

**URBAN EXPERIENCE
COMMITTEE MEETING AGENDA FOR
MONDAY October 11, 2021
10:00 a.m. — Streaming Live Online & Airing on City Cable 5**

The Spokane City Council's Urban Experience Committee meeting will be held at **1:15 p.m. on October 11th, 2021** – Streaming Live Online & Airing on City Cable 5. Council members and presenters will be attending virtually and the meeting will be streamed live at <https://my.spokanecity.org/citycable5/live> and will also air on City Cable 5.

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 physical meeting will not be open to the public and no public testimony will be taken. Discussion will be limited to appropriate officials, presenters, and staff. The public is encouraged to tune in live at the address above.

AGENDA

I. Call to Order

II. Approval of Minutes from September 13th, 2021

III. Discussion Items

A. Staff Requests

- a. [Floodplain Management Update of SMC 17E.030](#)- Amanda Beck (10 min)
- b. [Neighborhood Council Liaison Expectations](#)- Carly Cortright (15 min)
- c. [Sprague District CSO-34 Request for Proposal Process](#)- Teri Stripes (10 min)
- d. [Treasury Rent Assistance Program 2.0 \(T-RAP 2.0\) Grant Acceptance](#)- Margaret Hinson and Kirstin Davis

B. Council Requests

- a. Spokane Arts Quarterly Report- Melissa Huggins, Shelly Wynecoop, and Mike Maloney (10 min)
- b. Update on Centennial Trail Project on Summit- Marlene Feist (10 min)
- c. CHHS Future Plan and Update- Marlene Feist and Eric Finch (20 min)

IV. Standing Topic Discussions

- A. Building Permit/Construction Updates- Kris Becker

V. Consent Items- Briefing Papers Only, No Discussion

- A. [Ordinance Related to the Parking Advisory Committee](#) – Jesten Ray
- B. [Riverpoint Village PUD \(Type III Land Use Application\) Remove Parcel](#)- Tami Palmquist
- C. [New Master Lease and Site Lease Agreement for the Dish Network](#)- Dave Steele
- D. [Finalizing Gonzaga University RW Vacation](#)- Eldon Brown

- E. [MFTE Conditional Agreement NoDo Spokane \(aka Normandie\)](#)- Teri Stripes
- F. [MFTE Conditional Agreement NoDo Spokane \(aka Sinto\)](#)- Teri Stripes
- G. [MFTE Conditional Agreement Broadway Apartments](#)- Teri Stripes

VI. Adjournment

Next Urban Experience Committee meeting will be on Monday, November 8, 2021 at 1:15 pm.

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. 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.

STANDING COMMITTEE MINUTES
City of Spokane
Urban Experience Committee
9/13/21 – MINUTES

Attendance

City Employees: Hannahlee Allers, Giacobbe Byrd, Erik Poulsen, Annica Eagle, CM Candace Mumm, Rick Giddings, CM Lori Kinnear, Teri Stripes, Kris Becker, Amanda Beck, Margaret Hinson, Michael Ormsby, Melissa Morrison, CM Michael Cathcart, Michael Sloon, Sally Stopher, Micaela Martinez, call in, Shauna Harshman, CM Karen Stratton, CM Betsy Wilkerson (left at 2:12pm), CP Breean Beggs, Garrett Jones, James Richman, Tirrell Black, Justin Lundgren, Alexander Gibilisco, Kirstin Davis, CM Kate Burke, Brian McClatchey

Non-City Employees: Mark Richard, Elisabeth Hooker, Fawn Schott

The meeting started at 1:16 pm.

Approval of Minutes:

The August 16th, 2021 meeting minutes were approved.

Agenda Items:

- 1. Pre-Approval of Purchase of Vehicles for City Use- Michael Ormsby**
Over on the purchasing process and timeline. Rick Giddings shared his screen/presentation. With microchip shortages and COVID time frame issues the four week approval process typically takes to long and cars are sold before approved. Presentation looking for ability to pre-approve. Review of purchasing priorities and green options. Looking at challenges for at least the remainder of 2021. CM Kinnear mentioned a conversation needed regarding charging stations and employees taking cars home. CM Cathcart asked about how the vehicle selections were made.
- 2. DSP Quarterly Update- Mark Richard**
Overview of the team and that they have a few open positions, downtown map, finance overview, clean up update, challenges with plants and the heat, First Friday program, mentioned recent and upcoming events, holiday planning, and ended with Q&A.
- 3. Pilot Street Mural Art Painting- Annica Eagle**
Presentation shared with photos, the street mural policy, and overview of the project. CM Mumm asked about clarifying the timeframe for removal or update.
- 4. Purchase of Chevy Tahoe- Justin Lundgren**
Removed from agenda prior to meeting.
- 5. MFTE Conditional Agreement- Millennium Monroe- Teri Stripes**
Overview of the MFTE program, housing options, affordable housing, and some

background. Reviewed current application and property tax calculator. CM Mumm mentioned adding a line for the tax revenue after the tax break.

6. Short Plat Fee Amendment- Amanda Beck

Overview of the short plat options and fees. Discussion on the process and fees.

7. Volunteers of America Crosswalk Capital Campaign Resolution- Melissa Morrison

Melissa did an introduction to Fawn Schott who went over the Crosswalk program and location over by SCC. New program will have 36 beds and focus on kids. For young adults they can work with them for transitional housing and living on their own. CM Stratton commented on the kids who liked the location being out of the downtown core.

8. Resolution Welcoming Refugees from War in Afghanistan- Alex Gibilisco

Background on the program and refugees as well as Americans who went over to fight.

9. Rapid Capital Housing Acquisition RFP Resolution- Melissa Morrison

Overview of housing types and funding. CM Cathcart asked about this item in being reviewed in July regarding Catholic Charities, update on that. CP Beggs clarified this is an RFP and would be approved at a later date.

10. Building Permit/Construction Updates- Kris Becker

Consent Items:

Item H-Cannon St 24 hr. Services Facility CM Kinnear asked for confirmation that it is a 24/7 shelter and not going to transition into a day shelter only. Kirstin responded that is what the contract refers to, she isn't involved in what will happen down the line and hasn't been a part of that process. CM Stratton suggested Kirstin connect CM Kinnear and CM Wilkerson to someone involved with the contract for more information. CM Cathcart had a question on the funding, Sally confirmed that ESG dollars are the funding source. Consent items approved.

Executive Session:

There was no Executive Session.

Adjournment:

The meeting was adjourned at 2:55 pm.

Prepared by:

Danielle Norman

Approved by:

Chair – Karen Stratton

For further information contact: Danielle Norman, 625-6195

Briefing Paper

Urban Experience Committee

| | |
|--|---|
| Division & Department: | Business and Development — Planning Services |
| Subject: | Floodplain Management Update of SMC 17E.030 |
| Date: | July 12, 2021 |
| Author (email & phone): | Amanda Beck; abeck@spokanecity.org ; 509-625-6414 |
| City Council Sponsor: | CM Kinnear |
| Executive Sponsor: | Louis Meuler, Planning Director |
| Committee(s) Impacted: | Urban Experience |
| Type of Agenda item: | <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative |
| Alignment: | RCW 43.21C, RCW 86.16, WAC 197-11, Shaping Spokane Comprehensive Plan Chapter 9. |
| Strategic Initiative: | Urban Experience - River Connection; Innovative Infrastructure - Resiliency. |
| Deadline: | December 31, 2021 |
| Outcome: | Mandated update of Spokane Municipal Code 17E.030. |
| Background and History: <p>Local governments are responsible for managing development in floodplains under the National Flood Insurance Program (NFIP), which is overseen by the Federal Emergency Management Agency (FEMA). The Washington Department of Ecology is the state lead for floodplain management. In December 2019, Ecology revised the state's <i>FEMA Model Ordinance</i> to incorporate new minimum regulations.</p> <p>FEMA's National Flood Insurance Program nationally maps floodplains, outlines federal regulations for management, and provides insurance for buildings within floodplains. FEMA offers insurance to residents in participating communities that agree to enforce minimum NFIP standards. The regulated area is called the Special Flood Hazard Area and this includes the 100 year floodplain and the floodway. There is a 100-year floodplain along Latah Creek and the Spokane River.</p> <p>Amending the Unified Development Code to comply with Ecology changes will achieve:</p> <ul style="list-style-type: none"> • Compliance with the appropriate Code of Federal Regulations (CFR), RCWs, and WACs; • Be consistent with the Comprehensive Plan and City development regulations; and • Allow appropriate use and enjoyment of land within the floodplain while protecting life and property. | |
| Executive Summary: <p>The City-initiated amendment to SMC 17A.020 and 17E.030 is state mandated and proposed amendments focus on compliance with state and federal regulatory changes. Amendments will go through review with Ecology, internal staff, and partner agencies. The City is required to complete an amendment of its floodplain management regulations to comply with state changes by December 31, 2021.</p> | |
| Budget Impact: <p>Approved in current year budget? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Annual/Reoccurring expenditure? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Other budget impacts: Not applicable</p> | |
| Operations Impact: <p>Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Requires change in current operations/policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Specify changes required: Dept. of Ecology review → City Council legislative action.</p> <p>Known challenges/barriers: None.</p> | |

Briefing Paper

Urban Experience Committee

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|---|---|
| Division & Department: | NHHS - ONS |
| Subject: | Neighborhood Council Liaison Expectations |
| Date: | 10/10/21 |
| Contact (email & phone): | Carly Cortright ccortright@spokanecity.org 625-6263 |
| City Council Sponsor: | CP Breean Beggs |
| Executive Sponsor: | Carly Cortright |
| Committee(s) Impacted: | Urban Experience |
| Type of Agenda item: | <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative |
| Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan) | |
| Strategic Initiative: | |
| Deadline: | |
| Outcome: (deliverables, delivery duties, milestones to meet) | |
| <p><u>Background/History:</u></p> <p>Neighborhood Councils are formed under the Spokane City Charter Article VIII Neighborhood Councils and codified in SMC 4.27. There are 29 Neighborhood Councils in the City of Spokane; each has a representative seat on the Community Assembly, develops their own bylaws, and responsibilities defined by the Charter and SMC. Neighborhood Councils are independent organizations, recognized by resolution under SMC 4.27 by the City Council. Each Neighborhood Council is required to have: two points of contact for communication with the City, a set of bylaws on file, operate a democratic process, and allow participation by anyone over the age of 16 and any resident or property owner. Each Neighborhood Council sets their events and their meeting schedules, meeting monthly, bi-monthly, or quarterly, but must meet at least quarterly.</p> <p>Per the Spokane Municipal Code, the Office of Neighborhood Services is to support Neighborhood Councils (NC), but the specific nature of that support is not defined beyond helping NCs and other city departments work together to address issues in the neighborhoods. Traditionally, a staff liaison has been assigned to each NC to support them, including attending their meetings on at least a quarterly basis.</p> <p>Because so many NCs meet the same nights and times, attending each meeting in person is not a viable option. Further compounding this issue, the liaisons average about 10 neighborhoods each they support – with drive time, that’s anywhere from 20-30 hours a month – up to about 20% of their time, which reduces their availability on other projects that support the neighborhoods. Additionally, experience has demonstrated that often the ONS liaison is unable to answer questions at the meeting and instead must track down an answer the following day from the appropriate city department. Finally, the understanding of the role of the liaison varies between NC chairs, which creates confusion and frustration.</p> <p>ONS developed a liaison expectation document that was shared with neighborhood council leadership and sought their feedback for any changes. The expectations document the minimum amount of support ONS will provide – for councils that seek more support, we will make every effort to accomplish this. These minimum expectations include:</p> <ul style="list-style-type: none"> • Provide a monthly report of key items to be aware of, customized by neighborhood | |

- Attend an NC meeting in person at least 3 times per year (once for those who meet quarterly)
- Provide timely response to questions (both throughout the month and following meetings)

ONS will also be sure a member of ONS (if not the liaison) will attend NC meetings if there is an emergent issue

Executive Summary:

- ONS will continue to provide staff support to the independent NCs based on their need
- The NC liaison will provide a monthly summary report of key issues and items relevant to that neighborhood
- At minimum, will attend 3 council meetings in person per year (1 for NCs that meet quarterly)
- Liaisons will still be responsive throughout the month to responding to and resolving issues for NCs

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

| | |
|---|--|
| Division & Department: | Community and Economic Development Services, Planning & ED |
| Subject: | Sprague District CSO-34 Request for Proposal Process |
| Date: | October 11, 2021 |
| Contact (email & phone): | Teri Stripes, tstripes@spokanecity.org |
| City Council Sponsor(s): | Cathcart |
| Executive Sponsor: | Louis Meuler |
| Committee(s) Impacted: | Urban Experience; PIES |
| Type of Agenda item: | <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative |
| Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan) | Comprehensive Plan and Neighborhood Plan |
| Strategic Initiative: | Encouraging Private Investment; Utilization of Public Infrastructure, Infill Development |
| Deadline: | N/A |
| Outcome: (deliverables, delivery duties, milestones to meet) | <p>The RFP process, evaluation/review of the proposals, and recommendation will result in a:</p> <ul style="list-style-type: none"> • collaborative process supported by the review team and community leaders. • recommendation for the City to enter into a contractual relationship. • redevelopment of the site that fits well within the district. • project that helps advances community plans and visions. • better utilization of existing public infrastructure. • predictable, transparent, and accountable selection process that achieves outcomes important to the community. <p>We are hoping at least two Council members will want to participate in the CSO-34 RFP review process.</p> |
| <u>Executive Summary:</u> <p>The Sprague Union District is an economically vibrant diverse mixed use Employment Center. To help strengthen this vision we are embarking on an exploration for an above ground use on top of CSO-34 in the heart of the district.</p> <p>The development of above ground amenities can stand alone or be supportive of a development within the district. Examples: park, parking lot, event space, dog-park for nearby multifamily housing, food truck court, solar park with covered event space underneath, outdoor eating space for nearby restaurants, permanent farmers market space with utility services...</p> <p>RFP Review Committee Members will:</p> <ul style="list-style-type: none"> ▪ attend three-six working meetings of up to 90 minutes over two-three months ▪ review meeting documents ahead of meetings, ▪ score project proposals, ▪ make a recommendation for Mayor and Council consideration on the best proposal. | |

Budget Impact:

TOTAL COST: N/A

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

Specify changes required: Known challenges/barriers: None

DRAFT 2021 CSO-34 RFP Scope & Timeline

| Mnth | Work/Tasks | Outcome/Deliverable |
|-------------|---|---|
| Mnths 1-4 | <p>Staff:</p> <ul style="list-style-type: none"> Draft RFP Scope & Timeline The Draft Charter vision, mission, set success criteria & timelines UE BP due September 29 <ul style="list-style-type: none"> Seek RFP Review Team Memembers (Council, Sprague Union District, and Staff) – Review committee manager will only score in the event of a tie. Identify & Develop RFP & Scoring Needs? <ul style="list-style-type: none"> Funding requirements Conceptual Site Plan Contractual requirements Plan alignment Maintenance & Proposal viability Scoring matrix Waste Water Management will also consider if a proposal is scored RFP – Release end of September | Draft Charter Draft 2021 Scope & Timeline Briefing Papers RFP Issued |
| Mnths 4 - 5 | <p>Staff:</p> <ul style="list-style-type: none"> Circulate Scope, Timeline & Charter – seeking agreement (revise) Get non-disclosures forms from review team members Create and share a Review/Scoring Process with team Share RFP with appointed RFP Review Team Members Share Scoring with team members Review all proposal for completeness and responsiveness | Non-disclosures Review Process Scoring Criteria Responsive Proposals |
| Mnth 6 | <p>Staff & RFP Review Team Meetings (2 Virtual)</p> <ul style="list-style-type: none"> Pre-scoring meeting for Q&A Review & Score proposlas (on your own and submit) Meet to discuss proposals and Q&A (don't discuss scores) Rescore & Resubmit post discussion | Q&A Preliminary Scores 2 nd Round of Scoring |
| Mnth 7 | <p>Staff & RFP Review Team Meeting (Virtual)</p> <ul style="list-style-type: none"> Staff presents scoring and top 5 proposal before narrowing to 3: <ul style="list-style-type: none"> Are interviews needed? <ul style="list-style-type: none"> If so, staff will work to set up interviews for the top 5 If not, discuss top five proposals <ul style="list-style-type: none"> Rescore to narrow the proposal to 3 or less (in person) Are interviews needed? <ul style="list-style-type: none"> If not, staff with check references. If so, staff will set up interviews | Top 5 or 3 proposals Interviews set |
| Mnth 8 | <p>Staff & RFP Review Team Meeting (Virtual)</p> <ul style="list-style-type: none"> Interviews(?) Discuss Refence Check Rescore final 3 if needed Draft Recommendation for Council & Mayor | Final Recommendation |

2021 CSO-34 RFP Draft Charter

An agile project charter contains three key elements:

1. **Vision:** *The vision defines the "Why" of the project. This is the higher purpose or the reason for the project's existence.*

The Sprague Union District is an economically vibrant diverse mixed use Employment Center.

To help strengthen this vision we are embarking on an exploration for an above ground use on top of CSO-34 in the heart of the district.

The development of above ground amenities can stand alone or be supportive of a development within the district. Examples: park, parking lot, event space, dog-park or openspace for nearby multifamily housing, food truck court, solar park with covered event space underneath, outdoor eating space for nearby restaurants, permanent farmers market space with utility services...

2. **Mission:** *This is the "What" of the project, and it states what will be done in the project to achieve its higher purpose.*

A RFP review team of City Council members, Sprague Union Leaders, and Staff (Planning and Economic Development, Integrated Capital Management, Wastewater Management, and Engineering) will review proposals submitted for the redevelopment and a developer for the CSO-34 site. Based upon the selection criteria outlined in the RFP review team will make a recommendation to the Mayor and City Council on who to extend up to \$250,000 in design, engineering and permit fee assistance, as well as a long-term lease agreement of up to 20 years with renewals.

Selection criteria outlined in the RFP includes:

- reference requirements,
- contractual requirements,
- possible code requirements,
- current site plan and map,
- alignment and implementation of current Neighborhood and City's Comprehensive Plans,
- whether the proposal is community focused with public/private use or private in nature,
- how rapidly the project can be implemented,
- if the redevelopment multi-purpose,
- whether the project is innovative,
- whether the project is answering a market pressure/need,
- a required conceptual level site plan sketch,
- whether proposed project would require regulatory changes,
- if the development supports another use within the district,
- long-term viability, if someone else has to take it over in the future, and
- proposed cost of operations, management and the repair/replacement schedule.

3. **Success Criteria:** *The success criteria are management tests that describe effects outside of the solution itself.*

The evaluation of the proposals and recommendation will result in a:

- collaborative process supported by the review team and community leaders.
- recommendation for the City to enter into a contractual relationship.
- redevelopment of the site that fits well within the district.
- project that helps advances community plans and visions.
- better utilization of existing public infrastructure.
- predictable, transparent, and accountable selection process that achieves outcomes important to the community.

Briefing Paper

Urban Experience Committee

| | |
|--|---|
| Division & Department: | Neighborhood, Housing, and Human Services Division – Community, Housing, and Human Services Department |
| Subject: | Treasury Rent Assistance Program 2.0 (T-RAP 2.0) Grant Acceptance |
| Date: | 9/28/2021 |
| Author (email & phone): | Margaret Hinson (mhinson@spokanecity.org 509-867-8539) |
| City Council Sponsor: | Council Member Stratton |
| Executive Sponsor: | Kirstin Davis |
| Committee(s) Impacted: | Public Safety & Community Health |
| Type of Agenda item: | <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative |
| Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan) | 2020-2025 Strategic Plan to End Homelessness; Greater Spokane Comprehensive Emergency Management Plan |
| Strategic Initiative: | Safe & Healthy / Reduce Homelessness |
| Deadline: | The grant has a start date of October 1, 2021 and the grant expires on September 30, 2025. |
| Outcome: (deliverables, delivery duties, milestones to meet) | CHHS is requesting permission to accept \$ \$10,540,405 in T-RAP 2.0 funds from the WA State Dept. of Commerce (Commerce). These funds will be subgranted to providers that help prevent eligible households facing eviction from experiencing homelessness and an SBO will be submitted to create budget capacity. The grant agreement will be provided as soon as it is received. |
| <p>Background/History: These funds are part of the U.S. Department of Treasury \$46 billion response to the COVID-19 pandemic passed through Washington State Dept. of Commerce. These funds are intended to continue to prevent evictions by paying rental arrears, current due rent, future rent, utilities and home energy costs, and other housing costs. Commerce offered to split the award for the Spokane region using the same proportional allocation used for Consolidated Homeless Grant (CHG). This second tranche of funds is retroactively available to March 1, 2021 with a contract end date of September 30, 2025. The grant agreement will be provided as soon as it is received from Commerce.</p> | |
| <p>Executive Summary:</p> <p>The T-RAP Grant is part of Washington State’s response to the COVID-19 pandemic, intended to prevent evictions that would contribute to the spread of the virus by paying past due, current due, future rent, and utilities, targeting limited resources to those who have experienced financial hardship due to the COVID-19 outbreak and are at risk of experiencing homelessness or housing instability.</p> <p>Households must meet the three federally required initial screening criteria:</p> <ul style="list-style-type: none"> • Income at or below 80% of Area Median Income (AMI). • Experiencing a financial hardship directly or indirectly <i>during</i> the COVID-19 outbreak that threatens the household’s ability to pay the costs of the rental property when due. • At risk of experiencing homelessness or housing instability. <p>The following households must be prioritized:</p> <ul style="list-style-type: none"> • Income at or below 50% AMI. • Households with one or more individuals who are unemployed and have been unemployed for 90 days before application date. | |

The percentage of head of households provided rent assistance must at least equal the proportion to the population living in poverty in the county for each of the following groups:

- People of Color (includes Black or African American, American Indian and Alaska Native, Native Hawaiian or other Pacific Islander, Hispanic/Latinx, Asian, Other/Multi-Racial)
- Black or African American
- American Indian and Alaska Native
- Hispanic/Latinx

Additional performance targets include:

- Ten percent of households served must be young adults age 18-25.
- Ten percent of financial assistance must be utility assistance.

Commerce is requiring grantees to subcontract with By and For Organizations to meet the equity requirements and is requiring grantees to commit to coordination with their local Dispute Resolution Center.

Budget Impact:

Approved in current year budget? ☐ Yes ☒ No
Annual/Reoccurring expenditure? ☐ Yes ☒ No

If new, specify funding source: U.S. Treasury Department passed through WA State Commerce.

Other budget impacts: N/A

Operations Impact:

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

Specify changes required: None.

Known challenges/barriers: None.

Briefing Paper

Urban Experience Committee

| | |
|--|---|
| Division & Department: | Community and Economic Development, Parking Services |
| Subject: | Ordinance related to the Parking Advisory Committee |
| Date: | October 11, 2021 |
| Author (email & phone): | Jesten Ray, jray@spokanecity.org ; 509-625-6819 |
| City Council Sponsor: | Karen Stratton and Lori Kinnear |
| Executive Sponsor(s): | Kris Becker |
| Committee(s) Impacted: | Urban Experience |
| Type of Agenda item: | <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative |
| Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan) | |
| Strategic Initiative: | Economic Development and Downtown Parking Study |
| Deadline: | N/A |
| Outcome: (deliverables, delivery duties, milestones to meet) | Bring Parking Advisory Committee (PAC) into alignment with other City committees by putting the PAC under Title 04, Administrative Agencies and Procedures. |
| Background/History: The Parking Advisory Committee was created in 2016 as an official City committee, however, it resided under Title 07, Finance. This ordinance amends SMC section 07.08.130 relocating the Parking Advisory Committee sections to a new chapter (04.38) under Title 04, Administrative Agencies and Procedures consistent with all other boards and commissions. This ordinance includes sections under chapter 04.38, for Parking Advisory Committee 1) purpose, 2) duties and functions, 3) appointment, 4) membership, 5) officers, 6) compensation, 7) support staff and 8) meetings. | |
| Executive Summary: Ordinance related to the Parking Advisory Committee, to relocate the City committee from under Title 07, Finance to under Title 04, Administrative Agencies and Procedures. Recommended for Council approval by the Parking Advisory Committee on April 27, 2021. | |
| Budget Impact: Approved in current year budget? Yes No Annual/Reoccurring expenditure? Yes No If new, specify funding source: n/a Other budget impacts: n/a | |
| Operations Impact: Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Requires change in current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Specify changes required: n/a Known challenges/barriers: N/A | |

ORDINANCE NO.

AN ORDINANCE relating to the Parking Advisory Committee amending SMC section 07.08.130; adding a new chapter 04.38 to title 04; adopting new sections 04.38.010, 04.38.020, 04.38.030, 04.38.040, 04.38.050, 04.38.060, 04.38.070, and 04.38.080 to chapter 04.38 of the Spokane Municipal Code; and setting an effective date.

WHEREAS, the Parking Advisory Committee as an official City committee should be located under Administrative Agencies and Procedures instead of Finance, and;

WHEREAS, the City desires code to spell out the purpose of the Parking Advisory Committee, duties and functions, appointment, membership, officers, compensation, support staff and meetings, and;

WHEREAS, the Parking Advisory Committee reviewed and approved the proposed code changes April 27, 2021, and; --- Now, Therefore,

The City of Spokane does ordain:

Section 1. That SMC section 07.08.130 is amended to read as follows:

Section 07.08.130 Parking System Fund

- A. There is created and shall be maintained in the office of the City Treasurer a special revenue fund designated the "parking system fund." All City parking revenue from on and off-street (~~((meter-))~~)systems, miscellaneous parking fees, permits, etc., along with other sums appropriated in the budget from the City general fund shall be deposited into the fund upon receipt. One hundred percent (100%) of the total amount of the parking infraction revenue collected, less the expenditures of the municipal court parking violations program from the prior calendar year, will be transferred from the general fund to the parking system fund.
- B. Money deposited into the fund shall be accumulated or expended to pay for operations and maintenance of the parking system, to include parking enforcement and collections, the parking violation system and to maintain, improve, and enhance the customer environment in those areas where parking revenue is generated within the City.
- C. City Council priorities for expenditures from the parking system fund are parking system investments, parking environment improvements, administration, and safety and security of the parking system. For purposes of this section, "parking environment" shall mean all infrastructure in the public right-of-way that contributes to the interface between the (~~((downtown-))~~)resident, visitor or worker and the(~~((--downtown))~~) built environment. This infrastructure includes, but is not limited to, parking stalls, payment systems, parking asset management, streetscapes (including landscaping and pedestrian lighting investments), street furniture, wayfinding systems, public safety, vehicle, bicycle, and pedestrian rights-of-way, public spaces, gateways and all other

aspects of((~~downtown~~)) common areas, which contribute to the overall experience ((~~of downtown~~))within the Paid Parking Zone.

~~((D. — Parking Advisory Committee.~~

- ~~1. A thirteen-member parking advisory committee will be created to advise the City on investments in the parking environment, policy, and rate setting as informed by the downtown parking study. The committee shall be facilitated by Business Improvement District staff and shall be composed of the following stakeholders to be appointed by the City Council: one (1) downtown property owner, one (1) owner of a large downtown business, one (1) owner of a downtown small business, one (1) resident of downtown, one (1) downtown worker, one (1) designee from Spokane Transit Authority, one (1) representative of the Arts community; three (3) members chosen at the discretion of the Business Improvement District; two (2) city council members in non-voting, *ex officio* roles; and the (1) Parking Services Manager in a non-voting, *ex officio* role. The committee members shall serve staggered terms of three (3) years. The committee chair shall be elected by a vote of the committee and shall serve a (1) year term, however, the Committee may vote to extend the chairperson's term by (1) additional year.~~
- ~~2. The Committee shall propose to the City Council, on an annual basis, a set of recommended projects to improve the downtown parking environment, guidance on parking rate setting, and other public policy recommendations concerning the downtown parking system, as well as a description and analysis of the outcomes of the prior years' parking fund investments.~~
- ~~3. In forming its recommendations, the Parking Advisory Committee shall observe the following process:~~
 - ~~a. City Council and the City administration, though their *ex-officio* Committee positions, shall provide the Committee with priorities for the Committee's consideration during their annual project planning process.~~
 - ~~b. With consideration given to the input received in this process from City Council and the Administration, The Committee shall develop an annual recommended budget and capital project list for the parking system fund. This list will be presented to the City Council on or before November 1 of each year. The City Council shall then consider for approval the list of projects and recommended investments as part of the normal annual budget process. Projects will be placed in the six-year capital program as needed.~~
 - ~~c. The parking advisory committee, in collaboration with City Council and staff Committee designees, will develop a set of indicators that will track downtown vitality as a result of improvements made from parking system fund investments. These data will be available in the annual report.))~~

D. City Council goals for the parking system fund include: (1) the establishment of a parking system fund reserve of \$500,000, and (2) the set-aside of not less than ten percent (10%) of the parking system fund for the support of emergency projects in the parking environment.

- E. Any available parking funds must first be used to cover the debt service on Series 2005B LTGO bonds (Bonds) or any subsequent refinancing of these bonds. In the event the Bonds are refinanced and result in a reduction of remaining debt service, said reductions may be utilized for economic development purposes in the City subject to City Council Resolution.

Section 2. That there is adopted a new chapter 04.38 to title 04 of the Spokane Municipal Code to read as follows:

Chapter 04.38 Parking Advisory Committee

Sections:

- 04.38.010 Purpose
- 04.38.020 Duties and Functions
- 04.38.030 Appointment
- 04.38.040 Membership
- 04.38.050 Officers
- 04.38.060 Compensation
- 04.38.070 Staff Support
- 04.38.080 Meetings

Section 04.38.010 Purpose

The Parking Advisory Committee advises the City administration, the Mayor, and the City Council on investments in the parking environment, policy, and rate setting as informed by adopted parking studies. For purposes of this section, “parking environment” shall mean all infrastructure in the public right-of-way that contributes to the interface between the resident, visitor or worker and the built environment. This infrastructure includes, but is not limited to, parking stalls, payment systems, parking asset management, streetscapes (including landscaping and pedestrian lighting investments), street furniture, wayfinding systems, public safety, vehicle, bicycle, and pedestrian rights-of-way, public spaces, gateways, and all other aspects of common areas, which contribute to the overall experience of areas within the Paid Parking Zone ([SMC 16A.04.100G](#)).

Section 04.38.020 Duties and Functions

The Parking Advisory Committee has the power and duty to:

- A. Evaluate funding requests for eligible activities and projects and, on an annual basis, propose a set of recommended projects to the City Council to improve the parking environment;
- B. Provide guidance on setting or changing parking rates for on-street parking;
- C. Make recommendations for public policy relating to the parking system;

- D. Issue an annual report to the Mayor and City Council on the parking system along with achievements for the past year and goals for the coming year;
- E. Adopt rules;
- F. Hold regular public meetings and keep a written record of its proceedings which is a public record;

Section 04.38.030 Appointment

- A. The Parking Advisory Committee consists of thirteen members nominated by the Mayor and appointed by the City Council to staggered three-year terms.
- B. Appointees need not be residents of the City of Spokane.
- C. Appointees shall serve three (3) year terms and may be eligible for one (1) reappointment for a three (3) year term reappointment.
- D. Each appointee is eligible for establishing a single designee, who may attend committee meetings in lieu of appointee attendance. Establishment of a designee is subject to committee approval.
- E. Vacancies are filled by appointments to unexpired terms in the same manner.

Section 04.38.040 Membership

The membership as a whole shall reflect a broad range of opinion, experience, and expertise with the objective of providing sound advice representative of the citizenry. The Committee shall include two (2) City Council members in non-voting, ex officio roles; and one (1) City Parking Services Manager in a non-voting, ex officio role. The remaining eleven (11) members shall be appointed with intent to maintain diversity among the following stakeholder categories:

- A. Representative of the University District;
- B. Designee from the Business Improvement District;
- C. Owner/operator of a parking lot or garage within the Paid Parking Zone;
- D. Resident of downtown;
- E. Downtown worker;
- F. Designee from Spokane Transit Authority;
- G. Representative of the hospitality industry;
- H. Representative of the arts and entertainment community;
- I. Realtors, developers, property managers or business owners within the Paid Parking Zone.

Section 04.38.060 Officers

The Committee on an annual basis elects a chair and a vice chair from its membership to preside over meetings and perform such other functions as may be prescribed by rule.

Section 04.38.050 Compensation

Members serve without compensation.

Section 04.38.070 Staff Support

The mayor assigns a City employee to provide technical and administrative assistance to the Committee.

Section 04.38.080 Meetings

All meetings are held in accordance with the Open Public Meetings Act, chapter 42.30 RCW. Minutes of all meetings are kept as public records.

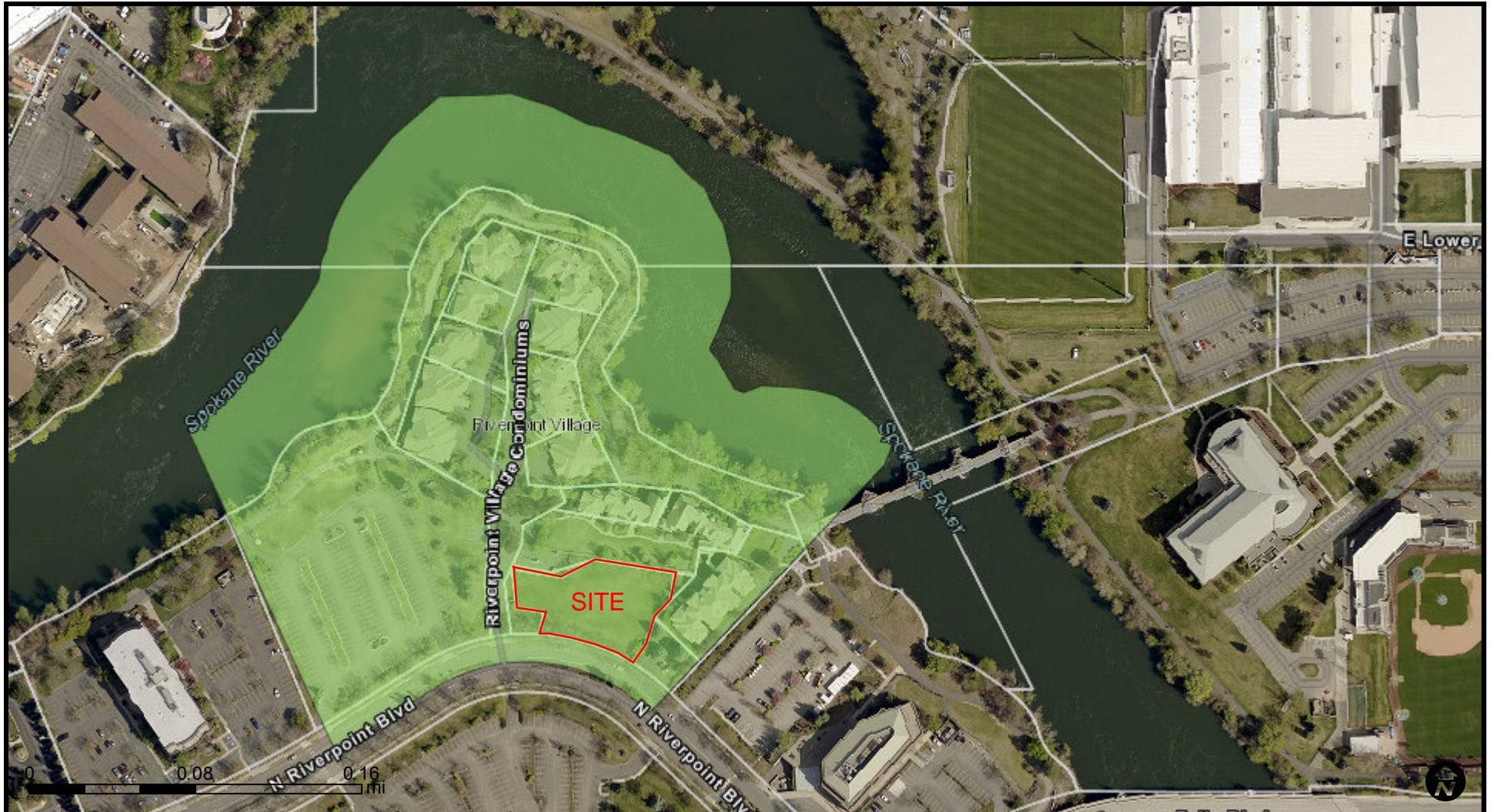
Section 3. Effective Date. This ordinance shall take effect and be in force on November 29, 2021.

Briefing Paper




Urban Experience Committee

| | |
|---|--|
| Division & Department: | Development Services Center - Planning |
| Subject: | Riverpoint Village PUD (Type III land use application) – Remove Parcel |
| Date: | October 11, 2021 |
| Author (email & phone): | Tami Palmquist, Principal Planner, tpalmquist@spokanecity.org , 509.625.6157 |
| City Council Sponsor: | Karen Stratton |
| Executive Sponsor: | Kris Becker |
| Committee(s) Impacted: | Urban Experience |
| Type of Agenda item: | <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative |
| Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan) | SMC 17G.060.170 Land Use Application Procedures Decision Criteria SMC 17G.060T Land Use Application Tables Spokane Comprehensive Plan |
| Strategic Initiative: | Urban Experience, Safe and Healthy |
| Deadline: | Ordinance Adoption proposed for November 2021 |
| Outcome: (deliverables, delivery duties, milestones to meet) | Adoption of the Hearing Examiners decision, findings and conclusions and changing the City's zoning map PUD overlay to remove Unit 12 (parcel 35173.3003) from the Riverpoint Village PUD. |
| Background/History: Pursuant to the type III land use application process, the Hearing Examiner held a public hearing on the proposal to remove Unit 12 (parcel number 35173.3003) from the Riverpoint Village PUD on August 18, 2021 on the request of the owner. On September 20, 2021, the Hearing Examiner recommended approval subject to conditions. The appeal period for this decision ended on October 4, 2021. | |
| Executive Summary: <ul style="list-style-type: none"> The applicant is proposing to remove Unit 12 (parcel number 35173.3003) from the Riverpoint Village PUD. All procedural requirements were completed prior to the application being heard before the Hearing Examiner on August 18, 2021. The City's Hearing Examiner approved the removal on September 20, 2021. The Appeal Period ended on October 4, 2021. The next step is to adopt the Hearing Examiner Decision and updates to the City's Zoning Map. The proposal is consistent with multiple goals and policies from the land use, economic development, and urban design chapters of the Comprehensive Plan. The Zoning remains DTU (Downtown University). The proposal includes 1 parcel. <ul style="list-style-type: none"> Parcel number: 35173.3003 (.70 acres) | |
| Attachments – Proposed Ordinance, Current and Proposed Zoning Maps | |
| Budget Impact: N/A Approved in current year budget? <input type="checkbox"/> Yes <input type="checkbox"/> No N/A Annual/Reoccurring expenditure? <input type="checkbox"/> Yes <input type="checkbox"/> No N/A If new, specify funding source: N/A no budget impact to this site specific rezone (type III land use permit) Other budget impacts: (revenue generating, match requirements, etc.) N/A | |
| Operations Impact: 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 | |

City of Spokane Map



Legend

-  City of Spokane Boundary
-  PUD
-  Parcel

City of Spokane GIS



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.

CITY OF SPOKANE HEARING EXAMINER

Re: Application to Amend the Riverpoint) FINDINGS, CONCLUSIONS,
Village Planned Unit Development) AND DECISION
(PUD) to remove Unit 12 from the)
PUD) FILE NO. Z21-105PPUD

SUMMARY OF PROPOSAL AND DECISION

Proposal: The applicant is requesting approval of an amendment to the Riverpoint Village PUD that will remove Unit 12 from the boundaries of the PUD so that it may be developed independent of the PUD, in accordance with the standards of the existing zoning regulations.

Decision: Approved, with conditions.

FINDINGS OF FACT **BACKGROUND INFORMATION**

Applicant/Agent: Goodale & Barbieri Company
Attn: Stephen Barbieri
818 W Riverside Ave, Suite 300
Spokane, WA 99201

Owner: Huckleberry Bay Company
818 W Riverside Ave, Suite 300
Spokane, WA 99201

Property Location: The subject property is located on parcel number 35173.3003, addressed as 643 N Riverpoint Boulevard, in the City of Spokane, Washington.

Legal Description: The legal description of the property is provided in Exhibit 1A.

Zoning: The property is zoned DTU (Downtown University).

Comprehensive Plan (CP) Map Designation: The property is designated as Downtown.

Site Description: The subject property is 30,377 square feet in size. It is undeveloped and irregular in shape. The site is relatively flat and is currently a large grassy area. This parcel is identified as Unit 12 in the Riverpoint Village PUD plan.

Surrounding Conditions and Uses: The land adjacent to the site, to the north, south, east and west, is zoned Downtown University (DTU). Adjacent land uses to the north and east are residential uses, which are within the existing Riverpoint Village PUD. The Spokane River forms the northerly border of the Riverpoint Village PUD. On the other side of the Spokane River, the land is zoned Community Business to the northwest, Residential High Density to the north, and General Commercial to the northeast. Gonzaga University's

campus is located northeasterly of the site, on the opposite side of the Spokane River. To the south, west, and east is the campus of WSU-Spokane.

Project Description: The applicant is proposing an amendment to remove Unit 12 from the Riverpoint Village PUD. Removing Unit 12 will allow it to be developed separately from the PUD. At this time, there are no immediate development plans for Unit 12. No specific project is being proposed in conjunction with the requested amendment.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (SMC) 17C.124, Downtown Development; SMC 17G.060, Land Use Application Procedures; SMC 17G.070, Planned Unit Developments; and SMC 17G.060.170, Decision Criteria.

Notice of Community Meeting: Mailed: April 30, 2021
Posted: May 5, 2021

Notice of Application/Public Hearing: Mailed: July 30, 2021
Posted: August 3, 2021

Community Meeting: May 20, 2021

Site Visit: August 17, 2021

Public Hearing Date: August 18, 2021

State Environmental Policy Act (SEPA): The May 1, 1992, Mitigated Determination of Non-Significance (MDNS) for Riverpoint Village PUD was adopted by reference pursuant to SMC 17E.050.180 and Washington Administrative Code (WAC) 197-11-600.

Testimony:

Donna deBit, Assistant Planner II
City of Spokane Planning & Development
808 W. Spokane Falls Boulevard
Spokane, WA 99201

William Lenz
Witherspoon Kelley
422 W. Riverside Avenue, Suite 1100
Spokane, WA 99201

Russell Oakley
639 N. Riverpoint Boulevard, 3W
Spokane, WA 99202

Stephen Barbieri
Goodale & Barbieri Company
818 W Riverside Ave, Suite 300
Spokane, WA 99201

Roger Felice
639 N. Riverpoint Boulevard, 6E
Spokane, WA 99202

Susan McLauchlin
PO Box 30522
Spokane, WA 99223

Submitted Comments to the Record or Present but did not Testify:

Bruce & Pam Gallaher
639 N. Riverpoint Boulevard, H103
Spokane, WA 99202

Larry & Betty Guenther
larryguenther@outlook.com
betsyguenther@outlook.com

Kathleen & James McLean
Kmclean888@hotmail.com

Constance Scarpelli
639 N. Riverpoint Boulevard, J307
Spokane, WA 99202

Michael Hinnen
639 N. Riverpoint Boulevard, 9W
Spokane, WA 99202

Giotom Tsegay
639 N. Riverpoint Boulevard, J308
Spokane, WA 99202

Jill Serbousek
639 N. Riverpoint Boulevard, H101
Spokane, WA 99202

Exhibits:

Staff Report, dated 08/11/21, including the following exhibits:

1. Application Materials, including:
 - A General Application
 - B Planned Unit Development Application
 - C Notification Map Application
2. Request for Agency Comments dated 06/23/21, including:
 - A Spokane Tribe of Indians
 - B City of Spokane Treasury Accounting
 - C Avista
 - D City of Spokane Engineering
3. Noticing Documents, including:
 - A Notice of Public Hearing Instructions dated 06/21/21
 - B Notice of Public Hearing for 08/18/21 Hearing
 - C Noticing Affidavits
4. Public Comments
5. Community Meeting Materials, including:
 - A Community Meeting Instructions dated 04/26/21
 - B Notice of Community meeting for 05/20/21
 - C List of Meeting Participants
 - D Affidavits
 - E Community Meeting Recording
6. Historical Documents, including:
 - A Exceptions
 - B Original Recorded Plat
 - C Original Zone Change and PUD Application
 - D Original Hearing Date
 - E Title Report, Vesting Deed, Corporate Resolution
 - F Original PUD Decision
7. Staff Presentation

FINDINGS AND CONCLUSIONS

To be approved, an amendment to a PUD must comply with the criteria set forth in Section 17G.060.170 SMC. The Hearing Examiner has reviewed the application and the evidence of record with regard to the application and makes the following findings and conclusions:

- 1) *The proposal is allowed under the provisions of the land use codes. See SMC 17G.060.170(C)(1).*

The Applicant seeks to remove a parcel of land from an existing PUD. Modifications to a PUD are allowed, so long as the proposal goes through the Type II or Type III review process as appropriate. *Testimony of D. deBit.* In this case, a Type III process was required because the proposal to remove Unit 12 from the PUD was considered a “major modification.” *See id.*; *see also* SMC 17G.070.200(D)(6)(c). This process is not out of the ordinary. In fact, land has been removed from this same PUD previously. *Testimony of D. deBit.*

There is no statute, rule, or regulation, to the Hearing Examiner’s knowledge, that prohibits the removal of land from a PUD. The original decision approving the PUD, similarly, does not include conditions that preclude the removal of Unit 12 from the PUD. *Testimony of D. deBit*; *see also* Exhibit 6F. In addition, Staff noted that the PUD would continue to comply with the original decision criteria after the removal of that parcel. *See* Staff Report, p. 4. Thus, approving this proposal will not create a nonconformity or put the remainder of the site into noncompliance with the project conditions or the original decision criteria.

Removing the parcel from the PUD will permit the property to be developed without the restrictions imposed by the PUD. However, a new development will be required to meet any applicable land use standards at the time of submittal. *See* Staff Report, p. 4; *Testimony of D. deBit.* Compliance with those development standards would have to be reviewed at the time a development application is submitted. *See id.* This review will ensure that the future use and development of the property will comply with the land use codes.

- 2) *The proposal is consistent with the comprehensive plan designation and goals, objectives, and policies for the property. See SMC 17G.060.170(C)(2).*

The CP does not contain any goals, policies, or commentary that are especially relevant to a proposal to remove a parcel of land from an existing PUD. In addition, the mere removal of the property from the PUD is not a specific project action. This makes evaluating specific goals or policies more difficult. Even so, the CP does lend general support to this proposal, as the following discussion illustrates.

As the Staff noted, any future proposal to develop the property must demonstrate consistency with this land use designation, in addition to satisfying the applicable zoning and development regulations. *See* Staff Report, p. 4. Thus, when a specific development project is proposed, consistency with the CP will be one of the requirements. In addition, future development proposals will also be required to satisfy concurrency standards, which will ensure that public infrastructure and services are adequate to support the future use. *See id.* This fulfills Policy LU 1.12, Public Facilities and Services. *See* CP, Chapter 3, Policy LU 1.12, p. 3-14. This will also promote the efficient use of land by

focusing growth in areas where adequate facilities and services are available. See CP, Chapter 3, Policy LU 3.1, p. 3-17.

Given the nature of this proposal, the goals and policies of the CP are of limited application. However, to the extent the CP is relevant at this stage, the Hearing Examiner agrees with Staff that the proposal is consistent with the CP.

- 3) *The proposal meets the concurrency requirements of Chapter 17D.010SMC. See SMC 17G.060.170(C)(3).*

On June 23, 2021, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 2. In response, the City received comments from various agencies regarding the proposal. See e.g. Exhibits 2A-2D. None of the commenting agencies or departments reported that concurrency was not satisfied. See Staff Report, p. 4. The Hearing Examiner concludes that this criterion is met.

- 4) *If approval of a site plan is required, the property is suitable for the proposed use and site plan considering the physical characteristics of the property, including but not limited to size, shape, location, topography, soils, slope, drainage characteristics, the existence of ground or surface water and the existence of natural, historic or cultural features. See SMC 17G.060.170(C)(4).*

The proposal is to remove a parcel of property from an existing PUD. No specific development project is being proposed at this stage. As a result, there is no site plan to consider. Since this criterion assumes a site plan is under consideration, this criterion is not especially relevant to this proposal.

That being said, the site was previously evaluated and approved for development. In accordance with the original PUD, the site is an appropriate location for single-family residences, parking areas, and a parking garage. See Exhibit 7 (Riverpoint Village PUD History); see *also* Exhibit 6F. There is little reason to believe the site cannot support other types of development as well. For example, the site is relatively flat, contains sufficient area to support various uses, and is adjacent to a public road, among other things. There is no evidence in this record suggesting that the physical characteristics of the property make it inappropriate for future development. In any case, Staff correctly noted that any new development proposed for this site will be reviewed by Development Services to determine suitability regarding site planning, soils, drainage, as well as building and land use codes. See Staff Report, p. 4.

There are no known historic or cultural features on the development site. See Exhibit 2A. However, the Spokane Tribe of Indians indicates a high probability of encountering cultural resources within the area. See *id.* The Tribe also recommended an inadvertent discovery plan be implemented in the scope of work. See Exhibit 2A. Staff proposed specific project conditions to address the Tribe's concerns. Those conditions have been incorporated into this approval. See Conditions 1 & 2.

The Hearing Examiner concludes that the property is suitable for future development separate from the Riverpoint Village PUD, given the conditions and characteristics of the site. As a result, this criterion is satisfied.

- 5) *The proposal will not have a significant adverse impact on the environment or the surrounding properties, and if necessary conditions can be placed on the proposal to avoid significant effect or interference with the use of neighboring property or the surrounding area, considering the design and intensity of the proposed use. See SMC 17G.060.170(C)(5).*

As stated previously, there is no specific development project associated with this proposal. The mere removal of the site from the PUD will not result in environmental impacts. Removal of the site from the PUD will allow the owner to develop the property in various ways. However, the owner will be required to develop the site in compliance with all current regulations concerning land use and environmental protection. See Staff Report, p. 5. In addition, future development proposals will require a new SEPA review unless it is found to be categorically exempt per SMC 17E.050.070. See *id.* Finally, approval of this proposal will not diminish or alter the conditions of approval applicable to the remainder of the PUD. See *id.* Thus, the remainder of Riverpoint Village PUD will continue to be required to meet the conditions of the 1992 approval and the MDNS issued on May 1, 1992. See *id.* The Hearing Examiner concludes that this criterion is, therefore, satisfied.

- 6) *The remainder of Riverpoint Village PUD will continue to comply with the PUD criteria after the removal of Unit 12.*

When the Hearing Examiner approved the Riverpoint Village PUD in 1992, he found that the proposal was consistent with the decision criteria for PUDs. See Exhibit 6F (referencing former SMC 11.19.361); see also Staff Report, p. 5. The Staff determined that the Riverpoint Village PUD will continue to satisfy these criteria after Unit 12 is removed from the PUD. The Hearing Examiner agrees. No testimony or evidence presented at the hearing undermined the Staff's conclusion. The Hearing Examiner adopts and incorporates the Staff's analysis of this issue, found on page 5 of the Staff Report.

- 7) *The Hearing Examiner concludes that request to remove Unit 12 from the PUD should be approved despite the objections to the proposal.*

A number of objections and criticisms were raised about the proposal, both in written comments and in public testimony. The primary concerns raised in the public comments are discussed below.

Loss of Green Space. Condominium owners objected that the proposal would result in the loss of green space that they enjoy. See Exhibit 4 (E-mail of B. Guenther 8-12-2021, 3:42 PM). Some owners purchased their properties because of the green space provided by Unit 12. See Exhibit 4 (E-mail of G. Tsegay 8-4-2021, 10:00 AM; Letter of J. Serbousek 7-2-2021). Others believed the loss of green space would negatively impact both the environmental health of the area as well as the aesthetics of the district. See Exhibit 4 (E-mail of K. McLean 8-11-2021, 2:39 PM; Letter of C. Scarpelli 8-14-2021); *Testimony of R. Felice.*

The Hearing Examiner is sympathetic to these concerns. However, Unit 12 is a privately owned lot. *Testimony of S. Barbieri & W. Lenz.* The property was not designated as green space or open space when the PUD was approved. *Testimony of D. deBit.* One condominium owner contended that Unit 12 was designated as a "Group Limited Common Element" in the recorded Condominium Association ("Association") documents. See

Exhibit 4 (Letter of J. Serbousek 7-2-2021). However, she did not identify the specific provisions that supported this claim. The Hearing Examiner concludes that Ms. Serbousek is mistaken. At the hearing, both the owner and the Association specifically confirmed that Unit 12 was not a common element or a limited common element of the condominium.

Testimony of S. Barbieri & W. Lenz.

Unit 12 is maintained as a grassy, open area by the current owner, at its expense. The owner is not required to continue this arrangement indefinitely. In fact, that was never the intent. Under the original PUD, Unit 12 was to be developed with single-family residences, parking areas, and a parking garage. See Exhibit 7 (Riverpoint Village PUD History); see also Exhibit 6F. The removal of the site from the PUD may result in a different kind of development than originally contemplated. However, the proposal does not eliminate green space that was set aside for the benefit of the condominium owners or others.

Violation of Condominium CC&Rs. The Association contended that removing Unit 12 from the PUD violates the Covenants, Conditions, and Restrictions (CC&Rs) of the condominium. *Testimony of W. Lenz*; see also Exhibit 8. Under those covenants, the owner had the option to remove Unit 12 from the PUD, but had to do so by a stated deadline. See *id.* That deadline expired in 2003. See *id.* Thus, the owner missed its opportunity to remove Unit 12 from the PUD, and cannot legally do so now. See *id.*; see also Exhibit 4 (E-mail of B. Gallaher 8-13-2021, 10:12 AM; Letter of J. Serbousek 7-2-2021). The Association also pointed out that Unit 12 could be developed with a residential use, consistent with the CC&Rs. *Testimony of W. Lenz.* However, any proposal to convert the property to a non-residential use is prohibited. See *id.*; see also Exhibit 8.

The removal of Unit 12 may or may not be permissible under the terms of the CC&Rs. The CC&Rs may or may not operate to preclude non-residential uses of the site. Unfortunately, the Hearing Examiner does not have authority to answer these legal questions through this administrative process. The Hearing Examiner's authority is limited to rendering a decision on the application presented, based upon the relevant codes and regulations that govern this type of application. See *Chausee v. Snohomish County Council*, 38 Wn.App. 630, 636-37, 689 P.2d 1084 (1984) (holding that a hearing examiner can only exercise the powers specifically conferred by the local legislature). The Hearing Examiner cannot interpret and enforce CC&Rs, grant equitable remedies, or award damages. For these types of relief, the Association or its members must turn to the courts. The Hearing Examiner concludes that he has no jurisdiction to interpret and enforce the terms of private covenants.

Noncompliance with Condominium Act. The Association argued that the Applicant must comply with the requirements of the Condominium Act in order to withdraw Unit 12. See Exhibit 8. In order to withdraw the property from the condominium, the Applicant must prepare, execute, and record an amendment to the CC&Rs as well as a new/certified survey map and plans. See *id.* (Citing to Revised Code of Washington [RCW] 64.34.232 & .264). Those procedures have not been followed to date. See *id.* Any attempt to withdraw without following these procedures is invalid, according to the Association. See *id.*

The application before the Hearing Examiner seeks to remove Unit 12 from a PUD. A PUD is a form of subdivision of land authorized by local ordinance. As the Association notes, it is a "planning construct" created by the City to facilitate the efficient and beneficial use of land. See Exhibit 8. The creation of a condominium, by contrast, is a private arrangement by or among the owners of real estate. See *id.* The condominium process is legally distinct

from the creation of a PUD. The Hearing Examiner has no role in that process and no jurisdiction to apply or enforce condominium law in the context of a land use application. The Hearing Examiner concludes that this issue is outside the scope of his authority. As with the controversy over the effect of the CC&Rs, this issue can only be resolved in the courts.

Lack of Specific Development Proposal. Several public comments were made objecting to the fact that the owner did not submit a specific development proposal for Unit 12. The Association emphasized that more specificity was necessary in order to properly evaluate the effect of the proposal. *Testimony of W. Lentz.* One condominium owner stated that it was difficult to determine the purpose for the change, given the uncertainty regarding the future use. *Testimony of R. Felice.* Other owners predicted that there would be a range of impacts, if the property was ultimately developed in a more intense way, such as a commercial or institutional use. See e.g. Exhibit 4 (E-mail of K. McLean 8-11-2021, 2:39 PM; E-mail of R. Oakley 8-7-2021, 9:40 AM).

The proposal seeks to remove a parcel from a PUD, in order to permit development consistent with the current zoning. There is no rule mandating that an owner formulate a specific development plan as a precondition to removing a parcel from a PUD. *Testimony of D. deBit.* In addition, proposals to remove property from a PUD has been approved in the past, including at Riverpoint Village. See *id.* The proposal is in the nature of a non-project action, like a rezone. Rezones can be approved without specific development plans attached. Often, changes of that type are made with only long-term plans in mind. Moreover, the uncertainty surrounding this proposal is not materially different than occurs with any undeveloped parcel. An undeveloped parcel can be developed in a variety of ways, depending on the zoning, the market conditions, and the intent of the owner.

Ultimately, any future development proposal will require a new application and review for compliance with SEPA requirements. The developer will be required to provide all the salient details about such a proposal. The project will be subject to the City's application review process. The environmental impacts of any non-exempt project would also be considered at that time. In other words, there is a process in place to consider the project-specific impacts. That process will take place at the time a specific development application is submitted to the City.

Potential Impacts of Proposal. Project opponents predicted that removal of Unit 12 from the PUD would damage views; create noise impacts; lower property values; exacerbate parking problems; increase traffic and congestion; create safety hazards; and increase crime, among other concerns. See e.g. Exhibit 4 (E-mail of K. McLean 8-11-2021, 2:39 PM; E-mail of R. Oakley 8-7-2021, 9:40 AM; E-mail of G. Tsegay 8-4-2021, 10:00 AM; and Letter of J. Serbousek 7-2-2021). For various reasons, the Hearing Examiner concludes that these concerns do not justify denial of the proposal.

As previously discussed, Unit 12 was not set aside as open/green space for the benefit of neighboring owners or the community. It is a parcel of private property that was always slated for development. The original plan included a parking garage, single-family residences, and parking areas. The views across Unit 12 were never going to be preserved. In addition, a neighboring owner does not have a right to a view across another person's land, in the absence of an easement or covenant preserving the view. No objecting party contended that such an easement or covenant existed. Finally, the Hearing Examiner agrees with the Applicant that Riverpoint Village is primarily oriented toward the

Spokane River, rather than to the south. *Testimony of S. Barbieri*. There is also an existing parking garage and common areas that provide some buffer between Unit 12 and the residential units in the PUD. See *id.* Ultimately, Unit 12 was not intended to be preserved as a view amenity.

The other impacts listed by project opponents are more appropriately considered when a specific development proposal is submitted. It is difficult to see how the mere removal of the property from the PUD will result in such negative outcomes. The predictions of noise, traffic, congestion, crime, unsafe conditions, lower property values, etc. reflect generalized fears regarding how the property might be developed in the future. However, unsubstantiated fears of area residents do not constitute a substantive basis for denial of a land use application. See *Sunderland Family Treatment Services v. Pasco*, 127 Wn.2d 782, 796-97, 903 P.2d 986 (1995). Similarly, general community fears or displeasure are not a proper basis to condition or deny a project. See *Maranatha Mining, Inc. v. Pierce County*, 59 Wn. App. 795, 804, 801 P.2d 985 (1990).

In this case, there is no specific evidence in this record substantiating the predicted impacts. For example, there is no data supporting the idea that removing the property from the PUD will actually cause a drop in property values, an increase in crime, or any of the other impacts. There was no expert testimony explaining why the listed impact would necessarily arise from this proposal. It is also entirely possible that none of the predicted impacts will occur, depending upon the ultimate proposal. It is also possible that entirely different impacts will have to be considered or mitigated. At this stage, the predictions are essentially speculative.

To address its concerns, the Association suggested a range of project conditions, including a prohibition on tree removal; subjecting future development to architectural committee review; ensuring compliance noise and light regulations; and requiring the developer to be responsible for any utility modifications or relocations. See Exhibit 4 (E-mail of R. Oakley 8-7-2021, 9:40 AM). The Hearing Examiner does not believe these proposed conditions are appropriate.

First, the Hearing Examiner has no authority to require a property owner to preserve the trees¹ on his or her land. There is no rule or regulation upon which to base such a condition. In addition, there was no condition requiring the preservation of trees in the original decision approving the PUD. Thus, tree removal is at the discretion of the property owner, regardless of whether the property is developed for residential purposes or not.

Second, the Hearing Examiner does not have authority to interpret and enforce the CC&Rs of the Association, as previously discussed. Thus, the Hearing Examiner is not inclined to condition any future projects upon approval by the architectural review committee of the Association. As with the other questions related to the CC&Rs, the courts will have to determine whether future projects must comply with the architectural review provisions of the Association documents.

Third, the remaining, proposed conditions are unnecessary. Any future development will be required to satisfy the applicable regulations. That includes compliance with regulations

¹ "Street trees" located within the public right-of-way, by contrast, cannot be removed by the adjacent property owner without first obtaining a permit. See SMC 12.02.900 *et seq.* Incidentally, these types of permits are only granted in limited circumstances. See *id.*

regarding noise and light/glare. In addition, the developer will certainly be responsible to move utility lines as necessary to accommodate the development of Unit 12. That work must be done with necessary permits and in coordination with the utility providers.

Inconsistency with PUD Approval. The Association maintains that the Hearing Examiner's original decision required that the PUD "be made subject to the Declaration and be for the purpose of residential development." See Exhibit 8; see *also* Exhibit 6F. As a result, the Association concludes that the removal of Unit 12 from the PUD is inconsistent with the Hearing Examiner's original decision approving the PUD. Thus, the proposal should be denied. The Hearing Examiner disagrees with the Association's reasoning.

As the Association contends, the Hearing Examiner's decision approving the PUD states that the PUD shall be subject to the terms and conditions of the CC&Rs of the Riverpoint Village Planned Unit Development. See Exhibit 6F (Conditions 21 & 22). The primary purpose of these conditions, however, is to ensure that there is a mechanism to allocate a fair share of the costs of maintaining the common areas before sale of any lots/units. This also provides fair warning to future buyers regarding the obligations that go with ownership. The Association's argument seems to suggest that by requiring CC&Rs to be put in place before the development could proceed, the Hearing Examiner intended to adopt all the terms and conditions of those CC&Rs as conditions of approval for the PUD. The Hearing Examiner rejects this suggestion. This PUD conditions do not purport to dictate all the specific terms and conditions that must be included in the CC&Rs. Nor do the PUD conditions incorporate all the specific terms of the CC&Rs as conditions of the PUD itself.

The Hearing Examiner concludes that the proposal is consistent with the original decision approving the PUD. Nothing in those project conditions precludes the Hearing Examiner from approving this proposal.

DECISION

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to approve the proposed PUD amendment, subject to the following conditions:

1. If any artifacts or human remains are found upon excavation, The Spokane Tribe of Indians and the City of Spokane shall be immediately notified, and the work in the immediate area cease. Pursuant to RCW 27.53.060 it is unlawful to destroy any historic or prehistoric archaeological resources. RCW 27.44 and RCW 27.53.060 require that a person obtain a permit from the Washington State Department of Archaeology & Historic Preservation (WSDAHP) before excavating, removing, or altering Native American human remains or archaeological resources in Washington.
2. Prior to any land disturbing activities an Inadvertent Discovery Plan (IDP) shall be provided to the City, in a form satisfactory to the Planning Department. The IDP shall be kept on site during all land disturbance activity.
3. The land remaining within the Riverpoint Village PUD is and will remain subject to the applicable conditions of approval as set forth in the Hearing Examiner's decision dated June 16, 1992, including the MDNS issued on May 1, 1992.

4. The land removed from the PUD will be subject to such regulations and standards for land development as are in effect at the time that a development proposal is submitted.
5. If any existing easements exist on the subject property, they shall remain in place and in full force and effect until legally abandoned.

DATED this 20th day of September 2021.



Brian T. McGinn
City of Spokane Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Appeals of decisions by the Hearing Examiner are governed by Spokane Municipal Code 17G.060.210 and 17G.050.

Decisions of the Hearing Examiner amendments to PUDs are final. They may be appealed to the City Council. All appeals must be filed with the Planning Department within fourteen (14) calendar days of the date of the decision. The date of the decision is the 20th day of September 2021. **THE DATE OF THE LAST DAY TO APPEAL IS THE 4th DAY OF OCTOBER 2021, AT 5:00 P.M.**

In addition to paying the appeal fee to appeal the decision, the ordinance requires payment of a transcript fee to the City of Spokane to cover the costs of preparing a verbatim transcript and otherwise preparing a full record for the City Council.

Briefing Paper

Urban Experience Committee

| | |
|--|---|
| Division & Department: | Finance – Facilities Management |
| Subject: | New Master Lease and Site Lease Agreement for the Dish Network |
| Date: | 07/01/2021 |
| Contact (email & phone): | Dave Steele, dsteELE@spokanecity.org , X 6533 |
| City Council Sponsor: | CM Lori Kinnear |
| Executive Sponsor: | Tonya Wallace |
| Committee(s) Impacted: | Public Safety, Finance & Administration, Urban Experience |
| Type of Agenda item: | <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative |
| Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan) | |
| Strategic Initiative: | Strategic Investment |
| Deadline: | 11/1/2021 |
| Outcome: (deliverables, delivery duties, milestones to meet) | Approve master contact |
| <p>Background/History:</p> <p>The City of Spokane commonly leases out space on Utilities structures and other City owned buildings for the purpose of installing cellular communications antennas. We currently have agreements with the 4 major cellular providers for roughly a dozen structures.</p> <p>Each of the current vendors operates under a Master Use Agreement as an umbrella, an specific site use agreements for each specific location.</p> <p>This agreement establishes a new master agreement with a new company (The Dish Network) and provides the agreed upon format for site lease agreements for two initial locations. The initial term is for 5 years with an optional 5-year renewal.</p> <p>Going forward the Site use agreement would be utilized at additional locations as necessary.</p> | |
| <p>Executive Summary:</p> <p>The City of Spokane Commonly leases out space on Utilities Structures and other City owned buildings for the purpose of installing cellular communications antennas. This agreement establishes a new master agreement with a new company (Dish Network) and provides the format for site lease agreements for two locations. The initial term is for 5 years with an optional 5-year renewal.</p> | |
| <p>Budget Impact:</p> <p>Approved in current year budget? <input type="checkbox"/>Yes <input checked="" 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.) REVENUE GENERATING</p> | |
| <p>Operations Impact:</p> <p>Consistent with current operations/policy? <input checked="" type="checkbox"/>Yes <input type="checkbox"/>No <input type="checkbox"/>N/A</p> <p>Requires change in current operations/policy? <input type="checkbox"/>Yes <input checked="" type="checkbox"/>No <input type="checkbox"/>N/A</p> <p>Specify changes required:</p> <p>Known challenges/barriers:</p> | |

MASTER LICENSE AGREEMENT

This Master License Agreement, dated as of _____, 202__, is made by and between the City of Spokane, a municipal corporation of the State of Washington ("Licensor" or "City"), and DISH Wireless L.L.C., a Colorado limited liability company having a place of business at 9601 S. Meridian Blvd., Englewood, Colorado 80112 ("Licensee"). Licensor and _____ may be referred to where appropriate individually as a "Party" or collectively as the "Parties."

RECITALS

Licensor owns or has other legal rights to certain property (land, improvements to that land, and structures on that land) Licensee wishes to obtain a ~~non-exclusive~~ license to use certain portions of Licensor's property for purposes of locating unmanned radio communications and direct support equipment, including, but not limited to, transmitters, receivers, ~~antennae~~ antennas, remote radio units, surge protection devices, junction/ distribution boxes, amplifiers, remote tilt units, diplexers, triplexers, couplers, trays, enclosures, junction boxes, hangers, pull boxes, racks, mounts, sleds, and grounding wiring, feed lines, combiners, batteries ~~and~~, chargers, ~~and all to the extent other appurtenant equipment, devices, and fixtures that may be used to provide in connection with an FCC-licensed frequencies communications facility~~ (collectively, the "Equipment") on such property. The specific portion of Licensor's property at each individual location licensed to Licensee will be referred to ~~individually as a "Site" and collectively as the "Sites."~~ Any ground space agreed by the Parties to be reasonably necessary for placement and operation of the Equipment shall be included in the Site licensed to Licensee as described in the Site License Acknowledgment, provided that such ground space may be subject to separate rental fees to the extent specified as part of the applicable Site License Acknowledgment as the "Premises" and shall include a portion of Licensor's real property as specified in each particular SLA, together with space on Licensor's water tower or other structure. Each Licensor property that is subject to an SLA shall be referred to individually as a "Site" and collectively as the "Sites."

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, the Parties agree as follows:

1. MASTER LICENSE AGREEMENT

This Agreement contains the basic terms and conditions upon which each Site is licensed by Licensor to Licensee. When the Parties agree on the particular terms for a Site, the Parties will execute a completed Site License Acknowledgment (a "SLA") in the form attached as Exhibit A. Each executed SLA is deemed to be a part of this Agreement. The terms and conditions of the SLA will govern and control if there is a discrepancy or inconsistency between the terms and conditions of any SLA and this Agreement. Licensee may record a memorandum of the SLA. Upon termination of the SLA for any reason, Licensee will record a notice of termination of the SLA if Licensee previously recorded a memorandum of the SLA.

2. USE

Subject to the terms and conditions contained in this Agreement and the SLA relating to the Site,

Licensors grants a license to Licensee –and Licensee accepts a license from Licensor for the Site(s). The license granted to Licensee under this MLA and each applicable SLA shall not be revocable at will; rather, this MLA and each applicable SLA may only be terminated in accordance with the termination rights expressly granted to each Party therein.

2.1 A Site may be used by Licensee only for the installation, operation, upgrading, repair, maintenance and removal of the unmanned radio communications facility including, without limitation, the Equipment and related Licensee-owned buildings, antennae and cabinets, antenna support structures ("Towers"), and utilities, all as more specifically described in the applicable SLA ("Communications Facility"); provided that in no event"), which shall such Equipment be used for include the provision of energy or water management services without the written consent of Licensor; provided, however, that such provision shall be deemed inapplicable right to the extent prohibited by state or federal law. Such installation replace, repair, operation, upgrading, maintenance and removal by Licensee at the Site add, or otherwise modify Licensee's Equipment and the frequencies over which the Equipment operates ("Permitted Use"). Licensee shall comply with any shall be lawful and in compliance with all applicable laws, statutes, codes, orders, ordinances, rules and regulations ("Applicable Laws") issued by any of federal, state, and local or other authorities having jurisdiction over the Communications Facility, the Parties, the SLAs, or this MLA ("Governmental Authority").

Commented [RJ1]: Please explain all of the edits to this section which City is inclined to reject.

(a) Licensee shall, at its install, maintain, remove, upgrade and operate at the Site only the Licensee Communications Facilities at Licensee's sole cost and expense (including the cost of any necessary testing of and/or modifications to Licensor's equipment), install, maintain, remove, upgrade and operate at the Site only the Licensee Communications Facilities specified on the applicable SLA. Licensee must install, operate and maintain the Equipment in a manner that does not interfere in any way with the existing or future operations of Licensor at the Site may add, replace or any other prior existing users of the Site, and in accordance with all applicable requirements set forth in Section 9 hereof. Licensee shall not use modify Licensee's equipment within the Premises ("Permitted Modifications"), including those which allow Licensee to: (i) modify or permit add additional technologies; and (ii) modify or add equipment within the Premises; in either case, without incurring any use of a Site that will in any way:

2.32.2 Conflict with any applicable law, statute, regulation, ordinance, rule, order increase in the then-current License Fee, or other requirement, now or hereafter in effect, of any governmental authority; Cause modification of the terms and conditions set forth in the SLA. For any modification or constitute any nuisance, noxious odors, unsafe condition addition that is not a Permitted Modification, Licensee shall seek Licensor's approval of Licensee's installation plans and specifications prior to commencing any such addition or waste in or about the Site; modification.

(a) Interfere with the rights, operations, or disturb the quiet enjoyment of Licensor, other users of the Site, any other person lawfully on the Site, or any other customer of Licensor; or

(b) Except as allowed in Section 15.3, cause a cancellation, increase the premiums for or deductible under, or otherwise affect any fire, casualty, property, liability or other insurance covering the Site.

2.42.3 The types of Sites potentially available to Licensee by Licensor include water towers and, raw land, and such other Licensor owned structures as the Parties may mutually agree to include. Licensor has the right to define the level of reasonable coordination required for the installation, maintenance, and repairs of Licensee's Communications Facilities at water towers and raw

~~land the Sites.~~ Such levels of coordination shall be defined within each SLA. Licensors and Licensee will respond to Licensee's request regarding coordination of coordinate the installation of Licensee's Communications Facilities within ~~twenty-ninety~~ (2090) days after receiving Licensee's request.

Commented [RJ2]: Dave, is this a realistic timeframe?

Commented [SD3R2]: Edited to Ninety Days

~~2.52.4~~ Licensee acknowledges that the license to use the Site is secondary to Licensors' operations, maintenance, and related activities, which are the primary uses of the Site. Accordingly, if there is a casualty to any of Licensors' equipment on or adjacent to a Site and it is necessary to ~~use temporarily relocate the Premises so that~~ the Site may be used for restoration or other activities necessary to ensure such continued Licensors' operations, maintenance and related activities, ~~then Licensors will permit~~ Licensee ~~will arrange~~ to utilize temporary facilities on or ~~off adjacent to~~ the Site and shall cooperate, and shall otherwise comply with reasonable requests made by Licensors to the extent necessary to restore or maintain services to Licensors' customers, in the sole discretion of Licensors. Licensors shall provide ~~30 days~~ six (6) months' notice in advance of any scheduled construction or maintenance activities that will require the Licensee to ~~remove and/or temporarily~~ relocate the Licensee's equipment. In cases of emergencies, Licensors will make a good faith effort to give ~~24 hours~~ as much advance notice to Licensee ~~for removal or relocation of Licensee's equipment, but reserves as is possible under the right circumstances and, following such notice, the Parties will together in good faith to move or temporarily~~ relocate ~~said equipment if it interferes~~ the Premises so that the Communications Facilities do not interfere with the Licensors emergency ~~requirements-use of the Site~~. In all cases, it remains the responsibility of the Licensee for the ~~removal and or temporary~~ relocation of Licensee's ~~equipment~~ Premises and Communications Facilities.

2.5 Nothing in this Agreement shall prohibit Licensors from entering into agreements with third parties for the use of the Site for communication and other purposes; ~~provided that any, unless such agreement would materially affect Licensors' ability to comply with the terms, conditions, and obligations under this MLA or the applicable SLA for the Site. Any~~ radio communication equipment proposed to be installed on the Site pursuant to such agreement shall be subject to requirements substantially equivalent to those set forth in Section 9.4 hereof.

2.6 Licensee shall, at Licensee's expense, prepare, ~~file, or otherwise request all certificates, permits, approvals, and other authorizations that may be required by any Governmental Authority (collectively, "Governmental Approvals").~~ The Parties acknowledge and agree that Licensee's ability to lawfully use the Premises at each Site is contingent upon Licensee obtaining such Governmental Approvals. Licensee will endeavor to obtain all such Governmental Approvals in a prompt and timely manner.

~~2.6~~ Licensors shall cooperate with Licensee in its efforts to obtain such Governmental Approvals by promptly executing such appropriate documents and applications as may be required by ~~any governmental agency~~ virtue of Licensors' ownership of, or rights in, each applicable Site, after such documents and applications have been prepared by Licensee for submission to the applicable Governmental Authority with jurisdiction in order for Licensee to obtain the necessary licenses, permits or other approvals from such governmental agency to use the Site as contemplated by this Agreement and the applicable SLA.

2.7 ~~Licensors shall execute such appropriate documents and applications as may be required by virtue of Licensors' ownership of or rights in the Site, after such documents and applications have been prepared by Licensee for submission to any governmental agency with jurisdiction in order for Licensee to obtain the necessary licenses, permits or other approvals from such~~

~~governmental agency to use the Site as contemplated by this Agreement and the applicable SLA;~~ provided, however, that Licensor shall not under any circumstances be obligated to execute any application or other document that, in Licensor's reasonable judgment, will in any way impair, limit or adversely affect Licensor's rights in or ownership or use of the Site or which creates an unjustifiable liability to Licensor.

2.8 Licensee acknowledges its understanding that Licensor has adopted a policy of encouraging the collocation of communication facilities on towers and monopoles within the City of Spokane. Licensee agrees that if Licensee constructs a communications tower or monopole on any City property, the tower or monopole will be constructed to accommodate equipment of up to two additional potential users; provided that such equipment is substantially similar in size and weight to that utilized by Licensee. Upon completion of construction, Licensee shall provide the City with a certified statement by an accountant that sets forth the actual design, construction and development cost of the communications tower or monopole. Licensee shall be entitled to charge each subsequent user its pro rata share of the design, construction and development costs plus an annual administration fee. The annual administration fee is for Site management and shall not exceed twenty percent of the total cost of the communications tower or monopole plus a fair pro rata share of maintenance expenses to be approved by Licensor.

A potential user will be entitled to install communication equipment on the tower or monopole constructed by Licensee when it has entered into a ground lease agreement with the Licensor and a tower agreement with the Licensee. Licensee's tower agreement with the potential user must be approved by the Licensor prior to the potential user locating any equipment on Licensor's property or the communications tower or monopole. Licensor will not unreasonably withhold condition or delay said approval.

All potential users are required to install wireless facilities according to all applicable industry standards and must be licensed. ~~Licensed shall permit co-location of other equipment or facilities provided that any such third party equipment or facilities shall be subject to requirements substantially equivalent to those set forth in Section 9.4 hereof, is in compliance with the co-location requirements of VMC 20.890.040.R, and is otherwise structurally feasible. All license or other fees resulting from such co-location shall be payable to Licensor unless otherwise specifically agreed in the applicable SLA.~~

3. TERM

The initial term of this Agreement ("Initial Term") is five (5) years commencing on the date specified on page I of this Agreement ("Effective Date"). The Initial Term for a SLA will be five (5) years and will commence on the "Commencement Date" of such SLA, ~~and will terminate concurrent with this Agreement,~~ unless otherwise terminated as provided in this Agreement. The Commencement Date of a SLA shall be the first day of the month following (i) 120 days after full execution of the SLA; or upon (ii) commencement of construction of the Communications Facilities, whichever occurs first. Each SLA will be automatically renewed for one (1) additional term of five (5) years (the "Renewal Term"), unless Licensee provides Licensor notice of intention not to renew not less than ninety (90) days prior to the expiration of the Initial Term of the SLA. Licensee may enter the Site stated in the SLA before the Commencement Date, to the extent such entry is related to engineering surveys, inspections, or other reasonably necessary tests required prior to construction and installation of Licensee's Communications Facility subject to the conditions addressed in Section 12 "Access to the Site." The term of this Agreement will be automatically renewed for one (1) additional ~~term ("Renewal Term")~~ of five (5) years, unless

Commented [SN4]: Is this intended to apply to raw land sites where Dish constructs a tower? If so, why would all license fees be payable to Licensor? If this is supposed to apply to water towers, why is this necessary?

Licensee provides Licensor notice of intention not to renew not less than ninety (90) days prior to the expiration of the Initial Term ~~or any Renewal Term. In the event that the Parties do not extend this Agreement beyond the Renewal Term, the terms and conditions of this Agreement shall survive and continue to govern any remaining SLAs in effect until each SLA expires or is earlier terminated.~~

4. TERMINATION

4.1 In addition to any other rights to terminate a SLA or this Agreement, Licensor ~~has the right to immediately~~ may elect to terminate a SLA and all of Licensee's rights to the Site ~~upon written notice to Licensee~~ if any Equipment placed on the Site by Licensee unreasonably interferes with any equipment located on the Site, ~~the use and quiet enjoyment of neighboring property of any customer of Licensor, or other users of prior to the date on which the Site, and SLA is executed, unless Licensee fails to resolve~~ eliminates the interference, or resolves the interference to the satisfaction of Licensor, within thirty (30) days of the date of such notice; ~~provided, however, that Licensee shall have such additional time beyond the original thirty (30) day period if Licensee temporarily eliminates, or resolves to Licensor's satisfaction, the interference during the original thirty (30) day period and thereafter continuously pursues a permanent cure to the interference.~~

4.2 In addition to any other event of termination of a SLA or this Agreement, Licensee shall have the right to terminate a SLA upon thirty (30) days prior written notice upon the occurrence of any of the following:

(a) Any ~~certificate, permit, license or approval specified in application for~~ Governmental Approvals required for the SLA ~~Site is rejected, provided that Licensee has used its best efforts to obtain such certificate, permit, license conditioned, materially delayed or otherwise not approved for any or approval no reason; or~~

(b) Any ~~certificate, permit, license or approval specified in the SLA~~ Licensee determines, in its sole and absolute discretion, that any Governmental Approval cannot be obtained in a timely fashion, provided that Licensee has used its best efforts to timely obtain such certificate, permit, license or approval commercially manner; or

(c) ~~If any~~ Any previously issued ~~certificate, permit, license or approval is~~ Governmental Approval is canceled, expires, lapses, or is otherwise withdrawn or terminated by the applicable ~~governmental agency, provided that Licensee has used its best efforts to keep such certificate, permit, license or approval in force~~ Governmental Authority; or

(d) If Licensee determines that the Site is not acceptable or appropriate for its operations for any of the following reasons:

(i) environmental concerns including without limitation conditions which that violate applicable law, that may limit or otherwise prevent Licensee from constructing, maintaining or operating the Licensee Facilities; or that pose unreasonable financial, health, or safety risks to Licensee, or Licensee's employees, agents, or contractors;

(ii) changes in Applicable Law which prohibit or adversely affect Licensee's ability to operate the Communications Facility or Equipment, in whole or in part, at

the Premises or

~~(+)(iii)~~ technological reasons, including without limitation, signal strength, coverage or interference.

4.3 In addition to any other rights to terminate a SLA or this Agreement, Licensor shall have the right to immediately terminate this Agreement in the event that, because of the existence of this Agreement (individually or in conjunction with other such agreements), any court, regulatory, or governmental entity having jurisdiction issues any final order that Licensor is a "Telecommunications Company" or that Licensor is providing "Telecommunications Service," as defined in any federal or Washington State statute or regulation. ~~Upon receipt of~~ In such event Licensor shall, before the effective date of any termination, and if Licensee so elects, negotiate in good faith with Licensee to amend this Agreement and the applicable SLAs, if necessary, in a manner that prevents Licensor from being designated as a Telecommunications Company or as providing Telecommunications Service.

Should Licensor become aware of any pending legislation, litigation, or regulatory change which is likely to result in Licensor being designated as a Telecommunications Company or as providing Telecommunications Service, Licensor shall promptly notify Licensee thereof. Licensee, at its sole cost and expense, may contest such legislation, litigation, or regulatory action, including rights of legal challenge and appeal to effect elimination of designation and Licensor shall support such activities of Licensee provided that such support shall not result in any cost or expense to Licensor.

Licensee shall have a reasonable period of time, not to exceed 90 days such period of time as may be prescribed by (or in conjunction with) the final, unappealable order designating Licensor as a Telecommunications Company or as providing Telecommunications Service, within which to secure alternate facilities and to disconnect and remove all of its property from Licensor's facilities Site, and this Agreement as well as Licensee's use of Licensor's facilities any applicable SLA(s) shall terminate upon the expiration of such period. If such final order specifies an earlier date of termination, then this Agreement shall terminate on the date so specified, unless Licensee is diligently prosecuting in good faith an appeal or other legal challenge to the final order and pending, such appeal or challenge, the effectiveness of such final order is stayed or its applicability to Licensor is otherwise suspended.

4.34.4 In addition to any other rights to terminate a SLA or this Agreement, Licensor shall have the right to terminate this Agreement upon notice in advance to Licensee, if the existence of this Agreement (individually or in conjunction with other such agreements) creates an adverse impact upon Licensor's ability to issue tax exempt debt. In such event Licensor shall, before the effective date of any termination, and if Licensee so elects, negotiate in good faith with Licensee to amend this Agreement to eliminate the adverse impact.

Should Licensor become aware of any pending legislation or regulatory change which is likely to have an adverse impact upon Licensor's ability to issue tax-exempt debt as a result of this Agreement (individually or in conjunction with other such agreements), Licensor shall promptly notify Licensee thereof. Licensee, at its sole cost and expense, may contest such legislation or regulatory action, including rights of legal challenge and appeal to effect elimination of such- adverse impact and Licensor shall support such activities of Licensee provided that such support shall not result in any cost or expense to Licensor.

Notwithstanding the foregoing, Licensor retains the right to terminate this Agreement at any time if, in its sole judgment, this Agreement individually or in conjunction with other such agreements creates an adverse impact on its ability to issue tax-exempt debt; however, Licensor agrees that it will not terminate this Agreement until the latest reasonable date as determined by Licensor, so as to afford Licensee as much time as reasonably possible to make arrangements for relocation of its facilities.

~~4.4 In addition to any other event of termination of a SLA or this Agreement, Licensor shall have the right to terminate, for any reason, a SLA and all of Licensee's rights to the Site upon three (3) months prior written notice.~~

~~4.5 Intentionally omitted.~~

4.6 If the Licensee terminates this Agreement, any prepaid Annual Fees (as described in Section 5 below) shall be retained by Licensor; provided that if such termination is pursuant to Sections 4.7, 8.6, 9.9, 18.2, 21.1, 21.3, 21.4, 23.3, 26.2(b), 26.2(c) and 26.2(d) hereof, such Annual Fees will be prorated to the date of such termination and the unused portion returned to the Licensee. If Licensor terminates this Agreement, any prepaid Annual Fees will be refunded to Licensee on a pro rata basis; except that no refund will be issued if termination is based upon Default of Licensee as set forth in Sections 23.1 and 23.2.

5. FEES

5.1 ~~ANNUAL-MONTHLY FEE~~

The "~~Annual-Monthly Fee~~" for each SLA shall be _____ (\$ _____) (the "~~Base Fee~~"), and shall increase thereafter by three percent (3%) per year on an annual basis ("~~Adjusted Base Rent~~"). Licensee shall also be responsible for paying applicable leasehold excise tax required by Chapter 82.29A RCW. The burden is on the Licensee to show that it falls within a legal exemption from said excise tax.

The Monthly Fee, as adjusted per this section 5.1, shall be payable on or before the Commencement date and on or before the first day of each month thereafter for the remainder of the Term. The Fee shall be payable to City at:

City of Spokane

Department

808 West Spokane Falls Blvd

Spokane, WA 99201
Attn: _____

~~shall mean the sum of the annual fees for all Sites as calculated in accordance with the applicable SLAs and the following:~~

~~(a) The Annual Fee will be payable on or before the Commencement Date and thereafter on the first day of the first month following each anniversary of the Effective Date of this Agreement; and~~

~~(b) The Annual Fees for each Site will be prorated in the first and last year of the SLA to coincide with the anniversary of the Effective Date of this Agreement, except that Annual Fees for each Site will continue past any termination of the SLA (and shall be prorated) until all of the Equipment is removed from the Site and restoration of the Site has occurred according to the Agreement; and~~

Commented [SN5]: Pending further review by Dish

~~(e) The prorated first year Annual Fee for each Site will be calculated based on the Commencement Date.~~

5.2 APPLICATION FEE

With respect to any Site which Licensee is or may be interested in licensing pursuant to this Agreement, Licensor shall provide, at the request of and at no charge to Licensee, general information pertaining to such Site such as its availability, ownership status and/or applicable easement rights, availability of utilities, and Licensor's future plans for usage of the Site to the extent available, and subject to change without notice. Any further request for preliminary information and/or submittal of a proposed SLA regarding such Site shall be accompanied by a nonrefundable application fee ~~in the amount set forth in Exhibit B of \$750.00~~, which shall cover the average Licensor costs of processing such request for additional information and/or proposed SLA; provided that only one Application Fee shall be charged per proposed Site.

5.3 ADJUSTMENT

~~The Annual Fee and Application Fee for a Site will be adjusted as provided on Exhibit B.~~

5.4.3 ESCORT AND BUILDING FEES

Licensee shall reimburse Licensor for any and all reasonable out of pocket costs and expenses ~~reasonably incurred~~ actually paid by Licensor in connection with providing escorts at Site(s) and in connection with services performed by Licensor at ~~the Licensee's prior written request of Licensee~~ within thirty (30) days after submittal of a statement of such reasonable costs and expenses and reasonable supporting documentation. Without limiting the generality of the foregoing, amounts recoverable by Licensor hereunder shall consist of reasonable and satisfactorily documented applicable engineering, construction, supervision, and administrative overheads, transportation, employee expenses, reproduction and/or graphic services, supplies, telephone service and other expenses.

5.5 5.4 INTEREST

If Licensee fails to pay any Fee within thirty (30) business days of when due, such amount will bear interest until paid at the rate of one and one-half percent (1.5%) per month or at the highest rate permitted by law, whichever is lower, provided interest shall not accrue unless and until Licensee receives written notice of such past due amount.

5.6.5 LATE FEE

If Licensee fails to pay any Fee within thirty (30) business days of when due, Licensor may require that Licensee pay to Licensor a late fee of \$150. The late fee is in addition to the interest Licensor may assess under Section ~~5.5.4~~ of this Agreement.

5.7 5.6 OTHER AMOUNTS

Any sums due to Licensor under this Agreement which are not specifically defined as "Annual Monthly Fees" are deemed additional fees and are subject to the interest charges and late fees specified in Sections ~~5.5.4~~ and ~~5.6.5~~ and any other provisions of this Agreement which address License Fees.

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5.8 — WHOLESALE PURCHASE OF AIR TIME

~~To the extent agreed between the Parties with respect to a particular Site or Sites, in lieu of part or all of the fees payable as set forth above, Licensee may in its discretion offer air time to Licensor on a commercially available basis at Licensee's wholesale rates or lesser rates for off-peak or other special service as negotiated between the Parties, subject to all applicable federal, state or local laws, regulations and tariffs.~~

6. SITE LICENSE APPROVAL

6.1 ~~Except as otherwise expressly stated herein,~~ Licensee has the right at its sole cost and expense to erect, maintain, replace and operate at each Site only that Communications Facility specified on a SLA. ~~Prior to commencing any installation or material alteration of a Site, Licensee must obtain Licensor's written approval (or disapproval as the case may be) of a completed the Parties shall have executed an~~ SLA, in the form attached ~~hereto~~ as Exhibit A, for the Site; ~~provided that such approval or disapproval. Each SLA shall be granted executed by Licensor only after any review, consideration by, or approval of the City of Spokane City Council required by Applicable Law.~~ Licensee shall specify its proposed installation of utilities to the Site in the applicable SLA and shall provide Licensor with prior written notice of such installation; provided that if the proposed route interferes with Licensor's current or ~~potential future~~ imminently planned use of the Site, the Licensor may ~~direct there require an alternative, commercially reasonable route or require a specific, commercially reasonable method of installation to take a specific route and be conducted in a specific manner avoid such interference.~~ Unless otherwise directed in writing by Licensor, Licensee shall submit each proposed SLA to:

For Equipment located on Water Department ~~sites~~ Sites:

Name: _____

Address: City of Spokane

Spokane, WA 992____

6.2 ~~In the event that Licensor gives its written consent to a proposed SLA,~~ Licensee shall install the Equipment and Communications Facility in strict accordance with:

- (a) The terms of the proposed approved SLA ~~thereof~~;
- (b) Licensor approved plans and construction drawings ("Plans");
- ~~(b)(c)~~ (c) Any conditions or qualifications specified by Licensor in ~~its consent~~ the Plans or SLA; and
- ~~(c)(d) (e)~~ (e) — The provisions of this Agreement, to the extent this Agreement is not inconsistent with the Plans or the SLA.

6.3 Licensee shall reimburse Licensor for any and all reasonable out of pocket costs and expenses reasonably incurred actually paid by Licensor in connection with services performed by Licensor at ~~the Licensee's prior written~~ request ~~of Licensee~~ (whether prior to or after the submittal

of a proposed SLA) within thirty (30) days after submittal of a statement of such reasonable costs and expenses and reasonable supporting documentation. Without limiting the generality of the foregoing, amounts recoverable by Licensor hereunder shall consist of reasonable and satisfactorily documented applicable engineering, supervision, and administrative overheads, transportation, employee expenses, reproduction and/or graphic services, supplies, telephone service and other reasonable and satisfactorily documented expenses.

6.4 Any structural work on a structure on the Site, or any work involving a material alteration of any portion of the Site, must be approved by a licensed structural engineer at Licensee's sole cost and expense. For purposes of the foregoing, Licensee's subsequent changing out of Equipment previously installed at a Site with Equipment of substantially the same size in the course of repairs or upgrading of electronic equipment will not be deemed to be a material alteration; provided, however, that any increase in the number of antennae at a Site or change in the height or placement of such antennae shall be deemed a material alteration.

6.5 In the event Licensee shall install or materially alter any Equipment, Communications Facility or portion thereof on Licensor's property or facilities without obtaining Licensor's written approval of a SLA relating to such installation or material alteration, Licensee shall pay, in addition to the fees payable pursuant to Section 6.3 and 6.4 above, a retroactive monthly charge for each month of such unauthorized installation in the amount ~~set forth in Exhibit B hereto~~ equal to the Monthly Fee described in Section 5.1. In addition, Licensee shall immediately submit to Licensor a SLA for such installation or alteration and, to the extent a mutually acceptable SLA cannot be negotiated within a reasonable period of time, shall promptly remove such facilities (or, with respect to materially altered facilities, shall return such altered facilities to the state specified in the original SLA) upon written notice from the Licensor, in accordance with the requirements set forth in Section 22 hereof. In the event Licensee cannot provide documentation satisfactory to Licensor, in Licensor's sole discretion, as to the actual date of such unauthorized installation or alteration, Licensee shall be liable for accrued charges for such installation or alteration for a period of two (2) years preceding the date of discovery by Licensor of such unauthorized installation or alteration.

7. SITE ACCEPTANCE

7.1 For purposes of Section 7.2 below, Licensee will be deemed to have accepted the Site only at the time Licensee ~~commences~~ completes installation of the Equipment at the Site pursuant to the SLA ~~approved~~ executed by Licensor ~~and Licensee~~; provided that Licensee's failure to so accept such Site shall not be grounds for termination of the SLA relating to such Site except as provided in Section 4 hereof. ~~Conducting feasibility and cost assessments and other inspections on the Site is not deemed to be acceptance and pre-commencement activities permitted in this Agreement on the Site is not deemed to be acceptance. The Parties acknowledge and agree that Sections 7.2 – 7.4 shall not apply to Environmental Hazards, including without limitation, the rights and obligations of the Parties as set forth in Section 25 of this Agreement.~~

7.2 Acceptance of the Site by Licensee is conclusive evidence that Licensee:

- (a) Accepts the Site as suitable for the purpose for which it is licensed;
- (b) Accepts the Site and any structure on the Site and every part and appurtenance thereof AS IS, with all faults; and
- (c) Waives all claims against Licensor in respect of defects in the Site and its structures and appurtenances, their habitability or suitability for any permitted purposes,

except:

- (i) As expressly provided otherwise in the SLA or this Agreement;
- (ii) To the extent the claim results from the negligent act of Licensor, its employees, agents or contractors; or
- (iii) If resulting from a known claim by a third party not identified by Licensor in its representations under this Agreement.

7.3 Licensor does not warrant the suitability of any particular Site for the purposes for which Licensee may desire to use it; nor does Licensor warrant the adequacy of any Site's location, its condition, or the condition of any structure or appurtenances for any purpose. ~~Licensee takes each Site "AS IS," "WHERE IS" and "WITH ALL FAULTS."~~

7.4 Notwithstanding the foregoing, Licensee may terminate an SLA by written notice upon discovering any fault or defect in a Site or its structures and appurtenances that unreasonably interferes with, hinders, or otherwise limits Licensee's ability to install, operate, and/or maintain the Communications Facility unless Licensor agrees to correct such fault or defect to Licensee's satisfaction and without unreasonable delay; provided, upon such termination by Licensee, Licensee shall remove the Communications Facility and all related appurtenances and restore the site to the condition it was in prior to Licensee's installation of the Communications Facility..

8. PERFORMANCE OF THE WORK

8.1 The installation, maintenance, repair, relocation and removal of Equipment and other work performed in connection with this Agreement is collectively referred to herein as the "Work."

8.2 Except as otherwise agreed upon by the Parties in writing, Licensee shall furnish all personnel, supervision, labor, transportation, tools, equipment and materials for performance of the Work. All Work will be undertaken at Licensee's sole cost and expense. Licensee shall expeditiously and efficiently perform the Work in accordance with the SLA and the provisions of this Agreement. Licensee shall not independently hire any Licensor employee to perform any of the Work (e.g., other than in the course of his or her employment with Licensor with respect to Work that Licensor agrees to perform for Licensee).

8.3 Licensee shall perform the Work in a workmanlike and skillful manner and (a) the Equipment will be safe when used in conformance with manufacturers' and installers' guidelines; (b) of ~~first-class quality for Licensee's intended purpose; and consistent with industry standards;~~ (c) in conformance with such ~~license~~ requirements and specifications as Licensor shall from time to time reasonably prescribe after thirty (30) days' written notice; and (d) in compliance with all ~~applicable laws and the regulations, orders and decrees of all lawfully constituted bodies and tribunals with jurisdiction thereof~~ Applicable Laws pertaining to the construction, operation and maintenance of communications facilities, including without limitation, the requirements of the latest edition of the National Electrical Safety Code ~~and Licensor's specifications.~~

8.4 Licensee shall promptly and satisfactorily correct or replace any Work ~~or Equipment~~ found to be defective or not in conformity with the requirements of this Agreement. Licensor shall notify Licensee in writing and shall specifically identify the exact manner in which the Work is or may be defective or non-conforming. Licensee shall be afforded a reasonable period of time to inspect such claim. If Licensee fails or refuses to perform any Work required by this Agreement or to make any such undisputed corrections, repairs, or replacements, Licensor may, after ten (10) days' within thirty (30) days of Licensor's written notice to Licensee (or sooner, upon Licensor's

~~determination of an emergency), perform such Work and, then Licensor may make such undisputed corrections, repairs, and replacements in coordination with Licensee, at Licensee's sole risk cost and expense and Licensee shall reimburse Licensor for the entire expense thereby reasonable out of pocket costs and expenses actually incurred by Licensor in performing such work.~~

8.5 Installation of the Equipment on a structure must not ~~adversely affect~~ cause the structure to exceed its structural integrity or maintenance of the Site or any structure or improvement on the Site and the resulting Equipment capacity. Any Equipment installed on the Site shall be reasonably inconspicuous as determined by the express requirements of the individual SLA.

8.6 Installation of the Equipment or the Work is subject to preemption by Licensor due to Licensor's work to restore its operations on the Site; however, such preemption shall occur only in an emergency situation, as reasonably determined by Licensor, and with reasonable notice to Licensee (within twenty-four (24) hours) of such emergency. Upon Licensee may, in compliance with temporary use requirements of VMC 20.899.050 SMC 17C.355A.140, immediately erect on the Site or an unused portion of the Site a temporary Communications Facility, including any supporting structure, while Licensor during any period of preemption; provided that (i) Licensee will provide Licensor with prior written notice of the proposed location of such temporary facility and an opportunity to inspect such facility upon its completion; (ii) if such proposed location interferes with Licensor's current or potential use of the Site during preemption, Licensor may require Licensee to change such proposed location to a more suitable location within or outside of the Site; (iii) Licensor shall proceed diligently to resolve the emergency requiring such preemption; and (iv) such a temporary Communication Facility will be removed by Licensee within thirty (30) days of expiration of the preemption period. Alternatively, upon the occurrence of a preemption, the Annual Fee shall be abated on a prorated basis for the duration of the preemption, or Licensee may terminate the SLA upon thirty (30) days' notice to Licensor and subject to Section 4.6.

8.7 Licensee shall ensure that all personnel who perform the Work shall be fully experienced and properly qualified to perform the same.

8.8 Licensee hereby acknowledges that Licensor employs workers covered by one or more collective bargaining agreements. In the event of any actual or potential labor dispute between Licensor and its workers that is, in whole or in part, based upon or otherwise arises out of the performance of the Work or this Agreement, Licensee will cooperate with Licensor as is reasonable.

8.9 Licensee shall, at all times, keep the Site reasonably cleared of all rubbish, refuse and other debris and in a neat, clean and safe condition. Upon completion of any portion of any of the Work, Licensee shall promptly remove all rubbish, refuse, debris and surplus materials.

8.10 The Work and the Equipment (i.e., as it relates to the Work) shall at all times be subject to reasonable visual inspection by Licensor. No inspection, delay or failure to inspect, or failure to discover any defect or non-compliance by Licensor shall relieve Licensee of any of its obligations under this Agreement.

8.11 Licensee shall give immediate attention to, and shall use reasonable efforts to promptly, courteously and equitably respond to, adjust and settle (without obligating Licensor in any way), all complaints received by Licensee from third parties arising out of or in connection with

performance of the Work. Licensee shall promptly notify Licensor of all such complaints and any action taken (or to be taken) in connection therewith. In handling any complaints, Licensee shall use its best efforts to maintain and promote good public relations for Licensor.

9. MINIMUM STANDARDS FOR COMMUNICATIONS SITES

9.1 Licensor retains the right to visually inspect Licensee's equipment at any reasonable time to ensure compliance with Site standards presently in effect or as may be amended. This clause shall not be construed as a duty to inspect.

9.2 Each transmitter at the Site will be identified with a copy of the Federal Communications Commission (FCC) compliance documentation, SLA document number, name of person or service agency responsible for repairs, their telephone number, equipment receive frequency, and equipment transmit/receive tone frequencies.

9.3 All communications fixed transmitter installations shall employ isolators or alternative techniques meeting the same criteria, to minimize spurious radiation and intermodulation products. In addition, transmitters in the 1950 to 1965 Mhz range shall have at least 30 dB of isolation followed by either a low pass filter and a bandpass cavity with at least 45 dB of attenuation 1.0 Mhz removed from the operating frequency or simply the bandpass cavity without the filter, provided testing reveals that the low pass filter is not needed.

9.4 Each party shall install and maintain equipment in compliance with the latest revision and ~~all~~ subsequent revisions of the Western Washington Cooperative Interference Committee (WWCIC) Engineering Standard No. 6, the current version of which is attached as Exhibit ~~C-B~~ of this Agreement and incorporated herein by reference, and in compliance with all applicable FCC regulations.

Commented [RJ6]: Update for local standards

9.5 Subject to Section 9.4 hereof, Licensee agrees to accept any and all interference from Licensor owned or operated ~~system/equipment~~ installed as of the Commencement Date.

9.6 Licensee shall use ~~its best commercially reasonable~~ efforts to resolve, ~~as promptly as possible, within forty-eight (48) hours following Licensee's receipt of written notice,~~ technical interference problems caused by Licensee's Equipment with ~~respect to~~ (i) any Licensor ~~owned or operated~~ equipment, installed ~~at the Site as of the Commencement Date; and (ii) any equipment of other licensed wireless communications providers installed and operating in compliance with its agreement with Licensor and Applicable Laws at the Site on the Commencement Date; and (ii) any third-party equipment legally installed as of the Commencement Date or, with respect to additional Licensee-~~ Licensor shall use commercially reasonable efforts to resolve, within forty-eight (48) hours following Licensor's receipt of written notice, technical interference problems with ~~Licensor's Equipment added to a Site following caused by (i) any Licensor equipment installed at the Site after the Commencement Date with respect to such Site, any Licensor or third-party equipment legally installed as of the date such additional Equipment was; and (ii) any equipment of other licensed wireless communications providers installed after the Commencement Date. If such interference is destructive (as defined by the FCC), such interference must be resolved as soon as possible and if such technical interference cannot be resolved within twenty-four (24) hours, Licensee shall discontinue its signal until the interference by Licensee or Licensor as required hereinabove, respectively, within forty-eight (48) hours following the Party's receipt of notification thereof, the at fault Party shall ensure that power to the interfering equipment is~~

~~reduced or that the interfering equipment is corrected, even if operating in compliance with FCC regulations. Nondestructive, removed if necessary, except for intermittent interference must be corrected within thirty (30) calendar days or Licensee's signal shall be disconnected until the interference is resolved. testing until such technical interference can be remedied.~~

9.7 Prior to the Commencement Date an intermodulation study shall be performed by the Licensee, and a copy provided to the Licensor, for each transmitter on a specific frequency added by the Licensee to a Site containing other transmitters or in the proximity of other transmitters to the extent that the Licensor determines in its reasonable judgment that potential interference may occur. New transmitters shall be designed to avoid the potential for intermodulation interference.

9.8 Where Licensee proposes to use systems utilizing spread spectrum emissions at a particular Site, Licensee shall provide Licensor with a ~~site~~Site noise floor measurement for the spectrum from 800 Mhz to 2400 Mhz prior to installation of Licensee's Equipment at the Site, and shall provide Licensor with an additional such measurement within thirty (30) days after such Equipment becomes operational.

9.9 In the event that radio interference resulting from users other than Licensee (including but not limited to Licensor) is not corrected within thirty (30) days, Licensee may terminate the affected SLA.

10. LIENS

10.1 Licensee must keep the Site free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of the Licensee. Licensee retains the right to use any Licensee-owned Communications Facility as collateral in financial transactions to the extent that Licensor's rights and interests are not affected.

10.2 If any lien is filed against the Site as a result of the acts or omissions of Licensee or Licensee's employees, agents, or contractors, Licensee must discharge the lien or bond the lien off in a manner reasonably satisfactory to Licensor within thirty (30) days after Licensee receives written notice from any party that the lien has been filed.

10.3 If Licensee fails to discharge or bond any lien within such period, then, in addition to any other right or remedy of Licensor, Licensor may discharge the lien by either paying the amount claimed to be due or obtaining the discharge by deposit with a court or a title company or by bonding, and/or terminate Licensee's rights to the Site(s).

10.4 Licensee must pay on demand any amount paid by Licensor for the discharge or satisfaction of any lien resulting from any act or omission of Licensee, and all reasonable attorney's fees and other legal expenses of Licensor incurred in defending any such action or in obtaining the discharge of such lien, together with all reasonable disbursements in connection therewith.

11. UTILITIES FOR THE SITE

Licensee shall have the right, at its sole cost and expense, to obtain electrical ~~and~~, telephone, ~~fiber and similar support~~ service from any utility company ~~or third party service provider~~ that provides, ~~or will provide~~, such service to the Site, ~~and~~, Licensee shall timely pay for all of its utility charges and costs. Licensee may arrange for the installation of a separate meter ~~and~~, main

breaker, and other infrastructure necessary to obtain such services at the Site. The exact location of proposed utility routes and the manner of installation will be part of the SLA described in Section 6.1 of and/or Plans approved by Licensor as permitted by this Agreement or the applicable SLA.

12. ACCESS TO THE SITE

The following provision grants to Licensee access rights to the Site subject to the following limitations (or unless otherwise modified on the applicable SLA):

- (a) Access for construction, routine maintenance and repair and other nonemergency visits shall only be during business hours (defined as Monday through Friday, 7:00 a.m. to 4:30 p.m.) with at least twenty-four (24) hours advance notice on a prior business day given to Licensor to arrange for an escort.** Licensee shall not have to pay an escort fee as described in Section 5.4 of this Agreement, provided Licensee met the advance notification requirement above, access is during business hours, and Licensee complies with Licensor access conditions pursuant to Section 12.d below.
- (b)** In the event of emergency defined as a natural disaster or other event which could have a material adverse effect on the service provided to Licensee's customers, Licensee may access the Site twenty-four (24) hours per day, seven (7) days per week, escorted by Licensor as arranged using the emergency phone number and related procedure described in Section 20 of this Agreement. Licensor may charge an escort fee as described in Section 5.4 in these situations.
- (c)** Access to the Site may be by foot or motor vehicle, including trucks;
- (d)** At its sole discretion, Licensor may allow Licensee access to the siteSite without an escort present, provided Licensee has given proper advance notice pursuant to Section 12.a above; Licensee has identified the person or persons who will be on the Site; the person or persons have undergone and passed a background check acceptable to Licensor; and Licensee maintains a complete and current access log as specified by Licensor at the Site available for inspection by Licensor at any time. Access to the Site shall also be subject to such additional reasonable conditions as may be imposed by Licensor from time to time which shall be after twenty (20) days' written notice to Licensee;
- (e)** Access to the Site is secondary to Licensor emergency operations and maintenance at the Site.
- (f) At no time shall Licensee or its agents (including Licensee's subcontractors) enter the siteSite without prior authorization from the Licensors emergency contact. Any such unauthorized entry may be reported to the appropriate authorities for potential criminal charges.**

Licensee acknowledges that the foregoing access rights may be subject to any limitations or restrictions on access imposed upon Licensor (and therefore upon Licensee) by the property owner under any underlying access easement relating to a particular Site. Licensee agrees to abide by such limitations or restrictions provided that Licensee has been given a copy of such license or license documents or has been notified by Licensor of such limitations and restrictions.

13. PAYMENT OF FEES AND TAXES

Licensee shall pay and have the right to appeal or contest at its expense (except as otherwise required by law) all personal property fees and taxes, and any required contributions to a

universal service fund, applicable to or incurred in connection with the Work, the Equipment or the Licensee's Communications Facility of which the Equipment constitutes a part.

14. BONDS

~~Pursuant to the requirements of VMC 20.980.040.N, which is incorporated herein by this reference,~~ Licensee shall obtain and keep in force a performance bond in favor of the City of Spokane, and a maintenance bond in favor of the City of Spokane.

15. INSURANCE

15.1 REQUIRED INSURANCE OF Licensee

Licensee must, during the term of this Agreement and at its sole expense, obtain and keep in force, not less than the following insurance:

- (a) Property insurance, including coverage for fire, extended coverage, vandalism and malicious mischief, upon each Communications Facility in an amount not less than ninety percent (90%) of the full replacement cost of the Communications Facility.
- (b) Commercial General Liability insuring operations hazard, independent contractor hazard, contractual liability, and products and completed operations liability, in limits not less than \$5,000,000 combined (primary and excess) single limit for each occurrence for bodily injury, personal injury and property damage liability, naming Licensor City of Spokane and its officers, officials, agents, and employees, as additional insureds. The Commercial General Liability policy must be endorsed to include "*Washington Stop Gap*" insurance. The limits must apply to the Stop Gap coverage, as well. This must be indicated on the certificate.
- (c) Automobile Liability coverage insuring all owned, hired, and leased vehicles and rolling stock through a standard business automobile policy, and employer's auto non-ownership liability, in limits not less than \$1 million per accident
- (d) Worker's Compensation and Employer's Liability insurance.

All insurance policies required of Licensee must be taken out with reputable national insurers rated at least A in the Best Key Rating Guide that are licensed to do business in the jurisdiction where the Sites are located. Licensee must disclose any self-insured retention, which will be permitted only if pre-approved by Licensor. Licensee agrees that certificates of insurance will be delivered to Licensor as soon as practicable after the placing of the required insurance, but not later than the Commencement Date of a particular SLA. All policies must contain an undertaking by the insurers to notify Licensor in writing not less than thirty (30) days before any ~~material change,~~ reduction in coverage, cancellation, or termination of the insurance.

Licensor and Licensee will each year review the limits for the insurance policies required by this Agreement. Policy limits will be adjusted from time to time to proper and reasonable limits, in accordance with then-current industry standards, but policy limits will not be reduced below those stated above.

15.2 NO LIMITATION ON LIABILITY

The provision of insurance required in this Agreement shall not be construed to limit or otherwise affect the liability of any Party to the other Party.

15.3 COMPLIANCE

Licensee will not do or permit to be done in or about the Site, nor bring or keep or permit to be brought to or kept at the Site, anything that:

(a) Licensee is made aware of that is prohibited by any insurance policy carried by Licensor covering the Site or any improvements thereon; or

(b) Will increase the existing premiums for any such policy beyond that contemplated for the addition of the Communications Facility.

Licensor acknowledges and agrees that the installation of the Communications Facility upon the Site in accordance with the terms and conditions of this Agreement will be considered within the underwriting requirements of any of Licensor's insurers and such premiums contemplate the addition of the Communications Facility.

16. RELEASE, LIMITATION OF LIABILITY AND INDEMNIFICATION

16.1 Licensee agrees to indemnify, defend, and save harmless Licensor, its officers, and employees from and against any and all claims, losses, damages and expenses, including attorneys' fees, arising out of or in connection with the performance of this Agreement, to the extent that such claim, loss, damage, or expense is attributable to (i) any negligent act or omission or willful misconduct of Licensee or anyone directly or indirectly employed by Licensee, including subcontractors of Licensee; (ii) any claim of injury or damage resulting from high voltage induction or electromagnetic fields attributed to Licensee's communication facility; or (iii) environmental hazards or pollutants transported to, stored on or disposed of on any Site by Licensee.

16.2 Licensee waives any immunity, defense, or protection under any workers' compensation, industrial insurance, or similar laws (including, but not limited to, the Washington Industrial Insurance Act, Title 51, of the Revised Code of Washington); provided, however, that Licensee's waiver of immunity through the provisions of this section extends only to claims against Licensee by Licensor pursuant to this Agreement, and does not include, or extend to, any claims by Licensee's employees directly against Licensee. The Parties hereby acknowledge that this waiver of immunity was specifically negotiated by the Parties.

16.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, LICENSOR SHALL, NOT HAVE ANY LIABILITY TO Licensee FOR ANY: LOSS OF PROFIT OR REVENUE, LOSS OF USE OF THE EQUIPMENT OR THE SYSTEM, CLAIMS OF CUSTOMERS OF Licensee FOR SERVICE INTERRUPTIONS, OR INDIRECT, INCIDENTAL, SPECIAL, ECONOMIC OR CONSEQUENTIAL DAMAGES, AS A RESULT OF OR RELATED TO THE EQUIPMENT, THE EXISTENCE OF THE EQUIPMENT AT THE SITE(S), OR THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, PRODUCT LIABILITY), OR OTHERWISE).

17. ASSIGNMENT

17.1 BY Licensee

Licensee shall not assign this Agreement or any portion of its rights in this Agreement, except as

follows:

(a) to any person or entity that controls, is controlled by or under common control with Licensee (the "Acquiring Affiliate") and provides written notice to Licensor; provided that the Acquiring Affiliate certifies to Licensor in writing (and provides such documents as may be reasonably requested by Licensor to establish) that the Acquiring Affiliate: (i) is assuming all of the obligations of Licensee under this Agreement; and (ii) is ready, willing and able to comply with all of the provisions of this Agreement; and, provided further, that Licensee furnishes to Licensor such information regarding the Equipment affected by such assignment or transfer, if any, as may reasonably be requested by Licensor;

(b) to Licensee's lender(s) for security purposes in connection with the financing and refinancing, from time to time by Licensee, provided that upon any transfer pursuant to any foreclosure of such security or any sale or other transfer in lieu of such foreclosure the person or entity acquiring the interests subject to such transfer assumes all of the obligations of Licensee under this Agreement.

18. REPAIRS

18.1 ~~Licensee's~~ **LICENSEE'S OBLIGATION**

Licensee must, at all times during the term of any particular SLA, at Licensee's sole cost and expense, keep and maintain the Communications Facility located by Licensee upon the Site in a structurally safe and sound condition and in good repair.

If Licensee does not make such repairs within thirty (30) days after receipt of notice from Licensor requesting such repairs and such repairs are required, then Licensor may, at its option, make the repairs. Licensee, upon receipt of satisfactory documentation, shall pay Licensor on demand Licensor's actual costs in making the repairs, plus Licensor's actual overhead.

If Licensee commences to make repairs within thirty (30) days after any written notice from Licensor requesting such repairs and thereafter continuously and diligently pursues completion of such repair, then the thirty (30) day cure period will extend for an additional sixty (60) days to permit the Licensee to complete said repairs.

If emergency repairs are needed to protect persons, or property, or to allow the use of the Site, Licensee must immediately correct the safety or use problem, even if a full repair cannot be made at that time, ~~or Licensor may choose to make such repairs at Licensee's expense.~~ Licensee shall obtain approval of the Licensor to access the Site, in accordance with Section 12, and make repairs and will coordinate with Licensor's emergency operations (pursuant to Section 12) and maintenance activities.

18.2 **LICENSOR'S OBLIGATION**

a. _____ Licensor must, at all times during the term of any SLA and at Licensor's sole cost and expense, keep and maintain the Site and any improvements located thereon in a structurally sound and safe condition. If Licensee is unable to use a Communications Facility because of repairs required on the Site or for any other reason not caused by the fault of Licensee, then Licensee may, in compliance with temporary use requirements of ~~VMC-20.890.050~~ [SMC 17C.355A.140](#), immediately erect on the Site or an unused portion of the Site a temporary Communications Facility, including any supporting structure, while Licensor makes repairs to the

Site; ~~provided that~~ subject to the following requirements (collectively, the "Temporary Facility Requirements") (i) Licensee will provide Licensor with prior written notice of the proposed location of such temporary facility and an opportunity to inspect such facility upon its completion; (ii) if such proposed location interferes with Licensor's current or potential use of the Site, Licensor may require Licensee to change such proposed location to a more suitable location within or outside of the Site; (iii) Licensor shall proceed diligently to complete such repairs; (iv) such a temporary Communication Facility may be ~~operate for not more than 60 days within a 6-month period commencing when transmission from such facility begins~~ operated until Licensee is required to remove the temporary Communications Facility as required below; and (v) such a temporary Communication Facility will be removed by Licensee within thirty (30) days of completion of repairs or replacement of the Site.

b. If Licensor after ~~thirty (30) days~~ six (6) months' prior notice to Licensee replaces any improvement on the Site that Licensee has attached Equipment to, Licensee is solely responsible for the cost of the transfer of said Equipment to the new improvement.

c. If Licensor is required to substantially relocate a Site and/or make related improvements by competent governmental authority and Licensee has Equipment at said Site, Licensor shall provide Licensee the earliest possible, but in no event less than twelve (12) months', notice prior to such relocation or making improvements and Licensee at its option may terminate the SLA under the provisions of section 4.2 and 4.6. In the event, Licensee does not terminate the SLA, Licensee is solely responsible for the cost of the relocation of said Equipment to the new location. Licensee shall be permitted to install temporary Communications Facility during any relocation period in accordance with the Temporary Facility Requirements specified in Section 18.2(a) above.

19. COOPERATION AND COORDINATION

19.1 Licensee acknowledges and anticipates that the Work may be interfered with and delayed from time to time on account of the concurrent performance of work by Licensor or others under control of Licensor. Upon the occurrence of any interference, Licensee shall have the right to elect any of the remedies in Section 8.6: including, without limitation, the right to install a temporary Communications Facility. If Licensee does not terminate the SLA, Licensee shall fully cooperate and coordinate the Work with such other work so as to minimize any delay or hindrance of any work.

19.2 If any part of the Work depends upon the results of other work by Licensor or others, Licensee shall, prior to commencing such Work, notify Licensor in writing of any actual or apparent deficiencies or defects in such other work that renders it unsuitable for performance of the Work. Failure of Licensee to so notify Licensor shall constitute an acceptance by Licensee of such other work as suitable for performance of the Work, except as to latent defects which may subsequently be discovered in such other work.

20. EMERGENCIES

In the event of an emergency relating to the Equipment, Licensee shall immediately contact Licensor at the emergency phone number below, immediately take all necessary or appropriate action to correct any safety or use problems, including but not limited to the actions in Section 18.2, even if the full repair cannot be made at the time, in order to protect persons and property or to allow use of the Site. The Parties' respective emergency phone numbers are as follows:

Licensor: 360-696-8177

Licensee:

Each Party shall promptly notify the other of any change in such Party's emergency phone number.

21. CASUALTY OR CONDEMNATION OF A SITE; RELOCATION OF FACILITIES

21.1 If there is a casualty to any structure upon which the Equipment is located, Licensor will use reasonable efforts to repair or restore the structure within sixty (60) days and, to the extent Licensee has the other necessary rights to do so, Licensee may immediately erect on the Site or a portion of the Site a temporary Communications Facility while Licensor makes repairs to the Site and so long as the temporary Equipment and associated Work does not interfere with Licensor's own restoration. Licensee must comply with temporary use requirements of [VMC SMC 17C.355A.14020-890.050](#). In the event that Licensee cannot relocate upon the Site within sixty (60) days, a Communications Facility reasonably free from technical interference, Licensee shall be entitled to terminate the applicable SLA upon thirty (30) days' prior written notice and subject to Section 4.6. Upon completion of such repair or restoration, Licensee will be entitled to immediately reinstall the Equipment. In the event such repairs or restoration will, in Licensor's reasonable estimation require more than sixty (60) days to complete, Licensee will be entitled to terminate the applicable SLA upon thirty (30) days' prior written notice and subject to Section 4.6.

21.2 If there is a condemnation of the Site, including without limitation a transfer of the Site by consensual deed in lieu of condemnation, then the SLA for the condemned Site will terminate upon transfer of title to the condemning authority, without further liability to either Party under this Agreement. Any prepaid Annual Fees will be refunded to Licensee on a pro rata basis from the date of transfer of title. Licensee may pursue a separate condemnation award for the Equipment from the condemning authority provided that such award does not reduce the amount of licensor's award.

21.3 If Licensor deems it necessary in its sole discretion to relocate any Licensor facilities to which Licensee's Equipment or Communications Facility are attached, Licensor shall provide Licensee at least ~~thirty (30) days'~~ twelve (12) months' prior written notice of such relocation; provided that in the event of unexpected damage to such facilities requiring immediate action by Licensor, no prior notice shall be required. Licensee shall either reimburse licensor for the costs of removal and reinstallation of such facilities by Licensor, which costs shall be agreed upon in advance by the Parties prior to such removal (unless immediate removal is required due to unexpected damage, as described above), or shall arrange for removal and reinstallation of its facilities at its sole cost and expense; provided that any such removal by parties other than Licensor shall be subject to any applicable restrictions set forth in the applicable SLA; and provided further that if Licensee does not remove such facilities in a timely manner and without disruption to licensor's required schedule, Licensor may remove Licensee's facilities and charge Licensee for the costs of such removal. Licensor shall only relocate Licensee's Equipment or Communication Facility to a Site reasonably free from technical interference. In the event there is no such suitable Site, Licensee shall be entitled to terminate the applicable SLA upon (30) days' prior written notice and subject to Section 4.6.

21.4 If Licensor is required to relocate any of its facilities within a state, county or city right of way and Licensee has Equipment on such facilities, such relocation shall be made pursuant to Section

21.3.

22. SURRENDER OF SITE; HOLDING OVER

22.1 Upon the expiration or other termination of a SLA for any cause whatsoever, Licensee must peacefully vacate the applicable Site in as good order and condition as the same were at the beginning of the applicable SLA, except for reasonable use, wear and tear. Licensee has the right to remove its Communications Facility for thirty (30) days after termination. Licensee will repair any damage caused during the removal of the Communication Facility, normal wear and tear excepted. If the Communication Facility is not operated for wireless communications for a period of 12 continuous months, Licensee is required to remove its Communication Facility in compliance with [VMC 20-890-110 SMC 17C.355A.120](#).

22.2 If Licensee continues to hold any Site after the termination of the applicable SLA, whether the termination occurs by lapse of time or otherwise, such holding over will, unless otherwise agreed to by Licensor in writing, constitute and be construed as a month-to-month tenancy at a monthly License Fee equal to 1/12th of one hundred twenty-five percent (125%) of the Annual Fee for such SLA and subject to all of the other terms set forth in this Agreement. Licensor shall have the option to require Licensee's removal of all Equipment upon giving thirty (30) days written notice of termination of said month-to-month tenancy. If not so removed, Licensor shall have the option to remove such Equipment and charge Licensee for all costs and expenses associated with such removal.

23. DEFAULT AND REMEDIES

23.1. Licensee'SLICENEE'S EVENTS OF DEFAULT

The occurrence of any one or more of the following events constitutes an "event of default" by Licensee under the applicable SLA:

- (a)** If Licensee fails to pay after thirty (30) days' notice from Licensor when due the full amount of any fee or other payment under the applicable SLA including terms and conditions applicable thereto contained in this Agreement;
- (b)** If Licensee fails to perform or observe any other term of the applicable SLA, including terms and conditions applicable thereto contained in this Agreement, and such failure continues for more than thirty (30) days after written notice from Licensor; except such thirty (30) day cure period will be extended as reasonably necessary to permit Licensee to complete cure so long as Licensee commences cure within such thirty (30) day cure period and thereafter continuously and diligently pursues and completes such cure;
- (c)** If any petition is filed by or against Licensee, under any section or chapter of the present or any future federal Bankruptcy Code or under any similar law or statute of the United States or any state thereof (and with respect to any petition filed against Licensee, such petition is not dismissed within ninety (90) days after the filing thereof), or Licensee is adjudged bankrupt or insolvent in proceedings filed under any section or chapter of the present or any future federal Bankruptcy Code or under any similar law or statute of the United States or any state thereof;
- (d)** If a receiver, custodian, or trustee is appointed for Licensee or for any of the assets of Licensee and such appointment is not vacated within sixty (60) days of the date of the

appointment; or

(e) If Licensee becomes insolvent or makes a transfer in fraud of creditors.

23.2. ~~Licensee'S~~**LICENSEE'S** DEFAULT

If an event of default occurs and is continuing, Licensor (without notice or demand except as expressly required above) may terminate the applicable SLA by at least five (5) days' written notice to Licensee, ~~in which event Licensee will immediately surrender the applicable Site to Licensor. Licensee will become liable for damages equal to the total of:~~without prejudice to any other remedies the Licensor may have at law or in equity.

~~(a) The actual costs of recovering the Site;~~

~~(b) The Annual Fee earned as of the date of termination, plus interest thereon, as specified in Section 5.5, from the date due until paid;~~

~~(c) The amount of the Annual Fee and other benefits that Licensor would have received under the applicable SLA for the remainder of the term under the applicable SLA; and~~

~~(d) All other sums of money and damages, if any, owing by Licensee to Licensor.~~

~~If at any time during this Agreement any of the events set forth in (a), (b), or (c) of Section 22.1 have previously occurred with respect to fifteen percent (15%) or more of the SLAs, Licensor, at its sole option, is entitled to terminate this Agreement upon thirty (30) days' prior written notice to Licensee. Licensor may elect any one or more of the foregoing remedies with respect to any particular SLA.~~

23.3 LICENSOR'S DEFAULT

If Licensor defaults in the performance of any of its material obligations with respect to any particular SLA or this Agreement, which default:

(a) Continues for a period of more than thirty (30) days after receipt of written notice from Licensee specifying such default; or

(b) Is of a nature to require more than thirty (30) days for remedy and continues beyond such time reasonably necessary to cure (and Licensor has not undertaken procedures to cure the default within such thirty (30) day period and diligently and continuously thereafter pursued such efforts to complete cure), then Licensee may, in addition to any other remedy available at law or in equity, at its option upon at least five (5) days' written notice, terminate the applicable SLA subject to Section 4.6.

23.4 DUTY TO MITIGATE DAMAGES

Licensee and Licensor shall endeavor in good faith to mitigate damages arising under this Agreement.

24. REPRESENTATIONS AND COVENANTS

24.1 REPRESENTATIONS OF BOTH PARTIES

Each Party mutually represents and warrants to the other:

- (a)** That it has the full right, power and authority to enter into this Agreement and the SLAs;
- (b)** That entering into this Agreement and the performance thereof will not violate any laws, ordinances, restrictions, covenants, or other agreements under which said Party is bound; provided, however, that the foregoing is subject to, and will not limit in any way, the rights of Licensor and the obligations of Licensee under Section 22, and provided further that, to the extent the foregoing representation is made by Licensor, such representation will not apply to any violation or breach that is caused by Licensee's failure to obtain and comply with *all* permits, licenses, franchises, rights-of-way, easements and other rights required to perform the Work and operate the Equipment in accordance with this Agreement;
- (c)** That each of the persons executing this Agreement on behalf of Licensor and Licensee represents and warrants that said Party is a duly organized and existing municipal corporation under the laws of the State of Washington or a corporation or limited partnership;
- (d)** That the Party is qualified to do business in each state wherein a Site is located or will be qualified in such state prior to undertaking any activities at the Site that would require the Party to be qualified to do business in such state; and
- (e)** That the persons signing on behalf of the corporation or limited partnership are authorized to do so; and
- (f)** That neither Party has had any dealings with any real estate brokers or agents in connection with the negotiation of this Agreement.

24.2 REPRESENTATIONS OF Licensee

Licensee represents and warrants:

- (a)** That it is, and at all times during the Term shall be, properly authorized, licensed, organized, equipped and financed to perform the Work and to operate the Equipment and Licensee's system of which the Equipment is a part; and **(b)** That it shall be, and operate as, an independent entity (not a contractor, agent or representative of Licensor) in the performance of the Work and the operation of the Equipment and Licensee's system. In no event shall Licensee be authorized to enter into any agreements or undertakings for or on behalf of Licensor or to act as or be an agent or representative of Licensor.

24.3 REPRESENTATIONS OF LICENSOR

Licensor represents and warrants, to the best of its knowledge, that it owns good and marketable fee simple title, has a good and marketable leasehold interest, or has a valid license, easement or other legal right of use, in the land on which the Site is located and has rights of access thereto. Licensee has the ultimate responsibility to obtain all necessary authority for Licensee's use of each specific Site. In the event of joint ownership of the Site, Licensee shall coordinate and contract with the joint owner of the Site prior to installing any Equipment. Licensor shall not be responsible to Licensee for the actions of any joint owner of the Site.

24.4 Except as specifically set forth in Sections 23 and 24, Licensor makes no warranties, express or implied, including, without limitation, any warranties of habitability or fitness for a particular purpose with regard to any Site.

25. ENVIRONMENTAL MATTERS

25.1 Licensors represent and warrant that it will notify Licensee, to the best of its knowledge, of all Environmental Hazards on each Site. Nothing in this Agreement or in any SLA will be construed or interpreted to require that Licensors remediate any Environmental Hazards located at any Site unless Licensors or Licensors' officers, employees, agents, or contractors placed the Environmental Hazards on the Site.

25.2 Licensee will not bring, keep or transport any Environmental Hazards or pollutants to, on or across any Site without Licensors' prior written approval, which approval will not be unreasonably withheld, conditioned or delayed, except that Licensee may keep on the Site substances used in back up power units, such as batteries and diesel generators commonly used in the wireless telecommunications industry. Licensee's use, storage, handling and disposal of any approved substances constituting Environmental Hazards must comply with all applicable laws, ordinances, regulations and other provisions of this Agreement governing such use, storage, handling and disposal. Under no circumstances will Licensee dispose of any Environmental Hazards or pollutants on any Site.

25.3 The term "Environmental Hazards" means hazardous substances (as defined in RCW Section 70.1050.020(5)), hazardous wastes, pollutants, asbestos, polychlorinated biphenyl (PCB), petroleum or other fuels (including crude oil or any fraction or derivative thereof and underground storage tanks. The term "hazardous substances" shall be defined in the Comprehensive Environmental Response, Compensation, and Liability Act, and any regulations promulgated pursuant thereto. The term "pollutants" shall be as defined in the Clean Water Act (33 USC Section 1251, et seq.), and any regulations promulgated pursuant thereto. The term "remediate" shall be defined as all actions necessary to satisfy the requirements of the Model Toxics Control Act (RCW Chapter 70.105D) and the Comprehensive Environmental Response, Compensation and Liability Act (42 USC Section 9601, et seq.) and any regulations promulgated pursuant thereto. This provision shall survive termination of the Agreement and any particular SLA.

~~25.4 Licensors and Licensee agree to defend, indemnify and hold harmless~~**25.4** Licensors agree to defend, indemnify and hold harmless Licensee from and against any and all claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and attorney's fees that the Licensee may suffer due to the existence or discovery of any Hazardous Substance on the Site or the migration of any Hazardous Substances to other properties or release into the environment, except to the extent released, spilled, or disposed of by Licensee on the Site during the term of the SLA

~~25.5 Licensee agrees to defend, indemnify and hold harmless Licensors~~**25.5** Licensee agrees to defend, indemnify and hold harmless Licensors from and against any and all claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and attorney's fees that the Licensors may suffer due to the existence or discovery of extent caused by any Hazardous Substance released, spilled, or disposed of by Licensee on the Site or during the migration term of any Hazardous Substances to other properties or release into the environment, that relate to or arise from the indemnitor's activities during or prior to the commencement of this License SLA.

26. SUBORDINATION

26.1 Licensee agrees that this Agreement and each SLA is subject and subordinate at all times to the lien of all mortgages and deeds of trust securing any amount or amounts whatsoever which may now exist or hereafter be placed on or against the Site or on or against Licensor's interest or estate therein, and any underlying ground license or master license on a particular Site, all without the necessity of having further instruments executed by Licensee to effect such subordination but with respect to any such liens, leases and licenses arising subsequent to the execution of this Agreement only if trustees or mortgagees will not disturb Licensee under this Agreement and the SLAs.

26.2 Each SLA may be subject to restrictions or other terms or conditions contained in any underlying ground License, Master License, easement, license, franchise, permit or other instrument of authorization or conveyance (an "Instrument") with respect to a particular Site. Licensee agrees to commit no act or omission which would constitute a violation of the terms and conditions of any known Instrument for a particular Site:

(a) Licensor shall not be required to obtain any consent required under any instrument from the landlord or other party to such instrument for purposes of this Agreement, unless expressly set forth in the SLA;

(b) If a restriction contained in an instrument for a particular Site and not set forth on the applicable SLA prevents Licensee from installing, maintaining or operating the Equipment or accessing the Site, Licensee will be entitled to terminate the affected SLA immediately subject to Section 4.6;

(c) Upon the termination or expiration of any underlying instrument with respect to a particular Site, the SLA relating to such Site shall automatically terminate without liability to either Party. In the event of such termination, the SLA with respect to such Site shall terminate concurrently therewith and subject to Section 4.6;

~~(d) Upon any sale or other transfer of all or any portion of a Site, the applicable SLA will automatically terminate, subject to Section 4.6, except to the extent the purchaser or transferee and Licensee enter into an agreement for Licensee's continued use of the Site and release Licensor from any further obligation or liability with respect to the Site. Licensor shall have no obligation to request or obtain such agreement from the purchaser or transferee;~~

~~(e)~~(d) Licensor will not materially breach the terms or conditions of any instrument with respect to a particular Site in a manner that causes Licensee to cease its use of the Site.

27. PROTECTION OF PROPERTY AND PERSONS

27.1 Licensee shall take all reasonable precautions which are necessary to prevent bodily injury (including death) to persons and damage to any property or environment arising in connection with performance of the Work or the operation of the Equipment. Without limiting the generality of the foregoing, Licensee shall erect and maintain such barricades, signs, flags, flashers and other safeguards as are reasonably required from time to time by Licensor. Licensee shall reasonably inspect all goods, materials, tools, Equipment and other items in an attempt to discover any conditions which involve a risk of bodily injury (including death) to persons or a risk of damage to any property or environment.

27.2 All of Licensor's or third party's property damaged, altered or removed in connection with the performance of the Work or the operation of the Equipment shall be promptly repaired, replaced or otherwise restored by Licensee to at least as good quality and condition as existed prior to such damage, alteration or removal.

28. COMPLIANCE WITH LAWS

In the performance of the Work and this Agreement, Licensee shall comply and shall ensure that all contractors hired by or acting on behalf of Licensee comply with all applicable:

- (a)** Laws, ordinances, rules, regulations, orders, licenses, permits and other requirements, now or hereafter in effect, of any governmental authority;
- (b)** Industry standards and codes; and
- (c)** Licensors' standard practices, specifications, rules and regulations which will be provided by Licensor to Licensee on request.

Licensee shall furnish such documents as may be reasonably required by Licensor to effect or evidence compliance.

29. PERMITS AND PROTECTION OF EXISTING RIGHTS

Licensee shall obtain and comply (and shall ensure that all of Licensee's suppliers and subcontractors under contract with it or acting on behalf it comply) with all permits, licenses, franchises, rights-of-way, easements and other rights required to perform the Work and operate the Equipment in accordance with this Agreement. Licensee shall furnish to Licensor such evidence thereof as Licensor may reasonably request. Compliance with this Section 29 shall be the sole responsibility of Licensee and a continuing condition of the use of the Site(s) by Licensee.

30. ENTIRE AGREEMENT

This Agreement and each SLA constitutes the entire agreement and understanding between the Parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained in this Agreement. There are no representations or understandings of any kind not set forth in this Agreement. Any amendments to this Agreement or any SLA must be in writing and executed by both parties.

31. SEVERABILITY

The invalidity or unenforceability of any provision of this Agreement or any SLA shall not affect the other provisions hereof, and this Agreement or SLA shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

32. SURVIVAL

All provisions of this Agreement which may reasonably be interpreted or construed as surviving the completion, termination or cancellation of this Agreement shall survive the completion, termination or cancellation of this Agreement.

33. BINDING EFFECT

This Agreement and each SLA will be binding on and inure to the benefit of the respective Parties' successors and permitted assignees.

34. HEADINGS

The headings of sections of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or the SLA.

35. NON-WAIVER

The failure of either Party to insist upon or enforce strict performance by the other Party of any of the provisions of this Agreement, or to exercise any rights under this Agreement, shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such provisions or rights in that or any other instance; rather, the same shall be and remain in full force and effect.

The Parties acknowledge and agree that they have been represented by counsel and each of the Parties has participated in the drafting of this Agreement and each SLA. Accordingly, it is the intention and agreement of the Parties that the language, terms and conditions of this Agreement and each SLA are not to be construed in any way against or in favor of any Party hereto by reason of the responsibilities in connection with the preparation of this Agreement or each SLA.

36. NOTICES AND OTHER COMMUNICATIONS

Any notice, request, approval, consent, instruction, direction or other communication given by either Licensor or Licensee to the other under this Agreement shall be in writing and shall be delivered by both facsimile transmission and first class mail to the individuals denoted below, unless otherwise directed in writing, at the address and facsimile number provided:

For the City:

Equipment connected to Water Facilities:

Title:

Director of Public Works

With cc to Operations Superintendent

For Licensee:

DISH Wireless L.L.C.

Attn: Lease Administration

5701 South Santa Fe Blvd.

Littleton, Colorado 80120

Address:

City of Spokane

808 W Spokane Falls Blvd

Spokane, WA 99201

Fax No.:

Phone No.:

Fax No.:

Phone No.:

Either Party may from time to time change such address by giving the other Party notice of such change in accordance with the provisions of this Section. Notice deemed received one (1)

business day following deposit with reliable courier, etc.

37. APPLICABLE LAW

This Agreement shall be construed under the laws of the State of Washington. The venue for any legal action commenced to enforce any provision of this Agreement shall be Clark County, Washington.

38. FORCE MAJEURE

If a Party is delayed or hindered in, or prevented from performance required under this Agreement (other than any delay or failure relating to payment of money, including, without limitation, the Annual Fees and all reimbursable costs and expenses described elsewhere in this Agreement) by reason of earthquake, landslide, strike, lockout, labor trouble, failure of power, riot, insurrection, war, acts of God or other reason of like nature not the fault of such Party, such Party is excused from such performance for the period of delay. The period for the performance of any such act shall then be extended for the period of such delay.

39. TIMELY RESPONSE

Each Party shall take such prompt action (including, but not limited to, the execution, acknowledgment and delivery of documents) as may reasonably be requested by the other Party for the implementation of continuing performance of this Agreement.

40. EXAMINATION OF RECORDS

Licensee shall promptly furnish Licensor with such information reasonably related to the Work or the Equipment as may from time to time be reasonably requested by Licensor.

41. RISK OF LOSS

Licensee shall be responsible for and shall bear any and all risk of loss, deterioration, theft, vandalism or destruction of or damage to the Equipment and anything used (or to be used or consumed) in connection with the Work, ~~unless~~except to the extent such destruction of or damage to the Equipment is caused by the ~~sole~~ negligence or intentional conduct of Licensor's activities on the Site.

42. REIMBURSEMENT AND PAYMENT

Licensor shall invoice _____ for all amounts payable by Licensee to Licensor under this Agreement (including, without limitation, the Annual Fees and all reimbursable costs and expenses described elsewhere in this Agreement) as they become due. _____ shall pay each such invoice in full within thirty (30) days after Licensee's receipt ~~thereof~~.

Commented [RJ7]: Do we send invoices to our wireless lessees, or do we just expect them to make timely payments without receiving an invoice?

Commented [SD8R7]: We bill them monthly

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

City of Spokane

DISH Wireless L.L.C.

Name: _____

Name: _____

Title: _____

Title: _____

_____, City Manager

APPROVED AS TO FORM:

_____, City Attorney

ATTEST: _____

_____, City Clerk

By: _____, Deputy City Clerk

STATE OF WASHINGTON)
County of _____) SS.

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

Name: _____
Dated: _____
Notary Public for the state of _____
Residing in _____
My appointment expires: _____

**EXHIBIT A
SITE LICENSE ACKNOWLEDGMENT**

This Site License Acknowledgment ("SLA") is made to the Master License Agreement between Licensor City of Spokane, and _____, dated _____, 202_____. Capitalized terms used in this SLA have the same meaning as such terms in the Master License Agreement unless otherwise indicated.

1. Site Name and/or Number:
Water Station 5
2. Site Address:
_____, Spokane WA 992_____
3. Site Legal Description:

A portion of the NW1/4 of Section 30, Township 2N, Range 2E Parcel # 37910-014
4. The Site is:
Owned by Licensor
5. FCC License Number:
0015401730
6. General Description of Facility Licensed:

Cricket 8'x 8' Lease area and equipment below Water Tank and North Support Leg.
Three (3) total antennas mounted to the Water Tank catwalk.
7. Antenna Physical Description:
Three (3) total antennas, 48"x 6"x 6" and 19.84lbs
8. Electronic Cabinet Physical Description:
Cricket Nortel CMO cabinet attached to a 3'x 5' concrete pad.
9. Transmitter Description: N/A

10. Utility services:

Power provided by: _____ PUD

Telecommunications Landline: Qwest

11. Intermodulation Study Completed and Approved (if applicable): N/A

12. Initial Site Floor Noise Measurement: N/A

13. Drawings Received by Licensor:

Equipment Layout and Detail: Received (initials): _____ Date: _____

Antenna Attachment Detail: Received (initials): _____ Date: _____

Site Plans and Elevations: Received (initials): _____ Date: _____

14. Structural Integrity Study: TBD

15. Site Access Details and Provisions: TBD

16. Plan for Minimizing Visual Impact of Equipment at Site: N/A

17. Construction Work requested of Licensor by Licensee: TBD

18. Coordination Provisions between Licensor and Licensee: TBD

19. ~~Annual~~ Monthly Fee:

~~\$ 1,450.00 month - \$17,400.00 year during Initial Term~~ _____, adjusted
annually pursuant to Section 5.1 of the Master License Agreement
~~\$ 1,700.00 month - \$20,400.00 year during Renewal Term~~

20. Additional Provisions:

IN WITNESS WHEREOF, the parties have executed this Agreement on this__day _____ 202__.

Name: _____
Title: _____

Name: _____
Title: _____

_____, City Manager

APPROVED AS TO FORM:

_____, City Attorney

ATTEST: _____

_____, City Clerk
By: _____, Deputy City Clerk

STATE OF WASHINGTON)
) SS.
County of _____)

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

Name: _____
Dated: _____
Notary Public for the state of _____
Residing in _____
My appointment expires: _____

STATE OF WASHINGTON)
) SS.
County of _____)

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

Name: _____
Dated: _____
Notary Public for the state of _____
Residing in _____

My appointment expires: _____

**EXHIBIT B
FEE SCHEDULE**

This Fee Schedule is made a part of the Master License Agreement between Licensor City of Spokane and _____ dated as of _____ 2010. Capitalized terms used in this Fee Schedule have the same meaning as such terms in the Master License Agreement ("MLA") unless otherwise indicated.

1. Annual Fee

The Annual Fee applicable to each Site will be negotiated between the Licensor and the Licensee on a site by site basis based on the current and projected values of the following factors, as applicable at the time the applicable SLA is executed by the Licensor and the Licensee: location and other site-specific factors; height requirements for proposed Licensee equipment; amount of space used, or rendered unusable by others; the aggregate number of sites proposed to be licensed by the Licensee; and any other factors affecting the interests of the Licensor, in the sole discretion of the Licensor. The Annual Fee with respect to each existing Site will be automatically increased by twentyfive percent (2015%) of the previously term's Annual Fee at the end of the initial term and each renewal term of the MLA, without further notice by Licensor.

2. Application Fee (as per Section 5.2 of the MLA): \$750.

3. Monthly Charge for Unauthorized Installations or Material Alterations (as per Section 6.5 of the MLA):

- a. \$1,450.00 per month during Initial Term.
\$1,700.00667.50 per month during Renewal Term.

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EXHIBIT **CB**
**WESTERN WASHINGTON COOPERATIVE
INTERFERENCE COMMITTEE**

Commented [RJ9]: Need to replace with local standards

**WWCIC ENGINEERING STANDARD #6 REV B. (10-91) FOR
EMISSION DESIGNATOR 20A0 THRU 3 & 20FO THRU 3
AND FM BROADCAST**

All communications fixed transmitter installations shall employ isolators or alternative techniques meeting the same criteria, to minimize spurious radiation and intermodulation products. Additional filtering required according to frequency and interconnect devices are listed below:

1. Transmitters in the 25 to 54 Mhz range shall have isolation of at least 20 dB followed by a low pass filter or cavity providing a minimum of 30 dB attenuation removed 1.0 Mhz from the operating frequency.
2. Transmitters in the 66 to 88 Mhz range shall have at least 25 dB of isolation followed by a band pass cavity providing at least 20 dB of attenuation 1.0 Mhz removed from the operating frequency.
- 3A. Transmitters in the 88 to 108 Mhz range operating at a power level of 350 watts or less shall have at least 25 dB of isolation followed by a band pass cavity providing at least 25 dB of attenuation 1.0 Mhz from the operating frequency.
- 3B. Transmitters in the 88 to 108 Mhz range operating at a power level greater than 350 watts shall have a band pass cavity providing at least 25 dB of attenuation 1.0 Mhz from the operating frequency.
4. Transmitters in the 130 to 225 Mhz range shall have at least 50 dB of isolation followed by a low pass filter and band pass cavity with a minimum of 25 dB attenuation 1.0 Mhz removed from the operating frequency.
5. Transmitters in the 400 to 470 Mhz range shall have at least 50 dB of isolation followed by a low pass filter and band pass cavity with a minimum of 15 dB of attenuation 1.0 Mhz removed from the operating frequency.
6. Transmitters in the 806 to 960 Mhz range shall have at least 50 dB of isolation followed by a low pass filter and band pass cavity with a minimum of 15 dB of attenuation 1.0 Mhz removed from the operating frequency.

The following general engineering standards shall be observed:

1. A band pass cavity or crystal filter is recommended at the input of all receivers. Its purpose is to protect against RF energy "off frequency" from mixing in a non-linear device such as the first RF amplifier in a receiver, which can re-radiate causing interference.

2. The band reject duplexer (cross notch duplexer) may not be used without a cavity/isolator outlined above.
3. Single braid coax cable is prohibited. Double shielded cable must have over 98.5% shield coverage.
4. jacketed coaxial cable is required, unjacketed transmission line of any type is prohibited.
5. Use of "N," "TNC" or "DIN" connectors is preferred over other non-constant impedance types. Every effort should be made to prevent the use of coax adapters.
6. All equipment is to be grounded and shielded. Grounding is to be done with copper strap or heavy braid to a station ground grid. The "green wire" of the AC power plug is not an acceptable grounding point.
7. Transmitting systems must be checked periodically, which includes the isolator, VSWR on the load port of the isolator, and overall system insertion loss.
8. Bare metallic ties are prohibited for securing transmission lines to towers. In the case of large lines, use of stainless steel or galvanized hangers is permitted. Hardware capable of rusting and dissimilar metals are prohibited. Transmission lines are to be insulated from metallic structures/objects. It is the duty of the installation personnel to prevent "diode junctions" from taking place.
9. All loose wire or metal objects are to be removed from the tower and ~~site~~Site. Metal fencing should be plastic coated.
10. All equipment shall be licensed and operated in full accordance with all applicable rules and regulations of the regulating agency, (FCC, NTIA). There shall be no modifications which violate "FCC Type Acceptance."
11. It is recommended that all equipment be labeled with the owner's name and a current 24-hour telephone contact number (service agency is acceptable).
12. Every effort should be made to protect the equipment from lightning damage. Feed-through lightning protectors should be used on all coaxial cable connections to equipment enclosures. Gas, Gap and MOV protectors should be used on Control, Audio, Telephone, and Power connections.

Briefing Paper (Urban Experience Committee)

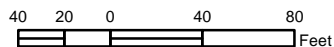
| | |
|--|---|
| Division & Department: | Development Services Center |
| Subject: | Finalizing Gonzaga University RW Vacation |
| Date: | October 11, 2021 |
| Contact (email & phone): | Eldon Brown (ebrown@spokanecity.org) 625-6305 |
| City Council Sponsor: | |
| Executive Sponsor: | |
| Committee(s) Impacted: | Urban Experience Committee |
| Type of Agenda item: | <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative |
| Alignment: (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. |
| Strategic Initiative: | |
| Deadline: | |
| Outcome: (deliverables, delivery duties, milestones to meet) | Precedes taking the ordinance to City Council for a final reading |
| Background/History: In 2013 City Council approved, subject to conditions, vacating some Right-of-way in the Gonzaga University Campus. Since that time GU has completed the conditions of the vacation and City Staff is prepared to send this back to Council for a final reading. | |
| Executive Summary: <ul style="list-style-type: none"> Map of the vacation area is attached | |
| Budget Impact: 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 | |
| Operations Impact: 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: | |



Vacation of Dakota St from the South line of Sharp Ave to the South line of Boone Ave as requested by Gonzaga University

COSGIS

Disclaimer: This is not a legal document: The information shown on this map is compiled from various sources and is subject to revision. This map should not be used to determine the location of facilities in relationship to property lines, sections lines, streets, etc.
Not suitable for design purposes.



AREA

 **COSGIS**
City of Spokane GIS



Briefing Paper

Urban Experience Committee

| | |
|--|--|
| Division & Department: | Planning & Economic Development |
| Subject: | MFTE Conditional Agreement – NoDo Spokane (aka Normandie) |
| Date: | October 11, 2021 |
| Contact (email & phone): | Teri Stripes (tstripes@spokanecity.org , 625-6597) |
| City Council Sponsor: | Council Members Mumm and Stratton |
| Executive Sponsor: | Louis Meuler (lmeuler@spokanecity.org , 625-6096) |
| Committee(s) Impacted: | Urban Experience |
| Type of Agenda item: | <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative |
| Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget , Comp Plan, Policy, Charter, Strategic Plan) | <p>SMC 08.15 Multi- Family Housing Property Tax Exemption</p> <p>A. The purposes of this chapter are to:</p> <ol style="list-style-type: none"> 1. encourage more multi-family housing opportunities, including affordable housing opportunities, within the City; 2. stimulate the construction of new multifamily housing and the rehabilitation of existing vacant and underutilized buildings for multi-family housing; 3. increase the supply of mixed-income multifamily housing opportunities within the City; 4. accomplish the planning goals required under the Growth Management Act, chapter 36.70A RCW, as implemented from time to time by the City's current and future comprehensive plans; 5. promote community development, neighborhood revitalization, and availability of affordable housing; 6. preserve and protect buildings, objects, sites and neighborhoods with historic, cultural, architectural, engineering or geographic significance located within the City; and 7. encourage additional housing in areas that are consistent with planning for public transit systems. <p>Comprehensive Plan Land Use Policies:</p> <p>LU 1.4 Higher Density Residential Uses</p> <p>LU 3.5 Mix of Uses in Centers</p> <p>LU 4.2 Land Uses That Support Travel Options and Active Transportation</p> <p>LU 4.6 Transit-Supported Development</p> <p>Comprehensive Plan Housing Policies:</p> <p>H 1.9 Mixed-Income Housing</p> <p>H 1.4 Use of Existing Infrastructure</p> <p>H 1.10 Lower-Income Housing Development Incentives</p> <p>H 1.11 Access to Transportation</p> <p>H 1.18 Distribution of Housing Options</p> <p>Comprehensive Plan Economic Development Policies:</p> <p>ED 2.4 Mixed-Use</p> <p>ED 7.4 Tax Incentives for Land Improvement</p> |
| Strategic Initiative: | |
| Deadline: | Will file for Council consideration following committee meeting |
| Outcome: (deliverables, delivery duties, milestones to meet) | Approval of Conditional Multi-Family Tax Exemption Agreement |
| Background/History: Chapter 84.14 RCW authorizes the City to create a multiple family housing property tax exemption program and to certify qualified property owners for that property tax | |

exemption. SMC [08.15](#) Multiple-family Housing Property Tax Exemption outlines the City of Spokane MFTE Program and project eligibility.

Staff has determined that the NoDo Spokane (aka Normandie) Conditional application meets the Project Eligibility defined in SMC [08.15.040](#) and is located in a previously adopted Residential Target Areas identified in SMC [08.15.030](#).

Once the project is constructed, the applicant intends to rent at minimum 20% of the units as affordable SMC [08.15.090](#) to those who are income qualified as a low to moderate-income household per SMC [08.15.020](#) earning 80-115% of Area Median Income (AMI).

This contract authorizes the appropriate city official to enter into the Multiple Family Housing Property Tax Exemption Conditional Agreement, which will ultimately result in the issuance of a final certificate of tax exemption to be filed with the Spokane County Assessor's Office post construction.

Executive Summary:

- Applicant applying for a **Conditional MFTE Contract** for **256 units**, at 127 W Mission.
- Property is zoned [OR-150](#), Office Retail allowing Residential, OR-150 has a 150 ft height limit; the proposed use is allowed.
- Construction investment estimate \$38M
- Located in the Emerson/Garfield neighborhood.

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

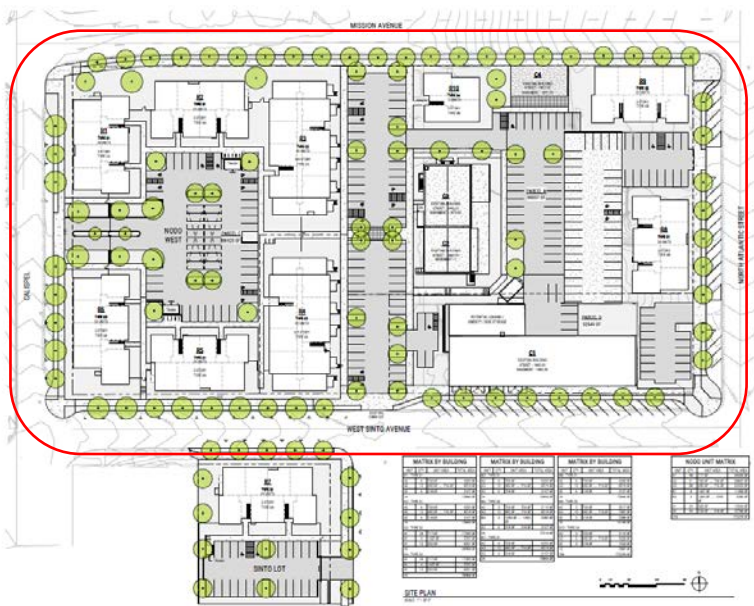
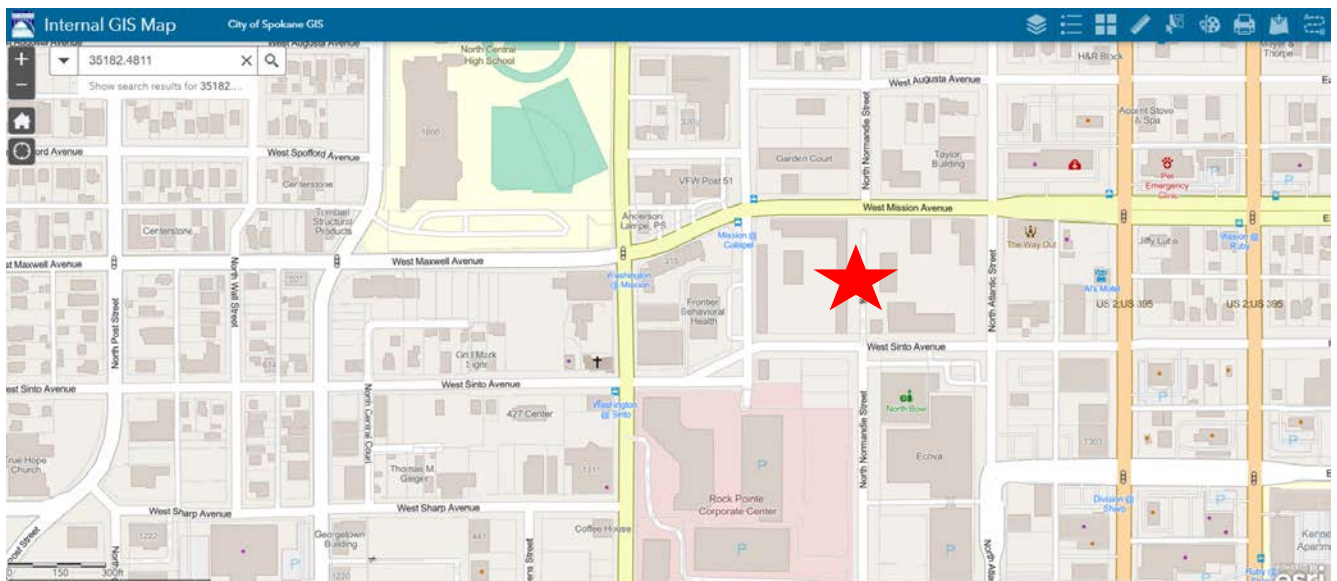
Specify changes required:

Known challenges/barriers:

Tax Exemption Information:

| 2021 Multi-Family Tax Exemption MFTE Property Tax Calculator | |
|---|--------------|
| Project Name: NoDo Spokane (Normandie) | |
| Current Taxable Property Value | \$2,539,400 |
| Number of units in the project | 256 |
| *Average Property Value Exempt per unit | \$128,300 |
| Annual City Property Tax forgone per unit | \$522 |
| Estimated Property Tax saved per project annually | \$387,632 |
| Enter the number of years of MFTE (8 or 12) | 12 |
| Estimated Property Tax saved during the term of exemption | \$4,651,588 |
| Estimated City Tax forgone per year | \$133,700 |
| Estimated City Tax forgone during the term of exemption | \$1,604,404 |
| Estimated Taxable Property Value at the end of the exemption | \$38,000,000 |
| Estimated Property Tax post exemption | |
| Annual estimate based on 2021 Total Tax Rate 11.85 | \$448,400 |
| Annual estimate based on 2021 City Tax Rate 4.07 | \$154,660 |
| Once a project has met programmatic criteria the owner can expect to save approximately \$1,180 on their tax bill for every \$100,000 of Exempt Assessed Value on the housing | |
| *Average Property Value Exempt per unit is based upon the average of all properties currently in the MFTE Program and 2021 Property value assessments. | |

Site & Map:



MULTIPLE FAMILY HOUSING PROPERTY
TAX EXEMPTION AGREEMENT

THIS AGREEMENT is between the City of Spokane, a Washington State municipal corporation, as "City", and NoDo Spokane, LLC, as "Owner/Taxpayer" whose business address is 502 W Riverside Suite 103, Spokane, WA 99201.

W I T N E S S E T H:

WHEREAS, the City has, pursuant to the authority granted to it by Chapter 84.14 RCW, designated various residential targeted areas for the provision of a limited property tax exemption for new and rehabilitated multiple family residential housing; and

WHEREAS, the City has, through Chapter 8.15 SMC, enacted a program whereby property owner/taxpayers may qualify for a Final Certificate of Tax Exemption which certifies to the Spokane County Assessor that the Owner/Taxpayer is eligible to receive the multiple family housing property tax exemption; and

WHEREAS, the Owner/Taxpayer is interested in receiving the multiple family property tax exemption for new multiple family residential housing units in a residential targeted area; and

WHEREAS, the Owner/Taxpayer has submitted to the City a complete application form for no fewer than a total of four new multiple family permanent residential housing units to be constructed on property legally described as:

CENTRAL ADD L1TO14 B57 L1TO14 B58 INC VAC 100FT ST BET

Assessor's Parcel Number(s) 35181.0201, commonly known as 127 W Mission.

WHEREAS, the City has determined that the improvements will, if completed as proposed, satisfy the requirements for a Final Certificate of Tax Exemption; -- NOW, THEREFORE,

The City and the Owner/Taxpayer do mutually agree as follows:

1. The City agrees to issue the Owner/Taxpayer a Conditional Certificate of Acceptance of Tax Exemption subsequent to the City Council's approval of this agreement.

2. The project must comply with all applicable zoning requirements, land use requirements, design review recommendations and all building, fire, and housing code requirements contained in the Spokane Municipal Code at the time a complete application for a building permit is received. However, if the proposal includes rehabilitation or demolition in preparation for new construction, the residential portion of the building shall fail to comply with one or more standards of applicable building or housing codes, and the rehabilitation improvements shall achieve compliance with the applicable building and construction codes.

3. If the property proposed to be rehabilitated is not vacant, the Owner/Taxpayer shall provide each existing tenant with housing of comparable size, quality and price and a reasonable opportunity to relocate.

4. The Owner/Taxpayer intends to construct on the site, approximately 256 new multiple family residential housing units substantially as described in their application filed with and approved by the City. In no event shall such construction provide fewer than a total of four multiple family permanent residential housing units.

5. The Owner/Taxpayer agrees to complete construction of the agreed-upon improvements within three years from the date the City issues the Conditional Certificate of Acceptance of Tax Exemption or within any extension granted by the City.

6. The Owner/Taxpayer agrees, upon completion of the improvements and upon issuance by the City of a temporary or permanent certificate of occupancy, to file with the City's Business & Development Services Department the following:

(a) a statement of the actual development cost of each multiple family housing unit, and the total expenditures made in the rehabilitation or construction of the entire property;

(b) a description of the completed work and a statement that the rehabilitation improvements or new construction of the Owner/Taxpayer's property qualifies the property for the exemption;

(c) a statement that the project meets the affordable housing requirements, if applicable; and

(d) a statement that the work was completed within the required three-year period or any authorized extension of the issuance of the conditional certificate of tax exemption.

7. The City agrees, conditioned on the Owner/Taxpayer's successful completion of the improvements in accordance with the terms of this Agreement and on the Owner/Taxpayer's filing of the materials described in Paragraph 6 above, to file a Final Certificate of Tax Exemption with the Spokane County Assessor indicating that the Owner/Taxpayer is qualified for the limited tax exemption under Chapter 84.14 RCW.

8. The Owner/Taxpayer agrees, within 30 days following the first anniversary of the County's filing of the Final Certificate of Tax Exemption and each year thereafter for a period of twelve years, to file a declaration with the City's Business and Development Services Department, verified upon oath and indicating the following:

(a) a statement of occupancy and vacancy of the multiple family units during the previous year;

(b) a certification that the property has not changed use and, if applicable, that the property has been in compliance with the affordable housing requirements as described in SMC 8.15.090 since the date of the filing of the Final Certificate of Tax Exemption, and continues to be in compliance with this Agreement and the requirements of SMC Chapter 8.15; and

(c) a description of any improvements or changes to the property made after the filing of the final certificate or last declaration.

9. The parties acknowledge that the units are to be used and occupied for multifamily residential use. The parties further acknowledge that the certificate of occupancy issued by the City is for multifamily residential units. The Owner/Taxpayer acknowledges and agrees that the units shall be used primarily for multi-family housing for permanent residential occupancy as defined in SMC 8.15.020 and RCW 84.14.010 and any business activities shall only be incidental and ancillary to the residential occupancy. Any units that are converted from multi-family housing for permanent residential occupancy shall be reported to the Spokane County Assessor's Office and removed from eligibility for the tax exemption. If the removal of the ineligible unit or units causes the number of units to drop below the number of units required for tax exemption eligibility, the remaining units shall be removed from eligibility pursuant to state law.

10. To qualify for the twelve-year tax exemption, the Owner/Taxpayer commits to renting or selling at least twenty percent of the multiple family housing units as affordable housing units to low and moderate-income households in addition to the other requirements set forth in the Agreement. The Owner/Taxpayer is further required to comply with the rental relocation assistance requirements set forth in RCW 84.14.020 (7) and (8).

11. If the Owner/Taxpayer converts to another use any of the multiple family residential housing units constructed under this Agreement, or if applicable, if the owner/taxpayer intends to discontinue compliance with the affordable housing requirements as described in SMC 8.15.090 or any other condition to exemption, the Owner/Taxpayer shall notify the Spokane County Assessor and the City's Business and Development Services Department within 60 days of such change in use.

12. The Owner/Taxpayer will have the right to assign its rights under this Agreement. The Owner/Taxpayer agrees to notify the City promptly of any transfer of Owner/Taxpayer's ownership interest in the Site or in the improvements made to the Site under this Agreement.

13. The City reserves the right to cancel the Final Certificate of Tax Exemption should the Owner/Taxpayer, its successors and assigns, fail to comply with any of the terms and conditions of this Agreement or of SMC Chapter 8.15.

14. No modifications of this Agreement shall be made unless mutually agreed upon by the parties in writing.

15. The Owner/Taxpayer acknowledges its awareness of the potential tax liability involved if and when the property ceases to be eligible for the incentive provided pursuant to this agreement. Such liability may include additional real property tax, penalties and interest imposed pursuant to RCW 84.14.110. The Owner/Taxpayer further acknowledges its awareness and understanding of the process implemented by the Spokane County Assessor's Office for the appraisal and assessment of property taxes. The Owner/Taxpayer agrees that the City is not responsible for the property value assessment imposed by Spokane County at any time during the exemption period.

16. In the event that any term or clause of this Agreement conflicts with applicable law, such conflict shall not affect other terms of this Agreement, which can be given effect without the conflicting term or clause, and to this end, the terms of this Agreement are declared to be severable.

17. The parties agree that this Agreement, the Final Certificate of Acceptance of Tax Exemption and the construction of the multiple family residential housing units referenced above shall be subject to the applicable provisions of Chapter 84.14 RCW and Chapter 8.15 SMC that exist at the time this agreement is signed by the parties. The parties may agree to amend this Agreement and the Final Certificate of Acceptance of Tax Exemption based upon applicable amendments and additions to Chapter 84.14 RCW as set forth in ESSSB 5287

adopted by the Washington State Legislature during the 2021 Regular Session effective July 25, 2021.

18. The Owner/Taxpayer acknowledges that RCW 84.14.020 (6) authorizes an extension of the exemption period for an additional twelve-years beyond the exemption period authorized in the Final Certificate of Tax Exemption conditioned upon compliance with the Owner renting or selling at least twenty percent of the multiple family housing units as affordable housing units for low-income households as set forth in RCW 84.14.020 (6) and providing the rental relocation assistance requirements and notice provisions set forth in RCW 84.14.020 (7) and (8). It is the Owner/Taxpayer's responsibility to make a timely request the extension as set forth in RCW 84.14.020 (6). The City shall not be responsible if the Owner/Taxpayer fails to make a timely request for the extension.

19. Nothing in this Agreement shall permit or be interpreted to permit either party to violate any provision of Chapter 84.14 RCW or Chapter 8.15 SMC

20. This Agreement is subject to approval by the City Council.

DATED this _____ day of _____, 2021.

CITY OF SPOKANE

NoDo Spokane, LLC

By: _____

By: _____

Mayor, Nadine Woodward

Its: _____

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Briefing Paper

Urban Experience Committee

| | |
|--|--|
| Division & Department: | Planning & Economic Development |
| Subject: | MFTE Conditional Agreement – NoDo Spokane (aka Sinto) |
| Date: | October 11, 2021 |
| Contact (email & phone): | Teri Stripes (tstripes@spokanecity.org , 625-6597) |
| City Council Sponsor: | Council Members Mumm and Stratton |
| Executive Sponsor: | Louis Meuler (lmeuler@spokanecity.org , 625-6096) |
| Committee(s) Impacted: | Urban Experience |
| Type of Agenda item: | <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative |
| Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget , Comp Plan, Policy, Charter, Strategic Plan) | <p>SMC 08.15 Multi- Family Housing Property Tax Exemption</p> <p>A. The purposes of this chapter are to:</p> <ol style="list-style-type: none"> 1. encourage more multi-family housing opportunities, including affordable housing opportunities, within the City; 2. stimulate the construction of new multifamily housing and the rehabilitation of existing vacant and underutilized buildings for multi-family housing; 3. increase the supply of mixed-income multifamily housing opportunities within the City; 4. accomplish the planning goals required under the Growth Management Act, chapter 36.70A RCW, as implemented from time to time by the City's current and future comprehensive plans; 5. promote community development, neighborhood revitalization, and availability of affordable housing; 6. preserve and protect buildings, objects, sites and neighborhoods with historic, cultural, architectural, engineering or geographic significance located within the City; and 7. encourage additional housing in areas that are consistent with planning for public transit systems. <p>Comprehensive Plan Land Use Policies:</p> <p>LU 1.4 Higher Density Residential Uses</p> <p>LU 3.5 Mix of Uses in Centers</p> <p>LU 4.2 Land Uses That Support Travel Options and Active Transportation</p> <p>LU 4.6 Transit-Supported Development</p> <p>Comprehensive Plan Housing Policies:</p> <p>H 1.9 Mixed-Income Housing</p> <p>H 1.4 Use of Existing Infrastructure</p> <p>H 1.10 Lower-Income Housing Development Incentives</p> <p>H 1.11 Access to Transportation</p> <p>H 1.18 Distribution of Housing Options</p> <p>Comprehensive Plan Economic Development Policies:</p> <p>ED 2.4 Mixed-Use</p> <p>ED 7.4 Tax Incentives for Land Improvement</p> |
| Strategic Initiative: | |
| Deadline: | Will file for Council consideration following committee meeting |
| Outcome: (deliverables, delivery duties, milestones to meet) | Approval of Conditional Multi-Family Tax Exemption Agreement |
| Background/History: Chapter 84.14 RCW authorizes the City to create a multiple family housing property tax exemption program and to certify qualified property owners for that property tax | |

exemption. SMC [08.15](#) Multiple-family Housing Property Tax Exemption outlines the City of Spokane MFTE Program and project eligibility.

Staff has determined that the NoDo Spokane (aka Sinto) Conditional application meets the Project Eligibility defined in SMC [08.15.040](#) and is located in a previously adopted Residential Target Areas identified in SMC [08.15.030](#).

Once the project is constructed, the applicant intends to rent at minimum 20% of the units as affordable SMC [08.15.090](#) to those who are income qualified as a low to moderate-income household per SMC [08.15.020](#) earning 80-115% of Area Median Income (AMI).

This contract authorizes the appropriate city official to enter into the Multiple Family Housing Property Tax Exemption Conditional Agreement, which will ultimately result in the issuance of a final certificate of tax exemption to be filed with the Spokane County Assessor's Office post construction.

Executive Summary:

- Applicant applying for a **Conditional MFTE Contract for 24 units**, at 1335 N Normandie.
- Property is zoned [OR-150](#), Office Retail allowing Residential, OR-150 has a 150 ft height limit; the proposed use is allowed.
- Construction investment estimate \$3.6M
- Located in the Emerson/Garfield neighborhood.

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

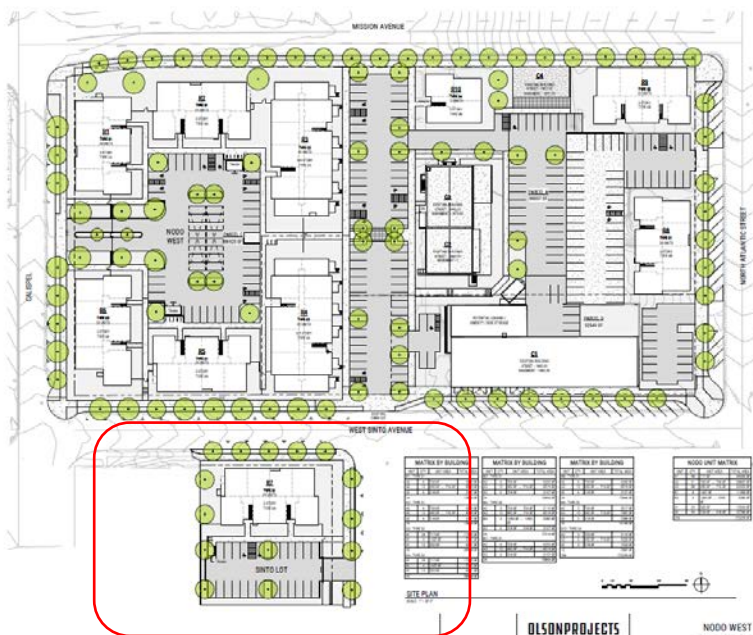
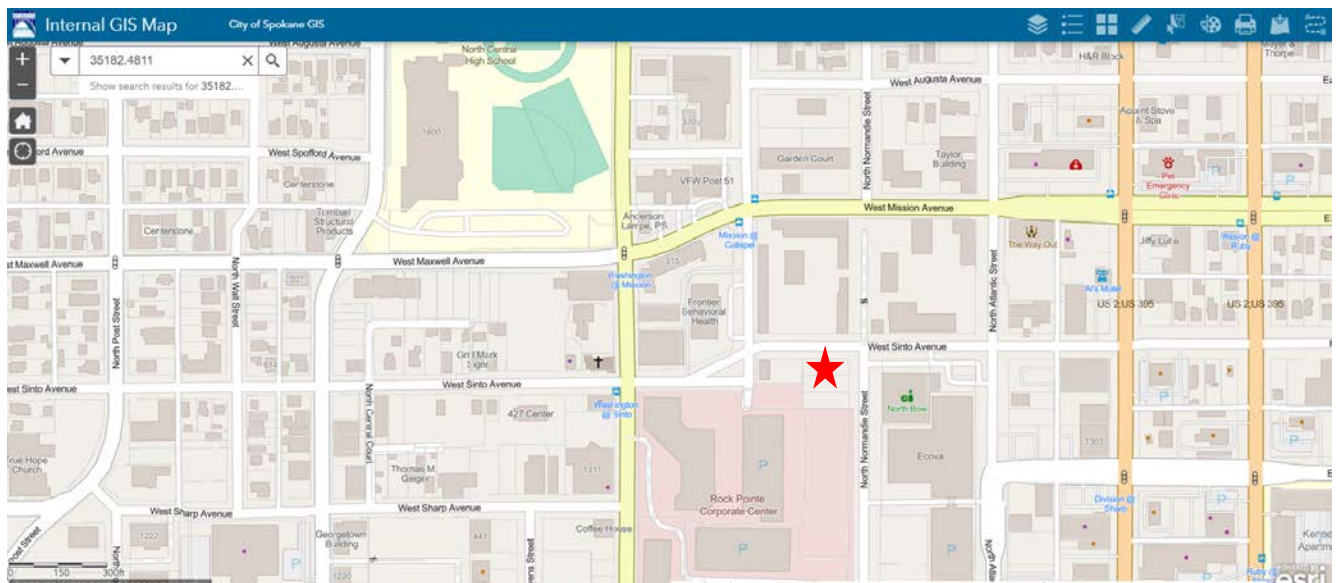
Specify changes required:

Known challenges/barriers:

Tax Exemption Information:

| 2021 Multi-Family Tax Exemption MFTE Property Tax Calculator | |
|---|-------------|
| Project Name: NoDo Spokane (Sinto) | |
| Current Taxable Property Value | \$197,900 |
| Number of units in the project | 24 |
| *Average Property Value Exempt per unit | \$128,300 |
| Annual City Property Tax forgone per unit | \$522 |
| Estimated Property Tax saved per project annually | \$36,341 |
| Enter the number of years of MFTE (8 or 12) | 12 |
| Estimated Property Tax saved during the term of exemption | \$436,086 |
| Estimated City Tax forgone per year | \$12,534 |
| Estimated City Tax forgone during the term of exemption | \$150,413 |
| Estimated Taxable Property Value at the end of the exemption | \$3,600,000 |
| Estimated Property Tax post exemption | |
| Annual estimate based on 2021 Total Tax Rate 11.85 | \$42,480 |
| Annual estimate based on 2021 City Tax Rate 4.07 | \$14,652 |
| Once a project has met programmatic criteria the owner can expect to save approximately \$1,180 on their tax bill for every \$100,000 of Exempt Assessed Value on the housing | |
| *Average Property Value Exempt per unit is based upon the average of all properties currently in the MFTE Program and 2021 Property value assessments. | |

Site & Map:



MULTIPLE FAMILY HOUSING PROPERTY
TAX EXEMPTION AGREEMENT

THIS AGREEMENT is between the City of Spokane, a Washington State municipal corporation, as "City", and NoDo Spokane, LLC, as "Owner/Taxpayer" whose business address is 502 W Riverside Suite 103, Spokane, WA 99201.

W I T N E S S E T H:

WHEREAS, the City has, pursuant to the authority granted to it by Chapter 84.14 RCW, designated various residential targeted areas for the provision of a limited property tax exemption for new and rehabilitated multiple family residential housing; and

WHEREAS, the City has, through Chapter 8.15 SMC, enacted a program whereby property owner/taxpayers may qualify for a Final Certificate of Tax Exemption which certifies to the Spokane County Assessor that the Owner/Taxpayer is eligible to receive the multiple family housing property tax exemption; and

WHEREAS, the Owner/Taxpayer is interested in receiving the multiple family property tax exemption for new multiple family residential housing units in a residential targeted area; and

WHEREAS, the Owner/Taxpayer has submitted to the City a complete application form for no fewer than a total of four new multiple family permanent residential housing units to be constructed on property legally described as:

CENTRAL ADD L1 B61, CENTRAL ADD L2 B61, and CENTRAL ADD L3 B61

Assessor's Parcel Number(s) 35181.0501, 35181.0502, and 35181.0503, commonly known as 1335,1331, and 1325 N Normandie.

WHEREAS, the City has determined that the improvements will, if completed as proposed, satisfy the requirements for a Final Certificate of Tax Exemption; -- NOW, THEREFORE,

The City and the Owner/Taxpayer do mutually agree as follows:

1. The City agrees to issue the Owner/Taxpayer a Conditional Certificate of Acceptance of Tax Exemption subsequent to the City Council's approval of this agreement.

2. The project must comply with all applicable zoning requirements, land use requirements, design review recommendations and all building, fire, and housing code requirements contained in the Spokane Municipal Code at the time a complete application for a building permit is received. However, if the proposal includes rehabilitation or demolition in preparation for new construction, the residential portion of the building shall fail to comply with one or more standards of applicable building or housing codes, and the rehabilitation improvements shall achieve compliance with the applicable building and construction codes.

3. If the property proposed to be rehabilitated is not vacant, the Owner/Taxpayer shall provide each existing tenant with housing of comparable size, quality and price and a reasonable opportunity to relocate.

4. The Owner/Taxpayer intends to construct on the site, approximately 24 new multiple family residential housing units substantially as described in their application filed with and approved by the City. In no event shall such construction provide fewer than a total of four multiple family permanent residential housing units.

5. The Owner/Taxpayer agrees to complete construction of the agreed-upon improvements within three years from the date the City issues the Conditional Certificate of Acceptance of Tax Exemption or within any extension granted by the City.

6. The Owner/Taxpayer agrees, upon completion of the improvements and upon issuance by the City of a temporary or permanent certificate of occupancy, to file with the City's Business & Development Services Department the following:

(a) a statement of the actual development cost of each multiple family housing unit, and the total expenditures made in the rehabilitation or construction of the entire property;

(b) a description of the completed work and a statement that the rehabilitation improvements or new construction of the Owner/Taxpayer's property qualifies the property for the exemption;

(c) a statement that the project meets the affordable housing requirements, if applicable; and

(d) a statement that the work was completed within the required three-year period or any authorized extension of the issuance of the conditional certificate of tax exemption.

7. The City agrees, conditioned on the Owner/Taxpayer's successful completion of the improvements in accordance with the terms of this Agreement and on the Owner/Taxpayer's filing of the materials described in Paragraph 6 above, to file a Final Certificate of Tax Exemption with the Spokane County Assessor indicating that the Owner/Taxpayer is qualified for the limited tax exemption under Chapter 84.14 RCW.

8. The Owner/Taxpayer agrees, within 30 days following the first anniversary of the County's filing of the Final Certificate of Tax Exemption and each year thereafter for a period of twelve years, to file a declaration with the City's Business and Development Services Department, verified upon oath and indicating the following:

(a) a statement of occupancy and vacancy of the multiple family units during the previous year;

(b) a certification that the property has not changed use and, if applicable, that the property has been in compliance with the affordable housing requirements as described in SMC 8.15.090 since the date of the filing of the Final Certificate of Tax Exemption, and continues to be in compliance with this Agreement and the requirements of SMC Chapter 8.15; and

(c) a description of any improvements or changes to the property made after the filing of the final certificate or last declaration.

9. The parties acknowledge that the units are to be used and occupied for multifamily residential use. The parties further acknowledge that the certificate of occupancy issued by the City is for multifamily residential units. The Owner/Taxpayer acknowledges and agrees that the units shall be used primarily for multi-family housing for permanent residential occupancy as defined in SMC 8.15.020 and RCW 84.14.010 and any business activities shall only be incidental and ancillary to the residential occupancy. Any units that are converted from multi-family housing for permanent residential occupancy shall be reported to the Spokane County Assessor's Office and removed from eligibility for the tax exemption. If the removal of the ineligible unit or units causes the number of units to drop below the number of units required for tax exemption eligibility, the remaining units shall be removed from eligibility pursuant to state law.

10. To qualify for the twelve-year tax exemption, the Owner/Taxpayer commits to renting or selling at least twenty percent of the multiple family housing units as affordable housing units to low and moderate-income households in addition to the other requirements set forth in the Agreement. The Owner/Taxpayer is further required to comply with the rental relocation assistance requirements set forth in RCW 84.14.020 (7) and (8).

11. If the Owner/Taxpayer converts to another use any of the multiple family residential housing units constructed under this Agreement, or if applicable, if the owner/taxpayer intends to discontinue compliance with the affordable housing requirements as described in SMC 8.15.090 or any other condition to exemption, the Owner/Taxpayer shall notify the Spokane County Assessor and the City's Business and Development Services Department within 60 days of such change in use.

12. The Owner/Taxpayer will have the right to assign its rights under this Agreement. The Owner/Taxpayer agrees to notify the City promptly of any transfer of Owner/Taxpayer's ownership interest in the Site or in the improvements made to the Site under this Agreement.

13. The City reserves the right to cancel the Final Certificate of Tax Exemption should the Owner/Taxpayer, its successors and assigns, fail to comply with any of the terms and conditions of this Agreement or of SMC Chapter 8.15.

14. No modifications of this Agreement shall be made unless mutually agreed upon by the parties in writing.

15. The Owner/Taxpayer acknowledges its awareness of the potential tax liability involved if and when the property ceases to be eligible for the incentive provided pursuant to this agreement. Such liability may include additional real property tax, penalties and interest imposed pursuant to RCW 84.14.110. The Owner/Taxpayer further acknowledges its awareness and understanding of the process implemented by the Spokane County Assessor's Office for the appraisal and assessment of property taxes. The Owner/Taxpayer agrees that the City is not responsible for the property value assessment imposed by Spokane County at any time during the exemption period.

16. In the event that any term or clause of this Agreement conflicts with applicable law, such conflict shall not affect other terms of this Agreement, which can be given effect without the conflicting term or clause, and to this end, the terms of this Agreement are declared to be severable.

17. The parties agree that this Agreement, the Final Certificate of Acceptance of Tax Exemption and the construction of the multiple family residential housing units referenced above shall be subject to the applicable provisions of Chapter 84.14 RCW and Chapter 8.15 SMC that exist at the time this agreement is signed by the parties. The parties may agree to amend this Agreement and the Final Certificate of Acceptance of Tax Exemption based upon applicable amendments and additions to Chapter 84.14 RCW as set forth in ESSSB 5287

adopted by the Washington State Legislature during the 2021 Regular Session effective July 25, 2021.

18. The Owner/Taxpayer acknowledges that RCW 84.14.020 (6) authorizes an extension of the exemption period for an additional twelve-years beyond the exemption period authorized in the Final Certificate of Tax Exemption conditioned upon compliance with the Owner renting or selling at least twenty percent of the multiple family housing units as affordable housing units for low-income households as set forth in RCW 84.14.020 (6) and providing the rental relocation assistance requirements and notice provisions set forth in RCW 84.14.020 (7) and (8). It is the Owner/Taxpayer's responsibility to make a timely request the extension as set forth in RCW 84.14.020 (6). The City shall not be responsible if the Owner/Taxpayer fails to make a timely request for the extension.

19. Nothing in this Agreement shall permit or be interpreted to permit either party to violate any provision of Chapter 84.14 RCW or Chapter 8.15 SMC

20. This Agreement is subject to approval by the City Council.

DATED this _____ day of _____, 2021.

CITY OF SPOKANE

NoDo Spokane, LLC

By: _____
Mayor, Nadine Woodward

By: _____
Its: _____

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Briefing Paper

Urban Experience Committee

| | |
|--|--|
| Division & Department: | Planning & Economic Development |
| Subject: | MFTE Conditional Agreement – Broadway Apartments |
| Date: | October 11, 2021 |
| Contact (email & phone): | Teri Stripes (tstripes@spokanecity.org , 625-6597) |
| City Council Sponsor: | Council Members Mumm and Stratton |
| Executive Sponsor: | Louis Meuler (lmeuler@spokanecity.org , 625-6096) |
| Committee(s) Impacted: | Urban Experience |
| Type of Agenda item: | <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative |
| Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget , Comp Plan, Policy, Charter, Strategic Plan) | <p>SMC 08.15 Multi- Family Housing Property Tax Exemption</p> <p>A. The purposes of this chapter are to:</p> <ol style="list-style-type: none"> 1. encourage more multi-family housing opportunities, including affordable housing opportunities, within the City; 2. stimulate the construction of new multifamily housing and the rehabilitation of existing vacant and underutilized buildings for multi-family housing; 3. increase the supply of mixed-income multifamily housing opportunities within the City; 4. accomplish the planning goals required under the Growth Management Act, chapter 36.70A RCW, as implemented from time to time by the City's current and future comprehensive plans; 5. promote community development, neighborhood revitalization, and availability of affordable housing; 6. preserve and protect buildings, objects, sites and neighborhoods with historic, cultural, architectural, engineering or geographic significance located within the City; and 7. encourage additional housing in areas that are consistent with planning for public transit systems. <p>Comprehensive Plan Land Use Policies:</p> <p>LU 1.4 Higher Density Residential Uses</p> <p>LU 3.5 Mix of Uses in Centers</p> <p>LU 4.2 Land Uses That Support Travel Options and Active Transportation</p> <p>LU 4.6 Transit-Supported Development</p> <p>Comprehensive Plan Housing Policies:</p> <p>H 1.9 Mixed-Income Housing</p> <p>H 1.4 Use of Existing Infrastructure</p> <p>H 1.10 Lower-Income Housing Development Incentives</p> <p>H 1.11 Access to Transportation</p> <p>H 1.18 Distribution of Housing Options</p> <p>Comprehensive Plan Economic Development Policies:</p> <p>ED 2.4 Mixed-Use</p> <p>ED 7.4 Tax Incentives for Land Improvement</p> |
| Strategic Initiative: | |
| Deadline: | Will file for Council consideration following committee meeting |
| Outcome: (deliverables, delivery duties, milestones to meet) | Approval of Conditional Multi-Family Tax Exemption Agreement |
| Background/History: Chapter 84.14 RCW authorizes the City to create a multiple family housing property tax exemption program and to certify qualified property owners for that property tax | |

exemption. SMC [08.15](#) Multiple-family Housing Property Tax Exemption outlines the City of Spokane MFTE Program and project eligibility.

Staff has determined that the Broadway Apartments Conditional application meets the Project Eligibility defined in SMC [08.15.040](#) and is located in a previously adopted Residential Target Areas identified in SMC [08.15.030](#).

Once the project is constructed, the applicant intends to rent at minimum 20% of the units as affordable SMC [08.15.090](#) to those who are income qualified as a low to moderate-income household per SMC [08.15.020](#) earning 80-115% of Area Median Income (AMI).

This contract authorizes the appropriate city official to enter into the Multiple Family Housing Property Tax Exemption Conditional Agreement, which will ultimately result in the issuance of a final certificate of tax exemption to be filed with the Spokane County Assessor's Office post construction.

Executive Summary:

- Applicant applying for a **Conditional MFTE Contract** for **20-22 units**, at 1324 W Broadway.
- Property is zoned [O-150](#), Office allowing Residential, O-150 has a 150 ft height limit; the proposed use is allowed.
- Construction investment estimate \$2.85M
- Located in the West Central neighborhood.

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

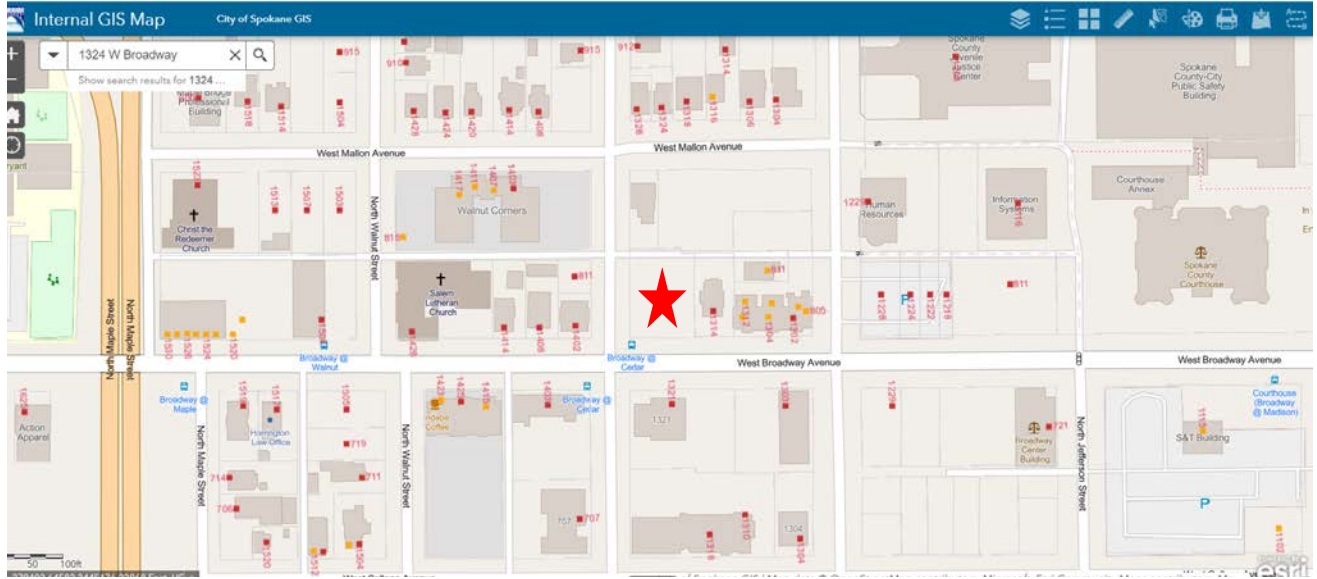
Specify changes required:

Known challenges/barriers:

Tax Exemption Information:

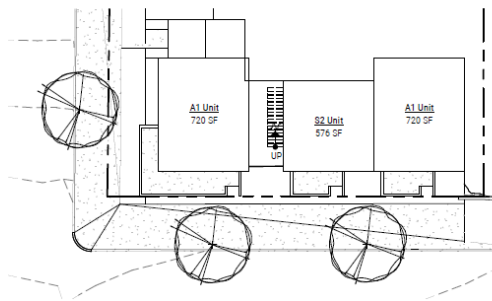
| 2021 Multi-Family Tax Exemption MFTE Property Tax Calculator | |
|---|-------------|
| Project Name: Broadway Apartments | |
| Current Taxable Property Value | \$159,820 |
| Number of units in the project | 22 |
| *Average Property Value Exempt per unit | \$128,300 |
| Annual City Property Tax forgone per unit | \$522 |
| Estimated Property Tax saved per project annually | \$33,312 |
| Enter the number of years of MFTE (8 or 12) | 12 |
| Estimated Property Tax saved during the term of exemption | \$399,746 |
| Estimated City Tax forgone per year | \$11,490 |
| Estimated City Tax forgone during the term of exemption | \$137,878 |
| Estimated Taxable Property Value at the end of the exemption | \$2,850,000 |
| Estimated Property Tax post exemption | |
| Annual estimate based on 2021 Total Tax Rate 11.85 | \$33,630 |
| Annual estimate based on 2021 City Tax Rate 4.07 | \$11,600 |
| Once a project has met programmatic criteria the owner can expect to save approximately \$1,180 on their tax bill for every \$100,000 of Exempt Assessed Value on the housing | |
| *Average Property Value Exempt per unit is based upon the average of all properties currently in the MFTE Program and 2021 Property value assessments. | |

Site & Map:



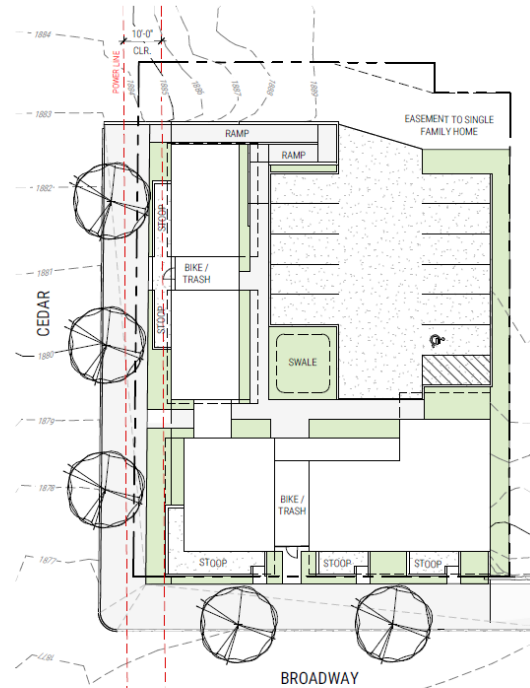
| PARKING | | |
|------------------|-------|----------|
| Type | Count | Comments |
| 80'x18'-0" | 11 | |
| 80'x20' Parallel | 10 | |
| Grand total: 21 | | |

| UNIT MATRIX - LEASABLE AREA | | | | | | |
|-----------------------------|------|-----------|------------|------------|-----------|------------|
| UNITS | | AREA | | BED / BATH | | |
| UNIT | QTY. | UNIT AREA | GROSS AREA | BED | TOTAL BED | TOTAL BATH |
| 0 | | | | | | |
| S1 Unit | 2 | 522 SF | 1044 SF | | | |
| S2 Unit | 1 | 576 SF | 576 SF | | | |
| S3 Unit | 2 | 430 SF | 864 SF | | | |
| | 5 | | 2484 SF | | | |
| 1 | | | | | | |
| A1 Unit | 12 | 720 SF | 8640 SF | | | |
| | 12 | | 8640 SF | | | |
| 2 | | | | | | |
| B1 Unit | 3 | 1044 SF | 3132 SF | | | |
| | 3 | | 3132 SF | | | |
| TOTAL | 20 | | 14256 SF | | | |



LO FLOOR PLAN

SCALE: 1" = 20'-0"



CONCEPT SITE PLAN

SCALE: 1" = 20'-0"

BROADWAY & CEDAR

1324 W BROADWAY AVE. - SPOKANE, WA 99201

OLSONPROJECTS

1000 N. BROADWAY, SUITE 200, SPOKANE, WA 99201

Ac.101

SITE PLAN, FLOOR PLAN 05/19/21

MULTIPLE FAMILY HOUSING PROPERTY
TAX EXEMPTION AGREEMENT

THIS AGREEMENT is between the City of Spokane, a Washington State municipal corporation, as "City", and Broadway Apartments, LLC, as "Owner/Taxpayer" whose business address is 502 W Riverside Suite 103, Spokane, WA 99201.

W I T N E S S E T H:

WHEREAS, the City has, pursuant to the authority granted to it by Chapter 84.14 RCW, designated various residential targeted areas for the provision of a limited property tax exemption for new and rehabilitated multiple family residential housing; and

WHEREAS, the City has, through Chapter 8.15 SMC, enacted a program whereby property owner/taxpayers may qualify for a Final Certificate of Tax Exemption which certifies to the Spokane County Assessor that the Owner/Taxpayer is eligible to receive the multiple family housing property tax exemption; and

WHEREAS, the Owner/Taxpayer is interested in receiving the multiple family property tax exemption for new multiple family residential housing units in a residential targeted area; and

WHEREAS, the Owner/Taxpayer has submitted to the City a complete application form for no fewer than a total of four new multiple family permanent residential housing units to be constructed on property legally described as:

D P JENKINS ADD LTS 6 & 7 BLK 7 TOG W/ S1/2 OF VAC ALLEY
LYG NLY & ADJ. TOGETHER WITH THE N1/2, EXCEPT THE EAST 20FT, OF
THE VAC ALLEY LYG NLY & ADJ (VAC ORD # C35642)

Assessor's Parcel Number(s) 35182.4811, commonly known as
1324 W BROADWAY AVE.

WHEREAS, the City has determined that the improvements will, if completed as proposed, satisfy the requirements for a Final Certificate of Tax Exemption; --
NOW, THEREFORE,

The City and the Owner/Taxpayer do mutually agree as follows:

1. The City agrees to issue the Owner/Taxpayer a Conditional Certificate of Acceptance of Tax Exemption subsequent to the City Council's approval of this agreement.

2. The project must comply with all applicable zoning requirements, land use requirements, design review recommendations and all building, fire, and housing code requirements contained in the Spokane Municipal Code at the time a complete application for a building permit is received. However, if the proposal includes rehabilitation or demolition in preparation for new construction, the residential portion of the building shall fail to comply with one or more standards of applicable building or housing codes, and the rehabilitation improvements shall achieve compliance with the applicable building and construction codes.

3. If the property proposed to be rehabilitated is not vacant, the Owner/Taxpayer shall provide each existing tenant with housing of comparable size, quality and price and a reasonable opportunity to relocate.

4. The Owner/Taxpayer intends to construct on the site, approximately 22 new multiple family residential housing units substantially as described in their application filed with and approved by the City. In no event shall such construction provide fewer than a total of four multiple family permanent residential housing units.

5. The Owner/Taxpayer agrees to complete construction of the agreed-upon improvements within three years from the date the City issues the Conditional Certificate of Acceptance of Tax Exemption or within any extension granted by the City.

6. The Owner/Taxpayer agrees, upon completion of the improvements and upon issuance by the City of a temporary or permanent certificate of occupancy, to file with the City's Business & Development Services Department the following:

(a) a statement of the actual development cost of each multiple family housing unit, and the total expenditures made in the rehabilitation or construction of the entire property;

(b) a description of the completed work and a statement that the rehabilitation improvements or new construction of the Owner/Taxpayer's property qualifies the property for the exemption;

(c) a statement that the project meets the affordable housing requirements, if applicable; and

(d) a statement that the work was completed within the required three-year period or any authorized extension of the issuance of the conditional certificate of tax exemption.

7. The City agrees, conditioned on the Owner/Taxpayer's successful completion of the improvements in accordance with the terms of this Agreement and on the Owner/Taxpayer's filing of the materials described in Paragraph 6 above, to file a Final Certificate of Tax Exemption with the Spokane County Assessor indicating that the Owner/Taxpayer is qualified for the limited tax exemption under Chapter 84.14 RCW.

8. The Owner/Taxpayer agrees, within 30 days following the first anniversary of the County's filing of the Final Certificate of Tax Exemption and each year thereafter for a period of twelve years, to file a declaration with the City's Business and Development Services Department, verified upon oath and indicating the following:

(a) a statement of occupancy and vacancy of the multiple family units during the previous year;

(b) a certification that the property has not changed use and, if applicable, that the property has been in compliance with the affordable housing requirements as described in SMC 8.15.090 since the date of the filing of the Final Certificate of Tax Exemption, and continues to be in compliance with this Agreement and the requirements of SMC Chapter 8.15; and

(c) a description of any improvements or changes to the property made after the filing of the final certificate or last declaration.

9. The parties acknowledge that the units are to be used and occupied for multifamily residential use. The parties further acknowledge that the certificate of occupancy issued by the City is for multifamily residential units. The Owner/Taxpayer acknowledges and agrees that the units shall be used primarily for multi-family housing for permanent residential occupancy as defined in SMC 8.15.020 and RCW 84.14.010 and any business activities shall only be incidental and ancillary to the residential occupancy. Any units that are converted from multi-family housing for permanent residential occupancy shall be reported to the Spokane County Assessor's Office and removed from eligibility for the tax exemption. If the removal of the ineligible unit or units causes the number of units to drop below the number of units required for tax exemption eligibility, the remaining units shall be removed from eligibility pursuant to state law.

10. To qualify for the twelve-year tax exemption, the Owner/Taxpayer commits to renting or selling at least twenty percent of the multiple family housing

units as affordable housing units to low and moderate-income households in addition to the other requirements set forth in the Agreement. The Owner/Taxpayer is further required to comply with the rental relocation assistance requirements set forth in RCW 84.14.020 (7) and (8).

11. If the Owner/Taxpayer converts to another use any of the multiple family residential housing units constructed under this Agreement, or if applicable, if the owner/taxpayer intends to discontinue compliance with the affordable housing requirements as described in SMC 8.15.090 or any other condition to exemption, the Owner/Taxpayer shall notify the Spokane County Assessor and the City's Business and Development Services Department within 60 days of such change in use.

12. The Owner/Taxpayer will have the right to assign its rights under this Agreement. The Owner/Taxpayer agrees to notify the City promptly of any transfer of Owner/Taxpayer's ownership interest in the Site or in the improvements made to the Site under this Agreement.

13. The City reserves the right to cancel the Final Certificate of Tax Exemption should the Owner/Taxpayer, its successors and assigns, fail to comply with any of the terms and conditions of this Agreement or of SMC Chapter 8.15.

14. No modifications of this Agreement shall be made unless mutually agreed upon by the parties in writing.

15. The Owner/Taxpayer acknowledges its awareness of the potential tax liability involved if and when the property ceases to be eligible for the incentive provided pursuant to this agreement. Such liability may include additional real property tax, penalties and interest imposed pursuant to RCW 84.14.110. The Owner/Taxpayer further acknowledges its awareness and understanding of the process implemented by the Spokane County Assessor's Office for the appraisal and assessment of property taxes. The Owner/Taxpayer agrees that the City is not responsible for the property value assessment imposed by Spokane County at any time during the exemption period.

16. In the event that any term or clause of this Agreement conflicts with applicable law, such conflict shall not affect other terms of this Agreement, which can be given effect without the conflicting term or clause, and to this end, the terms of this Agreement are declared to be severable.

17. The parties agree that this Agreement, the Final Certificate of Acceptance of Tax Exemption and the construction of the multiple family residential housing units referenced above shall be subject to the applicable provisions of Chapter 84.14 RCW and Chapter 8.15 SMC that exist at the time this agreement is

signed by the parties. The parties may agree to amend this Agreement and the Final Certificate of Acceptance of Tax Exemption based upon applicable amendments and additions to Chapter 84.14 RCW as set forth in ESSSB 5287 adopted by the Washington State Legislature during the 2021 Regular Session effective July 25, 2021.

18. The Owner/Taxpayer acknowledges that RCW 84.14.020 (6) authorizes an extension of the exemption period for an additional twelve-years beyond the exemption period authorized in the Final Certificate of Tax Exemption conditioned upon compliance with the Owner renting or selling at least twenty percent of the multiple family housing units as affordable housing units for low-income households as set forth in RCW 84.14.020 (6) and providing the rental relocation assistance requirements and notice provisions set forth in RCW 84.14.020 (7) and (8). It is the Owner/Taxpayer's responsibility to make a timely request the extension as set forth in RCW 84.14.020 (6). The City shall not be responsible if the Owner/Taxpayer fails to make a timely request for the extension.

19. Nothing in this Agreement shall permit or be interpreted to permit either party to violate any provision of Chapter 84.14 RCW or Chapter 8.15 SMC

20. This Agreement is subject to approval by the City Council.

DATED this _____ day of _____, 2021.

CITY OF SPOKANE

Broadway Apartments, LLC

By: _____

By: _____

Mayor, Nadine Woodward

Its: _____

Attest:

Approved as to form:

City Clerk

Assistant City Attorney