

RESOLUTION NO. 365

**A RESOLUTION OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE CITY OF LAKEWOOD REGARDING THE REPLACEMENT OF THE LEACH CREEK CULVERT UNDER BRIDGEPORT WAY WEST.**

**WHEREAS**, The State of Washington Department of Fish & Wildlife identified the Leach Creek Culvert under Bridgeport Way West as a barrier to fish passage in accordance with RCW 75.20.060 and RCW 77.16.210 and ordered it remedied; and

**WHEREAS**, Leach Creek serves as the boundary between Lakewood and University Place placing responsibility to provide a viable fish-way under Bridgeport Way in accordance with RCW 77.16.210 on both cities; and

**WHEREAS**, in August 2001 Lakewood and University Place submitted a joint "in stream passage" grant request to the Salmon Recovery Funding Board of the Office of the Interagency Committee each pledging a match of up to \$85,000; for a total match of \$170,000 and

**WHEREAS**, on April 12, 2002 the Salmon Recovery Funding Board awarded the cities a grant of \$713,000 to replace the Leach Creek Culvert under Bridgeport Way West with a fish passage friendly structure; and


**WHEREAS**, an interlocal agreement addressing the roles and responsibilities of the City of University Place and The City of Lakewood with regard to the replacement of the Leach Creek culvert under Bridgeport Way West is in the public interest; NOW THEREFORE:

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

Section 1. City Manager Authorized to Enter into Interlocal Agreement: The City Council hereby authorizes the City manager to enter into an interlocal agreement regarding roles and responsibilities with regard to the replacement of the Leach Creek Culvert under Bridgeport Way West attached hereto as Exhibit A.

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

**ADOPTED BY THE CITY COUNCIL AUGUST 26, 2002.**

  
\_\_\_\_\_  
Jean Brooks, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Catrina Craig, City Clerk

**AN AGREEMENT BETWEEN  
THE CITY OF UNIVERSITY PLACE AND THE CITY OF LAKEWOOD  
REGARDING THE REPLACEMENT OF THE LEACH CREEK CULVERT  
UNDER BRIDGEPORT WAY**

**THIS AGREEMENT** is entered into this day by and between the **CITY OF UNIVERSITY PLACE**, a municipal corporation of the State of Washington (herein referred to as "University Place") and the **CITY OF LAKEWOOD**, a municipal corporation of the State of Washington (herein referred to as "Lakewood").

**WHEREAS**, The State of Washington Department of Fish & Wildlife identified the Leach Creek Culvert under Bridgeport Way West as a barrier to fish passage in accordance with RCW 75.20.060 and RCW 77.16.210 and ordered it remedied; and

**WHEREAS**, Leach Creek serves as the boundary between Lakewood and University Place placing responsibility to provide a viable fish-way under Bridgeport Way in accordance with RCW 77.16.210 on both cities; and

**WHEREAS**, in August 2001 Lakewood and University Place submitted a joint "in stream passage" grant request to the Salmon Recovery Funding Board of the Office of the Interagency Committee each pledging a match of up to \$85,000; for a total match of \$170,000 and

**WHEREAS**, on April 12, 2002 the Salmon Recovery Funding Board awarded the cities a grant of \$713,000 to replace the Leach Creek Culvert under Bridgeport Way West with a fish passage friendly structure;

**NOW, THEREFORE**, in consideration of the terms and conditions contained herein, it is mutually agreed by and between University Place and Lakewood as follows:

## SECTION 1. PURPOSES

The purposes of this agreement are: (1) document the agreement reached between Lakewood and University Place regarding the replacement of the Leach Creek Culvert and (2) to establish roles and responsibilities.

## SECTION 2. IDENTIFICATION OF GOALS

The goals in entering into this Agreement are: (1) to facilitate the replacement of the Leach Creek culvert under Bridgeport Way West with a fish friendly passage in accordance with RCW 75.20.060; (2) produce a plan that meets the applicable standards and approval of both cities (3) to achieve maximum cost savings for the benefit of the public; (3) to minimize inconvenience to the traveling public; and (4) to perform appropriate mitigation and project monitoring.

## 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 an agreement with the Office of the Interagency Committee (IAC); (2) submitting requests for reimbursement, (3) maintaining project records; (4) reporting progress; (5) advertising for a design consultant; (6) soliciting construction bids; (7) securing applicable permits (8) construction oversight; and (9) project success monitoring.

B. **University Place representative(s) to lead design and construction of the Leach Creek Culvert Replacement.** University Place will assign at least one representative to represent University Place's interests and verify that the project proceeds in accordance with this Agreement. University Place's representative(s) shall (1) enter into an agreement with IAC accepting the grant and general provisions; (2) prepare a request for design proposals;

(3) interview and select a design consultant; (4) prepare and enter into a contract with the selected design consultant; (5) obtain applicable permits; (6) advertise for and select a project contractor; (7) prepare and enter into a contract with the selected project contractor; and (8) monitor construction activity for compliance with design and construction documents and this agreement.

**C. University Place shall secure construction easements in the City of University Place.** University Place shall secure any construction easements including areas for staging or equipment and material storage needed to facilitate construction of the culvert replacement on the north side of Leach Creek (in University Place). All such easements shall be secured no later than February 1, 2003.

**D. University Place to advance funds.** University Place and Lakewood shall share in the cost of the Leach Creek Culvert Replacement. University Place agrees to advance funds to pay for the advertising, design, permitting, construction, monitoring and other costs related to the Leach Creek culvert replacement. University Place shall submit requests for reimbursements for its advances from IAC in accordance with the Salmon Project Agreement and general provisions. Reimbursement requests shall be made at least monthly for the total expended during that period less the proportionate share of the combined University Place and Lakewood match. The project reimbursement period began on April 29, 2002 and expires on April 1, 2006. No expenditure made before or after this period is eligible for reimbursement. University Place shall bill Lakewood for its proportionate share equal to 50% of the match.

**E. Posting signs.** University Place shall post information signs adjacent to the southbound lanes of Bridgeport Way West including projects sponsors and other project information.

F. **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.

G. **University Place is independently obligated for any non-culvert replacement work in University Place.** It is understood that University Place may choose to combine other public improvements with the Leach Creek Culvert Replacement. These improvements may include but are not limited to road widening and new pedestrian and/or bicycle facilities.

#### SECTION 4. LAKEWOOD RESPONSIBILITIES

A. **Lakewood representative to assist in design and construction of the Leach Creek Culvert Replacement.** Lakewood shall assign at least one representative to represent Lakewood's interests and verify that the project proceeds in accordance with this Agreement. Lakewood representative(s) shall: (1) participate in project team meetings; (2) assist in the interview and selection of a design consultant; (3) assist with obtaining applicable permits; (4) assist review and selection of a project contractor; (5) track and report employee's project time; and (6) assist with project success monitoring.

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 secure construction easements in Lakewood.** Lakewood shall secure any construction easements including areas for staging or equipment and material storage needed to facilitate construction of the culvert replacement on the south side of Leach Creek (in Lakewood). All such easements shall be secured no later than February 1, 2003.

D. **Posting signs.** Lakewood shall post information signs adjacent to the northbound lanes of Bridgeport Way West including project sponsors and other project information.

E. **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.

F. **Lakewood is independently obligated for any non-culvert replacement work in Lakewood.** It is understood that Lakewood may choose to combine other public improvements with the Leach Creek Culvert Replacement. These improvements may include but are not limited to road widening and realignment and new pedestrian and/or bicycle facilities.

#### **SECTION 5. APPROVAL OF FINAL PLANS**

Final design and construction plans must be approved by both cities and shall adhere to applicable standards of both cities.

#### **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 July 1, 2006. 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**

University Place shall defend, indemnify, and save harmless Lakewood, its officers, employees, and agents from any and all costs, claims, judgments, or awards of damages, resulting from the acts or omissions of University Place, its officers, employees, or agents associated with this Agreement.

Lakewood shall defend, indemnify and save harmless University Place, its officers, employees and agents from any and all costs, claims, judgments, or awards of damages, resulting from the acts or omissions of Lakewood, its officers, employees or agents associated with this Agreement.

In the event of the concurrent negligence of Lakewood and University Place, each shall be liable for its own percentage of fault. The cities' responsibility to indemnify each other includes the obligation to defend the other and to pay any judgment or award and all chargeable costs and reasonable attorney's fees.

**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**

University place and Lakewood certify that they are Equal Opportunity Employers.

**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: David Swindale, Planning Manager

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: Greg Vigoren, P.E., Associate Civil Engineer II



The name and address to which notices and communications shall be directed may be changed at any time, and from time to time, by either University Place or Lakewood giving written notice thereof to the other as herein provided.

**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 \_\_\_\_\_ day of \_\_\_\_\_, 2002.

**UNIVERSITYPLACE**

**LAKWOOD**

\_\_\_\_\_  
ROBERT W. JEAN  
CITY MANAGER

\_\_\_\_\_  
D. SCOTT ROHLFS  
CITY MANAGER

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Attest:

Attest:

\_\_\_\_\_  
CATRINA CRAIG  
CITY CLERK

\_\_\_\_\_  
ALICE BUSH  
CITY CLERK

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
TIMOTHY X. SULLIVAN,  
CITY ATTORNEY

\_\_\_\_\_  
HEIDI HORST  
CITY ATTORNEY