

**ADDENDUM NO. 1 - TO THE INTERLOCAL AGREEMENT
BETWEEN THE CITY OF UNIVERSITY PLACE AND
THE CITY OF LAKEWOOD
RELATING TO THE DESIGN OF BRIDGEPORT WAY
FROM CIRQUE DRIVE WEST TO 59TH AVENUE SW**

THIS ADDENDUM NO. 1 is made and entered into this 29th day of Dec, 2007, by and between the **CITY OF UNIVERSITY PLACE**, a municipal corporation of the State of Washington (hereinafter referred to as "University Place"), and the **CITY OF LAKEWOOD**, a municipal corporation of the State of Washington (hereinafter referred to as "Lakewood"), as an addendum to the Interlocal Agreement between the parties for the design of Bridgeport Way from Cirque Drive West to 59th Avenue SW executed on the 22nd day of December, 2003, pursuant to the Interlocal Cooperation Act, Chapter 39.34 of the Revised Code of Washington.

WITNESSETH:

WHEREAS, University Place received authorization from the Puget Sound Regional Council (PSRC) to move a grant award of \$519,000.00 from their 27th Avenue Project to the joint University Place-Lakewood Bridgeport Way – Cirque Drive W to 59th Avenue SW, and

WHEREAS, University Place and Lakewood agree to equitably split the additional grant award dollars as outlined in the original Interlocal Agreement.

NOW THEREFORE in consideration of their mutual covenants, conditions and promises, the PARTIES HERETO HEREBY AGREE as follows:

ITEM ONE REVISION TO THE TOTAL GRANT DOLLAR AMOUNT: That 3rd paragraph of Page 1 of 10 of the Agreement is amended to read as follows:

WHEREAS, a joint application was submitted and approved for \$778,500 of TEA-21 Federal funding, and a University Place TEA-21 Federal funding grant award of \$519,000.00 has been transferred, for a total grant dollar amount of \$1,297,500 for the design of improvements to Bridgeport Way with a Local Match requirement of 13.5%, naming University Place as the Lead Agency for the purposes of grant administration,

ITEM TWO REVISION TO THE NOTICE OF COMMUNICATION: That Lakewood point of contact in Section 12 of the Agreement is amended to read as follows:

CITY OF LAKEWOOD
6000 Main Street SW
Lakewood, WA 98499

Attention: ~~William Larkin IV, P.E., Public Works Director~~
Desireé S. Brown, P.E., Transportation Division Manager

ITEM THREE REMAINING TERMS UNCHANGED: That all other provisions of the [Interlocal] Agreement between the parties for the design of Bridgeport Way from Cirque Drive West to 59th Avenue SW executed on the 22nd day of December, 2003, pursuant to the Interlocal Cooperation Act, Chapter 39.34 of the Revised Code of Washington, shall remain unchanged, and in full force and effect.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

UNIVERSITY PLACE

CITY OF LAKEWOOD

By: [Signature]
Its: CITY MANAGER

By: [Signature]
D, Scott Rohlfs, Lakewood City Manager

Attest:

Attest:

By: [Signature]
Its: Acting City Clerk

By: [Signature]
Alicee M. Bush, CMC, Lakewood City Clerk

Approved as to form:

Approved as to form:

12-29-07

[Signature]
Attorney for [University Place]

[Signature]
Heidi A. Wachter, City Attorney

**CITY OF UNIVERSITY PLACE – CITY OF LAKEWOOD
INTERLOCAL AGREEMENT
REGARDING THE DESIGN OF BRIDGEPORT WAY
FROM CIRQUE DRIVE WEST TO 59TH AVE S.W.**

THIS INTERLOCAL AGREEMENT made and entered into, pursuant to the Interlocal Cooperation Act, Chapter 39.34 of the Revised Code of Washington (RCW), on the 22nd day of December, 2003, by and between the CITY OF UNIVERSITY PLACE, a municipal corporation of the State of Washington (hereinafter referred to as "University Place"), and the CITY OF LAKEWOOD, a municipal corporation of the State of Washington, (hereinafter referred to as "Lakewood").

WHEREAS, Bridgeport Way serves as a major arterial providing vital mobility to both Lakewood and University Place; and,

WHEREAS, a joint application was submitted and approved for \$778,500 of TEA-21 Federal funding for design of improvements to Bridgeport Way with a Local Match requirement of 13.5%, naming University Place as the Lead Agency for the purposes of grant administration; and,

WHEREAS, the grant application identifies a funding split based on percent of roadway length in each jurisdiction; and,

WHEREAS, it is agreed that the total length of the project is 18,274 feet of which 10,764 feet (58.9%) is in Lakewood and 7,510 feet (41.1%) is in University Place.

WHEREAS, each agency currently is qualified as a Certified Acceptance Agency (CA) under agreement with the Washington State Department of Transportation;

NOW THEREFORE, THE PARTIES HERETO DO HEREBY AGREE as follows:

SECTION 1. PURPOSES

The purposes of this agreement are: to establish roles and responsibilities of each agency in the administration of the grant, billing and payment of local match amounts, awarding of contracts, and project administration.

SECTION 2. IDENTIFICATION OF GOALS

The goals in entering into this Agreement are: (1) to facilitate the improvement to Bridgeport Way with curbs, sidewalks, and other roadway related amenities; (2) produce plans that meet the applicable standards required under the grant and approval of each city (3) and to achieve maximum cost savings for the benefit of the public.

SECTION 3. UNIVERSITY PLACE RESPONSIBILITY

A. **University Place shall provide project lead.** University Place shall take the lead role in coordinating the grant administration including: (1) entering into a Local Agency Agreement with the Highways and Local Programs Office of the Washington State Department of Transportation (WSDOT); (2) submitting requests for reimbursement, (3) maintaining project grant records; (4) reporting progress; (5) contract administration for its portion of the project; and (6) when required and as applicable, a University Place representative shall participate in project team meetings;

B. **University Place to advance funds.** University Place and Lakewood shall share in the cost of the design of the Bridgeport Way project on a proportionate share based on the length of project within each jurisdiction. University Place agrees to advance funds as necessary to pay for project expenses that will be shared jointly, such as but not limited to; preparation of a biological assessment. University Place shall submit timely requests for reimbursement to the Department of Transportation for its advances and for work performed or paid for by Lakewood. Reimbursement requests shall be made at monthly intervals for the total expended during that

period less the proportionate share of the combined University Place and Lakewood match. The project reimbursement period shall begin after WSDOT has approved a Local Agency Agreement (LAA) authorizing project expenditures. No expenditure made before this date is eligible for reimbursement. University Place shall bill Lakewood for its proportionate match share for any combined expenditures advanced by University Place.

C. **University Place shall notify Lakewood** within fourteen (14) calendar days from the date of receipt by University Place of reimbursement from the WSDOT, of costs incurred by Lakewood and University Place. University Place shall pay to Lakewood Lakewood's proportionate share of said reimbursement.

D. **University Place shall notify Lakewood.** University Place shall promptly notify Lakewood of any issues it feels are inconsistent with the design, construction documents, plans or this Agreement. University Place shall work cooperatively with Lakewood to resolve design and construction issues to the mutual satisfaction of both parties if reasonably practical.

SECTION 4. LAKEWOOD RESPONSIBILITIES

A. **Lakewood representative to assist in administration of the Bridgeport Way project.** Lakewood shall assign at least one representative to represent Lakewood's interests and verify that the project proceeds in accordance with this Agreement and state and federal requirements. When required and as applicable, Lakewood's representative(s) shall: (1) participate in project team meetings; (2) assist in the interview and selection of a consultant(s) for joint activities; (3) assist with obtaining applicable permits; (4) assist with project success monitoring; (5) contract administration for its portion of the project; and (6) shall maintain its project records as required by state and federal auditing requirements and shall present its records for review as requested.

B. **Lakewood shall pay University Place.** Lakewood shall pay all invoices received from University Place within 30 days. If Lakewood disputes a portion of the invoice, it shall pay the undisputed portion within 30 days and immediately meet with University Place to resolve the disputed amount. Interest shall be charged on all past due payments until paid in full. Past due payments shall bear simple interest at a rate of 2% per year. Beginning July 1, 2006, any past due payments shall bear simple interest at a rate of 8.00% per year until paid in full.

C. **Lakewood shall notify University Place.** Lakewood shall promptly notify University Place of any issues it feels are inconsistent with the design, construction documents, plans or this Agreement. Lakewood shall work cooperatively with University Place to resolve design and construction issues to the mutual satisfaction of both parties if reasonably practical.

SECTION 5. PLANS

Final design plans shall adhere to applicable standards of each respective city as well as state and federal requirements.

SECTION 6. TERM OF THE AGREEMENT

This Agreement shall be in full force and effect commencing on the date of execution of this Agreement and **terminating on December 1, 2006** unless extended by the agreement of both parties. Either party may request the appropriate Pierce County, regional and state agencies to reprogram the proportionate share of the funds allocated to its jurisdiction to include payment for total project right-of-way acquisition. Termination of this agreement shall have no effect on the obligations of either party to maintain the improvements installed in their respective rights-of-way.

SECTION 7. INDEMNIFICATION AND DEFENSE

A. University Place shall indemnify and hold Lakewood and its agents, employees, and/or officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City of Lakewood arising out of, in connection with, or incident to the execution of this Agreement and/or ~~the~~ University Place's performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of Lakewood, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of University place; and provided further, that nothing herein shall require University Place to hold harmless or defend Lakewood, its agents, employees and/or officers from any claims arising from the sole negligence of Lakewood, its agents, employees, and/or officers. No liability shall attach to Lakewood by reason of entering into this Agreement except as expressly provided herein.

B. Lakewood shall indemnify and hold University Place and its agents, employees, and/or officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against University Place arising out of, in connection with, or incident to the execution of this Agreement and/or the City of Lakewood's performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of University Place, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the City; and provided further, that nothing herein shall require the City to hold

harmless or defend the City of University Place, its agents, employees and/or officers from any claims arising from the sole negligence of the City of University Place, its agents, employees, and/or officers. No liability shall attach to the City of University Place by reason of entering into this Agreement except as expressly provided herein.

C. Each party acknowledges it's CA status heretofore mentioned and therefore takes its respective responsibility for complying with all state and federal requirements for design, finances, and all other aspects of the project within its corporate limits. Failure to do so will result in the agency being financially responsible to WSDOT under the terms of the Local Agency Agreement. The City of University Place will be lead agency for the project but does not guarantee the adequacy of work performed by Lakewood nor does Lakewood guarantee the adequacy of work performed by University Place.

SECTION 8. NO THIRD-PARTY BENEFICIARY

University Place, by this Agreement, does not assume any contractual obligations to anyone other than Lakewood. Lakewood, by this Agreement, does not assume any contractual obligations to anyone other than University Place. There is no third-party beneficiary to this Agreement.

SECTION 9. INSURANCE COVERAGE

University Place and Lakewood shall maintain at all times during the course of this Agreement a general liability insurance policy or other comparable coverage with a self-insured retention of not more than \$500,000.00 and a policy limit of not less than \$5,000,000.00 dollars.

SECTION 10. NON-DISCRIMINATION

Each of the parties, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that it will

comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or the presence of any sensory, mental or physical handicap be discriminated against or receive discriminatory treatment by reason thereof.

SECTION 11. ASSIGNMENT

Neither University Place nor Lakewood shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.

SECTION 12. NOTICE

Any formal notice or communication to be given by Lakewood to University Place under this Agreement shall be deemed properly given, if delivered, or if mailed postage prepaid and addressed to:

CITY OF UNIVERSITY PLACE
3715 Bridgeport Way West
University Place, WA 98466

Attention: Patrick O'Neill, P.E.; City Engineer

Any formal notice or communication to be given by University Place to Lakewood under this Agreement shall be deemed properly given, if delivered, or if mailed postage prepaid and addressed to:

CITY OF LAKEWOOD
6000 Main Street S.W.
Lakewood WA 98499

Attention: William Larkin IV, P.E., Public Works Director

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing. All notices and payments mailed by regular post (including first class) shall

be deemed to have been given on the second business day following the date of mailing, if properly mailed and addressed. Notices and payments sent by certified or registered mail shall be deemed to have been given on the day next following the date of mailing, if properly mailed and addressed. For all types of mail, the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing.

SECTION 13. UNIVERSITY PLACE AND LAKEWOOD AS INDEPENDENT

CONTRACTORS.

University Place is, and shall at all times be deemed to be, an independent contractor. Lakewood is, and shall at all times be deemed to be, an independent contractor. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between University Place and Lakewood or any agents or employees. University Place and Lakewood shall each independently retain all authority for the rendition of services, standards of performance, control of personnel, and other matters incident to the performance of services by University Place and Lakewood pursuant to this Agreement.

Nothing in this Agreement shall make any employee of University Place a Lakewood employee or any employee of Lakewood a University Place employee for any purpose, including, but not limited to, the withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded Lakewood or University Place employees by virtue of their employment.

SECTION 14. WAIVER

No waiver by either party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Agreement.

SECTION 15. ENTIRE AGREEMENT

This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose.

SECTION 16. AMENDMENT

Provisions within this Agreement may be amended with the mutual consent of the parties hereto. No additions to, or alteration of, the terms of this Agreement shall be valid unless made in writing, formally approved, and executed by duly authorized agents of both parties.

SECTION 17. FILING

Both parties shall file copies of this Agreement, together with resolutions of the University Place City Council and Lakewood City Council approving and ratifying this Agreement, with the University Place City Clerk and the Lakewood City Clerk after execution of the Agreement.


SECTION 17. SEVERABILITY

If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

IN WITNESS WHERE OF, the parties have caused this Agreement to be executed on this 22nd day of Dec., 2003.

UNIVERSITYPLACE

LAKWOOD


ROBERT W. JEAN
CITY MANAGER


D. SCOTT ROHLFS
CITY MANAGER


10/7/03
Date

12-22-03
Date

Attest:


Attest:



CATRINA CRAIG
CITY CLERK


ALICE M. BUSH, CMC / AAE
CITY CLERK 12-22-03

Approved as to Form:

Approved as to Form:

 10/6/03
TIMOTHY X. SULLIVAN,
CITY ATTORNEY

 11/26/03
HEIDI A. WACHTER
CITY ATTORNEY