable.

EXECUTED THIS _____ DAY OF _____, 2018.

City of University Place

City of Lakewood

By: _____

By: _____

TITLE: _____

TITLE: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

University Place City Attorney

Lakewood City Attorney

Pierce County

By: _____

TITLE: _____

APPROVED AS TO FORM:

Deputy Prosecuting Attorney

STUDY SESSION

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

Proposed Council Action:

Adopt a resolution amending the Development Services Fee Schedule.

Agenda No: 9
Dept. Origin: Planning & Development Services
For Agenda of: February 20, 2018
Exhibits: Resolution and Proposed Fee Schedule

Concurred by Mayor: _____
Approved by City Manager: _____
Approved as to form by City Atty.: _____
Approved by Finance Director: _____
Approved by Department Head: _____

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

The Development Services fee schedule last updated in 2013 needs to be updated to add fees for new services in accordance with Ordinance 12. New fees have been added for a new Floodplain Development Permit recommended the State Department of Ecology and for Floodplain Certificate and Floodplain Amendment reviews. Also added is a fee for a Shoreline Permit Exemption, and Property Notification mailing labels and map, a service previously provided by the County or title companies. The Temporary Sign Permit deposit fee has been removed per City Council direction and an Energy Code fee Scrivener's error has been corrected.

ALTERNATIVES CONSIDERED

BOARD OR COMMITTEE RECOMMENDATION

RECOMMENDATION / MOTION

MOVE TO: Adopt a resolution amending the Development Services Fee Schedule.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, AMENDING
RESOLUTION NO. 729, DEVELOPMENT SERVICES FEES**

WHEREAS, by ordinance, the City has authorized fees and charges for services provided by the City; and

WHEREAS, the City desires to recover the cost of services where fees may be appropriate; and

WHEREAS, to recover the cost for services, the City needs to amend the existing Development Services Fees to add fees for services the City offers but is not charging for, adjust the fee for Tree Preservation Plan Review for parcels between ½ and 2 acres, reduce the Tree Preservation Plan Review fee for single family residential lots, eliminate the temporary sign permit deposit fee, and amend text to reflect current staff responsibilities.

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

Section 1. Development Services Fees Amended. The fees and charges for Development Services are hereby amended as set forth in the Development Services Fee Schedule as set forth in Exhibit "A".

Section 2. Effective Date. This Resolution shall take effect immediately upon adoption.

ADOPTED BY THE CITY COUNCIL AT AN OPEN PUBLIC MEETING ON _____, 2018.

Kent Keel, Mayor

ATTEST:

Emelita Genetia, City Clerk

APPROVED AS TO FORM:

Matthew S. Kaser, City Attorney

EXHIBIT A

DEVELOPMENT SERVICES FEE SCHEDULE

BUILDING PERMIT FEES

The Building Permit Fees shall be based upon valuation and shall be assessed in accordance with the following valuation table:

Total Valuation*	Fee
\$1.00 to \$500	\$26.45
\$501 to \$2,000	\$26.45 for the first \$500.00 plus \$4.00 for each additional \$100.00 or fraction thereof, to and including \$2,000.00
\$2,001 to \$25,000	\$86.45 for the first \$2,000.00 plus \$16.00 for each additional \$1,000.00 or fraction thereof, to and including \$25,000.00
\$25,001 to \$50,000	\$454.45 for the first \$25,000.00 plus \$11.90 for each additional \$1,000.00 or fraction thereof, to and including \$50,000.00
\$50,001 to \$100,000 ..	\$751.95 for the first \$50,000.00 plus \$7.65 for each additional \$1,000.00 or fraction thereof, to and including \$100,000.00
\$100,001 to \$1,000,000	\$1,134.45 for the first \$100,000.00 plus \$6.70 for each additional \$1,000.00 or fraction thereof, to and including \$1,000,000.00
\$1,000,001 to \$5,000,000	\$7,164.45 for the first \$1,000,000.00 plus \$4.00 for each additional \$1,000.00 or fraction thereof, to and including \$5,000,000.00
\$5,000,001 to \$50,000,000	\$23,164.45 for the first \$5,000,000.00 plus \$3.50 for each additional \$1,000.00 or fraction thereof, to and including \$50,000,000.00
\$50,000,001 and above	\$180,664.45 for the first \$50,000,000.00 plus \$2.95 for each additional \$1,000.00 thereafter

Other Inspections and Fees

1. Inspections outside of normal business hours (*minimum two hours*) **\$100.00 (*per hour*)
2. Reinspection fees (*minimum one hour*) **\$100.00 (*per hour*)
3. Inspection fees other than those listed in the adopted building codes (*minimum one hour*) . **\$100.00 (*per hour*)
4. Additional plan review required by changes, additions or revisions to approved plans **\$125.00 (*per hour*)
5. For use of outside consultants for plan review or inspection, or both ***actual cost (*including overhead*)
6. A General Development Services Support Fee of 12 percent (12%) will be added to all Building Permit Fees to cover overhead charges.
7. Investigation Fees / Work Without a Permit double the permit fee

* Total valuation shall be determined by the Building Official in accordance with nationally accepted industry standards. The listing of unit valuations presented shall be used as the standard for normal construction projects. For unusual projects that are not specifically listed, national construction estimating tools such as the Building *Construction Cost Data* by R.S. Means or the BNI Construction Costbook will be used as a guide for determination of valuation.

** Or the total hourly cost to the jurisdiction, whichever is the greatest. This cost shall include supervision, hourly wages and benefits of the employees involved.

*** The applicant is responsible for the following fees incurred by the City from outside consultants or experts:
 (1) Expenses associated with permit review, approval, and issuance; (2) expenses associated with the applicant's failure to comply with the permit and applicable City codes; and (3) expenses associated with the City's evaluation and mitigation of hazardous conditions arising from the applicant's failure to comply with the approved permit and applicable codes.

PLAN REVIEW FEE

Plan Review Fees shall be 65 percent (65%) of the Building Permit Fee with a minimum fee of one half hour (\$62.50). In addition to the Building and Fire Code Fees, other fees may be assessed for a specific permit or investigation when applicable.

MECHANICAL CODE FEES

Permit Issuance Flat Fees (residential)

New Single-Family Residence / Duplex / Condo (as defined by the International Residential Code) \$ 269.80

Permit Issuance (not listed above)

1. For the issuance of each permit \$ 32.40

2. Commercial Mechanical Permit Fees (commercial building as defined by the International Building Code)

Tenant Improvement Fees shall be based upon fixtures installed per the Unit Fee Schedule listed below up to an estimated value of \$5,000.00. Values greater than \$5,000.00 may be determined by the stated value.

New Commercial Structure Fees shall be calculated for all mechanical systems and fixtures using the following table. Valuation is determined based on the prevailing fair market value of the materials, labor, and equipment needed to complete the work. The permit fee is due at issuance.

Commercial Mechanical Permit Fee based on the following valuation table:

Total Valuation	Fee
Up to \$1,000	\$31.75
\$1,001 to \$100,000	\$31.75 for the first \$1,000.00 plus \$18.00 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
\$100,001 and above.....	\$1,813.75 for the first \$100,000.00 plus \$13.25 for each additional \$1,000.00 thereafter and fraction thereof

3. Commercial Mechanical Review Fees

When plans and/or specifications for the mechanical installation are reviewed by the Building Official, the fee is 50 percent (50%) of the fee calculated for the Mechanical Permit Fee based on the table above. In addition to the Mechanical Permit Fee the Plan Review Fee is due at issuance with a minimum fee of one half hour (\$ 62.50).

Unit Fee Schedule (in addition to item 1)

- 1. **Furnaces.** For the installation or relocation of each forced air or gravity-type furnace or burner, including ducts and vents attached to such appliance, up to and including 100,000 Btu/h (29.3kW) .. \$ 18.35
 - For the installation or relocation of each forced air or gravity-type furnace or burner, including ducts and vents attached to such an appliance over 100,000 Btu/h (29.3kW) \$ 22.65
 - For the installation or relocation of each floor furnace, including vent \$ 18.35
 - For the installation or relocation of each suspended heater, recessed wall heater, or floor mounted unit heater \$ 18.35
- 2. **Appliance Vents.** For the installation, relocation, or replacement of each appliance vent installed and not included in an appliance permit \$ 10.75
- 3. **Repairs and Additions.** For the repair of, alteration of, or addition to each heating appliance, refrigeration unit, cooling unit, absorption unit, or each heating, cooling, absorption or evaporation cooling system, including installation of controls regulated by the Mechanical Code \$ 18.35
- 4. **Roof Top Units** \$ 107.90
- 5. **Boilers, Compressors, and Absorption Systems.** For the installation or relocation of each boiler or compressor to and including three horsepower (10.6 kW) or for each absorption system to and including 100,000 Btu/h (29.3kW) \$ 18.35

For the installation or relocation of each boiler or compressor over three horsepower (10.6 kW) to and including 15 horsepower (52.7 kW) or for each absorption system over 100,000 Btu/h (29.3 kW) to and including 500,000 Btu/h (146.6 kW)	\$ 32.40
For the installation or relocation of each boiler or compressor over 15 horsepower (52.7 kW) to and including 30 horsepower (105.5 kW), or for each absorption system over 500,000 Btu/h (146.6 kW) to and including 1,000,000 Btu/h (293.1 kW)	\$ 43.15
For the installation or relocation of each boiler or compressor over 30 horsepower (105.5 kW) to and including 50 horsepower (176 kW), or for each absorption system over 1,000,000 Btu/h (293.1 kW) to and including 1,750,000 Btu/h (512.9 kW)	\$ 64.75
For the installation or relocation of each boiler or compressor over 50 horsepower (176 kW), or for each absorption system over 1,750,000 Btu/h (512.9 kW)	\$ 124.10
6. Air Handlers. For each air-handling unit to and including 10,000 cubic feet per minute	\$ 14.05
7. Evaporative Coolers. For each evaporative cooler other than the portable type	\$ 14.05
8. Ventilation and Exhaust. For each ventilation fan connected to a single duct	\$ 10.75
For each ventilation system which is not a portion of a heating or air-conditioning system authorized by a permit	\$ 14.05
For the installation of each hood which is served by a mechanical exhaust, including the ducts for such a hood	\$ 14.05
9. Incinerators. For the installation or relocation of each domestic type incinerator	\$ 22.65
For the installation or relocation of each commercial or industrial type incinerator	\$ 76.60
10. Hot Water Heater. For installation of gas fired hot water heater and ventilation system	\$ 16.15
11. Miscellaneous. For each appliance or piece of equipment regulated by the Mechanical Code but not classed in other appliance categories, or for which no other fee is listed in the Code	\$ 14.05
Permit fees for fuel gas piping shall be as follows:	
For each gas pipe system of one to four outlets	\$ 9.69
For each gas piping system additional outlets over five, each	\$ 3.21
Permit fees for process piping shall be as follows:	
For each hazardous process piping system (HPP) of one to four outlets	\$ 7.55
For each piping system of five or more outlets, per outlet	\$ 2.15
For each non hazardous process piping system (NPP) of one to four outlets	\$ 4.35
For each piping system of five or more outlets, per outlet	\$ 1.10

Other Inspections and Fees

1. Inspection fees outside business hours, per hour	*\$ 100.00
2. Reinspection fees, per hour	*\$ 100.00
3. Fees for inspections needed other than those listed (minimum one hour)	*\$ 100.00
4. Additional plan review required by changes, additions, or revisions to plans or to plans for which an initial review has been completed (minimum one half hour (\$-62.50)	*\$ 125.00

*Or the total hourly cost to the City, whichever is greatest. The cost shall include supervision, equipment, hourly wages and benefits of the employees involved.

PLUMBING CODE FEES

Permit Issuance Flat Fees (residential)

New Single-Family Residence / Duplex / Condo (as defined by the International Residential Code)..... \$ 269.80
 A separate permit is required for non-attached exterior fixtures (including backflow prevention devices)

Permit Issuance (not listed above)

1. For the issuance of each permit \$ 32.40

2. Commercial Plumbing Permit Fees (commercial building as defined by the International Building Code)

Tenant Improvement Fees shall be based upon fixtures installed per the Unit Fee Schedule listed below up to an estimated value of \$5,000.00. Values greater than \$5,000.00 may be determined by the stated value.

New Commercial Structure Fees shall be calculated for all plumbing systems and fixtures using the following table. Valuation is determined based on the prevailing fair market value of the materials, labor, and equipment needed to complete the work. The Plumbing Permit Fee is due at issuance.

Plumbing Permit Fee based on the following valuation table:

Total Valuation	Fee
Up to \$1,000	\$31.75
\$1,001 to \$100,000	\$31.75 for the first \$1,000.00 plus \$18.00 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
\$100,001 and above	\$1,813.75 for the first \$100,000.00 plus \$13.25 for each additional \$1,000.00 thereafter and fraction thereof

3. Commercial Plan Review Fees

When plans and/or specifications for the plumbing installation are reviewed by the Building Official, the fee is 50 percent (50%) of the fee calculated for the Plumbing Permit Fee based on the table above. In addition to the Plumbing Permit Fee the Plan Review Fee is due at issuance with a minimum fee of one half hour (\$62.50).

Unit Fee Schedule (in addition to item 1)

1. For each plumbing fixture or trap or set of fixtures on one trap (including water, drainage, piping and backflow protection therefore) \$ 14.05
2. For each building sewer and each trailer park sewer \$ 29.10
3. Rainwater systems – per drain (inside building) \$ 14.05
4. For each electric water heater \$ 16.15
5. For each industrial waste pre-treatment interceptor including its trap and vent, excepting kitchen type grease interceptors functioning as fixture traps \$ 27.00
6. For installation, alteration or repair of water piping and/or water treating equipment, each \$ 10.75
7. For repair or alteration of drainage or vent piping, each fixture \$ 10.75
8. For atmospheric type vacuum breakers not included in item 1:
 - one to five \$ 16.15
 - over five, each \$ 4.35
9. For each backflow protective device other than atmospheric type vacuum type breakers:
 - two inches and smaller \$ 16.15
 - over two inches \$ 30.25
10. **Miscellaneous.** For each appliance or piece of equipment regulated by the Plumbing Code but not classed in other fixture categories, or for which no other fee is listed in the Code \$ 14.05

Other Inspections and Fees

1.	Inspection fees outside business hours, per hour	*\$ 100.00
2.	Reinspection fees, per hour	*\$ 100.00
3.	Fees for inspections needed other than those listed (<i>minimum one hour</i>)	*\$ 100.00
4.	Additional plan review required by changes, additions, or revisions to plans or to plans for which an initial review has been completed (<i>minimum one half hour</i> (\$62.50))	*\$ 125.00

*Or the total hourly cost to the City, whichever is greatest. The cost shall include supervision, equipment, hourly wages and fringe benefits of the employees involved.

MISCELLANEOUS FEES

1.	Re-roofs (<i>R-3 and associated accessory U occupancies</i>)	\$ 32.40
	Building Permit Fee Valuation Table for other occupancies	
2.	Demolition Permit	
	Residential Building/Structures	\$ 70.15
	Commercial & Multi-Family Building	\$ 140.30
	Commercial Tenant Improvement	\$ 70.15
3.	Mobile Home Location Permit	
	Single Wide	\$ 107.90
	Double Wide	\$ 161.85
4.	Occupancy Permit	\$ 107.90
	Fire Inspection Fee (<i>when applicable</i>)	\$ 100.00
5.	Adult Family Home Permit	\$ 140.30
6.	Bed and Breakfast Permit	\$ 140.30
7.	Moving Permit	
	a. Class I and II Moving Permit	\$ 70.15
	Inspection fee	*\$ 100.00
	*Plus \$100.00 per hour after the first hour and \$.55 per mile if the building to be moved is outside of the City	
	b. Class III and IV Moving Permit	\$ 70.15
	c. A cash deposit or surety bond as indemnity to damage or injury to City property in accordance with the House Moving Ordinance, Section 5	
	d. A liability insurance policy, naming the City as an additional insured in accordance with the House Moving Ordinance, Section 5	
	e. A cash deposit or a corporate surety bond for completion of the house moved in accordance with the House Moving Ordinance, Section 5	
<u>8</u>	<u>Floodplain Development Permit</u>	<u>\$ 160.00</u>
<u>9</u>	<u>Letter of Map Amendment Review</u>	<u>\$ 160.00</u>
<u>10</u>	<u>Certificate of Elevation Review</u>	<u>\$ 160.00</u>

ENERGY CODE FEES

1.	In addition to the Building Code Fees, an Energy Code Fee is hereby established to check for energy requirements called for by the Washington State Energy Code.	
	Single-Family	\$ 129.50
	Residential Remodel/Addition	\$ -64.70
	New Commercial and Multi-Family Building	
	0 to 2,000 sq ft	\$ 323.75
	2,001 to 5,000 sq ft	\$ 647.50
	5,001 to 10,000 sq ft	\$ 971.25
	10,001 and over	\$1,241.05

Remodels and Tenant Improvements

One half of the above fee (*New Commercial Building*)

Warehouses – 70% of the above Commercial

FIRE CODE OFFICIAL MARSHAL REVIEW, INSPECTION & FIRE CODE FEES

Site Development Plan Review (plats, short plats, commercial projects, residential infills, etc.)

Basic review fee	\$ 250.00
Additional review (over two hours)	\$ 125.00 (per hour)

Vehicle Gates (includes plan review, inspection and testing) \$ 125.00 (per hour)

Construction Plan Review

A Plan Review Fee will be charged for Fire Department review of requirements for construction and inspection of the Fire Code requirements for buildings classified as Group A, B, E, F, H, I, LC, M, R (as applicable), and S. The Plan Review Fee shall be 15 percent (15%) of the Building Permit Fee established by the Building Permit Fee Schedule with a minimum fee of one half hour (\$62.50).

Fire Alarm Systems

Tenant Improvements (first four zones)	\$ 215.85 plus \$ 5.40 (per device)
Additional zones	\$ 53.95 (each)
Residential (one and two-family dwellings)	\$ 215.85
Commercial and Multi-Family (first four zones)	\$ 323.75 plus \$ 5.40 (per device)
Additional zones	\$ 53.95 (each)
Sprinkler supervision only	\$ 269.80

Fire Alarm Permit Fee for upgrading of an existing system shall be 50 percent (50%) of the fee for new.

Fire Alarm Plan Review Fee shall be 25 percent (25%) of the permit fee, with a minimum of one half hour (\$62.50).

Underground Sprinkler Supply (includes plan review, inspection and testing) \$ 323.75

Above Ground Fire Sprinkler Systems

The fee for fire sprinkler systems shall be based on the Building Permit Fee Table. The valuation shall be based on the per square foot figure for sprinkler systems as established by policy in accordance with nationally recognized standards.

The Plan Review Fee for fire sprinkler systems shall be 25 percent (25%) of the permit fee, with a minimum fee of one half hour (\$62.50). Plan Review Fees are in addition to the permit fee.

Tenant Improvement (relocation and addition to existing system) valuation 20 percent (20%) of the fee for new

Commercial Cooking Type 1 Hood and Suppression System \$ 269.80

Standpipes (includes review, inspection and testing fees)

Temporary Standpipe	\$ 161.85
Class I	\$ 183.45
Class II	\$ 296.75
Class III	\$ 318.35

Fire Pump Installations \$ 539.60

Commercial Power Generator Installations \$ 350.75

False Fire Alarms

In the event of more than two false alarms in any 90-day period, the Chief may charge a fee for Fire Department response as specified below:

False Alarms Fee

First and second	no fee
Third	\$ 53.95
Fourth and additional	\$ 269.80 (each)

Fire Watch Fees

First Two Hours	\$ 200.00
Each subsequent half hour or a fraction thereof	\$ 110.00
Additional Persons.....	\$ 100.00 per half hour, per person

FIRE CODE PERMIT FEES

The following are annual fees, except where noted:

Permit charges may be waived by the Fire ~~Code Official~~ Chief or Fire Marshal for the following: *Activities of Washington State non-profit corporations and/or civic or fraternal organizations which possess an IRS tax exempt status. Proof of IRS tax exempt shall be presented at time of permit application. However, any group shall be assessed a permit fee if the approved conditions of the permit are modified or not adhered to by the applicant.*

Aerosol Products	\$ 110.00
Aircraft Refueling Vehicle	\$ 110.00
Aircraft Repair Hangar	\$ 110.00
Asbestos Removal (<i>limited</i>)	\$ 110.00
Automobile Wrecking Yard	\$ 110.00
Bowling Pin Refinishing	\$ 110.00
Bowling Alley Refinishing (<i>limited</i>)	\$ 110.00
Candles or Open Flame in Assembly Areas (<i>limited</i>)	\$ 110.00
Carnivals and Fairs, etc. – Outdoors (<i>limited</i>)	
Carnivals – Commercial	\$ 110.00
Fairs, Bazaars, Flea Marts, Farmers Markets, etc.	\$ 110.00
Special Events – Outdoors	\$ 110.00
Cellulose Nitrate Film	\$ 110.00
Cellulose Nitrate Storage	\$ 110.00
Combustible Fiber Storage	\$ 110.00
Combustible Material Storage.....	\$ 110.00
Compressed Gases	\$ 110.00
Commercial Rubbish Handling Operation	\$ 110.00
Cryogen	\$ 110.00
Dry Cleaning Plants	\$ 110.00
Dust Producing Operations	\$ 110.00
Explosives/Blasting Agents	\$ 110.00
Explosives/Blasting Agents – Transport, Use	\$ 110.00
Fireworks Display, Special (<i>limited</i>)*	\$ 270.00
Fireworks Stand (<i>limited</i>) *	\$ 110.00
* A bond for cleanup is required in accordance with the Fireworks Ordinance in the amount of \$500.00 in a bond or cashier’s check for all fireworks stands	
Flammable/Combustible Liquids	
Pipeline install	\$ 110.00
Pipeline operate	\$ 110.00
Store, handle use	\$ 110.00
Remove abandoned tank	\$ 110.00
Remove (<i>or abandon in place</i>) residential tank	\$ 55.00
Install, alter, etc. – tank, piping, equipment	\$ 110.00
Tank vehicles	\$ 110.00
Change contents (<i>limited</i>)	\$ 110.00
Fruit Ripening	\$ 110.00
Fumigation or Insecticide Fogging	\$ 110.00
Hazardous Material	\$ 110.00
Hazardous Material Production	\$ 110.00

High Pile Storage	\$ 110.00
Liquefied Petroleum Gases – Tank Install	\$ 110.00
Liquid or Gas-Filled Vehicles/Equipment in Assembly Buildings	\$ 110.00
Lumber Yards	\$ 110.00
Magnesium Working	\$ 110.00
Mall – (Covered)	
Kiosks – Concessions – Booths, etc.	\$ 110.00
Used for Assembly (limited)	\$ 110.00
Use Open Flame, etc. (limited)	\$ 110.00
Display Flammable Liquid or Gas Filled Equipment	\$ 110.00
Motor Vehicle Fuel Dispensing Station	\$ 110.00
Organic Coatings	\$ 110.00
Ovens – Industrial	\$ 110.00
Parade Floats (limited)	\$ 110.00
Place of Assembly	\$ 110.00
Special Events Carnival or Fairs – schools (limited)	\$ 110.00
Haunted House – Commercial (limited)	\$ 110.00
Haunted House – Schools (limited)	\$ 110.00
Bazaars – Boutiques – Flea Marts – Booths or Displays.....	\$ 110.00
Other Special Events (limited)	\$ 110.00
Pyrotechnical Special Effects Material	\$ 110.00
Radioactive Material	\$ 110.00
Refrigeration Equipment (Commercial)	\$ 110.00
Repair Garages	\$ 110.00
Spraying and Dipping	\$ 110.00
Tents and Canopies	\$ 110.00
Tire Storage	\$ 110.00
Welding and Cutting	\$ 110.00

LAND USE FEES

*When applicable, consultant fees will be charged on a time and material basis.
 Major revisions will be charged additional hourly administrative and plan review fees.
 All land use fees are based upon average time required to review and process each permit type.
 If the project exceeds the base fee an additional \$80.00 will be charged per hour.*

PLATS & BOUNDARIES

Flat Fees

Binding Site Plans	\$ 4,126.20
Binding Site Plan Amendment	\$ 2,063.10
Short Plats	\$ 6,877.00
Short Plat Amendment	\$ 3,438.50
Boundary Line Adjustments	\$ 1,375.40
Lot Combinations	\$ 1,375.40
Preliminary Plats	\$15,658.40
Plat Amendments	
Minor	\$ 3,782.35
Major	\$ 8,093.70
Final Plats	\$ 7,564.70
	+\$ 37.00 (per lot)
Plat Alterations	
Without Hearing	\$ 1,375.40
With Hearing	\$ 2,592.10

LAND USE PERMITS

Flat Fees

Variances	
Minor	\$ 825.25
Major	\$ 3,396.20
Administrative Use Permits	
Telecommunications	\$ 1,100.30
Temporary Housing Unit	\$ 137.55
Temporary Use / Seasonal Use Permit (except firework stands)	\$ 68.75
Extended Stay RV Permit	\$ 68.75
Sign Permits	
Sign Permit Land Use Review Fee	\$ 80.00
Non-Conforming Sign Permit	\$ 68.75
Temporary Sign Permit	\$ 68.75
	+\$ 26.45 (refundable deposit)
Special Event Permits (a certificate of liability may be required)	
Minor Event	\$ 137.55
Major Event	\$ 275.10
Master Event	\$ 2,500.00

QUASI-JUDICIAL PERMITS

Conditional Use Permits	\$ 5,184.20
Amendments (<i>includes shoreline and conditional use amendments</i>)	
Minor	\$ 1,031.55
Major	\$ 3,121.10

SHORELINE PERMITS

Flat Fees

Revision	\$ 687.70
Substantial Development	\$ 5,184.20
Conditional Use	\$ 5,184.20
Variance	\$ 5,184.20
Exemption	<u>\$ 160.00</u>

ENVIRONMENTAL

Flat Fees

Environmental Checklist	\$ 1,375.40
Expanded Checklist	\$ 1,719.25
Environmental Impact Statement	\$ 4,126.20

Urban Forest Management (Administrative Use Permit)

Tree Preservation Plan (Single Family Lot)	<u>\$ 240.00</u>
Tree Preservation Plan (<i>1/2 acre or less</i>)	\$ 650.00
	\$ 687.70
Tree Preservation Plan (<i>1/2 acre to 2 acre</i>)	<u>\$ 1,000.00</u>
Tree Preservation Plan (<i>over 2 acres</i>)	\$ 1,375.40

WETLANDS

Flat Fees

Wetland Verification	\$ 687.70
Wetland Report Review	\$ 1,375.40
Mitigation Plan Review	\$ 1,375.40

CRITICAL AREAS

Flat Fees

Habitat Assessment	\$ 370.30
Habitat Management Plan Review	\$ 687.70
Geological Assessment	\$ 687.70
Geotechnical Report Review	\$ 1,375.40
Variance	\$ 1,375.40
Reasonable Use Exemption	\$ 1,375.40

OTHER FEES

Flat Fees

Staff Time \$80.00 (*per hour*)
Consultant Time actual cost (*including overhead*)

APPEALS AND RECONSIDERATION

Reconsideration	\$ 687.70
Administrative Appeal	\$ 1,375.40

AMENDMENTS TO PLANS (includes rezones & text amendments)

Plans	\$ 4,126.20
Regulations	\$ 4,126.20
Annexation Petitions	\$ 4,126.20

EXPIRATION & REVOCATION

Revocation	\$ 3,808.80
Relinquishment without Hearing	\$ 687.70
Relinquishment with Hearing	\$ 2,433.40
Time Extension	\$ 687.70

ADMINISTRATIVE / DESIGN REVIEW

Basic.....	\$ 2,500.00
Planning Commission.....	\$ 3,500.00

FEE EXCEPTIONS

All City Departments are exempt from Land Use Fees.

[When a Comprehensive Plan Map Amendment is submitted concurrently with a Rezone, Applications the Rezone Application fee is waived.](#)

ADMINISTRATIVE FEES

Zoning Verification Letter	\$ 68.75
Zoning Maps (tax included)	
Small	\$ 3.95
Large	\$ 19.85
Critical Areas Checklist	\$ 68.75
GIS Maps (tax included)	
8½ X 11	\$ 1.05
11 X 17	\$ 3.15
18 X 24	\$ 4.25
24 X 36	\$ 5.30
Owner Notification Property Listing and Labels	\$ 30.00
Plans Copier	
Small – 18 X 24	\$ 1.30
Large – 24 X 36	\$ 1.60

The applicant is responsible for the following fees incurred by the City from outside consultants or experts: (1) expenses associated with permit review, approval, and issuance; (2) expenses associated with the applicant's failure to comply with the permit and applicable City codes; and (3) expenses associated with the City's evaluation and mitigation of hazardous conditions arising from the applicant's failure to comply with the approved permit and applicable codes.

DEVELOPMENT ENGINEERING PERMITS FEES

Site Development Permit	\$ 2,500.00
Small Project Site Development Permit	\$ 500.00
Right-of-Way Permit	\$ 300.00
Additional Right-of-Way Inspection Fee*	\$ 100.00
Annual Right-of-Way Permit	\$ 150.00
Annual Permit Reportable Activity Inspection	\$ 100.00
Site Development Plan Review Fee	\$ 625.00 base fee plus \$ 125.00 per hour for time in excess of five hours
Small Project Engineering Plan Review Fee	\$ 125.00 per hour**
Site Development Amendment/Revision Fee	\$ 250.00+ base fee plus \$ 125.00 per hour for time in excess of two hours
Right-of-Way Vacation	\$ 2,500.00 application fee \$ 1,000.00 final process fee
Review of Geological Assessment	\$ 1,250.00
Review of Geological Reports	\$ 1,250.00
Review of Traffic Impact Analysis	\$ 1,250.00
Site Development Commercial Inspection.....	3% of estimated total project cost***
Site Development Residential Inspection	2% of estimated total project cost***
Small Project Engineering Inspection Fee	\$ 100.00 per hour**
Investigation Fees / Work Without a Permit	double the permit fee
Public Works Modification Fee	\$ 625.00+ base fee plus \$ 125.00 per hour for time in excess of five hours**
Modification Notification Fee****	\$ 150.00
Storm Drainage Inventory Fee (GIS)	\$ 50.00 per structure/flow point
For use of outside consultants for plan checking or inspection (or both) *****	actual cost (including overhead)

*Additional Right-of-Way Inspection Fees will be charged for projects that exceed two inspections. A minimum one-hour inspection time will be charged per inspection.

**If it is determined by the [Development Services Engineering](#) Division that the scope of the project is such that only a minimal amount of review/inspection time will be required, then the review/inspection fee can be based on the hourly rate and the time spent. In addition, this fee may be assessed for engineering review/inspection of projects not requiring a Site Development Permit.

***An itemized project cost estimate shall be prepared and stamped by a licensed professional engineer and submitted to the City for approval. This engineer's estimate shall be used to determine the project cost.

****If it is determined that the modification impacts surrounding properties, public notification will be required.

*****The applicant is responsible for the following fees incurred by the City from outside consultants or experts: (1) expenses associated with permit review, approval, and issuance; (2) expenses associated with the applicant's failure to comply with the permit and applicable City codes; and (3) expenses associated with the City's evaluation and mitigation of hazardous conditions arising from the applicant's failure to comply with the approved permit and applicable codes.

Temporary Street Banners

For the processing of permit applications and for costs of installation and removal of temporary street banners or decorations in the public right-of-way:

Fee for up to two poles (<i>four hour minimum</i>)	\$ 465.00
Each additional pole up to ten poles	\$ 115.00

Memo

DATE: February 20, 2018
TO: Mayor & Members of the City Council
FROM: Matt Kaser, City Attorney
CC: Steve Sugg, City Manager
SUBJECT: Verus Town Center Phase 3 Development (Lot 3)

City staff and Verus Partners, LLC have been working on and are prepared to present an in-progress draft agreement for the next phase of the Town Center development, governing Lot 3.

Town Center Lots 1, 2, 3 and 11 currently remain under contract to Verus Partners, LLC. The first UP-Verus agreement was for Lot 7 which provided for the University Place Whole Foods Market as the northern anchor of Town Center. The second UP-Verus agreement was for Lot 4, construction upon which is being finalized.

After closing Lot 4, Verus notified the City of its intent to exercise its phasing rights for a third phase project, in this instance, it elected to exercise its rights to Lot 3. In the negotiations for Lots 7 and 4, the conceptual designs were settled before the Development Agreement was approved to allow the City Council to have that information in considering the Agreement. In this case, however, because we are dealing with a compressed timetable, the City and Verus are discussing both the Phase 3 Development Agreement and the conceptual designs concurrently. Fortunately, it appears that many of the larger design issues of concern to the City have been addressed.

The land sale price is set by the first (Lot 7) Development Agreement approved by City Council Resolution No. 739 on November 4, 2013, at \$15.00 psf, for a sale price of \$597,300.00 for Lot 3 (39,820sf). The Lot 7 Agreement affixed the rate for Verus' rights to subsequent phases. Remember that this figure was based off analysis and negotiation intended to set a price that was higher than the market at the time, but gave Verus the benefit of fixing a price that would not penalize them for the increased property value that they created by bringing Whole Foods to Town Center. The market for Town Center property in 2013 was in the \$4 - \$5 psf range. The \$15.00 psf remains appropriate in today's market, accounting for the increase in value from the presence of the successful University Place Whole Foods. But it is important to

understand this price was built into the Lot 7 Development Agreement and is not negotiable.

The Phase 3 Project will be developed on Lot 3 of the Town Center Property which is the lot west of the Latitude 47 building, and south of Whole Foods, bounded by Bridgeport Way on the west and Market Place on the east. The Project is anticipated to be two commercial buildings between approximately 15,000 - 25,000 square feet, for multiple commercial tenants designed in conformity with recorded Town Center Overlay Design Standards, and with attention paid to consistency and harmony with the buildings completed or under construction on Lots 4, 7, 8, 9, and 10. The construction and operation of such commercial buildings by Verus is consistent with, and in furtherance and fulfillment of, the Town Center Plan.

Verus has notified City Staff that they wish to "break ground" in the May 2018 timeframe. Staff has been reviewing various design proposals with Verus and both parties are working to address various design issues. Given this compressed timeframe, the Agreement included in this packet remains in draft format and contains terms which are still being negotiated between staff and Verus; the version which Council will approve will be the final as-negotiated Agreement.

In considering the Phase 3 Development Agreement, it is important to once again be aware that the legislative decision, like the Phase 2 Agreement, is more constrained than the decision on the original Development Agreement. For the Phase 3 project, the sole legislative policy consideration is whether Verus has met the requirements of the original Development Agreement to be allowed to proceed to Phase 3.

The administration is and will continue to thoroughly review the design plan to ensure that Verus, as a matter of fact and law, meets the requirements of the Lot 7 Development Agreement. Accordingly, at an appropriate time in the near future, staff will be recommending a Phase 3 Development Agreement for approval.

**PHASE 3 PURCHASE & DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF UNIVERSITY PLACE AND VERUS PARTNERS, LLC**

THIS PHASE 3 PURCHASE & DEVELOPMENT AGREEMENT ("Phase 3 Agreement") is dated this _____ day of _____, 2018 (the "Effective Date"), between the City of University Place (the "City"), a Washington municipal corporation, acting in its proprietary capacity, and Verus Partners, LLC (the "Developer"), a Washington limited liability company 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. In furtherance of the City's Town Center Plan, the City, over the course of several years, acquired for private redevelopment certain lots located within the Town Center Planned Action Area which are depicted on the Town Center 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 City currently owns in its proprietary capacity the undeveloped Lots 1, 2, 3, 11, and Tracts A & B of the Town Center Property.

B. The City and Developer entered into a Purchase and Development Agreement dated November 15, 2013, (the "Development Agreement") under which the Developer acquired Lot 7 of the University Place Town Center Binding Site Plan (the "BSP") for development of a facility for an anchor retail tenant, as well as the right to acquire in phases, Lots 1, 2, 3, 4, and 11 of the BSP ("Phased Properties"), on terms established in the Development Agreement, which remains in full force and effect. The Developer has fully performed its first phase obligations and is now exercising its right to acquire and develop Lot 3 of the BSP as the Phase 3 of its development, pursuant to the terms of the Development Agreement.

C. Upon Developer's successful closing on Lot 3, Developer will have further extended Developer's Phasing Rights and the Phasing Rights Period as to the remaining Phased Properties for an additional six (6) months. To exercise the Phasing Rights as to a remaining Phased Property, Developer shall give notice to the City within six (6) months of the Closing on Lot 3 of Developer's intent to acquire a Phased Property.

E. The Developer desires to acquire Lot 3 of the Town Center Property (the "Lot 3 Property") identified as Lot 3 on the BSP for purposes of constructing structures of between 15,000 and 25,000 square feet core/shell buildings for commercial tenants and related exterior structures and site improvements (i.e., parking and landscaping) thereon (the "Phase 3 Project"). The construction and operation of such commercial facilities by the Developer would be consistent with, and in furtherance and fulfillment of, the Town Center Plan.

F. As described in this Phase 3 Agreement, consideration from the Developer to the City for acquisition of the Lot 3 Property includes cash and the obligation to construct certain improvements on the Lot 3 Property.

G. The cash price to be paid by the Developer for all future Lot acquisition was established in the Development Agreement, and establishment of that future acquisition Lot price was a material portion of the consideration for the Developer bringing Whole Foods Market as an anchor use to Town Center. Both Parties understand and agree that the opening of Whole Foods Market increased the value and viability of the Town Center, and the establishment of Developer's future acquisition Lot price was full consideration to the Developer for that increased value and viability.

H. By Resolution No. _____, adopted _____ 2018, the University Place City Council found and determined that the consideration to be provided by the Developer established in the Development Agreement was sufficient consideration for acquisition of the Lot 3 Property and approved the execution of this Phase 3 Agreement.

I. The Parties intend by this Agreement to set forth their mutual agreement and undertakings with regard to the Phase 3 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 Phase 3 Project upon the Lot 3 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. Recitals.

1.1 Incorporation of Recitals; Definitions. Each of the recitals set forth above is incorporated into this Phase 3 Agreement as though fully set forth herein. Capitalized terms not otherwise defined herein shall have the meaning set forth in Exhibit A attached hereto.

2. Acquisition of Lot 3.

2.1 Acquisition of Lot 3. In consideration of the mutual covenants set forth in this Phase 3 Agreement, the City agrees to convey to Developer, and Developer agrees to accept from the City on the terms and conditions set forth in this Phase 3 Agreement, the Lot 3 Property, subject to the terms and conditions set forth in this Phase 3 Agreement.

2.2 Consideration from Developer for Acquisition of the Lot 3 Property. The Developer will pay the City the sum of five hundred ninety-seven thousand, three hundred dollars (\$597,300.00) for the Lot 3 Property (subject to a proportionate revision for any change in size of the Lot 3 area based upon \$15 per square foot), which sum was previously established in the Development Agreement dated November 15, 2013, at the Closing of the purchase of the Lot 3 Property, and shall be bound by this Phase 3 Agreement to construct the Phase 3 Project. Developer shall get a credit at Closing in accordance with Section 2.3.1 of the Development Agreement.

2.3 Phased Properties Period and Pricing. The Phasing Rights shall extend for six (6) months commencing on the Closing date of the Lot 3 Property (the "Phasing Rights Period"). Developer's subsequent successful closing on any of the Phased Properties will further extend the Phasing Rights and the Phasing Rights Period as to the remaining Phased Properties for an additional six (6) months. The Developer will pay the City the sum of \$15.00 per square foot for the purchase of Lots 1, 2, and 11.

2.4 Exercise of Rights(s). At any time during the Phasing Rights Period the Developer may give notice to the City of its intent to exercise any or all of the rights on the Phased Properties. Upon delivery of such notice, the City and Developer will negotiate in good faith to reach agreement on purchase and development agreement(s) which shall be substantially in the form of this Agreement for the Phased Property or Phased Properties for which Developer has provided notice of its intent to acquire. Closing on a Phased Property shall be pursuant to the process and timeline set forth in the purchase and development agreement(s). If the Parties successfully negotiate additional purchase and development agreements for any Phased Property, such agreements remain subject to approval by resolution of the University Place City Council.

3. Developer's Review and Permitting Period.

3.1 Review Period. Developer shall have one hundred twenty (120) calendar days from the Effective Date to review the feasibility of the Lot 3 Property for development of the Phase 3 Project, including, without limitation, survey, property condition, environmental reports and zoning (the "Review Period"). If 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 this Phase 3 Agreement, in which event neither Party shall have any further obligation or liability to the other. Any and all funds or deposits shall be immediately returned to Developer. All activities performed by Developer during the Review Period shall be at Developer's sole expense.

3.2 Title and Survey Review. Title Company shall provide the City Representative and Developer with a preliminary title commitment for the Lot 3 Property together with complete, legible copies of any exceptions identified in Schedule B thereof (the "Title Commitment") within twenty (20) days following the Effective Date of this Phase 3 Agreement. The City shall provide Developer with an ALTA Survey of Lot 3 certified to

Developer within twenty (20) days following the Effective Date of this Phase 3 Agreement. Developer shall conduct its review of the Title Commitment and ALTA Survey in accordance with the following procedures:

3.2.1 Developer's Notice. Developer shall have sixty (60) business days after receipt of the Title Commitment and the ALTA Survey to notify the City Representative of its approval or disapproval of each exception in Schedule B of the Title Commitment or any exception or item on the ALTA Survey. Failure to deliver such notice by that date shall constitute Developer's approval of all exceptions in Schedule B or the ALTA Survey.

3.2.2 City's Notice. The 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 the City Representative receives timely notice. The City Representative's failure to so notify Developer shall constitute the City Representative's election to not remove all such exceptions. The City Representative shall remove all exceptions and cure all ALTA Survey objections it elects to remove or cure on or before the Closing Date.

3.2.3 Developer's Election. If the City Representative does not elect to remove or cure all exceptions or items disapproved by Developer, Developer may elect to terminate this Phase 3 Agreement by written notice to the City Representative given within five (5) business days following the City Representative's notice, in which event this Phase 3 Agreement shall automatically terminate, and neither Party hereto shall have any further rights or obligations under this Phase 3 Agreement. If Developer does not elect to terminate this Phase 3 Agreement within the time frame set forth herein, disapproved exceptions that the City Representative has not elected to remove shall become Permitted Exceptions for the Lot 3 Property.

3.3 Permitting Period. Developer shall have 120 days from the expiration or earlier waiver of the Review Period to design the Phase 3 Project and file a complete permit application for construction of the Phase 3 Project which will comply with the recorded Town Center Overlay Design Standards (the "Permitting Period"). If Developer, in its sole and absolute discretion, is dissatisfied with any conditions, restrictions, limitations, mitigation measures or other matters affecting the feasibility of the Phase 3 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 Phase 3 Agreement, in which event neither Party shall have any further obligation or liability to the other. Any and all funds or deposits shall be immediately returned to Developer. Except for an ALTA and Topographic survey for Lot 3 ("Lot 3 Survey") and Phase I environmental review costs to be borne by the City as set forth in Section 4.9, all activities performed by Developer during the 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 Lot 3 Property at all reasonable times during the Design and Permitting Period. Upon request by the City, Developer shall provide the City with a list of the contractors, consultants and agents, including contact information for each party 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 the City's approval, which will not be unreasonably withheld, conditioned or delayed. Developer shall restore the Lot 3 Property, including filling test holes, to eliminate any damage to the Lot 3 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 Lot 3 Property, including, without limitation, remediation of any existing Hazardous Substances. If Developer discovers any defects or conditions in or on the Lot 3 Property that create a dangerous condition, including the discovery of any Hazardous Substances, Developer shall promptly notify the City of such defect or condition. Developer agrees to indemnify the City and to hold the City, the 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 Lot 3 Property, including the conduct of 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 (i) any existing environmental contamination in or on the Lot 3 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 sole responsibility of the City, or (ii) the negligence or willful misconduct of the City.

4. Closing of Acquisition of Lot 3.

4.1 Timing. Closing of the Lot 3 Property shall occur within thirty (30) days following the satisfaction of all conditions precedent as stated in Sections 4.6 and 4.7 below.

4.2 Title to Lot 3 Property. Upon Closing, the City Representative shall execute and deliver to Developer a statutory warranty deed ("Deed") conveying fee title to the Lot 3 Property free and clear of all defects and encumbrances and subject only to those exceptions that Developer approves pursuant to Section 3.2 above. The conveyance of any interest in the Lot 3 Property and appurtenant rights shall be subject to the provisions of this Phase 3 Agreement.

4.3 Title Insurance. On the Closing Date, the City Representative shall cause Title Company to issue to Developer a standard coverage Owner's Policy of Title Insurance ("Title Policy") insuring good and marketable fee simple title in Developer against any loss or damage by reason of defects in the City's title, other than the Permitted Exceptions. Developer may, at its sole cost and expense, request extended coverage or endorsements to the Title Policy, but the availability of extended coverage or such

endorsements shall not be a condition precedent to Closing; provided, however, that the City Representative shall sign any owner's affidavit or similar document required by Title Company to enable Developer to obtain extended coverage.

4.4 "AS-IS" Conveyance. Upon electing to proceed with Closing of the acquisition of the Lot 3 Property, Developer represents that it has had an opportunity to and has conducted a thorough investigation of the Lot 3 Property and is in all respects knowledgeable and familiar with the present condition and state of repair of the Lot 3 Property. Developer acknowledges that it is concluding the acquisition of the Lot 3 Property based solely upon Developer's inspection and investigation of the Lot 3 Property and that, except as otherwise provided herein, the Lot 3 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 the City owns the Lot 3 Property. IN PARTICULAR, BUT WITHOUT LIMITATION, THE CITY MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE PHYSICAL CONDITION OR VALUE OF THE LOT 3 PROPERTY, SOILS CONDITIONS, OR OTHER PHYSICAL CHARACTERISTICS OF ALL OR ANY PORTION OF THE LOT 3 PROPERTY OR THE SUITABILITY OF ALL OR ANY PORTION OF THE LOT 3 PROPERTY FOR DEVELOPER'S INTENDED DEVELOPMENT. THE CITY MAKES NO REPRESENTATION WHATSOEVER REGARDING THE FINANCIAL FEASIBILITY OF ALL OR ANY PORTION OF THE PHASE 3 PROJECT. Upon recording of the Deed, Developer shall be deemed to have accepted the Lot 3 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 the 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 Lot 3 Property or any requirements of law applicable thereto.

4.5 Receipt of City Disclosure Statement. Prior to execution of this Phase 3 Agreement, the City Representative has provided Developer with a City Disclosure Statement in the form set forth in RCW 64.06.013. As provided by Washington law, the City Disclosure Statement is for disclosure only and shall not be considered a part of this Phase 3 Agreement, and does not constitute any representation or warranty by the City.

4.6 Conditions Precedent to City's Obligation to Convey the Lot 3 Property. The City's obligation to close the acquisition of the Lot 3 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 the 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 Phase 3 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 Phase 3 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 the 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, the City Representative shall have the right, in his sole discretion, to terminate this Phase 3 Agreement at any time thereafter, upon written notice to Developer, whereupon this Phase 3 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 the Lot 3 Property. Developer's obligation to close the acquisition of the Lot 3 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. The City shall have performed, observed and complied with all of the covenants, agreements, obligations and conditions required by this Phase 3 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 the City set forth in this Phase 3 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 The 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 the City necessary for the authorization, execution, delivery and performance of this Phase 3 Agreement has been duly taken. The City has full power and authority to enter into, execute and deliver this Phase 3 Agreement and to perform its obligations under this Phase 3 Agreement.

4.7.2.1.2 This Phase 3 Agreement, when executed and delivered by the City, and assuming it has been duly authorized, executed and delivered by Developer, will be the legal, valid and binding agreement of the 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 Phase 3 Agreement, and building and other permits necessary for construction) is necessary in connection with the execution, delivery and performance of this Phase 3 Agreement by the City or any transaction contemplated hereby, except as may have already been obtained by the City prior to the date of this Phase 3 Agreement. There is no provision in the City's organizational documents which would be contravened by the execution and delivery of this Phase 3 Agreement or by the performance of any provision, condition, covenant or other term required to be performed by the City under this Phase 3 Agreement.

4.7.2.1.4 There is no pending or threatened litigation, tax claim, action, dispute or other proceeding (including condemnation proceeding) of any nature whatsoever contemplated by or affecting the City or any officer, trustee or managerial member of the City which could have a material adverse effect on the legal existence or powers of the City or its financial conditions or operations or have a material adverse effect on the ability of the City to perform its obligations under this Phase 3 Agreement and the City is not in default with respect to any Requirements of Law that might result in any such effect.

4.7.2.1.5 To the best of the City's knowledge the Lot 3 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 Lot 3 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.

4.7.2.2 Developer's Representations.

4.7.2.2.1 Developer is a limited liability company 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 other actions on the part of its members necessary for the authorization, execution, delivery and performance of this Phase 3 Agreement have been duly taken. Developer has full power and authority to enter into, execute and deliver this Phase 3 Agreement and to perform its obligations under this Phase 3 Agreement.

4.7.2.2.2 This Phase 3 Agreement, when executed and delivered by Developer, and assuming it has been duly authorized, executed and delivered by the 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 Phase 3 Agreement, and building and other permits necessary for construction) is necessary in connection with the execution, delivery and performance of this Phase 3 Agreement by Developer or any transaction contemplated hereby, except as may have already been obtained by Developer prior to the date of this Phase 3 Agreement. There is no provision in Developer's organizational documents which would be contravened by the execution and delivery of this Phase 3 Agreement or by the performance of any provision, condition, covenant or other term required to be performed by Developer under this Phase 3 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 Phase 3 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 Phase 3 Project.

4.7.3 Condition of Lot 3 Property. The City shall deliver sole and exclusive possession of the Lot 3 Property to Developer at Closing (free of any visible debris) and not subject to any encumbrance not approved by Developer.

4.7.4 Title Policy. Title Company shall be prepared to issue to Developer the Title Policy (or later date commitment) for the Lot 3 Property.

4.7.5 Entitlements. The City shall have approved a binding site plan for the Town Center Property and all zoning and entitlements necessary for Developer to construct the Phase 3 Project and operate a retail project on the Lot 3 Property.

4.7.6 Permits. The City, any governing authority and all utility providers shall have issued all permits necessary for Developer to construct the Phase 3 Project including but not limited to: site construction permits, building construction permits, signage permits, off-site construction permits, utility extension permits, etc.

4.7.7 Easements/Approvals. The City and any other governing authority or party shall have authorized any and all approvals and granted any easements necessary for the construction and operation of the Phase 3 Project.

4.8 Closing Date. As used in this Phase 3 Agreement, "Closing" and "Closing Date" mean the date on which the Deed and all other documents required to be recorded by this Phase 3 Agreement are recorded. Developer and the City Representative shall place into escrow with Title Company all instruments and documents necessary to complete the acquisition of the Lot 3 Property in accordance with this Phase 3 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 Phase 3 Agreement by the Closing Date, then unless the City Representative and Developer agree to a further extension of the Closing Date, this Phase 3 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 the City is the party that is unable to perform all of its obligations hereunder at the Closing, the 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, the 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 Title Company, 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. The City Representative shall deliver the following original documents, duly executed and acknowledged by the 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 Any easements pertaining to the Lot 3 Property.
- 4.8.1.1.5 Owner's affidavit.

4.8.1.1.6 Any and all such other documents as may be necessary, and as are consistent with the provisions of this Phase 3 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 and all other documents and agreements as may be required by the City or Title Company and as are consistent with the terms of this Phase 3 Agreement.

4.9 City's Closing Costs. In connection with the Closing, the City shall pay the cost of the Title Policy with standard owner's coverage, the Lot 3 Surveys and Phase I environmental review costs, one-half of the Closing escrow fees, the cost of recording documents to clear the City's title, transfer or excise taxes if applicable, and the 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 the 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 Lot 3 Property, from and after the Closing Date. The City represents that no special assessments or local improvement district assessments currently exist or are contemplated in connection with the Phase 3 Project.

4.12 Possession. Developer shall be entitled to sole and exclusive possession of the Lot 3 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.

4.13 Memorandum of Phase 3 Agreement. The parties agree to record a Memorandum of this Phase 3 Agreement which will include only the Developer's construction obligations for the Phase 3 Project, a description of Developer's right to acquire Lot 3, and a description of Developer's Phasing Rights with respect to the Phased Properties.

5. Development.

5.1 Development Conditions. The following development conditions shall apply to the Phase 3 Project:

5.2 Developer's Commencement of Construction. Developer shall commence construction of the Phase 3 Project on Lot 3 within twelve (12) 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 commencement and shall not preclude the Developer and the City Representative from agreeing to a shorter schedule. Notwithstanding anything in this Agreement to the contrary, Developer shall not be obligated to demolish and replace existing improvements, including curb, gutter sidewalk and landscaping, except where Developer may choose to do so as part of its Phase 3 Project.

5.3 Enforcement. In the event Developer fails to commence construction within the time described above and any extension for Unavoidable Delay, the City will have the right, but not the obligation, to reacquire the Lot 3 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 Lot 3 Property to the City by statutory warranty deed, free and clear of all liens and encumbrances except Permitted Exceptions. Title Company, 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 Lot 3. If the City notifies Developer that it intends to reacquire the Lot 3 Property, but fails to close the reacquisition within sixty (60) days thereafter, the City shall not be in default under this Phase 3 Agreement, but Developer shall have the right to convey the Lot 3 Property to another Developer expressly subject, however, to all of the terms, covenants, conditions and provisions set forth in this Phase 3 Agreement.

5.4 Certificate of Completion. Upon the issuance of a certificate of occupancy for the Phase 3 Project, Developer shall file a Notice of Completion with the City. Within three (3) business days after receipt of the Notice of Completion, the City shall inspect the Phase 3 Project and if the City concurs that all Developer construction obligations are complete, the City shall furnish the Developer with a Certificate of Completion in substantially the form attached as Exhibit B. If the City should find that Final Completion has not occurred upon its inspection then the City shall immediately set forth in writing the deficiency(s) and any required corrective measures to remedy the deficiency(s). In such event the City shall re-inspect the Improvements and follow the procedure set forth above. The Certificate of Completion shall be a conclusive determination that the Parties' agreements with respect to the Developer's construction obligations for the Phase 3 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, and shall have the effect of completing Developer's obligations with respect to the Lot 3 Property

and Phase 3 Project and shall terminate the Memorandum of Phase 3 Agreement as recorded.

6. Indemnification.

6.1 Developer's Indemnification of City. Developer shall protect, defend, indemnify, and save harmless the City and its respective officers, officials, employees and agents (collectively, the "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 Phase 3 Agreement. Developer's obligations under this Section shall include, but not be limited to:

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

6.1.2 The duty to indemnify and defend the 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 the 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.

6.1.3 In the event the 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.

6.1.4 Notwithstanding the provisions contained above, Developer's obligation to indemnify the City shall not extend to any claim, demand or cause of action to the extent caused by the negligence or willful misconduct of the City or breach of this Phase 3 Agreement by the City.

6.2 City's Indemnification of Developer. The 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 the City's officers, employees, agents, contractors and/or subcontractors of all tiers, acts or omissions, performance or failure to perform this Phase 3 Agreement. The City's obligations under this Section shall include, but not be limited to:

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

6.2.2 The duty to indemnify and defend Developer from any claim, demand and/or cause of action brought by or on behalf of any of the City's employees or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the 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 the City's employees or agents. The Parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

6.2.3 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 the City.

6.2.4 Notwithstanding the provisions contained above, the 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 Phase 3 Agreement by Developer.

6.3 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).

7. Damage and Destruction; Condemnation.

7.1 Damage and Destruction. In the event there is any damage or destruction to the Phase 3 Project prior to Final Completion, Developer shall give the City prompt written notice thereof generally describing the nature and cause of such casualty and the extent of the damage or destruction to the Phase 3 Project. Developer shall cause reconstruction and restoration of the Phase 3 Project in accordance with the applicable Construction Documents and the provisions of this Phase 3 Agreement. Developer will assign all insurance proceeds which Developer may be entitled to receive prior to Final Completion of the Phase 3 Project with respect to damage or destruction to the Construction Lender, or if there is no Construction Lender, a third party insurance trustee mutually acceptable to the 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.

7.2 Condemnation. As used in this Phase 3 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.

7.2.1 Condemnation Prior to Closing Date. In the event condemnation proceedings are threatened against a material portion of the Lot 3 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 Phase 3 Agreement, and except as otherwise expressly provided herein, neither party shall have any further rights or obligations to the other under this Phase 3 Agreement and all condemnation awards payable to the property owner by reason of such condemnation, if any, shall be paid to the City. If neither party elects to terminate this Phase 3 Agreement, the Phase 3 Agreement shall remain in full force and effect, Developer shall accept the Lot 3 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.

7.2.2 Condemnation After Closing Date. In the event of a condemnation of the Lot 3 Property after the Closing Date, to the extent that the Phase 3 Project may still be constructed in accordance with the Construction Documents and 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 Phase 3 Project in accordance with the Construction Documents, as modified, if applicable.

8. Default.

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

8.1.1 The failure of either Party to keep, observe, or perform any of its duties or obligations under this Phase 3 Agreement; or

8.1.2 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.

8.2 City Remedies Upon Developer Event of Default. Upon any Event of Default by Developer, the 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, the City shall be entitled to exercise the specific remedies identified in this Phase 3 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:

8.2.1 Prior to Closing on the Lot 3 Property. If Developer fails to perform any material obligation under this Phase 3 Agreement, the 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 the City is not in default hereunder, then the City will have the right, as its sole and exclusive remedy, to terminate this Phase 3 Agreement, and except as otherwise expressly provided herein neither party shall thereafter have any further rights or obligations under this Phase 3 Agreement.

8.2.2 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.

8.3 Developer Remedies Upon City Default. Upon any Event of Default by the City, Developer shall give the City written notice of the same, whereupon following receipt of such written notice the 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 the 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 Phase 3 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:

8.3.1 Prior to Closing on the Lot 3 Property. If the City fails to perform any material obligation under this Phase 3 Agreement, Developer shall give the City written notice of same, whereupon following receipt of such written notice, the 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 the 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 Phase 3 Agreement, and

except as otherwise expressly provided herein neither party shall thereafter have any further rights or obligations under this Phase 3 Agreement.

8.3.2 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.

8.4 Limitation on Damages. Notwithstanding anything to the contrary set forth in this Phase 3 Agreement, the 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 Phase 3 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.

8.5 Rights and Remedies Cumulative. Except as otherwise expressly stated in this Phase 3 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.

8.6 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.

9. 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 Phase 3 Agreement (each a "Matter in Dispute") using the procedures set forth herein.

9.1 Senior Management. If a Matter in Dispute arises, the aggrieved party shall promptly notify the other party to this Phase 3 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.

9.2 Mediation. If prior to completion of construction of the Phase 3 Project a Matter of Dispute arises between the 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 Phase 3 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.

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

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

9.2.3 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 Phase 3 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.

9.2.4 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 the City and Developer, and that the recommendations concerning any such dispute are advisory only. The Mediator’s recommendations shall be based on the pertinent Phase 3 Agreement provisions, and the facts and circumstances involved in the dispute. The recommendations shall be furnished in writing to the Parties.

9.2.5 City’s Responsibility. The 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.

9.2.6 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.

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

9.2.8 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 the City and Developer for payment. Satisfactorily submitted invoices shall be paid within sixty (60) days.

9.3 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.

10. Miscellaneous.

10.1 Assignment. Developer shall not voluntarily or involuntarily sell, transfer, convey, assign or otherwise dispose of its rights under this Phase 3 Agreement, in whole or in part to any entity not affiliated with Developer or its principals, without the prior written consent of the City Manager, which consent shall not be unreasonably withheld, conditioned or delayed. Such restrictions or prohibitions shall not apply to (i) any residential lease of any unit in the Phase 3 Project (but shall apply to a ground lease of all or substantially all of the Lot 3 Property or any substantial portion thereof to any person or entity not a resident of the Lot 3 Property); (ii) any mortgage, deed of trust, security agreement or security instrument granted or entered by Developer to provide financing for Developer's purchase of the Lot 3 Property or performance of its obligations to the City with regard to the Lot 3 Project; or (iii) a Transfer, or series of Transfers which in the aggregate, does not or do not result in a change of control of the Developer's interests in the Lot 3 Property or in Developer. The foregoing is intended to allow the Developer to add debt and/or equity-related investment partners to the ownership of the Lot 3 Property or a phase thereof, within the limits expressed in this Section 10. These provisions can be reasonably modified or waived by the City Manager from time to time upon request of the Developer.

10.2 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.

10.3 Neutral Authorship. In connection with the execution and delivery hereof, each party has been represented by counsel. Each of the provisions of this Phase 3 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 Phase 3 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 Phase 3 Agreement.

10.4 Terminology. All personal pronouns used in this Phase 3 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.

10.5 Complete Agreement; Amendment. This Phase 3 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.

10.6 Severability. Each provision of this Phase 3 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 Phase 3 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 Phase 3 Agreement that are valid.

10.7 Relationship of Parties. Developer and the City shall not be construed as having a joint venturer or partnership, and neither shall have the power to bind or obligate the other party except as set forth in this Phase 3 Agreement. Developer shall have no right or authority, express or implied, to commit or otherwise obligate the City in any manner whatsoever except to the extent specifically provided herein or specifically authorized in writing by the City.

10.8 No Third Party Rights. The provisions of this Phase 3 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 Phase 3 Project.

10.9 Representatives.

10.9.1 Representatives of Developer. Developer shall designate a Project Manager for the Phase 3 Project who shall be the single point of contact for the City on all matters arising under this Phase 3 Agreement and shall promptly render decisions to avoid delay in the orderly process of design and construction of the

Phase 3 Project. The Developer's Project Manager may be changed from time to time.

10.9.2 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 Phase 3 Agreement and shall promptly render decisions to avoid delay in the orderly process of design and construction of the Phase 3 Project. The City's Project Manager may be changed from time to time.

10.10 Notices. Any notices or other communications required or permitted by this Phase 3 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 or email transmission to the fax numbers or email address 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
Email	
Developer:	Verus Partners, LLC 224 Westlake Ave. North, Suite 500 Seattle, WA 98109
Attention:	John Maus
Facsimile:	602-956-4998
Email:	jрмаus@verusholdings.com

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.

10.11 Non Waiver of Governmental Rights. Nothing contained in this Phase 3 Agreement shall require the City to take any discretionary action relating to development of the Improvements to be constructed on the Lot 3 Property as part of the Phase 3 Project, including, but not limited to, zoning and land use decisions, permitting, or any other governmental approvals.

10.12 Captions. The captions of this Phase 3 Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Phase 3 Agreement.

10.13 Counterparts. This Phase 3 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.

10.14 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 Phase 3 Agreement and the transactions contemplated hereby.

10.15 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.

10.16 Time is of the Essence. Time is of the essence of this Phase 3 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.

10.17 Independent Contractor. Developer is acting under this Phase 3 Agreement as an independent contractor and nothing herein contained, or any acts of Developer or the City, nor any other circumstances, shall be construed to establish Developer as an agent of the 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.

10.18 Attorneys' Fees. Each party shall be responsible for payment of the legal fees and costs of its own counsel in the event of any litigation, arbitration or other proceeding brought to enforce or interpret or otherwise arising out of this Phase 3 Agreement.

10.19 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.

10.20 Exhibits. The Exhibits hereto are made a part of and incorporated into this Phase 3 Agreement.

10.21 Conflicts of Interests. No member, official or employee of the City shall make any decision relating to the Phase 3 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.

10.22 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 Phase 3 Agreement.

10.23 Applicable Law. This Phase 3 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 Phase 3 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.

11. Term of Phase 3 Agreement. This Phase 3 Agreement shall commence on the Effective Date and shall continue in force for a period of ten (10) years from the Effective Date unless sooner terminated or extended as provided herein. Following the termination hereof, this Phase 3 Agreement shall have no force and effect, subject to post-termination obligations of the Developer or the City which by the terms hereof or by applicable law survive or extend beyond such termination.

IN WITNESS WHEREOF, the Parties have executed this Phase 3 Agreement effective as of the date first above written.

CITY OF UNIVERSITY PLACE

VERUS PARTNERS, LLC

Stephen P. Sugg, City Manager

John R. Maus
Authorized Signer

Attest:

Emelita Genetia, City Clerk

Approved as to form:

Matthew S. Kaser, City Attorney

EXHIBIT "A"

Definitions

The following terms within the Phase 3 Agreement are defined as follows:

"City Council" or "Council" means the University Place City Council.

"Certificate of Completion" means a certificate issued by the City to Developer pursuant to Section 5 Development of this Phase 3 Agreement.

"City Representative" means the City Manager of University Place or designee upon reasonable approval of Developer. Upon approval of this Phase 3 Agreement by the City Council, the City Representative for this Phase 3 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 Statutory Warranty Deed and all other documents required to be recorded by this Phase 3 Agreement are recorded.

"Effective Date" means the date set forth in the first paragraph of this Phase 3 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 8 herein.

"Final Completion" means that the City has issued final unconditional certificates of occupancy for the Phase 3 Project.

"Improvements" means all buildings, structures, improvements and fixtures placed or constructed in, under or upon the Lot 3 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 Lot 3 Property.

"Mortgagee" means the holder of a first mortgage or deed of trust ("Mortgage") encumbering Developer's interest in any portion of the Lot 3 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 Phase 3 Agreement.

“Phase 3 Project” means the development of the Lot 3 Property, including construction of all Improvements and all related obligations of Developer under this Phase 3 Agreement.

“Lot 3 Property” means the real property identified as Lot 3 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 Phase 3 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.

“Title Company” means Chicago Title Insurance Company at 4717 South 19th Street, Suite 101, Tacoma, Washington 98405.

“Unavoidable Delay” 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 Phase 3 Agreement, and that directly affects the performance of this Phase 3 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 Phase 3 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 Phase 3 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 Phase 3 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 Phase 3 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 Lot 3 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 Phase 3 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 Phase 3 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 Phase 3 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 sole 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 Phase 3 Agreement.
- xii. The inability of any Party to secure financing.

DRAFT

EXHIBIT "B"

Form of Certification of Completion

After recording return to

CERTIFICATE OF COMPLETION

GRANTOR: CITY OF UNIVERSITY PLACE

GRANTEE:

Legal Description

Assessor's Tax Parcel No(s):

Related Document: Phase 3 Purchase and Development Agreement (Doc. No. _____)

The City of University Place, a Washington municipal corporation, acting in its proprietary capacity (the "City"), hereby certifies that _____, a _____ ("Developer"), has satisfactorily completed construction of the Phase 3 Project on the Lot _____ Property described above (the "Property"), as such Project is described in the Memorandum of Phase 3 Agreement dated _____ (the "Phase 3 Agreement"), which was recorded in the Records of the Pierce County Auditor, Washington, as Document No. _____, on _____, _____.

This Certificate of Completion is and shall be a conclusive determination that the Developer has satisfied, or the City has waived, each of the agreements, covenants and conditions contained in the Phase 3 Agreement as to the construction of the Phase 3 Project.

Notwithstanding this Certificate of Completion, the Phase 3 Purchase and Development Agreement dated _____ includes certain covenants between the City and Developer that survive and continue after issuance of a Certificate of Completion, and nothing in this Certificate of Completion affects such survival.

The Phase 3 Agreement is hereby terminated to the extent it is an encumbrance on the Lot 3 Property.

IN WITNESS WHEREOF, the City has caused this instrument to be executed this _____ day of _____, _____.

CITY OF UNIVERSITY PLACE

By

Stephen P. Sugg, City Manager

STATE OF WASHINGTON)) ss.
COUNTY OF PIERCE))

I certify that I know or have satisfactory evidence that Stephen P. Sugg is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the City Manager of the City of University Place to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, _____.



(Use this space for notary seal)

Notary Public

Print/Type Name _____

My commission expires _____