

**URBAN EXPERIENCE COMMITTEE MEETING**  
**AGENDA FOR**  
**July 9, 2018**  
**1:15 p.m. – City Council Briefing Center**

The Spokane City Council's Urban Development Committee meeting will be held at **1:15 p.m. on July 9, 2018** in City Council Briefing Center –Lower Level City Hall, 808 West Spokane Falls Boulevard, Spokane, Washington.

The meeting will be conducted in a standing committee format. Because a quorum of the City Council may be present, the standing committee meeting will be conducted as a committee of the whole council.

The meeting will be open to the public, with the possibility of moving or reconvening into executive session only with the members of the City Council and the appropriate staff. No legislative action will be taken. No public testimony will be taken and discussion will be limited to appropriate officials and staff.

**AGENDA**

**I. Call to Order**

**II. Approval of Minutes**

**III. Consent Items**

- I-03 Control Facility Administrative Reserve Increase- Joel Graff
- Subsite Video Pipeline Inspection Systems- Raylene Gennett
- Amendment to Value Blanket for Purchase of Feeder and Grate Parts for the Waste to Energy Facility with Hitachi Zosen- David Paine
- Approval of a 1<sup>st</sup> year Extension of a 1 year Value Blanket Order- Gary Kaesemeyer (PIES)
- Resolution Approving Development Agreement with Flamingo Links, LLC- Scott Simmons
- Amending Ordinance C34117 to Release Portion of Easement- Eldon Brown
- Property Maintenance Code (PMC)- Alicia Ayars
- Resolution Nuclear Weapons Free Community and Annual Day of Remembrance- CM Burke
- Ordinance Number C35641 SBO's to GF- CM Mumm

**IV. Discussion Items**

A. Council Request

B. Staff Requests

C. Business Reports

**V. Strategic Plan Session**

A. Economic Update – Kinder (10 minutes)

**VI. Adjournment:**

**Next Urban Development Committee meeting will be on Monday, August 13, 2018.**

***AMERICANS WITH DISABILITIES ACT (ADA) INFORMATION:*** *The City of Spokane is committed to providing equal access to its facilities, programs and services for persons with disabilities. The Spokane City Council Chamber in the lower level of Spokane City Hall, 808 W. Spokane Falls Blvd., is wheelchair accessible and also is equipped with an infrared assistive listening system for persons with hearing loss. Headsets may be checked out (upon presentation of picture I.D.) at the City Cable 5 Production Booth located on the First Floor of the Municipal Building, directly above the Chase Gallery or through the meeting organizer. Individuals requesting reasonable accommodations or further information may call, write, or email Human Resources at 509.625.6363, 808 W. Spokane Falls Blvd, Spokane, WA, 99201; or [msteinolfson@spokanecity.org](mailto:msteinolfson@spokanecity.org). Persons who are deaf or hard of hearing may contact Human Resources through the Washington Relay Service at 7-1-1. Please contact us forty-eight (48) hours before the meeting date.*

# Briefing Paper

## Urban Experience Committee

<b>Division &amp; Department:</b>	Engineering Services
<b>Subject:</b>	I-03 Control Facility Administrative Reserve Increase
<b>Date:</b>	7/9/18
<b>Contact (email &amp; phone):</b>	Joel Graff, <a href="mailto:jgraff@spokanecity.org">jgraff@spokanecity.org</a> , x7757
<b>City Council Sponsor:</b>	CM Beggs
<b>Executive Sponsor:</b>	Scott Simmons
<b>Committee(s) Impacted:</b>	Urban Experience
<b>Type of Agenda item:</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
<b>Alignment:</b> (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	This project is in the 6 year sewer plan
<b>Strategic Initiative:</b>	Innovative Infrastructure
<b>Deadline:</b>	
<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	For council consideration. Request will be forwarded to the council agenda for approval.
<p><b>Background/History:</b> <i>Engineering Project #2013214</i> – I-03 Control Facility, in an ongoing CSO tank project in the Emerson/Garfield neighborhood. During excavation of the tank, an old dump site was found. This material extended up to 16 feet below the tank foundation and was unsuitable to support the weight of the tank. The removal and replacement of this material led to cost overruns for extra excavation, borrow, removal and replacement of unsuitable material, shoring, temporary concrete barriers, asphalt, and curb totaling approximately \$405,000.00.</p> <p>This extra work affected the critical path of the tank construction and pushed much of that work into the winter months which required the use of ground thaw units and cold weather protection to cure the concrete which the contractor could not have anticipated. The cost of this addition work is approximately \$150,000.00.</p> <p>These issues have used a large portion of the Administrative Reserve. Engineering Services is requesting an additional \$260,000 to complete the project.</p>	
<p><b>Executive Summary:</b></p> <ul style="list-style-type: none"> <li><i>Removal and Replacement of unsuitable foundation material will result in an estimated cost of \$405,000.</i></li> <li><i>Ground thaw units and cold weather protection will result in an estimated cost of \$150,000.</i></li> <li><i>Payments have been issued to date for 7,928,696.72. The authorized budget with administrative reserve is \$8,794,314.14</i></li> <li><i>An additional \$260,000 is being requested to complete the project.</i></li> </ul>	
<p><b>Budget Impact:</b></p> <p>Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Annual/Reoccurring expenditure? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If new, specify funding source:</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	
<b>Operations Impact:</b>	

Consistent with current operations/policy?

☐

Yes

☐

No

☐

N/A

Requires change in current operations/policy?

☐

Yes

☐

No

☐

N/A

Specify changes required:

Known challenges/barriers:

# Briefing Paper

## Urban Experience Committee

<b>Division &amp; Department:</b>	Public Works, 4310 – Wastewater Maintenance
<b>Subject:</b>	Subsite Video Pipeline Inspection Systems
<b>Date:</b>	9 July 2018
<b>Author (email &amp; phone):</b>	Raylene Gennett, <a href="mailto:rgennett@spokanecity.org">rgennett@spokanecity.org</a> x7909
<b>City Council Sponsor:</b>	---
<b>Executive Sponsor:</b>	---
<b>Committee(s) Impacted:</b>	---
<b>Type of Agenda item:</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
<b>Alignment:</b> (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	Funding for this purchase has been budgeted in Wastewater Maintenance department funds.
<b>Strategic Initiative:</b>	Innovative Infrastructure
<b>Deadline:</b>	The purchase of replacement equipment is needed to support efficient service of the City of Spokane Wastewater Maintenance system.
<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	This action supports procurement of known product replacement for 2018 and establishes an efficient method of future procurement by establishing a five (5) year sole source for this vital equipment.
<b>Background/History:</b> The Wastewater Maintenance department has been using this equipment (previously from RS Technical) for roughly 30 years. The purchase of minor replacement parts and payment for necessary repair services has historically been handled by departmental sole source, but the rising cost of replacement equipment has pushed the annual spend over Council threshold. At this time, Wastewater Maintenance is seeking approval to purchase equipment for known 2018 replacements and approval to establish a five (5) year sole source resolution for purchases of new equipment and parts, along with repair services.	
<b>Executive Summary:</b> <ul style="list-style-type: none"> <li>• Award Recommended to Western Systems &amp; Fabrication (Spokane Valley, WA) for:           <ul style="list-style-type: none"> <li>○ \$42,450.25 (including tax) for 2018 Replacement Equipment</li> <li>○ \$45,000.00 (including tax) Annually for As-Needed Replacement Parts on Value Blanket Order</li> <li>○ \$30,000.00 (including tax) Annually for Contracted Equipment Repair</li> </ul> </li> <li>• Five (5) Year Sole Source Resolution to support future orders of equipment, parts, and repair services</li> </ul>	
<b>Budget Impact:</b> Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Annual/Reoccurring expenditure? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If new, specify funding source: --- Other budget impacts: N/A	
<b>Operations Impact:</b> Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Requires change in current operations/policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Specify changes required: N/A Known challenges/barriers: N/A	

## Briefing Paper

### Urban Experience

<b>Division &amp; Department:</b>	Public Works Division; Solid Waste Disposal
<b>Subject:</b>	Amendment to Value Blanket for Purchase of Feeder and Grate Parts for the Waste to Energy Facility with Hitachi Zosen.
<b>Date:</b>	July 9, 2018
<b>Contact (email &amp; phone):</b>	David Paine, <a href="mailto:dpaine@spokanecity.org">dpaine@spokanecity.org</a> , 625-6878
<b>City Council Sponsor:</b>	
<b>Executive Sponsor:</b>	
<b>Committee(s) Impacted:</b>	Urban Experience/ Public Infrastructure, Environment and Sustainability Committee
<b>Type of Agenda item:</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
<b>Alignment:</b> (link agenda item to guiding document – i.e., Master Plan, Budget , Comp Plan, Policy, Charter, Strategic Plan)	
<b>Strategic Initiative:</b>	Sustainable Resources – Reliable operations supports good customer service; Innovative infrastructure – Sustaining our core principals
<b>Deadline:</b>	
<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	Council approval of additional funding to the Hitachi Zosen Value Blanket in order to prevent an unscheduled outage due to a grate carriage failure.
<b>Background/History:</b> In September of 2016 Hitachi Zosen was the low cost bidder to RFB #4292-16 and was awarded a value blanket for Feeder and Grate parts for the WTE. The Value Blanket was to go from November 1, 2016 to October 31, 2018 for a total cost of \$520,315.40. During the May 2018 outage, it was identified that many of the grate carriages are at the end of their life and can no longer be repaired with reinforcing welds. These grates convey all of the solid waste burned, through the furnace. These unforeseen replacements will require an additional amount of \$180,000.00 to be added to the value blanket in order to get all of the failing grates replaced during the outage in October of 2018. These parts will need to be put on order in the very near future in order to be available at the fall outage as well so swift approval is needed.	
<b>Executive Summary:</b> <ul style="list-style-type: none"> <li>Increase in funds of \$180,000.00 to the value blanket with Hitachi Zosen for feeder and grate parts at the WTE.</li> <li>Original value blanket from Nov. 1, 2016 thru Oct. 31, 2018 for \$520,315.40.</li> <li>Multiple unforeseen grate carriages at the end of their life were identified in the spring outage that will need replaced.</li> <li>Parts will need ordered in the near future in order to arrive in time to be replaced in the fall outage.</li> <li>Not approving this increase to the value blanket could result in an unscheduled outage at the WTE.</li> </ul>	
<b>Budget Impact:</b> Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Annual/Reoccurring expenditure? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If new, specify funding source: Other budget impacts: (revenue generating, match requirements, etc.)	
<b>Operations Impact:</b> Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	

Requires change in current operations/policy?

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Yes

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No

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N/A

Specify changes required:

Known challenges/barriers:

## BRIEFING PAPER

### Spokane City Council – Urban Development Committee Resolution: Nuclear Weapons-Free Community and Annual Day of Remembrance July 9, 2018

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This resolution would declare that the City is a nuclear weapons-free community and establish an annual day of remembrance for the City of Spokane to reflect on the atomic bombing of two cities in Japan – Hiroshima and Nagasaki – in August of 1945.

Recently, the Bulletin of the Atomic Scientists updated its “Doomsday Clock” graphic to portray nuclear apocalypse (midnight) to show how close we are to nuclear conflict. The clock, is moved or left in place at the direction of the Bulletin’s Science and Security Board in consultation with its Board of Sponsors, which includes 15 Nobel laureates. The clock is now at 2 minutes to midnight – the closest it has been to midnight since 1953.

Although the Cold War is over, the threat of nuclear proliferation continues, as shown by the events of recent years in Iran and North Korea.

Even a *limited* nuclear exchange anywhere in the world would create catastrophic human, environmental, and economic consequences globally, the health and environmental impacts of nuclear weapons use and production disproportionately harm indigenous people, low-income populations, and minorities. In our own area, the Spokane Tribe of Indians has seen extremely negative impacts due to uranium mining, and Hanford down-winders have been affected by nuclear weapons production and clean-up.

Almost 30 other American communities have declared to the world that they are nuclear weapons-free communities. As a part of that declaration, it is important that the City call upon our Congressional delegation and our nation as a whole to ensure that the United States signs and ratifies the Treaty on the Prohibition of Nuclear Weapons, passed by the United Nations on July 7, 2017.

This resolution would also establish August 6 of each year as “Hiroshima and Nagasaki Remembrance Day,” as a day to solemnly remember the atomic bombing of those two cities on August 6 and 9, 1945, and to express our solidarity with the Japanese people.



## Briefing Paper

### Urban Experience Committee

<b>Division &amp; Department:</b>	Public Works / Street Department
<b>Subject:</b>	Approval of a 1 <sup>st</sup> year extension of a 1-year Value Blanket Order for Traffic Paint, using Washington State Contract (#02817), Spokane County Contract (P10162), or Pierce County contract (SC-104806), not to exceed \$95,000.00 annually.
<b>Date:</b>	July 9 <sup>th</sup> , 2018
<b>Contact (email &amp; phone):</b>	Gary Kaesemeyer ( <a href="mailto:gkaesemeyer@spokanecity.org">gkaesemeyer@spokanecity.org</a> X8810)
<b>City Council Sponsor:</b>	Breean Beggs
<b>Executive Sponsor:</b>	Scott Simmons
<b>Committee(s) Impacted:</b>	PIES
<b>Type of Agenda item:</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
<b>Alignment:</b>	Strategic Plan
<b>Strategic Initiative:</b>	
<b>Deadline:</b>	Current Value Blanket expired May 1 <sup>st</sup> , 2018.
<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	Maintain infrastructure.

Background/History: Due to supply issues in 2010-2011, the City is sourcing paint from multiple vendors.

Working with the Purchasing Department, the Street Department will use the approved Washington State contract (#02817) or Pierce County contract (SC-104806) via Interlocal Agreement OPR #1995-0065, for purchasing traffic paint.

The Washington State contract was awarded to Ennis-Flint, Sherwin Williams and Ozark Materials. The current contract ends February 29<sup>th</sup>, 2024.

The Pierce County contract was awarded to Alpine Products Inc., Auburn, WA (manufactured by Ennis-Flint). The original contract expired March 13, 2018, with up to four one-year extensions. This would be the first extension.

Executive Summary:

- The Signs and Markers Section maintains over 3.2 million linear feet of lane striping, 807 crosswalks, 751 stop bars and 708 roadway stencils, in paint, each year.
- The installation and maintenance of lane lines, marked crossings and other pavement markings is part of Street Department's annual tasks.
- Roadway markings provide important information to all roadway users, increasing safety and the efficient movement of the traveling public.

Budget Impact:

Approved in current year budget? ☒ Yes ☐ No ☐ N/A

Annual/Reoccurring expenditure? ☒ Yes ☐ No ☐ N/A

If new, specify funding source:

Other budget impacts: (revenue generating, match requirements, etc.)

Operations Impact:

Consistent with current operations/policy? ☒ Yes ☐ No ☐ N/A

Requires change in current operations/policy? ☐ Yes ☒ No ☐ N/A

Specify changes required:

Known challenges/barriers:

## Briefing Paper

### Urban Experience Committee

<b>Division &amp; Department:</b>	Public Works
<b>Subject:</b>	Resolution approving Development Agreement with Flamingo Links, LLC relating to development of land adjacent to State Hwy 2 and East of Hayford Road
<b>Date:</b>	July 9, 2018
<b>Author (email &amp; phone):</b>	Scott Simmons ( <a href="mailto:smsimmons@spokanecity.org">smsimmons@spokanecity.org</a> 625-6584)
<b>City Council Sponsor:</b>	Council President Ben Stuckart
<b>Executive Sponsor:</b>	Scott Simmons, Director of Public Works
<b>Committee(s) Impacted:</b>	Urban Experience
<b>Type of Agenda item:</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
<b>Alignment:</b> (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	City of Spokane Comprehensive Plan
<b>Strategic Initiative:</b>	
<b>Deadline:</b>	
<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	City Council Advanced Agenda July 9, City Council Legislative Agenda July 16.
<b>Background/History:</b> Resolution approving Developer Agreement with Flamingo Links, LLC for reimbursement for a portion of public right-of-way improvements on Highway 2, between Deer Heights Road and Flint Road. The developer has made an application to the City to develop the property for commercial purposes beginning with agricultural and outdoor retailer – North 40. The issuance of a Conditional Use Permit by the City and a Traffic Impact Analysis (File No. Z17-257CUP3) to permit commercial development, the Developer has agreed to dedicate land for public right-of-way and construct public improvements in conjunction with the project.	
<b>Executive Summary:</b> <ul style="list-style-type: none"> <li>• <i>The property is being developed for commercial purposes the agreement dedicates land for public right-of-way and to construct public improvements between Deer Heights Road and Flint Road on Highway 2.</i></li> <li>• <i>The improvements will include a roundabout (or traffic circle), sidewalks, storm drainage systems, street lighting, and other public improvements at the intersection.</i></li> <li>• <i>In addition, the Developer will dedicate right-of-way for the future construction of 12<sup>th</sup> Avenue and area to construct the roundabout.</i></li> <li>• <i>The City agrees to reimburse the Developer for a portion of the public improvements not to exceed \$1,500,000.</i></li> <li>• <i>The improvements have been determined to be compatible and consistent with countywide plan and development regulations and the Spokane Municipal Code.</i></li> <li>• <i>The West Plains/Airport Area Public Development Authority has invested to facilitate this public benefit project and improve the economic conditions in the area. The development and improvements will support other development, promote economic development, and increase real property values within the area.</i></li> </ul>	
<b>Budget Impact:</b> Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

Annual/Reoccurring expenditure? ☐ Yes ☒ No

If new, specify funding source:

Other budget impacts: (revenue generating, match requirements, etc.)

Operations Impact:

Consistent with current operations/policy?



Yes



No

Requires change in current operations/policy?



Yes



No

Specify changes required:

Known challenges/barriers:

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

A RESOLUTION APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY AND FLAMINGO LINKS, LLC RELATING TO DEVELOPMENT OF LAND ADJACENT TO STATE HIGHWAY 2 AND EAST OF HAYFORD ROAD.

WHEREAS, Flamingo Links, LLC, a Washington limited liability company ("Owner") owns that certain real property described in the development agreement attached hereto as **Exhibit A** (the "Development Agreement"), which property is located in the City of Spokane, Washington (hereafter the "Property");

WHEREAS, Owner represents that it is vested with ownership or control over the Property;

WHEREAS, Owner has made application to the City to develop the Property for commercial purposes beginning with an agricultural and outdoor retailer known as "North 40" who will occupy an approximately 80,000 square foot store with adjacent parking (the "Project" or "Development");

WHEREAS, Pursuant to issuance of a Conditional Use Permit by the City of Spokane and a Traffic Impact Analysis (File No. Z17-257CUP3) to permit commercial development on the Property, Developer has agreed to dedicate land for public right-of-way and to construct certain public improvements (the "**Improvements**") in conjunction with the Project, which Improvements will be located between Deer Heights Road and Flint Road on Highway 2 in and around the Property. The Improvements generally include a roundabout (or traffic circle), sidewalks, storm drainage systems, street lighting, and other public improvements at the intersection of Deer Heights Road and Highway 2, further defined in Exhibit B. Developer will dedicate right-of-way for the future construction of W 12<sup>th</sup> Avenue, and right-of-way necessary to construct the roundabout;

WHEREAS, Developer and the City acknowledge construction of Improvements will: (i) support the development of the Property, (ii) promote economic development as contemplated by RCW 35.21.703, (iii) encourage further private development to include increasing the fair market value of real property within the area, and (iv) is consistent with and carries out the purposes of RCW 36.70B.170. The City has further determined that the Improvements are compatible and consistent with the countywide planning policy adopted by the City under RCW 36.70A.210 and the City comprehensive plan and development regulations adopted under chapter 36.70A RCW and Title 17 of the Spokane Municipal Code;

WHEREAS, Through Spokane Municipal Code Chapter 4.25 and City of Spokane Ordinance No. C-3522, the West Plains/Airport Area Public Development Authority was established for purposes consistent with RCW 35.21.730 through .757 to facilitate the acquisition, construction, development and operation of public benefit

projects and improve economic conditions in and around the City and County of Spokane.

WHEREAS, Development Agreements are specifically authorized by RCW 36.70B.170 through .210 and Chapter 17A.060 SMC as a proper exercise of the City's police power;

WHEREAS, the Development is consistent with the requirements of the City's Comprehensive Plan, the City's zoning regulations, and other applicable development regulations;

WHEREAS, on May 3, 2018, the City issued a Determination of Nonsignificance "DNS" relating to the Project since enforcement of the City zoning regulations will mitigate any impacts of the Project;

WHEREAS, pursuant to RCW 36.70B.200, the City held a public hearing with respect to consideration and approval of this Development Agreement;

NOW, THEREFORE - - it is hereby resolved by the Spokane City Council;

1. The foregoing recitals and the contents of the attached Development Agreement are hereby adopted as the Council's findings in support of this Resolution.
2. The Development Agreement is hereby approved and the Mayor is hereby authorized to execute it on behalf of the City.

ADOPTED by the Spokane City Council this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney

Exhibit A

Development Agreement

Recorded at the Request of  
and after Recording Return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## DEVELOPMENT AGREEMENT

Grantor	City of Spokane, a municipal corporation
Grantee (1)/Developer:	Flamingo Links, LLC, a Washington Limited Liability Company
Grantee (2)/Developer:	Flint 2 Properties, LLC, a Washington Limited Liability Company
Grantee (3)/Developer:	Big Sky Spokane, LLC, a Washington Limited Liability Company

Legal Description  
(abbreviated):

Assessor's Tax Parcel ID#: 25194-0965, 25194-9064, 25194-9042, and 25194-9043

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into by and among City of Spokane, a municipal corporation of the State of Washington (the “**City**”), Flamingo Links, LLC, a Washington limited liability company, Flint 2 Properties, LLC, a Washington limited liability company, Big Sky Spokane, LLC, a Washington limited liability company (the “**Developer**”), collectively referred to hereinafter as the “**Parties**.”



## RECITALS

A. Developer owns property located adjacent to State Highway 2 and east of Hayford Road, in Spokane, Washington (the “**Property**”). A legal description of the Property is set forth in Exhibit A.

B. Developer has made application to the City to develop the Property for commercial purposes beginning with an agricultural and outdoor retailer known as "North 40" who will occupy an approximate 80,000 square foot store with adjacent parking (the "**Project**").

C. Developer agrees to construct the Project according to the Applicable Rules (defined herein) to include providing public benefit in accordance with this Agreement.

D. Pursuant to issuance of a Conditional Use Permit by the City of Spokane and a Traffic Impact Analysis (File No. Z17-257CUP3) to permit commercial development on the Property, Developer has agreed to dedicate land for public right-of-way and to construct certain public improvements (the "**Improvements**") in conjunction with the Project, which Improvements will be located between Deer Heights Road and Flint Road on Highway 2 in and around the Property. The Improvements generally include a roundabout (or traffic circle), sidewalks, storm drainage systems, street lighting, and other public improvements at the intersection of Deer Heights Road and Highway 2, further defined in Exhibit B. Developer will dedicate right-of-way for the future construction of W 12<sup>th</sup> Avenue, and right-of-way necessary to construct the roundabout, as described in Exhibit A-1 (the “**Right-of-Way Dedications**”).

E. Developer and the City acknowledge construction of Improvements and Right-of-Way Dedications will: (i) support the development of the Property, (ii) promote economic development as contemplated by RCW 35.21.703, (iii) encourage further private development to include increasing the fair market value of real property within the area, and (iv) is consistent with and carries out the purposes of RCW 36.70B.170. The City has further determined that the Improvements and Right-of-Way Dedications are compatible and consistent with the countywide planning policy adopted by the City under RCW 36.70A.210 and the City comprehensive plan and development regulations adopted under chapter 36.70A RCW and Title 17 of the Spokane Municipal Code.

F. Through Spokane Municipal Code Chapter 4.25 and City of Spokane Ordinance No. C-3522, the West Plains/Airport Area Public Development Authority was established for purposes consistent with RCW 35.21.730 through .757 to facilitate the acquisition, construction, development and operation of public benefit projects and improve economic conditions in and around the City and County of Spokane.

G. Development Agreements are specifically authorized by RCW 36.70B.170-.210 as a proper exercise of the City’s police power.

H. Pursuant to RCW 36.70B.200, the City held a public hearing with respect to consideration and approval of this Development Agreement.

NOW THEREFORE, in consideration of the above recitals which are adopted herein by reference, and in consideration of the mutual promises set forth here, the City and the Developer enter into this Agreement.

## **AGREEMENT**

### **I. Definitions.**

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise required:

(a) **“Applicable Rules”** means those provisions set forth in the City of Spokane Comprehensive Plan and Title 17 of the Spokane Municipal Code. Applicable Rules shall not include any requirements set forth in any of the following: the Americans With Disabilities Act, Chapter 19.27 RCW – the State Building Code, and building, fire, plumbing or electrical codes explicitly adopted by the City, and fees (to include utility connection fees) associated with the development of land.

(b) **“Subsequent Project Approvals”** means all Project approvals required by law or City policy after approval of this Agreement to construct the Project including, but not limited to, clearing and grading permits, preliminary and final subdivision approval, binding site plan approval, building permits and occupancy permits (as applicable), as defined by state law and local ordinance.

### **II. Development of the Property.**

(a) **Approval of the Project.** The City of Spokane Hearing Examiner, through findings, conclusions and decision set forth in Hearing Examiner File No. Z17-257CUP3, approved the Project. The City Council acknowledges that the Project, as approved by the Hearing Examiner, is consistent with the City of Spokane Comprehensive Plan and includes appropriate public benefits to the City and the surrounding properties.

(i) **Right to Develop.** During the Term and subject to the terms and conditions of this Agreement, including the reservations of authority set out in Section II(d) herein below, Developer shall have a vested right to develop, construct and repair the Project in accordance with, and to the extent of the Applicable Rules and this Agreement; provided all such development, construction and repair shall be subject to Subsequent Project Approvals. The Project shall remain subject to all Subsequent Project Approvals required to complete the Project. Subsequent Project Approvals shall be made pursuant to the Applicable Rules and this Agreement. Except as expressly set forth herein, this Agreement shall not be construed as a waiver of any of the conditions of development or use of the Property, nor shall this Agreement relieve

Developer from Developer's obligations to comply with rules and regulations applicable to the Property and Developer's development of the same, and to secure such authorizations and permits as may be imposed as a condition of any work being performed on the Property. Provided, further, the parties agree, as provided for in RCW 36.70B.170(4), that the City reserves the authority, regardless of the definition of Applicable Rules in this Agreement, to impose new or different regulations during the term of this Agreement to the extent required by a serious threat to the public health and safety.

(b) Developer Covenants and Agreements. Developer hereby covenants and agrees to the following:

(i) Development Approval. Developer shall obtain all required permits prior to commencing construction of the Project.

(ii) Public Benefits. As part of the Project, Developer will make significant public dedications (including without limitation the Right-of-Way Dedications) and investment in roads and public infrastructure to include utilities and other improvements, all of which will provide a public benefit to residents and visitors.

(iii) Acknowledgement. Developer voluntarily enters into this Agreement.

(c) Changes to Project and Amendments. Any Subsequent Project Approval involving a change or amendment of the Project that does not create new environmental impacts not evaluated in the DNS, all as set forth in Chapter 197-11 WAC, shall not require an amendment to this Agreement and shall be subject to the Applicable Rules. Any Subsequent Project Approval involving a change or amendment of the Project that may have a probable significant adverse environmental impact not evaluated in the DNS and not covered by the range of alternatives and impacts analyzed in the DNS, shall be subject to further environmental review.

(d) Reservations of Authority. Notwithstanding any other provision of this Agreement, the following shall apply to the Development of the Property, provided however, that nothing in this Agreement shall diminish Developer's rights for vesting by submission of a complete building permit application pursuant to RCW 19.27.095.

(i) Procedural regulations which are not substantive relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

(ii) Regulations governing construction standards and specifications as follows: the Washington State Building Code, Uniform Plumbing Code, National Electrical Code, and International Fire Code as may be amended except as they relate to standards modified by the City in the Approval.

(iii) Taxes, fees or assessments (including mitigations fees) which apply uniformly throughout the City or within a defined area of benefit which includes the Property.

(e) Transportation Impact Fees. Pursuant to the April 5, 2018 letter from the City Planning and Development Department (attached as Exhibit B) the Developer will be entitled to a credit against future impact fees for right-of-way dedicated to the City of Spokane as identified in the City Comprehensive Plan or other programs, policies and standards of the City. The manner and method of providing credit for the City Transportation Impact Fee shall be as set forth in Spokane Municipal Code Chapter 17D.075 and RCW Chapter 82.02.

### III. Term.

This Agreement shall commence on the Commencement Date and shall be deemed terminated and of no further effect upon the occurrence of (i) mutual agreement of the parties, or (ii) ten (10) years from the date of execution of this Agreement by all the parties hereto, or (iii) upon the nonoccurrence of any of the matters set forth in Section VII(i) herein below, in which case the City shall have no financial responsibility or liability under this Agreement whatsoever.

### IV. Financing of the Improvements.

The Improvements will be financed, in part, through payment by the City, in an amount not to exceed \$1,500,000.00 ("**NTE Amount**"), unless mutually adjusted by the Parties on the Commencement Date per section VII(i) of this agreement, with the actual payment amount based upon the costs shown in Developer's invoices submitted to the City, subject to the NTE Amount. In no case shall the NTE Amount exceed \$1,500,000.00 unless mutually agreed to in writing by the Parties.

### V. Design and Construction of Improvements.

(a) To facilitate the Project, Developer shall dedicate the public Right-of-Way described in Exhibit A-1 and cause the Improvements set forth in Exhibit B-1 to be constructed, subject to the provisions of this section II. The description of the Improvements and Right-of-Way will be adjusted and agreed to by the Parties on or prior to the Commencement Date (defined in Section VII(i)), and Exhibits A-1 and B-1 may be replaced at that time.

(b) Developer shall cause the Improvements to be completed, in their entirety. The costs of the Improvements include but are not limited to costs of design, construction, permitting (which includes inspection and review fees from the City and WSDOT), insurance, bonds, professional fees (including attorney fees) and other reasonable costs incurred in the performance of this Agreement. Developer shall dedicate the Right-of-Way and complete construction of the Improvements no later than \_\_\_\_\_, or such other date

agreed to by the Parties on or before the Commencement Date. The City shall not be responsible for design, construction, permitting and any other costs with respect to the Improvements in excess of the NTE Amount determined by the Parties and inserted in Exhibit B-1 on or before the Commencement Date.

(c) Developer shall engage engineers or other professionals to design the Improvements in a manner consistent with the procedures and requirements set forth in Chapter 39.80 RCW. See Exhibit C. With respect to the Improvements to be transferred to the City upon their completion and acceptance, Developer shall provide an opportunity for the City to review and comment on those proposed designs prior to formal submission for administrative approval. With respect to Improvements to be transferred to the Washington State Department of Transportation (“WSDOT”), upon their completion and acceptance, City shall provide an opportunity for WSDOT to review and comment on the relevant proposed designs prior to formal submission to each of those entities for administrative approval. Developer shall submit proposed designs to the City for administrative review and approval by officials designated by the City, and to WSDOT officials designated by each of those entities.

The administrative review shall be for the purpose of determining if the designs meet or exceed applicable City and WSDOT design standards; provided, however, that City and WSDOT administrative approval of designs shall not be construed to subject the City and WSDOT to any liability to the Developer or any third party for defects in design. The City shall issue administrative decisions approving, denying or requesting modification of the proposed designs within twenty-one (21) calendar days after submission or those designs shall be conclusively deemed approved. In the event of administrative denial or request for modification, the City shall specify the basis for the decision and the Parties shall timely, diligently, and in good faith, attempt to resolve the matter expeditiously. Developer shall develop a process and timeline for the review of designs by WSDOT. The City shall assist Developer in working out the review processes and timelines for the City and WSDOT.

(d) Developer shall use its reasonable business judgment, as it deems appropriate, in bidding, awarding and performing the work associated with the Improvements. All subcontractors (or a general contractor in lieu of multiple subcontractors) awarded a contract for work performed on the Improvements shall be selected by Developer or by a project manager on Developer’s behalf, through a competitive bidding process with all qualified bids considered, which process shall be substantially similar to that used by the City for public works bidding, consistent with chapter 39.04 RCW. See Exhibit C. As a condition of the City’s liability for or payment of any costs associated with the Improvements pursuant to this Agreement, payment for all labor in connection with the Improvements shall be on the basis of the State Prevailing Wage for each appropriate job classification. Developer shall pay or cause to be paid to all workers, laborers and mechanics employed to perform the construction of the Improvements not less than the prevailing rates of wages, as may then be determined by the Washington State Department of Labor and Industries for the particular craft in the particular geographic area. All payments for labor will be based on approved Affidavit of Wages Paid. Developer and any of its contractors/subcontractors involved in constructing the

Improvements shall, as a condition of the City's payment for any costs associated with the Improvements, comply with the following: Developer and all contractors and subcontractors will submit a "Statement of Intent to Pay Prevailing Wages" certified by the industrial statistician of the Department of Labor and Industries, prior to any payments and each voucher claim submitted by a contractor or subcontractor for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the "Statement(s) of Intent to Pay Prevailing Wages" on file with the City. Upon completion of the Improvements, the contractor and subcontractors must submit an "Affidavit of Wages Paid" certified by the industrial statistician.

In all contracts for the Improvements, Developer shall require contractors, or the general contractor and its subcontractors, to maintain all project information, records, and documents for a period of not less than six years from the date of Developer's final acceptance of the work, and the City shall have a right to direct audit of such information, records, and documents.

(e) Developer shall obtain payment and performance bonds to, respectively, guarantee payment of laborers, suppliers, materialmen, taxes and penalties and performance of the Improvements as generally set forth in RCW Chapter 39.08 (the "**Bonds**"). The Bonds shall be issued in an amount equal to the agreed amount to be paid for the Improvements and list as obligees both the City of Spokane and North 40, a \_\_\_\_\_ ("**Obligees**"). In the event of a default (defined herein) by the Developer (including its contractor retained to construct the Improvements), Obligees may execute on the Bonds for the purpose of paying amounts due pursuant to RCW 39.08.010 and causing the Improvements to be completed using the bond proceeds and any other funds available to the City pursuant to this Agreement.

(f) Subject to the terms and conditions of this Agreement, Developer may invoice the City for progress payments representing the costs of design and construction of the Improvements on a monthly basis. Invoices shall be sent to the City address indicated in Section VI, below, or at such other address that the City specifies. Each application for a progress payment shall (i) describe the work performed, (ii) certify that the work has been performed consistent with the applicable required specifications of the public entity that ultimately will accept ownership of the Improvements, and (iii) certify that prevailing wages have been paid and demonstrate compliance with the paragraph (d) above. Each progress payment shall be made only upon the City Chief Executive Officer's approval, which shall be made within thirty (30) days of receiving an invoice from the Developer. The construction of the Improvements in public rights of way on public property or within easements granted to governmental entities is subject to the provisions of chapter 60.28 RCW. The City shall treat those retained amounts as a trust fund for the protection and payment of claims and taxes as set forth in RCW 60.28.011. The amounts so retained by the City shall be later released to Developer consistent with RCW 60.28.011.

(g) Upon acceptance by the City, and payment to Developer of the actual costs associated with the Improvements, Developer shall deliver or cause to be delivered to the City and WSDOT, two complete sets of "as-built" drawings with respect to the Improvements to

be transferred. Developer shall also provide such bills of sale or other documents as are appropriate to ensure the transfer to the City and WSDOT, of the Improvements constructed by Developer. Upon acceptance by each governmental entity, the Developer shall dedicate or convey to the City and to WSDOT (i) applicable rights of way on property owned by the Developer for streets or sidewalks, and (ii) easements for all utility and other Improvements that are transferred to the respective governmental entity but which have been constructed on or across property owned by the Developer. The Parties shall agree upon the form and content of the documents to convey the necessary real property rights. Thereafter, the Improvements shall be available for use by the Developer, and any tenant, purchaser, occupant, assignee or transferee of the Property, without payment or reimbursement of any Improvement costs.

(h) Upon completion of the Improvements, Developer shall provide the City an accounting of the actual costs associated with the Improvements in a form determined by Developer consistent with its cost accounting practices and approved by the City as compatible with the requirements of the Washington State Auditor for audit purposes. The City shall within thirty (30) calendar days after receipt of the cost accounting, notify Developer in writing whether the City accepts, denies or requests modification of the accounting; providing, however, that in the event Developer does not receive a timely written response from the City within such time, then the actual costs associated with the Improvements shall be conclusively deemed accepted and approved. In the event the City refuses to accept any portion of the Improvements or denies or requests modification to the accounting, the City shall specify the basis for the decision and the City and Developer shall timely, diligently, and in good faith, attempt to resolve the matter expeditiously. In the event that on the date designated for payment and reimbursement there is not resolved and if within ninety (90) calendar days of City receipt of notification there remain unresolved any issues relating to actual costs, then the City shall pay to Developer the actual costs requested by Developer for the Improvements less the amounts unresolved, which shall be placed in an interest bearing escrow set aside account designated by Developer. The amount in dispute shall then be submitted to binding arbitration, using the services and subject to the rules of the Judicial Arbitration and Mediation Service. If an arbitrator determines that Developer prevails in the accounting dispute, Developer shall be entitled to immediate disbursement of the escrow set aside and interest accrued therein, in the amount determined by the arbitrator.

(i) Indemnification. Developer shall indemnify, defend, and hold the City, its officers, agents, and employees harmless from all loss and liability for any claim by any person, or for any injury or property damage resulting from, or by reason of, this Agreement and/or the development and construction of the Improvements, unless caused directly or indirectly by the City's negligence or intentional misconduct.

To the extent necessary to enforce Developer's indemnification obligations hereunder, Developer hereby agrees to waive immunity under Title 51 RCW. This provision has been specifically negotiated.

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Developer's Initials

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City's Initials

(j) **Insurance Requirements.** Developer shall procure and maintain the insurance described in the subsections below from the commencement of Developer's construction of the Improvements through the final completion and acceptance date of the Improvements by the City and WSDOT:

(i) **Builders All Risk Comprehensive Coverage.** Developer shall purchase and maintain Builders Risk insurance covering interests of the City, WSDOT and the Developer in the Improvements. Builders Risk insurance shall be on an "all-risk" policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood, earthquake, theft, vandalism, malicious mischief and collapse. The Builders Risk insurance shall include coverage for temporary buildings; debris removal; damage to materials in transit or stored offsite; mechanical or electrical breakdown/failure; loss of occupancy or business interruption costs; and, damage to electrical apparatus from electrical currents. Such insurance shall cover "soft costs" including but not limited to design costs, licensing fees, and architect's and engineer's fees. Builders Risk insurance shall be written in the amount of the completed value of the Improvement. The Builders Risk insurance shall be maintained until final acceptance of the Improvements. Developer and the City waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by Builders Risk insurance or other property insurance applicable to the Improvement. The policies shall provide such waivers by endorsement or otherwise.

(ii) **Commercial General Liability.** Developer shall carry Commercial General Liability insurance which shall be written on coverage forms at least as broad as ISO occurrence form CG 00 01, including but not limited to liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit, using ISO form CG 25 03 05 09 or an equivalent endorsement. Developer shall maintain Commercial General Liability insurance regarding the Improvements and their operations for at least three years following Substantial Completion of the Improvements. Such policy must provide the following minimum limits:

- \$5,000,000 Each Occurrence
- \$5,000,000 General Aggregate
- \$5,000,000 Products & Completed Operations Aggregate
- \$1,000,000 Personal & Advertising Injury each offense
- \$1,000,000 Stop Gap/ Employers' Liability each accident



(iii) Automobile Liability. Developer shall carry Commercial Automobile Liability insurance that provides coverage for owned, non-owned, hired, and leased vehicles; and shall be written on a coverage form at least as broad as ISO form CA 00 01. If the Improvement involves the transport of pollutants, the automobile liability policy shall include MCS 90 and CA 99 48 endorsements. Such policy must provide the following minimum limit:

- \$1,000,000 Combined single limit each accident

(iv) Workers' Compensation. Developer shall comply with Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

(v) Insurance Policies. Insurance policies required herein:

(aa) Qualifications. Shall be issued by companies authorized to do business in the State of Washington with the following qualifications:

- The insurance companies providing the required coverage must be rated no less than "A-VII" with the latest edition of A. M. Best's Key Rating Guide.
- All insurance policies, with the exception of Workers' Compensation and of Builder's Risk shall name the following listed entities as additional insured(s) using the forms or endorsements required herein:
  - The City, its officers, elected officials, employees, agents, and volunteers; and
  - The Developer, its officers, agents and employees.
- The policies shall be issued as primary and non-contributory policies; provided, however, that the City, the Developer, Developer, and general contractor(s) and subcontractors, may be insured under one (1) or more blanket insurance policies, which shall be permitted and acceptable. Any insurance, self-insurance or self-insured risk pool coverage maintained by the City shall be in excess of Developer's insurance and shall not be contributory.
- Developer shall cause each subcontractor of every tier to provide insurance coverage that complies with all applicable requirements of Developer-provided insurance as set forth herein, except Developer shall have sole responsibility for determining the limits of coverage required to be obtained by subcontractors.

(bb) Attachments. To the extent reasonably available from insurers, each such policy or certificate of insurance mentioned and required in this Section shall have attached thereto:

- An endorsement to the effect that the insurance, as to anyone insured, shall not be invalidated by any act or neglect of any other additional insured.
- An endorsement pursuant to which the insurance carrier waives all rights of subrogation against the Parties.
- An endorsement pursuant to which such insurance is primary and noncontributory for those obligations imposed in this Agreement.

(cc) Verification of Coverage. Developer shall deliver to the City a Certificate(s) of Insurance and endorsements for each policy of insurance meeting the requirements set forth herein prior to the commencement of the construction of any Improvements. Failure of the City to demand such verification of coverage with such insurance requirements or failure to identify a deficiency from the insurance documentation provided shall not be construed as a waiver of Developer's obligation to maintain such insurance. The Certificate(s) of Insurance shall clearly indicate the insurance and the type, amount, and classification required.

(dd) Cancellation. Cancellation of any insurance or nonpayment by Developer of any premium for any insurance policies required by this Agreement shall constitute an event of default under the terms of this Agreement.

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

## VI. Notices.

All notices under this Agreement shall be in writing and shall be effective when personally delivered, 48 hours after deposit in the United States mail first-class, as registered or certified mail, postage prepaid, return receipt requested, or by electronic communication with proof of delivery to the following representatives of the Parties at the addresses indicated below:

To Developer:

Flamingo Links, LLC  
Attn: Daniel Kuney  
120 North Ralph Street

Spokane, WA 99202  
Email: DKuney@maxkuney.com

To City:

City of Spokane  
Attn: Gavin Cooley  
808 W Spokane Falls Blvd  
Spokane, WA 99201

Copy to: City Attorney's Office  
808 W Spokane Falls Blvd  
Spokane, WA 99201

To WSDOT:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any of the Parties may change its address by giving notice in writing to the other Parties.

VII. Additional Provisions.

(a) Entire Agreement. This Agreement is complete and sets forth and contains the entire understanding and agreement of the Parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

(b) Amendments. The provisions of this Development Agreement contained in this Agreement may only be amended in writing signed by the City, Developer, and the Developer.

(c) Dispute Resolution. In the event of a dispute among any of the Parties regarding matters under this Agreement, each Party shall give written notice of its concern(s) to the other Party. The Parties shall timely, diligently, and in good faith, attempt to resolve the matter expeditiously. In the event that the relevant concerns are not resolved within thirty (30) calendar days from the original written notification (or such other time period agreed to by the Parties), the dispute may then be resolved through litigation in a court of competent jurisdiction.

(d) Recordation of Agreement. This Agreement and any amendment or termination to it shall be recorded with the Spokane City Auditor.

(e) No Third Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

(f) Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and shall constitute one and the same instrument.

(g) Non-Enforcement not Waiver. Failure by any one of the Parties to enforce this Agreement or any provision of it with regard to any provision contained herein shall not be construed as a waiver by that party of any right to do so. All remedies afforded in this Agreement or at law, except as provided herein to the contrary, shall be taken and construed as cumulative that is, in addition to every other remedy provided herein or by law.

(h) Authority. The undersigned covenant and represent that they are fully authorized to enter into and to execute this Agreement.

(i) Commencement Date. The Commencement Date is the date, not later than October 1, 2018, or such other date agreed to by the Parties in writing, on which: (i) the Parties confirm in writing the final description of the Improvements, which is anticipated to be when the design/engineering documents are thirty percent (30%) complete; (ii) the Parties agree to a specific amount of total costs to be borne by the City, which in no case shall exceed the NTE Amount unless the Parties mutually agree in writing to increase the NTE Amount by up to twenty-five percent (25%) after a mutual determination by the Parties that the construction of the Improvements cannot be reasonably completed within the NTE Amount; (iii) Developer confirms in writing to the City and WSDOT that it has acquired all necessary right-of-way and received all permits material to its ability to commence construction of the Improvements; and (iv) the Parties agree to a completion date. Within ten (10) days of the Commencement Date, the Parties shall modify Exhibit B to conform with the matters set forth in this Section IV(i). The modification shall be signed by the City's Chief Executive Officer and the Developer's authorized representative.

(j) Venue. This Agreement has and shall be construed as having been made and delivered in the state of Washington and the laws of the state of Washington shall be applicable to its construction and enforcement. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provision hereto shall be instituted only in the courts of competent jurisdiction within Spokane City, Washington.

(k) Relationship of Parties. It is understood and agreed by the parties hereto that the contractual relationship created between the parties hereunder is that Developer is an independent contractor and not an agent of City. Nothing contained herein or in any document executed in connection herewith shall be construed as making City and Developer joint venturers or partners.

(l) Covenants Run With the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law. Each covenant to do or refrain from doing some act on the Property hereunder, (a) is for the benefit of such properties and is a burden upon the Property, (b) runs with the Property, and (c) is binding upon each successive owner during its ownership of Property or any portion thereof, and each person having any interest therein derived in any manner through any owner of the property or any portion thereof, and shall benefit such party and the Property hereunder, and each other person succeeding to an interest in such Property.

(m) Nondiscrimination. No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this agreement because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities.

(n) Anti-Kickback. No officer or employee of the Parties, having the power or duty to perform an official act or action related to this agreement, shall have or acquire any interest in this agreement, or have solicited, accepted or granted a present or future gift, favor, service, or other thing of value from or to any person involved in this agreement.

(o) Events of Default; Remedies.

(i) Events of Default. Upon the occurrence of any one or more of the following events which shall continue and not be cured in accordance with the notice and opportunity to cure provisions set forth in this Section, the non-defaulting Party may, at its option, declare an "Event of Default" under this Agreement:

(aa) A Party fails to comply with any term or fails to perform any of its obligations under this Agreement and such failure has a material adverse effect on completion of the Improvements or creates a material risk of injury to person or damage to property;

(bb) A Party fails to comply with any term or fails to perform any of its obligations under this Agreement, where such failure is not within the terms

of Section 8.1(a) above, and continues for a period of ten (10) days after written notice from the non-defaulting Party;

(cc) if any representation or warranty made by a Party in this Agreement shall have been false or misleading as of the day it was made, provided that if such untrue representation or warranty is susceptible of being cured, the Party shall have the right to cure such representation or warranty within ten (10) days of receipt of notice from the non-defaulting Party;

(dd) any governmental approvals (including the appropriation of funds) or permits required to perform the Improvements expire or otherwise are not in full force and effect.

(ii) Events of Default. If a Party fails to comply with any term or fails to perform any of its obligations under this Agreement for a period of ten (10) days after written notice from the non-defaulting Party, an Event of Default may be declared under this Agreement.

(iii) Cure. If a default subject to a cure period hereunder is not reasonably susceptible of cure within the applicable cure period provided above, but the defaulting Party commences to cure such default within the applicable cure period and thereafter diligently prosecutes the cure to completion and completes such cure within fifteen (15) days of commencing the cure, such default shall not become an Event of Default.

(iv) Remedies. Upon the occurrence of any Event of Default, the non-defaulting Party shall, in addition to other rights as shall be granted under any other provision of this Agreement, but without waiving such other rights, (a) perform any and all work necessary to complete, secure and/or protect the Improvements, (b) bond or discharge any lien upon such property not bonded or discharged by the defaulting Party as required hereunder, (c) specifically enforce the defaulting Party's unperformed obligations through a court with competent jurisdiction, and (d) exercise all rights and remedies available at law or in equity through a court with personal and subject matter jurisdiction.

(p) Attorney Fees. In any action, except for mediation, brought under this Agreement, the prevailing party shall be entitled to recover in addition to any other amounts awarded, its reasonable attorney fees and costs of action as determined by a court with jurisdiction over the subject matter of the dispute.

(q) Forced Delay. Performance by either Party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to: war, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of terror, unforeseeable delays not caused by a

party, general governmental restrictions, regulations, orders or priority, unusually severe weather, breach of this Agreement by the other Party, or acts or failures of a governmental authority to act after diligent best efforts to cause the governmental authority to act. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within fifteen (15) days of the commencement of the cause. In the event the time for performance of a Party's obligation is extended under this section, the Parties shall reasonably and in good faith cooperate to minimize the duration of the extension.

AGREED by the Parties to this Agreement on the dates indicated below:

CITY OF SPOKANE

\_\_\_\_\_  
David A. Condon, Mayor

ATTEST:

\_\_\_\_\_  
Terri Pfister, City Clerk

( S E A L )

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney

DEVELOPER FLAMINGO LINKS, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

FLINT 2 PROPERTIES, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

**EXHIBIT A**

**The Property and Project**



## **EXHIBIT A-1**

### **Descriptions of Right-of-Way Dedications**

The northern 65 feet of 19-25-42: S1/2 OF SE1/4 EXC S825FT THEREOF; ALSO EXC W65FT THEREOF; ALSO EXC E30FT FOR FLINT RD, situated in City and County of Spokane, State of Washington, Tax Parcel 25194.9065

## **EXHIBIT B**

April 5, 2018

Dwight Hume  
Land Use Solutions and  
Entitlement 9101 N Mt.  
View Lane  
Spokane, WA 992178



Dear Dwight:

The following comments were submitted on your revised application materials for the Ag/Retail Building at Hwy 2 and Deer Heights Rd, (Z17-257CUP3). No additional corrections are required to proceed with the application process; these comments will become recommended conditions of approval of the Conditional Use Permit.

### **City of Spokane Planning – Ali Brast**

1. A boundary line adjustment will be required prior to the submittal of any building permit applications.

### **City of Spokane Traffic – Inga Note:**

1. The developer has agreed to a voluntary mitigation project at US 2/Deer Heights. A two-lane roundabout will be constructed at the intersection and the City of Spokane has agreed to reimburse the developer for a portion of the roundabout cost. The details of this arrangement will be provided in a separate development agreement.
2. West Plains Impact Fees are anticipated to be adopted in early summer 2018. Any building permits submitted after adoption will be subject to these fees.
3. The traffic study shows that the intersection of US 2/Flint Road and US 2/Hayford Road will fall below acceptable levels of service in the future. The long term plan for maintaining acceptable level-of-service on US 2 requires construction of alternative routes paralleling the highway. The 12<sup>th</sup> Avenue route is in place between Hayford Road and Deer Heights Road, but the remaining segment will be needed between Deer Heights and Flint Road. Once complete, this connection will draw some of the local traffic away from US 2 and allow the intersection level-of-service to stay within an acceptable range. The traffic study assumes that 12<sup>th</sup> Avenue has been constructed with later phases of the development and that traffic from project site will use it.

Map TR 12 in the City's Comprehensive Plan identifies 12<sup>th</sup> Avenue between Deer Heights and Flint Road as an Urban Major Collector. The developer shall dedicate 65' of right-of-way along the northern boundary of parcel 25194.9065 for the future 12<sup>th</sup> Avenue extension. The entire right-of-way must be within the Spokane city limits. The roadway is anticipated to carry two travel lanes, a center turn lane and two bike lanes. Depending on the number and location of access points the design may allow for periodic left turn pockets rather than a continuous center turn lane. Additional width for drainage facilities and sidewalk may be needed on the south side, but can be placed in an easement. The developer will be eligible for a credit against future transportation impact fees for the right-Development Agreement  
{S1678078; 8 }

of-way dedication.

4. The proposed roundabout calls for two entry lanes, one exit lane and one future westbound right bypass lane for the north leg of Deer Heights Road. Map TR 5 of the City's Comprehensive Plan shows that Deer Heights Road will have bike lanes. From US 2 to the south access drive, the curb-to-curb width needs to accommodate two bike lanes, two southbound lanes and two northbound lanes. Additional width may be needed for the splitter island approaching the roundabout and will be determined during the design phase.
5. On Deer Heights Road from the south access drive to 12<sup>th</sup> Avenue, the curb-to-curb width needs to accommodate two bike lanes, one southbound lane, one northbound lane and a center turn lane. The entire roadway right-of-way must be within the Spokane city limits.
6. Additional dedication of right-of-way for the roundabout may be needed from parcel 25194.9064, just outside of the CUP boundary, for street, turn lane and pedestrian connectivity. The amount of needed ROW will be determined through the roundabout design process.
7. Construct a 12' shared-use path along the north side of US 2 along the project frontage. This pathway is included in the City's Comprehensive Plan on Map TR 5 and page 4-67. For this phase of the development the pathway should start at the Lucas Drive access point and continue through the intersection of Deer Heights.
8. All access on site for driveways and travel lanes must be included in the CUP boundary to be completed as part of this development. An agreement will be required for all shared uses between parcels.
9. STA has discussed moving one of their routes to Deer Heights Road once the roundabout is completed. The applicant shall coordinate with STA during the site design process to determine if a bus stop pad should be incorporated into the Deer Heights frontage improvements.

**WSDOT – Greg Figg:**

1. The developer has agreed to a voluntary mitigation project at US 2/Deer Heights. A two-lane roundabout will be designed and constructed by the applicant at the US 2 and Deer Heights Intersection in conformance with the traffic study. The proposed roundabout calls for two entry lanes, one exit lane and one future westbound right bypass lane for the north leg of Deer Heights Road. Right of way dedications may be needed from the property owner for the construction of the roundabout.
2. WSDOT concurs with the City of Spokane's comment #7.
3. WSDOT approves the placement of one private access point on US 2 to be located directly across from Lucas Drive. This access point will allow right-in, right-out, left in but left out movements will be prohibited (additional turning movement restrictions may be imposed at this driveway in the future if needed to maintain the operations of safety of US 2). The developer shall propose channelization on US 2 as part of the design to prevent the left-out movement.
4. WSDOT concurs with the City of Spokane's comment #9.
5. An informational community meeting shall be held prior to the construction of the roundabout to inform the public of the final design, construction timeline, and lane restrictions.

## **EXHIBIT B-1**

### **IMPROVEMENTS**

See attached letter dated April 5, 2018 from the City of Spokane Planning & Development Department.

#### **The following is a general identification of the US-2 Improvements**

- **Roadway**
  - Multi-lane roundabout, as shown on the attached Exhibit B-1 at the intersection of Deer Heights Road and Highway 2, built to Washington State Department of Transportation standards. The new roadway will consist of new asphalt pavement and asphalt overlay.
  - Concrete truck apron around the central island and concrete curbing on the roadway.
  - The central island will be landscaped with drought-tolerant plants unless the City requests more expensive landscaping.
  - Given that the project is at the City limits, the City may direct Developer to install “Welcome to Spokane” or other signage as part of the Improvements, with the City providing design and specifications.
  - The approach legs will include splitter islands. Within the splitter islands, the area nearest the roundabout will be hardscaped where the remaining areas will be landscaped with drought-tolerant plants.
  - All landscaped areas with the central and splitter islands are to include temporary irrigation system for plant establishment.
  - Multi-Use sidewalk for pedestrian and bicyclist use.
  - All curb ramps will be ADA compliant.
  - Bicycle facilities to include a bicycle lane in some locations, and the multi-use sidewalk in some locations.
  - Channelization and signage for the proposed roundabout.
  - Illumination, as needed for the proposed roundabout.
- **Stormwater**
  - Conveyance systems consisting of catch basins (both Type 1 and 2).
  - Flow Control and water quality facilities will include an infiltration pond and bio-infiltration ponds.
  - Bio-infiltration swales as well as tiered bio-infiltration swales along both sides of the roadway within the landscape strip.
  - Tiered bio-infiltration swales to include check dams spaced every 50-feet.
  - Curb Inlet Type 1 to divert road runoff into the bio-infiltration swales.
  - Drywell Type B will be placed at all swale low spots.
  - Additional conveyance to include catch basin Type 1 as necessary.
- **Utilities**
  - Relocation as required.

**Deer Heights Road** - necessary modifications to accommodate the roundabout and its turn lanes / south of the southern-most driveway; work required on Deer Heights north of the turn lanes / south of the southern-most driveway is not considered part of the Improvements.

**NTE Amount:** \_\_\_\_\_.

**Completion Date:** \_\_\_\_\_.

## **EXHIBIT C**

### **PROCUREMENT PROCESS SUMMARY**

1. **Selection of Engineering Team.**

(a) Developer shall obtain engineering services from persons and firms through a written request that describes the general scope and nature of the Improvement. The request shall seek Statement of Qualifications/Proposals ("**Proposals**") for the engineering services. The Developer shall evaluate the Proposals submitted by firms, conduct discussions with one or more firms regarding the required services, and select the most highly qualified firm.

(b) Developer shall retain the selected firm to prepare design documents for the Improvements.

2. **Construction Services.**

(a) The Developer shall interview general contractors with experience in constructing the Improvements. The Developer based upon the interview and other relevant considerations shall retain a general contractor to perform the requested work.

(b) Following completion of the design documents, the general contractor shall solicit bids from subcontractors to construct the Improvements. Subcontractors who submit the lowest responsible bids, based upon the reasonable discretion of the contractor, shall be selected for the work. The general contractor may self-perform work provided the general contractor provides the work at costs equal to or below amounts received from subcontractors.

3. **Prevailing Wages and Retainage.**

Prevailing wages shall be paid laborers and a 5% retainage shall be withheld from the NTE Amount according to state law.

## Briefing Paper (Urban Experience Committee)

<b>Division &amp; Department:</b>	Planning & Development
<b>Subject:</b>	Amending Ordinance C34117 to release a portion of the easement
<b>Date:</b>	July 9, 2018
<b>Contact (email &amp; phone):</b>	Eldon Brown ( <a href="mailto:ebrown@spokanecity.org">ebrown@spokanecity.org</a> ) 625-6305
<b>City Council Sponsor:</b>	
<b>Executive Sponsor:</b>	Dawn Kinder
<b>Committee(s) Impacted:</b>	Public Infrastructure & Environmental Sustainability
<b>Type of Agenda item:</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
<b>Alignment:</b> (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	Section 17G.080.020 of the Spokane Municipal Code and Chapter 35.79 of RCW regarding street vacations.
<b>Strategic Initiative:</b>	
<b>Deadline:</b>	
<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	Precedes taking this to City Council to amend the original ordinance.
<b>Background/History:</b> In 2008 the City of Spokane vacated the alley in this block and reserved an easement for CenturyLink, Avista, and Comcast. The Inland Group is working with Catholic Charities to build a new low-income apartment complex at this location and would like to release a portion of the easement so they can place the building across it.	
<b>Executive Summary:</b> <ul style="list-style-type: none"> <li>Selling this right-of-way to the applicant by vacation petition, if approved, would generate \$12,040.74.</li> <li>Utility easements are to be reserved over a portion of the right-of-way.</li> <li>Map of the proposal area attached</li> </ul>	
<b>Budget Impact:</b> Approved in current year budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A Annual/Reoccurring expenditure? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A If new, specify funding source: Other budget impacts: (revenue generating, match requirements, etc.) Revenue Generating	
<b>Operations Impact:</b> Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Requires change in current operations/policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	

Specify changes required:  
Known challenges/barriers:



## BRIEFING PAPER

### Spokane City Council – Urban Development Committee Resolution: Nuclear Weapons-Free Community and Annual Day of Remembrance July 9, 2018

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This resolution would declare that the City is a nuclear weapons-free community and establish an annual day of remembrance for the City of Spokane to reflect on the atomic bombing of two cities in Japan – Hiroshima and Nagasaki – in August of 1945.

Recently, the Bulletin of the Atomic Scientists updated its “Doomsday Clock” graphic to portray nuclear apocalypse (midnight) to show how close we are to nuclear conflict. The clock, is moved or left in place at the direction of the Bulletin’s Science and Security Board in consultation with its Board of Sponsors, which includes 15 Nobel laureates. The clock is now at 2 minutes to midnight – the closest it has been to midnight since 1953.

Although the Cold War is over, the threat of nuclear proliferation continues, as shown by the events of recent years in Iran and North Korea.

Even a *limited* nuclear exchange anywhere in the world would create catastrophic human, environmental, and economic consequences globally, the health and environmental impacts of nuclear weapons use and production disproportionately harm indigenous people, low-income populations, and minorities. In our own area, the Spokane Tribe of Indians has seen extremely negative impacts due to uranium mining, and Hanford down-winders have been affected by nuclear weapons production and clean-up.

Almost 30 other American communities have declared to the world that they are nuclear weapons-free communities. As a part of that declaration, it is important that the City call upon our Congressional delegation and our nation as a whole to ensure that the United States signs and ratifies the Treaty on the Prohibition of Nuclear Weapons, passed by the United Nations on July 7, 2017.

This resolution would also establish August 6 of each year as “Hiroshima and Nagasaki Remembrance Day,” as a day to solemnly remember the atomic bombing of those two cities on August 6 and 9, 1945, and to express our solidarity with the Japanese people.

ORDINANCE NO C35641

An ordinance amending Ordinance No. C-35565, passed by the City Council December 11, 2017, and entitled, "An ordinance adopting the Annual Budget of the City of Spokane for 2018, making appropriations to the various funds, departments, and programs of the City of Spokane government for the fiscal year ending December 31, 2018, and providing it shall take effect immediately upon passage", and declaring an emergency.

WHEREAS, subsequent to the adoption of the 2018 budget Ordinance No. C-35565, as above entitled, and which passed the City Council December 11, 2017, it is necessary to make changes in the appropriations of the General Fund, which changes could not have been anticipated or known at the time of making such budget ordinance; and

WHEREAS, this ordinance has been on file in the City Clerk's Office for five days; - Now, Therefore,

The City of Spokane does ordain:

Section 1. That in the budget of the General Fund, and the budget annexed thereto with reference to the General Fund, the following changes be made:

FROM:	0100-99999-99999	General Fund	
	<b>28860-99999</b>	<b>Unappropriated Reserves</b>	<u>\$ 928,924</u>
TO:	0020-88100-14230	Non-Departmental	
	<b>54201</b>	<b>Contractual Services</b>	<u>\$ 232,231</u>
	0100-99999-99999	General Fund	
	<b>28660-20103</b>	<b>Revenue Stabilization</b>	<u>\$ 696,693</u>

Section 2. It is, therefore, by the City Council declared that an urgency and emergency exists for making the changes set forth herein, such urgency and emergency arising from the **need to pay the City's Tax Auditing firm for services provided and increase the amount held in the General Fund's revenue stabilization budget toward full funding**; and because of such need, an urgency and emergency exists for the passage of this ordinance, and also, because the same makes an appropriation, it shall take effect and be in force immediately upon its passage.

Passed the City Council \_\_\_\_\_

\_\_\_\_\_  
Council President

Attest: \_\_\_\_\_  
City Clerk

Approved as to form: \_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Effective Date

## Briefing Paper

### Urban Experience Committee

<b>Division &amp; Department:</b>	Neighborhood & Business Services, Development Services Center
<b>Subject:</b>	Property Maintenance Code (PMC)
<b>Date:</b>	July 9, 2018
<b>Author (email &amp; phone):</b>	Alicia Ayars, <a href="mailto:Aayars@spokanecity.org">Aayars@spokanecity.org</a> 625-6780
<b>City Council Sponsor:</b>	Karen Stratton & Kate Burke
<b>Executive Sponsor:</b>	Kris Becker
<b>Committee(s) Impacted:</b>	Urban Experience
<b>Type of Agenda item:</b>	<input type="checkbox"/> Consent <input checked="" type="checkbox"/> X Discussion <input type="checkbox"/> Strategic Initiative
<b>Alignment:</b> (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	Mayor's Housing Quality Task Force Report. Aligns with City of Spokane Strategic Plan, Increase housing quality and diversity.
<b>Strategic Initiative:</b>	Urban Experience
<b>Deadline:</b>	
<b>Outcome:</b> (deliverables, delivery duties, milestones to meet)	Council feedback on the PMC prior to taking to Plan Commission in late July.

#### Background/History:

- In 2016 the Mayor convened a task force to identify recommendations which address improving housing quality and affordability. One of the recommendations was to create a definition and minimum standards for the City of Spokane.
- A stakeholder group convened in early 2017 to develop the recommendation into what is now called the Property Maintenance Code (PMC). Stakeholders included external partners; Center for Justice, Spokane Home Builders, Community Assembly/Neighborhoods, for-profit and non-profit residential developers, Spokane Housing Venture, Washington Tenants Union and the Landlord Association of the Inland Northwest.
- An Advisory Committee was convened in late 2017 which consisted of staff to further refine the code and develop the enforcement process. Staff included; Code Enforcement, Building Department, Legal, Fire and City Council.
- The PMC has undergone public process, briefed at Plan Commission (August & September 2017 and February 2018) and the Urban Experience Committee (early 2018).

#### Executive Summary:

- The Property Maintenance Code (PMC) are minimum maintenance requirements for existing property, buildings and structures.
- The purpose of the code is to establish minimum maintenance standards for basic exterior structure conditions, light, ventilation, occupancy limits, heating, plumbing, mechanical & electrical, sanitation and fire safety.
- PMC to be adopted by end of year 2018 with enforcement to begin January 2019 at the earliest possible date.
- PMC will be enforced by the Code Enforcement Department. Enforcement process will mirror that of current city code violations (i.e. Fire Hazard, Illegal Dumping, Junk Vehicles...Etc.).

#### Budget Impact:

Approved in current year budget? ☐ Yes    ☒ X No

Annual/Reoccurring expenditure? ☐ Yes    ☐ No

If new, specify funding source:

Other budget impacts: (revenue generating, match requirements, etc.) We are evaluating the need for additional resources for enforcement of this code and will bring this forward at the next meeting with Council.

Operations Impact:

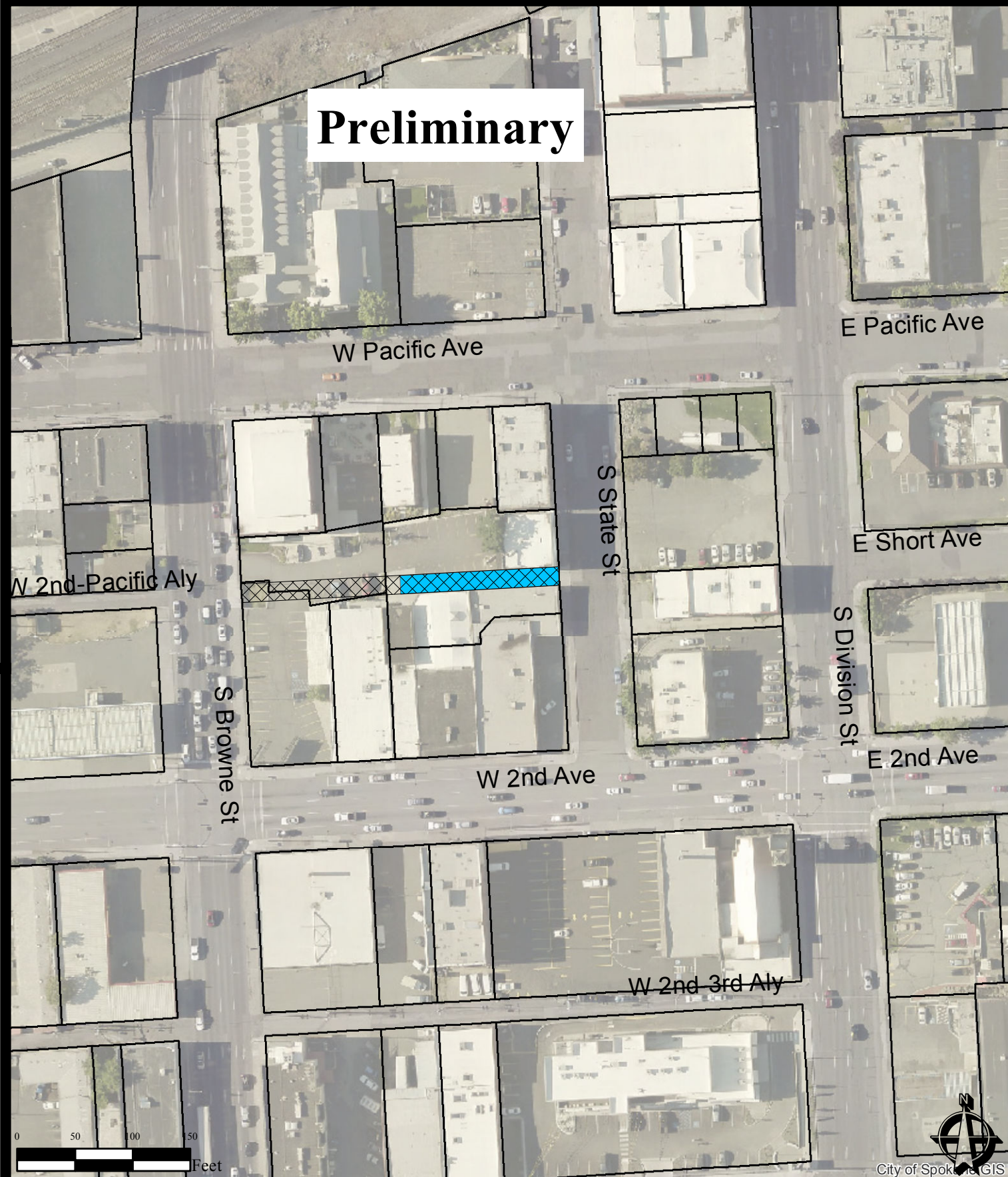
Consistent with current operations/policy? ☐ X Yes ☐ No

Requires change in current operations/policy? ☐ Yes ☒ X No



Specify changes required: Adoption of PMC as a brand new SMC and additional staffing needed.

Known challenges/barriers:

# Preliminary



## Legend

-  Original Easement Reservation
-  Easement Release Area

## The alley between Pacific & 2nd from Browne to State

THIS IS NOT A LEGAL DOCUMENT.  
The information shown on this map is compiled  
from various sources and is subject to constant  
revision. Information shown on this map should  
not be used to determine the location of facilities  
in relationship to property lines, section lines,  
streets, etc.

