

# THE CITY OF SPOKANE



## ADVANCE COUNCIL AGENDA

MEETING OF MONDAY, AUGUST 19, 2013

### MISSION STATEMENT

TO DELIVER EFFICIENT AND EFFECTIVE SERVICES  
THAT FACILITATE ECONOMIC OPPORTUNITY  
AND ENHANCE QUALITY OF LIFE.

MAYOR DAVID A. CONDON  
COUNCIL PRESIDENT BEN STUCKART

COUNCIL MEMBER MICHAEL A. ALLEN  
COUNCIL MEMBER NANCY McLAUGHLIN  
COUNCIL MEMBER JON SNYDER

COUNCIL MEMBER MIKE FAGAN  
COUNCIL MEMBER STEVE SALVATORI  
COUNCIL MEMBER AMBER WALDREF

COUNCIL CHAMBERS  
CITY HALL

808 W. SPOKANE FALLS BLVD.  
SPOKANE, WA 99201

## CITY COUNCIL BRIEFING SESSION

Council will adopt the Administrative Session Consent Agenda after they have had appropriate discussion. Items may be moved to the 6:00 p.m. Legislative Session for formal consideration by the Council at the request of any Council Member.

SPOKANE CITY COUNCIL BRIEFING SESSIONS (BEGINNING AT 3:30 P.M. EACH MONDAY) AND LEGISLATIVE SESSIONS (BEGINNING AT 6:00 P.M. EACH MONDAY) ARE BROADCAST LIVE ON CITY CABLE CHANNEL FIVE AND STREAMED LIVE ON THE CHANNEL FIVE WEBSITE. THE SESSIONS ARE REPLAYED ON CHANNEL FIVE ON WEDNESDAYS AT 6:00 P.M. AND FRIDAYS AT 10:00 A.M.

The Briefing Session is open to the public, but will be a workshop meeting. Discussion will be limited to Council Members and appropriate Staff and Counsel. There will be an opportunity for the expression of public views on any issue not relating to the Current or Advance Agendas during the Open Forum at the beginning and the conclusion of the Legislative Agenda.

### ADDRESSING THE COUNCIL

- No one may speak without first being recognized for that purpose by the Chair. Except for named parties to an adjudicative hearing, a person may be required to sign a sign-up sheet as a condition of recognition.
- Each person speaking at the public microphone shall print his or her name and address on the sheet provided at the podium and verbally identify him/herself by name, address and, if appropriate, representative capacity.
- If you are submitting letters or documents to the Council Members, please provide a minimum of ten copies via the City Clerk. The City Clerk is responsible for officially filing and distributing your submittal.
- In order that evidence and expressions of opinion be included in the record and that decorum befitting a deliberative process be maintained, modes of expression such as demonstration, banners, applause and the like will not be permitted.
- A speaker asserting a statement of fact may be asked to document and identify the source of the factual datum being asserted.

**SPEAKING TIME LIMITS:** Unless deemed otherwise by the Chair, each person addressing the Council shall be limited to a three-minute speaking time.

**CITY COUNCIL AGENDA:** The City Council Advance and Current Agendas may be obtained prior to Council Meetings from the Office of the City Clerk during regular business hours (8 a.m. - 5 p.m.). The Agenda may also be accessed on the City website at [www.spokanecity.org](http://www.spokanecity.org). Agenda items are available for public review in the Office of the City Clerk during regular business hours.

**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 Gita George-Hatcher at (509) 625-7083, 808 W. Spokane Falls Blvd, Spokane, WA, 99201; or [ggeorge-hatcher@spokanecity.org](mailto:ggeorge-hatcher@spokanecity.org). Persons who are deaf or hard of hearing may contact Ms. George-Hatcher at (509) 625-7083 through the Washington Relay Service at 7-1-1. Please contact us forty-eight (48) hours before the meeting date.

If you have questions, please call the Agenda Hotline at 625-6350.

# BRIEFING SESSION

(3:30 p.m.)

(Council Chambers Lower Level of City Hall)

(No Public Testimony Taken)

Council Reports

Staff Reports

Committee Reports

Advance Agenda Review

Current Agenda Review

# ADMINISTRATIVE SESSION

Roll Call of Council

# CONSENT AGENDA

## REPORTS, CONTRACTS AND CLAIMS

## RECOMMENDATION

- |  |                        |                              |
|--|------------------------|------------------------------|
| 1. Change Order No. 3 to contract with Inland Asphalt Company (Spokane, WA) for Francis Avenue from Crestline Street to Haven Street—an increase of \$84,526.85 (plus tax) and seven working days. Total cost to date—\$1,231,558.14.      | Approve                | PRO 2013-0003<br>ENG 2005052 |
| 2. Commercial and Investment Real Estate Purchase and Sale Agreement with Jeff Bosma (City as Seller) for property located at 1001 North Havana Street, Havana Street Bridge Project—\$2,000,000 revenue.                                  | Approve                | OPR 2013-0610                |
| 3. Loan Agreement and other documents with The Delaney Group LLC (Spokane, WA) for acquisition and rehabilitation of The Delaney, an 83-unit apartment building at 242 West Riverside Avenue—\$300,000 HOME funds. (Downtown Neighborhood) | Approve                | OPR 2013-0611                |
| 4. Report of the Mayor of pending:   | Approve &<br>Authorize |                              |
| a. Claims and payments of previously approved obligations, including those of Parks and Library, through _____, total \$_____, with Parks  | Payments               | CPR 2013-0002                |

and Library claims approved by their respective boards. Warrants excluding Parks and Library total \$\_\_\_\_\_.

b. Payroll claims of previously approved obligations through August 3, 2013: \$5,805,548.24.

CPR 2013-0003

## **EXECUTIVE SESSION**

(Closed Session of Council)

(Executive Session may be held or reconvened during the 6:00 p.m. Legislative Session)

## **CITY COUNCIL SESSION**

(May be held or reconvened following the 3:30 p.m. Administrative Session)

(Council Briefing Center)

This session may be held for the purpose of City Council meeting with Mayoral nominees to Boards and/or Commissions. The session is open to the public.

## **LEGISLATIVE SESSION**

(6:00 P.M.)

(Council Reconvenes in Council Chamber)

**WORDS OF INSPIRATION**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL OF COUNCIL**

**ANNOUNCEMENTS**

(Announcements regarding Changes to the City Council Agenda)

**BOARDS AND COMMISSIONS APPOINTMENTS**

(Includes Announcements of Boards and Commissions Vacancies)

### **APPOINTMENTS**

### **RECOMMENDATION**

**Bicycle Advisory Board: One Appointment**

**Confirm**

**CPR 1992-0059**

**Spokane Hotel - Motel Commission: One Reappointment**

**Confirm**

**CPR 2004-0017**

## **CITY ADMINISTRATION REPORT**

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### **COUNCIL COMMITTEE REPORTS**

(Committee Reports for Finance, Neighborhoods, Public Safety, Public Works, and Planning/Community and Economic Development Committees and other Boards and Commissions)

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### **OPEN FORUM**

This is an opportunity for citizens to discuss items of interest not relating to the Current or Advance Agendas nor relating to political campaigns/items on upcoming election ballots. This Forum shall be for a period of time not to exceed thirty minutes. After all the matters on the Agenda have been acted on, unless it is 10:00 p.m. or later, the open forum shall continue for a period of time not to exceed thirty minutes. Each speaker will be limited to three minutes, unless otherwise deemed by the Chair. If you wish to speak at the forum, please sign up on the sign-up sheet located in the Chase Gallery.

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## **LEGISLATIVE AGENDA**

### **NO EMERGENCY BUDGET ORDINANCES**

### **NO EMERGENCY ORDINANCES**

### **RESOLUTION & FINAL READING ORDINANCES**

(Require Four Affirmative, Recorded Roll Call Votes)

- RES 2013-0062**      Establishing the City Council's Human Services funding priorities for the 2014 Human Services Grant.
- ORD C35018**        Relating to the City of Spokane's use of surveillance equipment; requiring City departments to obtain City Council approval prior to acquiring certain surveillance equipment; requiring departments to propose protocols related to proper use and deployment of certain surveillance equipment for Council review, requiring departments to adopt written protocols that address data retention, storage and access of any data obtained through the use of certain surveillance equipment, and adopting a new Chapter 1.08 to Title 1 of the Spokane Municipal Code. (Deferred from August 5, 2013, Agenda)
- ORD C35020**        Creating departments within the Parks and Recreation division; amending SMC Section 3.01A.360; and adopting new Sections 3.01A.361, 3.01A.362 and 3.01A.363 to Chapter 3.01A of the Spokane Municipal Code.

## **FIRST READING ORDINANCE**

(No Public Testimony Will Be Taken)

**ORD C35021**      Regarding low impact development and amending SMC Sections 13.03.1112; 13.03.1137; 17A.020.120; 17C.110.410; 17C.120.230; 17C.130.230; 17C.200.060; 17D.060.030; 17H.010.020; 17H.010.030 and adopting a new section 17D.060.300 to Chapter 17D of the Spokane Municipal Code, and setting an effective date.

**FURTHER ACTION DEFERRED**

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**NO SPECIAL CONSIDERATIONS**

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**NO HEARINGS**

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**Motion to Approve Advance Agenda for August 19, 2013**  
(per Council Rule 2.1.2)

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### **OPEN FORUM (CONTINUED)**

This is an opportunity for citizens to discuss items of interest not relating to the Current or Advance Agendas nor relating to political campaigns/items on upcoming election ballots. This Forum shall be for a period of time not to exceed thirty minutes. After all the matters on the Agenda have been acted on, unless it is 10:00 p.m. or later, the open forum shall continue for a period of time not to exceed thirty minutes. Each speaker will be limited to three minutes, unless otherwise deemed by the Chair. If you wish to speak at the forum, please sign up on the sign-up sheet located in the Chase Gallery.

### **ADJOURNMENT**

The August 19, 2013, Regular Legislative Session of the City Council is adjourned to Monday, August 26, 2013.

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**NOTES**



**Agenda Sheet for City Council Meeting of:**

08/19/2013

<b>Date Rec'd</b>	8/7/2013
<b>Clerk's File #</b>	PRO 2013-0003
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	2005052
<b>Bid #</b>	
<b>Requisition #</b>	CR 13703

<b>Submitting Dept</b>	ENGINEERING SERVICES
<b>Contact Name/Phone</b>	KEN BROWN 625-7727
<b>Contact E-Mail</b>	KBROWN@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Contract Item
<b>Agenda Item Name</b>	0370-CO NO. 3 - FRANCIS AVENUE - INLAND ASPHALT

**Agenda Wording**

Change Order No. 3 to contract with Inland Asphalt Company for Francis Avenue from Crestline Street to Haven Street; with an increase of \$84,526.85, plus tax, and seven working days (Total cost-to-date \$1,231,558.14).

**Summary (Background)**

This Change Order provides payment for a sewer main extension. Total amount of Change Orders to date is \$93,872.89 or 8.25% of the original contract amount.

**Fiscal Impact**

Expense	\$ 91,880.69
Select	\$
Select	\$
Select	\$

**Budget Account**

# 4370 43354 94000 56501
#
#
#

**Approvals**

<b>Dept Head</b>	TWOHIG, KYLE
<b>Division Director</b>	QUINTRALL, JAN
<b>Finance</b>	LESESNE, MICHELE
<b>Legal</b>	BURNS, BARBARA
<b>For the Mayor</b>	SANDERS, THERESA

**Council Notifications**

<b>Study Session</b>	
<b>Other</b>	PCED 8/19/13

**Distribution List**

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jmallahan@spokanecity.org

**Additional Approvals**

<b>Purchasing</b>	

BRIEFING PAPER  
Engineering Services Department  
Date August 2, 2013

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Subject:

Francis Avenue Reconstruction, from Crestline Street to Haven Street, project number 2005052. Francis Avenue is a Street Bond project. Request City Council approval of a change order for installation of a sewer main.

Background:

Francis Avenue is on the northern boundary of Spokane in this area. It also is on the border between the City of Spokane Sewer Service area and Spokane County Sewer Service area. The easterly portion of Francis Avenue had no sanitary sewer installed and the parcels within the City were served from other streets. Because of this, during design extension of the sewer was not considered. Once construction began requests to become part of the City of Spokane Sewer Service area were received. The City reacted to these requests, contacted Spokane County and received approval to serve the lots fronting Francis Avenue with improved prospects to also provide future service to the developed area to the north (Morgan Acres). Please see attached parcel map.

Based on the requests, the expectation to serve further north, and the desire to prevent pavement cuts in Francis Avenue, it was determined to install a sewer main and sewer service stubs as part of the Francis Avenue project.

A change order with an estimated total cost of \$84,526.85 has been processed to install the sewer main and service stubs. The funding for this installation comes from the Wastewater Management fund. Connection charges and future monthly utility charges are expected to offset this cost.

Original Contract Amount:	\$1,137,685.25
Original Administrative Reserve:	\$113,768.52 (10%)
This Change Order:	\$84,526.85 (7.4%)

Total Budget with C.O.: \$1,335,980.62

Because this Change Order is for Agency ordered additional work, it is being processed through City Council for direct approval of the additional funds.

Impact:

Wastewater Management Capital Fund – 100%

Action:

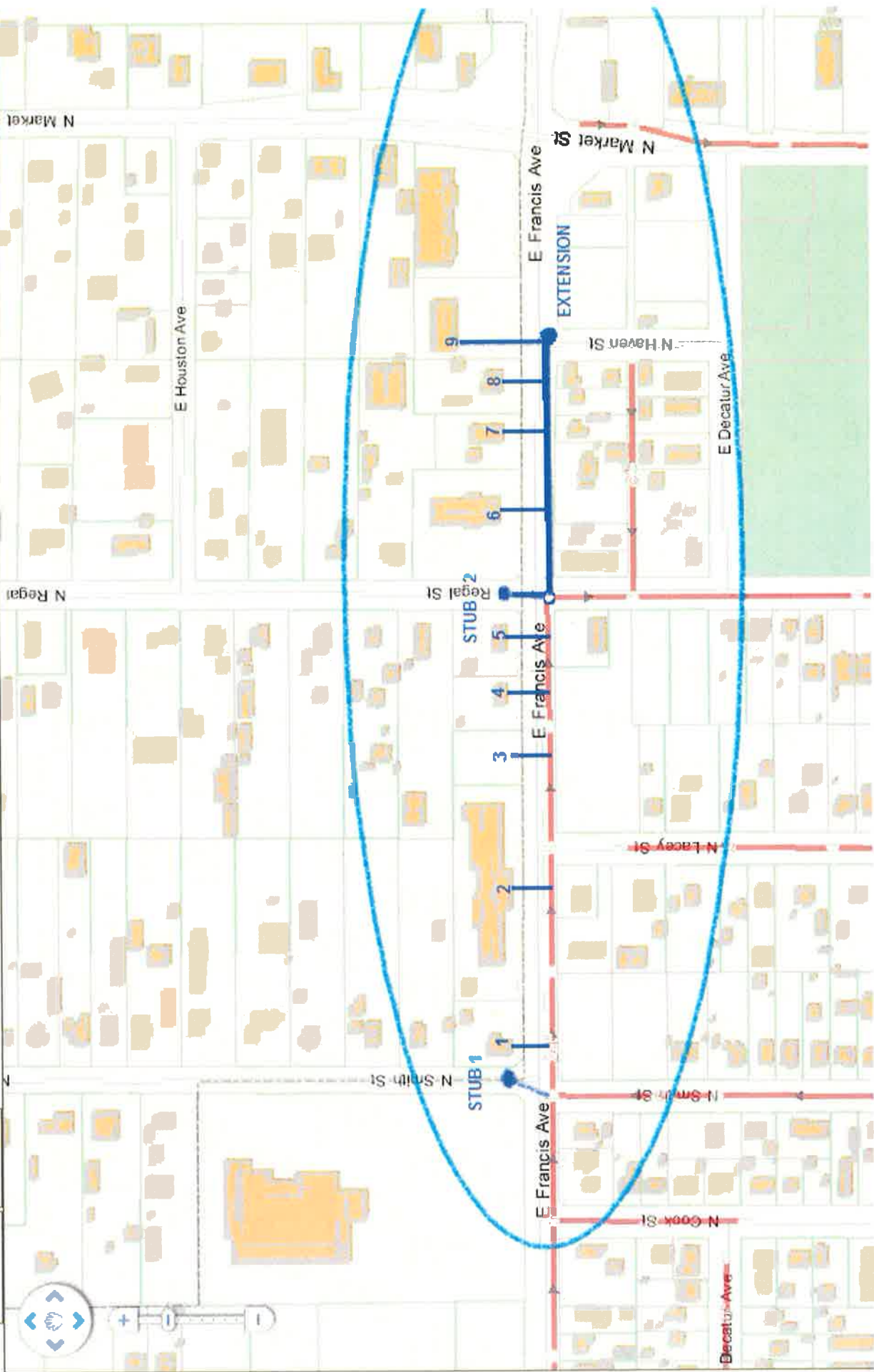
Approve the change order to pay the increased cost for this added work; \$84,526.85.

For further information on this subject contact Kyle Twohig, Engineering Operations Manager at 625-6152.



Property Info | Measure | Clear | Street View | Print

Overlays Results



**CITY OF SPOKANE**  
**CONSTRUCTION MANAGEMENT**

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**LEGISLATIVE CHANGE ORDER AGREEMENT NO. 3**

**INLAND ASPHALT COMPANY**

**2005052**

**FRANCIS AVENUE: CRESTLINE TO HAVEN**

**May 24, 2013**

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If this is a change to a Federal Aid Project and the amount authorized in the Local Agency Agreement is exceeded and federal funds are not available for this change, the Local Agency will assume the total cost of this Change Order. Federal Aid Number : \_\_\_\_\_

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- Change ordered by Engineer under the terms of Section 1-04.4 of the Standard Specifications  
 Change proposed by Contractor

**PROPOSED CHANGE**

All work shall be performed in accordance with the appropriate section(s) of the Standard Specifications.

During construction, a decision was made to extend the existing sewer main to the east and to the north and provide side sewers to eight lots.


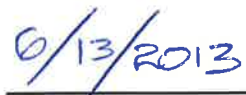




Bid item #704 - Sewer Main Extension, will be created in the amount of \$84,526.85. This amount includes all labor, materials, and equipment, required to perform the work, and also includes contractor markup.

Seven (7) working days will be added to the contract.

## COST SUMMARY

ITEM NO.	DESCRIPTION	QTY	UNIT	UNIT PRICE	INCR OR ( DECR )
704	Sewer Main Extension	1	LS	84,526.85	\$ 84,526.85 \$ - \$ -
<b>CHANGE ORDER TOTAL :</b>					<b>\$ 84,526.85</b>

### SIGNATURES

Endorsed By :	 <hr/> <b>CONTRACTOR</b>	 <hr/> <b>DATE</b>
Approved By :	 <hr/> <b>PRINCIPAL ENGINEER - CONSTRUCTION MGMT</b>	 <hr/> <b>DATE</b>
	 <hr/> <b>DIRECTOR - ENGINEERING SERVICES</b>	 <hr/> <b>DATE</b>
	<hr/> <b>DIRECTOR - PUBLIC WORKS AND UTILITIES</b>	<hr/> <b>DATE</b>
Attest :	<hr/> <b>CITY CLERK</b>	<hr/> <b>DATE</b>
	<hr/> <b>DAVID A. CONDON, MAYOR</b>	<hr/> <b>DATE</b>
Approved as to form :	<hr/> <b>ASSISTANT CITY ATTORNEY</b>	<hr/> <b>DATE</b>



**Agenda Sheet for City Council Meeting of:**

08/19/2013

<b>Date Rec'd</b>	8/7/2013
<b>Clerk's File #</b>	OPR 2013-0610
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	2004062
<b>Bid #</b>	
<b>Requisition #</b>	REVENUE

<b>Submitting Dept</b>	ASSET MANAGEMENT
<b>Contact Name/Phone</b>	DAVE STEELE 625-6064
<b>Contact E-Mail</b>	DSTEELE@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Contract Item
<b>Agenda Item Name</b>	5900-PURCHASE & SALE-BOSMA-HAVANA ST. BRIDGE

**Agenda Wording**

Commercial and Investment Real Estate Purchase & Sale Agreement between the City of Spokane and Jeff Bosma (City as Seller) for property located at 1001 North Havana Street, Havana Street Bridge project; revenue in the amount of \$2,000,000.00.

**Summary (Background)**

In October 2012 City Council declared certain properties acquired in conjunction with the Havana Street Bridge as surplus. Following the surplus action, the property was listed with Kiemle & Hagood. This Purchase and Sale agreement has been negotiated with the existing tenant for appraised value and completes the closing within thirty days.

**Fiscal Impact**

Revenue	\$ 2,000,000.00
Select	\$
Select	\$
Select	\$

**Budget Account**

#	3200 94991 99999 39510
#	
#	
#	

**Approvals**

<b>Dept Head</b>	WERNER, MARK
<b>Division Director</b>	QUINTRALL, JAN
<b>Finance</b>	LESESNE, MICHELE
<b>Legal</b>	BURNS, BARBARA
<b>For the Mayor</b>	SANDERS, THERESA

**Council Notifications**

<b>Study Session</b>	
<b>Other</b>	PCED 8/5/13

**Distribution List**

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mlesesne@spokanecity.org
htrautman@spokanecity.org

**Additional Approvals**

<b>Purchasing</b>	PRINCE, THEA
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**Kiemle & Hagood Company**  
 601 W Main Avenue, Suite 400  
 Spokane, WA 99201  
 Phone: (509) 838-6541  
 Fax: (509) 458-4014

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CBA Form PS-1A  
 Purchase & Sale Agreement  
 Rev. 1/2011  
 Page 1 of 13

**COMMERCIAL & INVESTMENT REAL ESTATE  
 PURCHASE & SALE AGREEMENT**

*This has been prepared for submission to your attorney for review and approval prior to signing. No representation is made by licensee as to its sufficiency or tax consequences*

Reference Date: May 24, 2013

Jeff Bosma and/or Assigns ("Buyer") agrees to buy and City of Spokane ("Seller") agrees to sell, on the following terms, the commercial real estate and all improvements thereon (collectively, the "Property") commonly known as 1001 N. Havana in the City of Spokane, Spokane County, Washington, legally described on attached Exhibit A. The Reference Date above is intended to be used to reference this Agreement and is not the date of "Mutual Acceptance," which is defined in Section 23.

1. **PURCHASE PRICE.** The purchase price is Two Million and no/100 Dollars (\$2,000,000.00) payable as follows (check only one):

- All cash at closing with no financing contingency.
- All cash at closing contingent on new financing ~~in accordance with the Financing Addendum (attach CBA Form PS\_FIN).~~ *SEE ATTACHED ADDENDUM #1.*
- \$\_\_\_\_\_ OR \_\_\_\_\_% of the purchase price in cash at closing with the balance of the purchase price paid as follows (check one or both, as applicable):  Buyer's assumption of the outstanding principal balance as of the Closing Date of a first lien note and deed of trust (or mortgage), or real estate contract, in accordance with the Financing Addendum (attach CBA Form PS\_FIN);  Buyer's delivery at closing of a promissory note for the balance of the purchase price, secured by a deed of trust encumbering the Property, in accordance with the Financing Addendum (attach CBA Form PS\_FIN ).
- Other: \_\_\_\_\_.

2. **EARNEST MONEY.** The earnest money in the amount of \$10,000.00 shall be in the form of  Cash  Personal check  Promissory note (attached CBA Form EMN)  Other: Company Check

The earnest money shall be held by  Selling Firm  Closing Agent. Selling Broker may, however, transfer the earnest money to Closing Agent.

Buyer shall deliver the earnest money no later than:

- 10 days after Mutual Acceptance.
- On the last day of the Feasibility Period defined in Section 5 below.
- Other: \_\_\_\_\_.

If the earnest money is to be held by Selling Firm and is over \$10,000, it shall be deposited to:  Selling Firm's pooled trust account (with interest paid to the State Treasurer)  A separate interest bearing trust account in Selling Firm's name. The interest, if any, shall be credited at closing to Buyer. If this sale fails to close, whoever is entitled to the earnest money is entitled to interest.

Selling Firm shall deposit any check to be held by Selling Firm within 3 days after receipt or Mutual Acceptance, whichever occurs later. Buyer agrees to pay financing and purchase costs incurred by Buyer. Unless otherwise provided in this Agreement, the earnest money shall be applicable to the purchase price.

3. **EXHIBITS AND ADDENDA.** The following Exhibits and Addenda are made a part of this Agreement:

- Exhibit A - Legal Description
- Earnest Money Promissory Note, CBA Form EMN
- Promissory Note, LPB Form No. 28A

INITIALS: Buyer JB Date 5-28-13 Seller [Signature] Date 6/14/13  
 Buyer \_\_\_\_\_ Date \_\_\_\_\_ Seller \_\_\_\_\_ Date \_\_\_\_\_



**Kiemle & Hagood Company**  
 601 W Main Avenue, Suite 400  
 Spokane, WA 99201  
 Phone: (509) 838-6541  
 Fax: (509) 458-4014

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 Purchase & Sale Agreement  
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 Page 2 of 13



**COMMERCIAL & INVESTMENT REAL ESTATE  
 PURCHASE & SALE AGREEMENT  
 (CONTINUED)**

- Short Form Deed of Trust, LPB Form No. 20
- Deed of Trust Rider, CBA Form DTR
- Utility Charges Addendum, CBA Form UA
- FIRPTA Certification, CBA Form 22E
- Assignment and Assumption, CBA Form PS-AS
- Addendum/Amendment, CBA Form PSA
- Back-Up Addendum, CBA Form BU-A
- Vacant Land Addendum, CBA Form VLA
- Financing Addendum, CBA Form PS\_FIN
- Tenant Estoppel Certificate, CBA Form PS\_TEC
- Defeasance Addendum, CBA Form PS\_D
- Other \_\_\_\_\_

**4. SELLER'S UNDERLYING FINANCING.** Unless Buyer is assuming Seller's underlying financing, Seller shall be responsible for confirming the existing underlying financing is not subject to any "lock out" or similar covenant which would prevent the lender's lien from being released at closing. In addition, Seller shall provide Buyer notice prior to the end of the Feasibility Period if Seller is required to substitute securities for the Property as collateral for the underlying financing (known as "defeasance"). If Seller provides this notice of defeasance to Buyer, then the parties shall close the transaction in accordance with the process described in CBA Form PS\_D or any different process identified in Seller's defeasance notice to Buyer.

**5. FEASIBILITY CONTINGENCY.** Buyer's obligations under this Agreement are conditioned upon Buyer's satisfaction in Buyer's sole discretion, concerning all aspects of the Property, including its physical condition; the presence of or absence of any hazardous substances; the contracts and leases affecting the property; the potential financial performance of the Property; the availability of government permits and approvals; and the feasibility of the Property for Buyer's intended purpose. This Agreement shall terminate and Buyer shall receive a refund of the earnest money unless Buyer gives written notice to Seller within 30 days (30 days if not filled in) (the "Feasibility Period") of Mutual Acceptance stating that this condition is satisfied. If such notice is timely given, the feasibility contingency stated in this Section 5 shall be deemed to be satisfied.

**a. Books, Records, Leases, Agreements.** Seller shall make available for inspection by Buyer and its agents within 5 days (2 days if not filled in) after Mutual Acceptance all documents in Seller's possession or control relating to the ownership, operation, renovation or development of the Property, excluding appraisals or other statements of value, and including: statements for real estate taxes, assessments, and utilities for the last three years and year to date; property management agreements and any other agreements with professionals or consultants; leases or other agreements relating to occupancy of all or a portion of the Property and a suite-by-suite schedule of tenants, rents, prepaid rents, deposits and fees; plans, specifications, permits, applications, drawings, surveys, and studies; maintenance records, accounting records and audit reports for the last three years and year to date; and "Vendor Contracts" which shall include maintenance or service contracts, and installments purchase contracts or leases of personal property or fixtures used in connection with the Property. Buyer shall determine within the Feasibility Period: (i) whether Seller will agree to terminate any objectionable Vendor Contracts; and (ii) whether Seller will agree to pay any damages or penalties resulting from the termination of objectionable Vendor Contracts. Buyer's waiver of the Feasibility Contingency shall be deemed Buyer's acceptance of all Vendor Contracts which Seller has not agreed in writing to terminate. Buyer shall be solely responsible for obtaining any required consents to such assumption and the payment of any assumption fees. Seller shall cooperate with Buyer's efforts to receive any such consents but shall not be required to incur any out-of-pocket expenses or liability in doing so. Seller shall transfer the Vendor Contracts as provided in Section 17.

INITIALS: Buyer JB Date 5-28-13 Seller [Signature] Date 6/14/13  
 Buyer \_\_\_\_\_ Date \_\_\_\_\_ Seller \_\_\_\_\_ Date \_\_\_\_\_





**Kiemle & Hagood Company**  
 601 W Main Avenue, Suite 400  
 Spokane, WA 99201  
 Phone: (509) 838-6541  
 Fax: (509) 458-4014

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CBA Form PS-1A  
 Purchase & Sale Agreement  
 Rev. 1/2011  
 Page 3 of 13

**COMMERCIAL & INVESTMENT REAL ESTATE  
 PURCHASE & SALE AGREEMENT  
 (CONTINUED)**

**b. Access.** Seller shall permit Buyer and its agents, at Buyer's sole expense and risk to enter the Property at reasonable times subject to the rights of and after legal notice to tenants, to conduct inspections concerning the Property and improvements, including without limitation, the structural condition of improvements, hazardous materials, pest infestation, soils conditions, sensitive areas, wetlands, or other matters affecting the feasibility of the Property for Buyer's intended use. Buyer shall schedule any entry onto the Property with Seller in advance and shall comply with Seller's reasonable requirements including those relating to security, confidentiality, and disruption of Seller's tenants. Buyer shall not perform any invasive testing including environmental inspections beyond a phase I assessment or contact the tenants or property management personnel without obtaining the Seller's prior written consent, which shall not be unreasonably withheld. Buyer shall restore the Property and improvements to the same condition they were in prior to inspection. Buyer shall be solely responsible for all costs of its inspections and feasibility analysis and has no authority to bind the Property for purposes of statutory liens. Buyer agrees to indemnify and defend Seller from all liens, costs, claims, and expenses, including attorneys' and experts' fees, arising from or relating to entry onto or inspection of the Property by Buyer and its agents. This agreement to indemnify and defend Seller shall survive closing. Buyer may continue to enter the Property in accordance with the foregoing terms and conditions after removal or satisfaction of the feasibility contingency only for the purpose of leasing or to satisfy conditions of financing.

**c.** Buyer waives the right to receive a seller disclosure statement ("Form 17-Commercial") if required by RCW 64.06. However, if Seller would otherwise be required to provide Buyer with a Form 17-Commercial, and if the answer to any of the questions in the section of the Form 17-Commercial entitled "Environmental" would be "yes," then Buyer does not waive the receipt of the "Environmental" section of the Form 17-Commercial which shall be provided by Seller.

**6. TITLE INSURANCE.**

**a. Title Report.** Seller authorizes Buyer, its Lender, Listing Broker, Selling Broker or Closing Agent, at Seller's expense, to apply for and deliver to Buyer a  standard  extended (standard, if not completed) coverage owner's policy of title insurance. If an extended coverage owner's policy is specified, Buyer shall pay the increased costs associated with that policy including the excess premium over that charged for a standard coverage policy, and the cost of any survey required by the title insurer. The title report shall be issued by First American Title (a title company of Seller's choice, if not completed). If Seller previously received a preliminary commitment from a title insurer that Buyer declines to use, Buyer shall pay any cancellation fee owing to the original title insurer. Otherwise, the party applying for title insurance shall pay any title cancellation fee, in the event such a fee is assessed.

**b. Permitted Exceptions.** Buyer shall notify Seller of any objectionable matters in the title report or any supplemental report within ~~the earlier of: (1) twenty (20) days after RECEIPT OF THE TITLE REPORT. Mutual Acceptance of this Agreement; or (2) the expiration of the Feasibility Period.~~ This Agreement shall terminate and Buyer shall receive a refund of the earnest money, less any costs advanced or committed for Buyer, unless within five (5) days of Buyer's notice of such objections (1) Seller agrees, in writing, to remove all objectionable provisions or (2) Buyer notifies Seller that Buyer waives any objections which Seller does not agree to remove. If any new title matters are disclosed in a supplemental title report, then the preceding termination, objection and waiver provisions shall apply to the new title matters except that Buyer's notice of objections must be delivered within five (5) days of delivery of the supplemental report and Seller's response or Buyer's waiver must be delivered within two (2) days of Buyer's notice of objections. The closing date shall be extended to the extent necessary to permit time for these notices. Buyer shall not be required to object to any mortgage or deed of trust liens, or the statutory lien for real property taxes, and the same shall not be deemed to be Permitted Exceptions; provided, however, that the lien securing any financing which Buyer has agreed to assume shall be a Permitted Exception. Except for the foregoing, those provisions not objected to or for which Buyer waived its objections

INITIALS: Buyer JB Date 5-28-13 Seller [Signature] Date 6/14/13  
 Buyer \_\_\_\_\_ Date \_\_\_\_\_ Seller \_\_\_\_\_ Date \_\_\_\_\_



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shall be referred to collectively as the "Permitted Exceptions." Seller shall cooperate with Buyer and the title company to clear objectionable title matters but shall not be required to incur any out-of-pocket expenses or liability other than payment of monetary encumbrances not assumed by Buyer and proration of real property taxes, and Seller shall provide an owner's affidavit containing the information and reasonable covenants requested by the title company. The title policy shall contain no exceptions other than the General Exclusions and Exceptions common to such form of policy and the Permitted Exceptions.

7. **CLOSING OF SALE.** The sale shall be closed on thirty (30) days after Buyer's waiver or removal of the feasibility contingency outlined in Paragraph #5 and Buyer's waiving or removing the contingencies as outlined in Addendum #1 attached. ("Closing") by First American Title-Dawn McClenahan ("Closing Agent") (Seller shall select the Closing Agent, if not completed). Buyer and Seller shall deposit with Closing Agent by 12:00 p.m. on the scheduled Closing date all instruments and monies required to complete the purchase in accordance with this Agreement. "Closing" shall be deemed to have occurred when the deed is recorded and the sale proceeds are available to Seller. Time is of the essence in the performance of this Agreement. Sale proceeds shall be considered available to Seller, even though they cannot be disbursed to Seller until the next business day after Closing. Notwithstanding the foregoing, if Seller informed Buyer during the Feasibility Period that Seller's underlying financing requires that it be defeased and may not be paid off, then Closing shall be conducted in accordance with the three-day closing process described in CBA Form PS\_D. This Agreement is intended to constitute escrow instructions to Closing Agent. Buyer and Seller will provide any supplemental instructions requested by Closing Agent provided the same are consistent with this Agreement.
  
8. **CLOSING COSTS AND PRORATIONS.** Seller shall deliver an updated rent roll to Closing Agent not later than two (2) days before the scheduled Closing date in the form required by Section 5(a) and any other information reasonably requested by Closing Agent to allow Closing Agent to prepare a settlement statement for Closing. Seller certifies that the information contained in the rent roll is correct as of the date submitted. Seller shall pay the premium for the owner's standard coverage title policy. Buyer shall pay the excess premium attributable to any extended coverage or endorsements requested by Buyer, and the cost of any survey required in connection with the same. Seller and Buyer shall each pay one-half of the escrow fees. Any real estate excise taxes shall be paid by the party who bears primary responsibility for payment under the applicable statute or code. Real and personal property taxes and assessments payable in the year of closing; collected rents on any existing tenancies; interest; utilities; and other operating expenses shall be pro-rated as of Closing. If tenants pay any of the foregoing expenses directly, then Closing Agent shall only pro rate those expenses paid by Seller. Buyer shall pay to Seller at Closing an additional sum equal to any utility deposits or mortgage reserves for assumed financing for which Buyer receives the benefit after Closing. Buyer shall pay all costs of financing including the premium for the lender's title policy. If the Property was taxed under a deferred classification prior to Closing, then Seller shall pay all taxes, interest, penalties, deferred taxes or similar items which result from removal of the Property from the deferred classification. At Closing, all refundable deposits on tenancies shall be credited to Buyer or delivered to Buyer for deposit in a trust account if required by state or local law. Buyer shall pay any sales or use tax applicable to the transfer of personal property included in the sale.
  - a. **Unpaid Utility Charges.** Buyer and Seller  WAIVE  DO NOT WAIVE (do not waive if neither box checked) the right to have the Closing Agent disburse closing funds necessary to satisfy unpaid utility charges affecting the Property pursuant to RCW 60.80. If "do not waive" is checked, then attach CBA Form UA ("Utility Charges" Addendum) to this Agreement.
  
9. **POST-CLOSING ADJUSTMENTS, COLLECTIONS, AND PAYMENTS.** After Closing, Buyer and Seller shall reconcile the actual amount of revenues or liabilities upon receipt or payment thereof to the extent those items were prorated or credited at Closing based upon estimates. Any bills or invoices received by Buyer after Closing which relate to services rendered or goods delivered to the Seller or the Property prior to Closing shall be paid by

INITIALS: Buyer JB Date 5-28-13 Seller [Signature] Date 6/11/13  
 Buyer \_\_\_\_\_ Date \_\_\_\_\_ Seller \_\_\_\_\_ Date \_\_\_\_\_





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Seller upon presentation of such bill or invoice. At Buyer's option, Buyer may pay such bill or invoice and be reimbursed the amount paid plus interest at the rate of 12% per annum beginning fifteen (15) days from the date of Buyer's written demand to Seller for reimbursement until such reimbursement is made. Notwithstanding the foregoing, if tenants pay certain expenses based on estimates subject to a post-closing reconciliation to the actual amount of those expenses, then Buyer shall be entitled to any surplus and shall be liable for any credit resulting from the reconciliation. Rents collected from each tenant after Closing shall be applied first to rentals due most recently from such tenant for the period after closing, and the balance shall be applied for the benefit of Seller for delinquent rentals owed for a period prior to closing. The amounts applied for the benefit of Seller shall be turned over by Buyer to Seller promptly after receipt. Seller shall be entitled to pursue any lawful methods of collection of delinquent rents but shall have no right to evict tenants after Closing.

- 10. **OPERATIONS PRIOR TO CLOSING.** Prior to Closing, Seller shall continue to operate the Property in the ordinary course of its business and maintain the Property in the same or better condition than as existing on the date of Mutual Acceptance but shall not be required to repair material damage from casualty except as otherwise provided in this Agreement. After the Feasibility Period, Seller shall not enter into or modify existing rental agreements or leases (except that Seller may enter into, modify, extend, renew or terminate residential rental agreements or residential leases in the ordinary course of its business), service contracts, or other agreements affecting the Property which have terms extending beyond Closing without first obtaining Buyer's consent, which shall not be unreasonably withheld.
- 11. **POSSESSION.** Buyer shall be entitled to possession  on closing *SUBJECT TO THE INITIAL LEASE WITH PENINSULA TRUCK LINES, INC.*  \_\_\_\_\_ (on closing, if not completed). Buyer shall accept possession subject to all tenancies disclosed to Buyer during the Feasibility Period.
- 12. **SELLER'S REPRESENTATIONS.** Except as disclosed to or known by Buyer prior to the satisfaction or waiver of the feasibility contingency stated in Section 5 above, including in the books, records and documents made available to Buyer, or in the title report or any supplemental report or documents referenced therein, Seller represents to Buyer that, to the best of Seller's actual knowledge, each of the following is true as of the date hereof: (a) Seller is authorized to enter into the Agreement, to sell the Property, and to perform its obligations under the Agreement; (b) The books, records, leases, agreements and other items delivered to Buyer pursuant to this Agreement comprise all material documents in Seller's possession or control regarding the operation and condition of the Property; (c) Seller has not received any written notices that the Property or the business conducted thereon violate any applicable laws, regulations, codes and ordinances; (d) Seller has all certificates of occupancy, permits, and other governmental consents necessary to own and operate the Property for its current use; (e) There is no pending or threatened litigation which would adversely affect the Property or Buyer's ownership thereof after Closing; (f) There is no pending or threatened condemnation or similar proceedings affecting the Property, and the Property is not within the boundaries of any planned or authorized local improvement district; (g) Seller has paid (except to the extent prorated at Closing) all local, state and federal taxes (other than real and personal property taxes and assessments described in Section 8 above) attributable to the period prior to closing which, if not paid, could constitute a lien on Property (including any personal property), or for which Buyer may be held liable after Closing; (h) Seller is not aware of any concealed material defects in the Property except as disclosed to Buyer in writing during the Feasibility Period; (i) There are no Hazardous Substances (as defined below) currently located in, on, or under the Property in a manner or quantity that presently violates any Environmental Law (as defined below); there are no underground storage tanks located on the Property; and there is no pending or threatened investigation or remedial action by any governmental agency regarding the release of Hazardous Substances or the violation of Environmental Law at the Property. As used herein, the term "Hazardous Substances" shall mean any substance or material now or hereafter defined or regulated as a hazardous substance, hazardous waste, toxic substance, pollutant, or contaminant under any federal, state, or local law, regulation, or ordinance governing any substance that could cause actual or suspected

INITIALS: Buyer QB Date 5-28-13 Seller [Signature] Date 6/14/13  
 Buyer \_\_\_\_\_ Date \_\_\_\_\_ Seller \_\_\_\_\_ Date \_\_\_\_\_



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harm to human health or the environment ("Environmental Law"). The term "Hazardous Substances" specifically includes, but is not limited to, petroleum, petroleum by-products, and asbestos.

If prior to Closing Seller or Buyer discovers any information which would cause any of the representations above to be false if the same were deemed made as of the date of such discovery, then the party discovering the same shall promptly notify the other party in writing. If the newly-discovered information will result in costs or liability to Buyer in excess of the lesser of \$100,000 or five percent (5%) of the purchase price stated in this Agreement, or will materially adversely affect Buyer's intended use of the Property, then Buyer shall have the right to terminate the Agreement and receive a refund of its earnest money. Buyer shall give notice of termination within five (5) days of discovering or receiving written notice of the new information. Nothing in this paragraph shall prevent Buyer from pursuing its remedies against Seller if Seller had actual knowledge of the newly-discovered information such that a representation provided for above was false.

**13. AS-IS.** Except for those representations and warranties specifically included in this Agreement: (i) Seller makes no representations or warranties regarding the Property; (ii) Seller hereby disclaims, and Buyer hereby waives, any and all representations or warranties of any kind, express or implied, concerning the Property or any portion thereof, as to its condition, value, compliance with laws, status of permits or approvals, existence or absence of hazardous material on site, occupancy rate or any other matter of similar or dissimilar nature relating in any way to the Property, including the warranties of fitness for a particular purpose, tenantability, habitability and use; (iii) Buyer otherwise takes the Property "AS IS;" and (iv) Buyer represents and warrants to Seller that Buyer has sufficient experience and expertise such that it is reasonable for Buyer to rely on its own pre-closing inspections and investigations.

**14. PERSONAL PROPERTY.**

a. This sale includes all right, title and interest of Seller to the following tangible personal property:  None  That portion of the personal property located on and used in connection with the Property, which Seller will itemize in an Exhibit to be attached to this Agreement within ten (10) days of Mutual Acceptance (None, if not completed). The value assigned to the personal property shall be \$ N/A (if not completed, the County-assessed value if available, and if not available, the fair market value determined by an appraiser selected by the Listing Broker and Selling Broker). Seller warrants title to, but not the condition of, the personal property and shall convey it by bill of sale.

b. In addition to the leases and Vendor Contracts assumed by Buyer pursuant to Section 5(a) above, this sale includes all right, title and interest of Seller to the following intangible property now or hereafter existing with respect to the Property including without limitation: all rights-of-way, rights of ingress or egress or other interests in, on, or to, any land, highway, street, road, or avenue, open or proposed, in, on, or across, in front of, abutting or adjoining the Property; all rights to utilities serving the Property; all drawings, plans, specifications and other architectural or engineering work product; all governmental permits, certificates, licenses, authorizations and approvals; all rights, claims, causes of action, and warranties under contracts with contractors, engineers, architects, consultants or other parties associated with the Property; all utility, security and other deposits and reserve accounts made as security for the fulfillment of any of Seller's obligations; any name of or telephone numbers for the Property and related trademarks, service marks or trade dress; and guaranties, warranties or other assurances of performance received.

**15. CONDEMNATION AND CASUALTY.** Seller bears all risk of loss until Closing, and thereafter Buyer shall bear the risk of loss. Buyer may terminate this Agreement and obtain a refund of the earnest money if improvements on the Property are destroyed or materially damaged by casualty before Closing, or if condemnation proceedings are commenced against all or a portion of the Property before Closing. Damage will be considered material if the cost of repair exceeds the lesser of \$100,000 or five percent (5%) of the purchase price stated in this Agreement. Alternatively, Buyer may elect to proceed with closing, in which case, at Closing, Seller shall assign to Buyer all

INITIALS: Buyer JB Date 5-28-13 Seller [Signature] Date 6/14/13  
 Buyer \_\_\_\_\_ Date \_\_\_\_\_ Seller \_\_\_\_\_ Date \_\_\_\_\_



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claims and right to proceeds under any property insurance policy and shall credit to Buyer at Closing the amount of any deductible provided for in the policy.

- 16. FIRPTA - TAX WITHHOLDING AT CLOSING.** Closing Agent is instructed to prepare a certification (CBA or NWMLS Form 22E, or equivalent) that Seller is not a "foreign person" within the meaning of the Foreign Investment in Real Property Tax Act, and Seller shall sign it on or before Closing. If Seller is a foreign person, and this transaction is not otherwise exempt from FIRPTA, Closing Agent is instructed to withhold and pay the required amount to the Internal Revenue Service.
- 17. CONVEYANCE.** Title shall be conveyed by a Statutory Warranty Deed subject only to the Permitted Exceptions. If this Agreement is for conveyance of Seller's vendee's interest in a Real Estate Contract, the Statutory Warranty Deed shall include a contract vendee's assignment sufficient to convey after acquired title. At Closing, Seller and Buyer shall execute and deliver to Closing Agent CBA Form No. PS-AS Assignment and Assumption Agreement transferring all leases and Vendor Contracts assumed by Buyer pursuant to Section 5(a) and all intangible property transferred pursuant to Section 14(b).
- 18. NOTICES AND COMPUTATION OF TIME.** Unless otherwise specified, any notice required or permitted in, or related to, this Agreement (including revocations of offers and counteroffers) must be in writing. Notices to Seller must be signed by at least one Buyer and must be delivered to Seller and Listing Broker with a courtesy copy to any other party identified as a recipient of notices in Section 28. A notice to Seller shall be deemed delivered only when received by Seller, Listing Broker, or the licensed office of Listing Broker. Notices to Buyer must be signed by at least one Seller and must be delivered to Buyer, with a copy to Selling Broker and with a courtesy copy to any other party identified as a recipient of notices in Section 28. A notice to Buyer shall be deemed delivered only when received by Buyer, Selling Broker, or the licensed office of Selling Broker. Selling Broker and Listing Broker have no responsibility to advise of receipt of a notice beyond either phoning the represented party or causing a copy of the notice to be delivered to the party's address provided in this Agreement. Buyer and Seller shall keep Selling Broker and Listing Broker advised of their whereabouts in order to receive prompt notification of receipt of a notice. If any party is not represented by a licensee, then notices must be delivered to and shall be effective when received by that party at the address, fax number, or email indicated in Section 28.

Unless otherwise specified in this Agreement, any period of time in this Agreement shall mean Pacific Time and shall begin the day after the event starting the period and shall expire at 5:00 p.m. of the last calendar day of the specified period of time, unless the last day is a Saturday, Sunday or legal holiday as defined in RCW 1.16.050, in which case the specified period of time shall expire on the next day that is not a Saturday, Sunday or legal holiday. Any specified period of five (5) days or less shall not include Saturdays, Sundays or legal holidays. Notwithstanding the foregoing, references to specific dates or times or number of hours shall mean those dates, times or number of hours; provided, however, that if the Closing Date falls on a Saturday, Sunday, or legal holiday as defined in RCW 1.16.050, or a date when the county recording office is closed, then the Closing Date shall be the next regular business day.

- 19. AGENCY DISCLOSURE.** At the signing of this Agreement,  
 Selling Broker Mark Lucas and Tracy Lucas of Kiemle & Hagood Company  
 represented Buyer  
 and the Listing Broker Mike Livingston of Kiemle & Hagood Company  
 represented Seller.

Selling Firm, Selling Firm's Designated Broker, Selling Broker's Branch Manager (if any) and Selling Broker's Managing Broker (if any) represent the same party that Selling Broker represents. Listing Firm, Listing Firm's

INITIALS: Buyer GB Date 5-28-13 Seller [Signature] Date 6/14/13  
 Buyer \_\_\_\_\_ Date \_\_\_\_\_ Seller \_\_\_\_\_ Date \_\_\_\_\_





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Designated Broker, Listing Broker's Branch Manager (if any), and Listing Broker's Managing Broker (if any) represent the same party that the Listing Broker represents. If Selling Broker and Listing Broker are different persons affiliated with the same Firm, then both Buyer and Seller confirm their consent to the Brokers' Designated Broker, Branch Manager (if any), and Managing Broker (if any) representing both parties as a dual agent. If Selling Broker and Listing Broker are the same person representing both parties, then both Buyer and Seller confirm their consent to that person and his/her Designated Broker, Branch Manager (if any), and Managing Broker (if any) representing both parties as dual agents. All parties acknowledge receipt of the pamphlet entitled "The Law of Real Estate Agency."

**20. ASSIGNMENT.** Buyer  may  may not (may not, if not completed) assign this Agreement, or Buyer's rights hereunder, without Seller's prior written consent, unless provided otherwise herein. If the "may not" option is selected and the words "and/or assigns" or similar words are used to identify the Buyer, then this Agreement may be assigned with notice to Seller but without Seller's consent only to an entity which is controlled by or under common control with the Buyer identified in this Agreement. Any other assignment requires Seller's consent. The party identified as the initial Buyer shall remain responsible for those obligations of Buyer stated in this Agreement notwithstanding any assignment and, if this Agreement provides for Seller to finance a portion of the purchase price, then the party identified as the initial Buyer shall guarantee payment of the Seller financing.

**21. DEFAULT AND ATTORNEY'S FEE.**

**a. Buyer's default.** In the event Buyer fails, without legal excuse, to complete the purchase of the Property, then (*check one*):

Seller may terminate this Agreement and keep the earnest money as liquidated damages as the sole and exclusive remedy available to Seller for such failure; or

Seller may, at its option, (a) terminate this Agreement and keep as liquidated damages the earnest money as the sole and exclusive remedy available to Seller for such failure, (b) bring suit against Buyer for Seller's actual damages, (c) bring suit to specifically enforce this Agreement and recover any incidental damages, or (d) pursue any other rights or remedies available at law or equity.

**b. Seller's default.** In the event Seller fails, without legal excuse, to complete the sale of the Property, then (*check one*):

As Buyer's sole remedy, Buyer may either (a) terminate this Agreement and recover all earnest money or fees paid by Buyer whether or not the same are identified as refundable or applicable to the purchase price; or (b) bring suit to specifically enforce this Agreement and recover incidental damages, provided, however, Buyer must file suit within sixty (60) days from the scheduled date of closing or from the date Seller has informed Buyer in writing that Seller will not proceed with closing, whichever is earlier; or

Buyer may, at its option, (a) bring suit against Seller for Buyer's actual damages, (b) bring suit to specifically enforce this Agreement and recover any incidental damages, or (c) pursue any other rights or remedies available at law or equity.

Neither Buyer nor Seller may recover consequential damages such as lost profits. If Buyer or Seller institutes suit against the other concerning this Agreement, the prevailing party is entitled to reasonable attorneys' fees and expenses. In the event of trial, the amount of the attorney's fee shall be fixed by the court. The venue of any suit shall be the county in which the Property is located, and this Agreement shall be governed by the laws of the state where the Property is located.

**22. MISCELLANEOUS PROVISIONS.**

INITIALS: Buyer QB Date 5-28-13 Seller [Signature] Date 6/14/13  
 Buyer \_\_\_\_\_ Date \_\_\_\_\_ Seller \_\_\_\_\_ Date \_\_\_\_\_



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- a. Complete Agreement.** This Agreement and any addenda and exhibits thereto state the entire understanding of Buyer and Seller regarding the sale of the Property. There are no verbal or other written agreements which modify or affect the Agreement.
  - b. Counterpart Signatures.** This Agreement may be signed in counterpart, each signed counterpart shall be deemed an original, and all counterparts together shall constitute one and the same agreement.
  - c. Electronic Delivery.** Electronic delivery of documents (e.g., transmission by facsimile or email) including signed offers or counteroffers and notices shall be legally sufficient to bind the party the same as delivery of an original. At the request of either party, or the Closing Agent, the parties will replace electronically delivered offers or counteroffers with original documents.
  - d. Section 1031 Like-Kind Exchange.** If either Buyer or Seller intends for this transaction to be a part of a Section 1031 like-kind exchange, then the other party agrees to cooperate in the completion of the like-kind exchange so long as the cooperating party incurs no additional liability in doing so, and so long as any expenses (including attorneys fees and costs) incurred by the cooperating party that are related only to the exchange are paid or reimbursed to the cooperating party at or prior to Closing. Notwithstanding Section 20 above, any party completing a Section 1031 like-kind exchange may assign this Agreement to its qualified intermediary or any entity set up for the purposes of completing a reverse exchange.
- 23. ACCEPTANCE; COUNTEROFFERS.** Seller has until midnight of June 12, 2013 (if not filled in, the third business day) following the day Buyer delivers the offer to accept this offer, unless sooner withdrawn. If this offer is not timely accepted, it shall lapse and the earnest money shall be refunded to Buyer. If either party makes a future counteroffer, the other party shall have until 5:00 p.m. on the 5th business day (if not filled in, the second business day) following receipt to accept the counteroffer, unless sooner withdrawn. If the counteroffer is not timely accepted or countered, this Agreement shall lapse and the earnest money shall be refunded to the Buyer. No acceptance, offer or counteroffer from the Buyer is effective until a signed copy is received by the Seller, the Listing Broker or the licensed office of the Listing Broker. No acceptance, offer or counteroffer from the Seller is effective until a signed copy is received by the Buyer, the Selling Broker or the licensed office of the Selling Broker. "Mutual Acceptance" shall occur when the last counteroffer is signed by the offeree, and the fully-signed counteroffer has been received by the offeror, his or her broker, or the licensed office of the broker. If any party is not represented by a broker, then notices must be delivered to and shall be effective when received by that party.
- 24. INFORMATION TRANSFER.** In the event this Agreement is terminated, Buyer agrees to deliver to Seller within ten (10) days of Seller's written request copies of all materials received from Seller and any non-privileged plans, studies, reports, inspections, appraisals, surveys, drawings, permits, applications or other development work product relating to the Property in Buyer's possession or control as of the date this Agreement is terminated.
- 25. CONFIDENTIALITY.** Until and unless closing has been consummated, Buyer and Seller shall follow reasonable measures to prevent unnecessary disclosure of information obtained in connection with the negotiation and performance of this Agreement. Neither party shall use or knowingly permit the use of any such information in any manner detrimental to the other party.
- 26. SELLER'S ACCEPTANCE AND BROKERAGE AGREEMENT.** Seller agrees to sell the Property on the terms and conditions herein, and further agrees to pay a commission in a total amount computed in accordance with the listing or commission agreement. If there is no written listing or commission agreement, Seller agrees to pay a commission of 6% of the sales price or \$\_\_\_\_\_. The commission shall be apportioned between Listing Firm and Selling Firm as specified in the listing or any co-brokerage agreement. If there is no listing or written co-brokerage agreement, then Listing Firm shall pay to Selling Firm a commission of 3% of the sales price or \$\_\_\_\_\_. Seller assigns to Listing Firm and Selling Firm a portion of the sales proceeds equal to the commission. If the earnest money is retained as liquidated damages, any costs advanced or committed by Listing Firm or Selling

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**COMMERCIAL & INVESTMENT REAL ESTATE  
 PURCHASE & SALE AGREEMENT  
 (CONTINUED)**

Firm for Buyer or Seller shall be reimbursed or paid therefrom, and the balance shall be paid one-half to Seller and one-half to Listing Firm and Selling Firm according to the listing agreement and any co-brokerage agreement. In any action by Listing Firm or Selling Firm to enforce this Section, the prevailing party is entitled to reasonable attorneys' fees and expenses. Neither Listing Firm nor Selling Firm are receiving compensation from more than one party to this transaction unless disclosed on an attached addendum, in which case Buyer and Seller consent to such compensation. The Property described in attached Exhibit A is commercial real estate. Notwithstanding Section 25 above, the pages containing this Section, the parties' signatures and an attachment describing the Property may be recorded.

**27. LISTING BROKER AND SELLING BROKER DISCLOSURE.** EXCEPT AS OTHERWISE DISCLOSED IN WRITING TO BUYER OR SELLER, THE SELLING BROKER, LISTING BROKER, AND FIRMS HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OR CONDUCTED ANY INDEPENDENT INVESTIGATION CONCERNING THE LEGAL EFFECT OF THIS AGREEMENT, BUYER'S OR SELLER'S FINANCIAL STRENGTH, BOOKS, RECORDS, REPORTS, STUDIES, OR OPERATING STATEMENTS; THE CONDITION OF THE PROPERTY OR ITS IMPROVEMENTS; THE FITNESS OF THE PROPERTY FOR BUYER'S INTENDED USE; OR OTHER MATTERS RELATING TO THE PROPERTY, INCLUDING WITHOUT LIMITATION, THE PROPERTY'S ZONING, BOUNDARIES, AREA, COMPLIANCE WITH APPLICABLE LAWS (INCLUDING LAWS REGARDING ACCESSIBILITY FOR DISABLED PERSONS), OR HAZARDOUS OR TOXIC MATERIALS INCLUDING MOLD OR OTHER ALLERGENS. SELLER AND BUYER ARE EACH ADVISED TO ENGAGE QUALIFIED EXPERTS TO ASSIST WITH THESE DUE DILIGENCE AND FEASIBILITY MATTERS, AND ARE FURTHER ADVISED TO SEEK INDEPENDENT LEGAL AND TAX ADVICE RELATED TO THIS AGREEMENT.

INITIALS: Buyer JB Date 5-28-13 Seller \_\_\_\_\_ Date \_\_\_\_\_  
 Buyer \_\_\_\_\_ Date \_\_\_\_\_ Seller \_\_\_\_\_ Date \_\_\_\_\_



**Kiemle & Hagood Company**  
 801 W Main Avenue, Suite 400  
 Spokane, WA 99201  
 Phone: (509) 838-6541  
 Fax: (509) 458-4014

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**COMMERCIAL & INVESTMENT REAL ESTATE  
 PURCHASE & SALE AGREEMENT  
 (CONTINUED)**

**28. IDENTIFICATION OF THE PARTIES.** The following is the contact information for the parties involved in this Agreement:

**Buyer**

Contact: Jeff Bosma  
 Address: 1001 N. Havana, Spokane, WA 99202  
 Business Phone: 509.534.9351 ext. 114  
 Mobile Phone: 509.710.6330  
 Fax: \_\_\_\_\_  
 Email: jeff@fastwayfreight.com

**Seller**

Contact: Mike Werner  
 Address: 808 W. Spokane Falls Blvd., Spokane, WA 99201  
 Business Phone: 509.625.6286  
 Mobile Phone: \_\_\_\_\_  
 Fax: \_\_\_\_\_  
 Email: mwerner@spokanec.org

**Selling Firm**

Name: Kiemle & Hagood Company  
 Assumed Name (if applicable) : \_\_\_\_\_  
 Selling Broker: Mark Lucas & Tracy Lucas  
 Address: 601 W. Main Ave., #400, Spokane, WA 99201  
 Business Phone: 509.755.7524 & 509.755.7558  
 Mobile Phone: \_\_\_\_\_  
 Email: mlucas@khco.com & tracyl@khco.com  
 Fax: \_\_\_\_\_  
 MLS Office No.: \_\_\_\_\_

**Listing Firm**

Name: Kiemle & Hagood Company  
 Assumed Name (if applicable) : \_\_\_\_\_  
 Listing Broker: Mike Livingston  
 Address: 601 W. Main Ave., #400, Spokane, WA 99201  
 Business Phone: 509.755.7559  
 Mobile Phone: \_\_\_\_\_  
 Email: mikel@khco.com  
 Fax: 509.458.4014  
 MLS Office No.: \_\_\_\_\_

**Licensed Office of the Selling Broker**

Address: \_\_\_\_\_  
 Business Phone: \_\_\_\_\_  
 Email: \_\_\_\_\_  
 Fax: \_\_\_\_\_  
 CBA Office No.: \_\_\_\_\_

**Licensed Office of the Listing Broker**

Address: \_\_\_\_\_  
 Business Phone: \_\_\_\_\_  
 Email: \_\_\_\_\_  
 Fax: \_\_\_\_\_  
 CBA Office No.: \_\_\_\_\_

INITIALS: Buyer JB Date 5-22-13 Seller [Signature] Date 6/14/13  
 Buyer \_\_\_\_\_ Date \_\_\_\_\_ Seller \_\_\_\_\_ Date \_\_\_\_\_





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**COMMERCIAL & INVESTMENT REAL ESTATE  
 PURCHASE & SALE AGREEMENT  
 (CONTINUED)**

**Courtesy Copy of Notices to Buyer to:**

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Business Phone: \_\_\_\_\_  
 Fax: \_\_\_\_\_  
 Mobile Phone: \_\_\_\_\_  
 Email: \_\_\_\_\_

**Courtesy Copy of Notices to Seller to:**

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Business Phone: \_\_\_\_\_  
 Fax: \_\_\_\_\_  
 Mobile Phone: \_\_\_\_\_  
 Email: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have signed this Agreement intending to be bound.

Buyer Jeff Bosma  
 Printed name and type of entity

Buyer \_\_\_\_\_  
 Printed name and type of entity

Buyer Jeff Bosma  
 Signature and title

Buyer \_\_\_\_\_  
 Signature and title

Date signed 5-28-13

Date signed \_\_\_\_\_

Seller \_\_\_\_\_  
 Printed name and type of entity

Seller Theresa Sanders  
 Printed name and type of entity

Seller \_\_\_\_\_  
 Signature and title

Seller Theresa Sanders  
 Signature and title

Date signed \_\_\_\_\_

Date signed 6/14/13

INITIALS: Buyer JB Date 5-28-13  
 Buyer \_\_\_\_\_ Date \_\_\_\_\_

Seller TS Date 6/14/13  
 Seller \_\_\_\_\_ Date \_\_\_\_\_





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**COMMERCIAL & INVESTMENT REAL ESTATE  
 PURCHASE & SALE AGREEMENT  
 (CONTINUED)**

**EXHIBIT A \***

[Legal Description]

<p><b>PARCEL A:</b></p> <p>THAT PORTION OF BLOCKS 116, 117, 118, 119, 123 AND 124 AND PORTIONS OF VACATED CATALDO AVENUE, MALLON AVENUE AND CUBA STREET IN EAST SIDE SYNDICATE ADDITION, ACCORDING TO PLAT RECORDED IN VOLUME "C" OF PLATS, PAGE 73, IN THE CITY OF SPOKANE, SPOKANE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:</p> <p>BEGINNING AT A POINT WHICH IS 200.00 FEET NORTH OF THE SOUTH LINE OF SAID BLOCK 117 AND 18.00 FEET WEST OF THE EAST LINE OF SAID BLOCK 117;        THENCE DUE WEST AT RIGHT ANGLES TO HAVANA STREET, 329.00 FEET;        THENCE NORTH 39.00 FEET;        THENCE WEST 133.50 FEET;        THENCE NORTH 411.71 FEET;        THENCE NORTH 72°43'30" EAST, 503.20 FEET TO A POINT ON THE EAST LINE OF SAID BLOCK 124;        THENCE SOUTH 150.00 FEET TO THE SOUTHEAST CORNER OF SAID BLOCK 124;        THENCE SOUTH 89°33'42" WEST, ALONG THE SOUTH LINE OF SAID BLOCK 124, 18.00 FEET;        THENCE SOUTH 450.00 FEET TO THE POINT OF BEGINNING.</p> <p>TOGETHER WITH A PERPETUAL EASEMENT FOR INGRESS AND EGRESS OVER AND ACROSS THE EASTERLY 50 FEET OF THAT PORTION OF BLOCK 124 IN SAID EAST SIDE SYNDICATE ADDITION LYING NORTHERLY OF THE ABOVE DESCRIBED REAL PROPERTY.</p> <p>EXCEPT THAT PORTION OF BLOCKS 116, 119 AND 123, AND PORTIONS OF VACATED CATALDO AVENUE AND MALLON AVENUE IN EAST SIDE SYNDICATE ADDITION, ACCORDING TO PLAT RECORDED IN VOLUME "C" OF PLATS, PAGE 73, IN THE CITY OF SPOKANE, SPOKANE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:</p> <p>BEGINNING AT A POINT WHICH IS 200.00 FEET NORTH OF THE SOUTH LINE OF SAID BLOCK 117 AND 18.00 FEET WEST OF THE EAST LINE OF SAID BLOCK 117;        THENCE DUE WEST AT RIGHT ANGLES TO HAVANA STREET, 329.00 FEET;        THENCE NORTH 39.00 FEET;        THENCE WEST 133.50 FEET TO THE TRUE POINT OF BEGINNING;        THENCE NORTH, 411.71 FEET;        THENCE NORTH 72°43'36" EAST, 26.18 FEET;        THENCE SOUTH 419.48 FEET;        THENCE WEST, 25.80 FEET TO THE TRUE POINT OF BEGINNING.</p>	<p><b>PARCEL B:</b></p> <p>THAT PORTION OF BLOCKS 123 AND 124 AND PORTIONS OF VACATED CATALDO AVENUE AND CUBA STREET IN EAST SIDE SYNDICATE ADDITION, ACCORDING TO PLAT RECORDED IN VOLUME "C" OF PLATS, PAGE 73, IN THE CITY OF SPOKANE, SPOKANE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:</p> <p>BEGINNING AT A POINT WHICH IS 200.00 FEET NORTH OF THE SOUTH LINE OF SAID BLOCK 117 AND 18.00 FEET WEST OF THE EAST LINE OF SAID BLOCK 117;        THENCE DUE WEST, AT RIGHT ANGLES TO HAVANA STREET, 329.00 FEET;        THENCE NORTH 39.00 FEET;        THENCE WEST, 133.50 FEET;        THENCE NORTH, 537.02 FEET, MORE OR LESS, TO THE SOUTH LINE OF NORTHERN PACIFIC RAILWAY RIGHT-OF-WAY;        THENCE NORTH 72°43'36" EAST, 26.18 FEET TO THE TRUE POINT OF BEGINNING;</p> <p>THENCE CONTINUING NORTH 72°43'36" EAST, 477.02 FEET TO THE NORTHEAST CORNER OF SAID BLOCK 124;        THENCE SOUTH, ALONG THE EAST LINE OF SAID BLOCK 124, 125.31 FEET;        THENCE SOUTH 72°43'36" WEST, 477.02 FEET;        THENCE NORTH, 125.31 FEET TO THE TRUE POINT OF BEGINNING.</p> <p><b>PARCEL C:</b></p> <p>THAT PORTION OF BLOCK 116 AND A PORTION OF VACATED CUBA STREET IN EAST SIDE SYNDICATE ADDITION, ACCORDING TO PLAT RECORDED IN VOLUME "C" OF PLATS, PAGE 73, IN THE CITY OF SPOKANE, SPOKANE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:</p> <p>BEGINNING AT A POINT WHICH IS 200.00 FEET NORTH OF THE SOUTH LINE OF SAID BLOCK 117 AND 18.00 FEET WEST OF THE EAST LINE OF SAID BLOCK 117;        THENCE DUE WEST AT RIGHT ANGLES TO HAVANA STREET, 329.00 FEET TO THE TRUE POINT OF BEGINNING;        THENCE NORTH 39.00 FEET;        THENCE WEST, 108.50 FEET;        THENCE SOUTH 39.90 FEET;        THENCE EAST, 108.50 FEET TO THE TRUE POINT OF BEGINNING.</p>
<p><b>PARCEL D:</b></p> <p>THE EAST 18 FEET OF BLOCKS 117 AND 119 IN EAST SIDE SYNDICATE ADDITION, ACCORDING TO PLAT RECORDED IN VOLUME "C" OF PLATS, PAGE 73, IN THE CITY OF SPOKANE, SPOKANE COUNTY, WASHINGTON;</p> <p>EXCEPT THE SOUTH 200 FEET OF SAID EAST 18 FEET OF SAID BLOCK 117;</p>	<p>AND THE EAST 18 FEET OF VACATED MALLON AVENUE, 75 FEET IN WIDTH, LYING BETWEEN AND ADJOINING SAID BLOCKS 117 AND 119;</p> <p>AND THE EAST 18 FEET OF VACATED CATALDO AVENUE, 75 FEET IN WIDTH, LYING BETWEEN AND ADJOINING SAID BLOCKS 118 AND 124;</p> <p>AND LOT 3, BLOCK 124, EAST SIDE SYNDICATE ADDITION, ACCORDING TO PLAT RECORDED IN VOLUME "C" OF PLATS, PAGE 73, IN THE CITY OF SPOKANE, SPOKANE COUNTY, WASHINGTON.</p>

\* To ensure accuracy in the legal description, consider substituting the legal description contained in the preliminary commitment for title insurance or a copy of the Property's last vesting deed for this page. Do not neglect to label the substitution "Exhibit A." You should avoid transcribing the legal description because any error in transcription may render the legal description inaccurate and this Agreement unenforceable.

INITIALS: Buyer JB Date 5-28-13 Seller [Signature] Date 6/14/13  
 Buyer \_\_\_\_\_ Date \_\_\_\_\_ Seller \_\_\_\_\_ Date \_\_\_\_\_



**Kiemle & Hagood Company**  
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 Utility Addendum  
 Rev. 1/2011  
 Page 1 of 2

**UTILITY CHARGES ADDENDUM**

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 New text inserted by licensee indicated by small capital letters.

The following is part of the Purchase and Sale Agreement dated May 24, 2013 between Jeff Bosma and/or Assigns ("Buyer") and City of Spokane ("Seller") concerning 1001 N. Havana (the "Property").

Pursuant to RCW 60.80, Buyer and Seller request the Closing Agent to administer the disbursement of closing funds necessary to satisfy unpaid utility charges affecting the Property. The names and addresses of all utilities providing service to the Property and having lien rights are as follows:

Water District:

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 City, State, Zip \_\_\_\_\_

Sewer District:

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 City, State, Zip \_\_\_\_\_

Irrigation District:

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 City, State, Zip \_\_\_\_\_

Garbage:

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 City, State, Zip \_\_\_\_\_

Electricity:

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 City, State, Zip \_\_\_\_\_

Gas:

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 City, State, Zip \_\_\_\_\_

INITIALS: Buyer JB Date 5-28-13 Seller [Signature] Date 6/14/13  
 Buyer \_\_\_\_\_ Date \_\_\_\_\_ Seller \_\_\_\_\_ Date \_\_\_\_\_



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**UTILITY CHARGES ADDENDUM  
 (CONTINUED)**

Special District(s):  
 (local improvement districts  
 or utility local improvement)

Name \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

IF THE ABOVE INFORMATION HAS NOT BEEN FILLED IN AT THE TIME OF MUTUAL ACCEPTANCE OF THIS AGREEMENT, THEN (1) WITHIN \_\_\_\_\_ DAYS (6 DAYS IF NOT FILLED IN) OF MUTUAL ACCEPTANCE OF THIS AGREEMENT, SELLER SHALL PROVIDE THE LISTING BROKER, SELLING BROKER, OR CLOSING AGENT WITH THE NAMES AND ADDRESSES OF ALL UTILITY PROVIDERS HAVING LIEN RIGHTS AFFECTING THE PROPERTY AND (2) BUYER AND SELLER AUTHORIZE LISTING BROKER, SELLING BROKER OR CLOSING AGENT TO INSERT INTO THIS ADDENDUM THE NAMES AND ADDRESSES OF THE UTILITY PROVIDERS IDENTIFIED BY SELLER. SELLER ACKNOWLEDGES THAT THIS ADDENDUM DOES NOT RELIEVE SELLER OF ITS OBLIGATION TO PAY UTILITY CHARGES, BILLED OR UNBILLED OR EVIDENCED BY A RECORDED LIEN OR NOT. THE PARTIES UNDERSTAND THAT NEITHER LISTING BROKER NOR SELLING BROKER IS RESPONSIBLE FOR PAYING UTILITY CHARGES OR FOR INSURING THAT THEY ARE PAID BY ANY OTHER PERSON.

INITIALS:

Buyer

*QB*

Date

*5-28-13*

Seller

*JYS*

Date

*6/11/13*

Buyer

Date

Seller

Date

**ADDENDUM NUMBER ONE**  
(Dated May 24, 2013 for reference purposes only)

**THIS ADDENDUM NUMBER ONE** to that Real Estate Purchase & Sale Agreement dated May 24, 2013, between Jeff Bosma and/or Assigns, as Buyer, and City of Spokane, as Seller for property commonly known as 1001 N. Havana and more particularly described in said Agreement, as Property; and,

**WHEREAS**, Buyer and Seller now wish to amend said Real Estate Purchase & Sale Agreement as follows:

1. This offer will be contingent Buyer applying for and obtaining financing acceptable to Buyer. Buyer will have thirty (30) days from mutual acceptance of this offer to remove such contingency. In the event Buyer does not waive this contingency within thirty (30) days of mutual acceptance this Agreement shall be null and void and Buyer shall receive a full refund of Buyer's earnest money upon request.

2. This offer is subject to Seller providing Buyer with a survey of the subject property. Survey shall certify the square footage of the Site as being not less than 6.61 acres and locating and staking all 4 property corners at Seller's sole cost and expense. Buyer shall have 5 business days from receipt of said survey to review and approve said survey.

*5 business days* 

3. Prior to closing, Seller agrees to separately meter the water from that of the property which is currently owned south and westerly and adjacent to the subject property by Paul Allison commonly known as 4105 E. Broadway.


The Real Estate Purchase & Sale Agreement dated May 24, 2013 and this Addendum Number One represents the entire Agreement between the parties, and neither has made or relied on any representations, warranties, promises, covenants or undertakings other than those expressly set forth herein. All other terms and conditions of the above-referenced Real Estate Purchase & Sale Agreement shall remain in full force and effect.

**A FAXED/AND OR SCANNED SIGNATURE SHALL BE CONSIDERED AN ORIGINAL. THIS AGREEMENT MAY BE EXECUTED IN MULTIPLE COUNTERPARTS, EACH OF WHICH SHALL BE DEEMED AN ORIGINAL AND ALL OF WHICH SHALL BE DEEMED AN ORIGINAL AND ALL OF WHICH SHALL CONSTITUTE ONE AGREEMENT.**

**IN WITNESS** hereof, the parties execute this Addendum Number One to the Real Estate Purchase & Sale Agreement which shall take effect on the last signature date below.

**BUYER**

Jeff Bosma and/or Assigns

By: 

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

Date: 5-28-13

**SELLER**

City of Spokane

By: 

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

Date: 6/14/13

**ADDENDUM NUMBER TWO**  
(Dated June 26, 2013 for reference purposes only)

THIS ADDENDUM NUMBER TWO to that Real Estate Purchase & Sale Agreement dated May 24, 2013, between Jeff Bosma and/or Assigns, as Buyer, and City of Spokane, as Seller for property commonly known as 1001 N. Havana and more particularly described in said Agreement, as Property; and,

WHEREAS, Buyer and Seller now wish to amend said Real Estate Purchase & Sale Agreement as follows:

1. Buyer and Seller agree Sellers obligation to provide a Survey of the subject property as provided in Paragraph 2 of Addendum Number One is hereby satisfied. Buyer and Seller agree the property to be sold is outlined in the letter dated June 21, 2013 from David Seese of Taylor Engineering to David Steele of the City of Spokane and the Exhibit thereto attached hereto and made part by reference which property contains approximately 298,169.47 square feet of land or approximately 6.845 acres.

2. Seller agrees to install a separate water and sewer service connected to the building located on the Subject Property that will include connections to the building, installation of water meter, all tap fees required by the City of Spokane, excavation, asphalt patch & repair, and capping of the existing water & sewer lines which also service the property at 4101 E. Broadway not later than November 30 2013. Buyer and Seller each agree to instruct closing agent to withhold \$100,000.00 from the Seller's closing proceeds until such time the water and sewer connections are completed as provided above. Closing agent will be authorized to disburse said funds to Seller with written instructions from the Buyer after the improvements are completed as above.

3. Jeff Bosma hereby assigns the above referenced Purchase and Sale Agreement to Havana Properties, LLC, a Washington limited liability company.

The Real Estate Purchase & Sale Agreement and Addendum Number One dated May 24, 2013, and this Addendum Number Two represents the entire Agreement between the parties, and neither has made or relied on any representations, warranties, promises, covenants or undertakings other than those expressly set forth herein. All other terms and conditions of the above-referenced Real Estate Purchase & Sale Agreement shall remain in full force and effect.

**A FAXED/AND OR SCANNED SIGNATURE SHALL BE CONSIDERED AN ORIGINAL. THIS AGREEMENT MAY BE EXECUTED IN MULTIPLE COUNTERPARTS, EACH OF WHICH SHALL BE DEEMED AN ORIGINAL AND ALL OF WHICH SHALL BE DEEMED AN ORIGINAL AND ALL OF WHICH SHALL CONSTITUTE ONE AGREEMENT.**

IN WITNESS hereof, the parties execute this Addendum Number Two to the Real Estate Purchase & Sale Agreement which shall take effect on the last signature date below.

**ASSIGNOR**

Jeff Bosma

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

*Jeff Bosma*  
Jeff Bosma

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

7-1-13

**SELLER**

City of Spokane

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

*David A. Condon*

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

**David A. Condon**

**Mayor**

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

**City of Spokane**

7/9/13

**ASSIGNEE/BUYER**

Havana Properties, LLC,  
a Washington limited liability company

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

*Jeff Bosma*  
Jeff Bosma

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

*Managing Member*

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

7-1-13





**Taylor Engineering, Inc.**  
Civil Design and Land Planning

June 21, 2013

David Steele  
City of Spokane  
Asset Management Group

RE: Site Visit to Find & Flag Monuments & Flag East Line  
1001 N. Havana

Dear David:

Per your request, on June 19, 2013 our survey field crew visited this site to locate those monuments shown on the Record of Survey recorded in Book 89 of Surveys, Page 68. During the course of that visit, we noted the following:

Northwest corner: Found a 5/8" rebar with yellow plastic cap "Benthin LS 13315"

Northeast corner: Found a 5/8" rebar with yellow plastic cap "Benthin LS 13315"

Southwest corner: Found a 5/8" rebar with yellow plastic cap "Benthin LS 13315"

Southeast corner: did not find monument; new concrete driveway, monument may be buried. Determined position from found rebar 18-ft west of position. Marked location on pavement

All found corners were flagged with high visibility flagging. Additionally, the east line of the property was flagged at four intervisible points on line. No new monuments were set during the course of this visit.

Based upon the found monuments, we can confirm that the total area of the parcel is 298,169.47 square feet, or 6.845 acres.

Thank you for allowing Taylor Engineering to assist you with this service. If we can answer any questions, or assist you further, please contact us at your convenience.

Sincerely,  
Taylor Engineering, Inc.

David M. Seese, PLS  
Survey Manager  
[davidseese@taylorengr.com](mailto:davidseese@taylorengr.com)

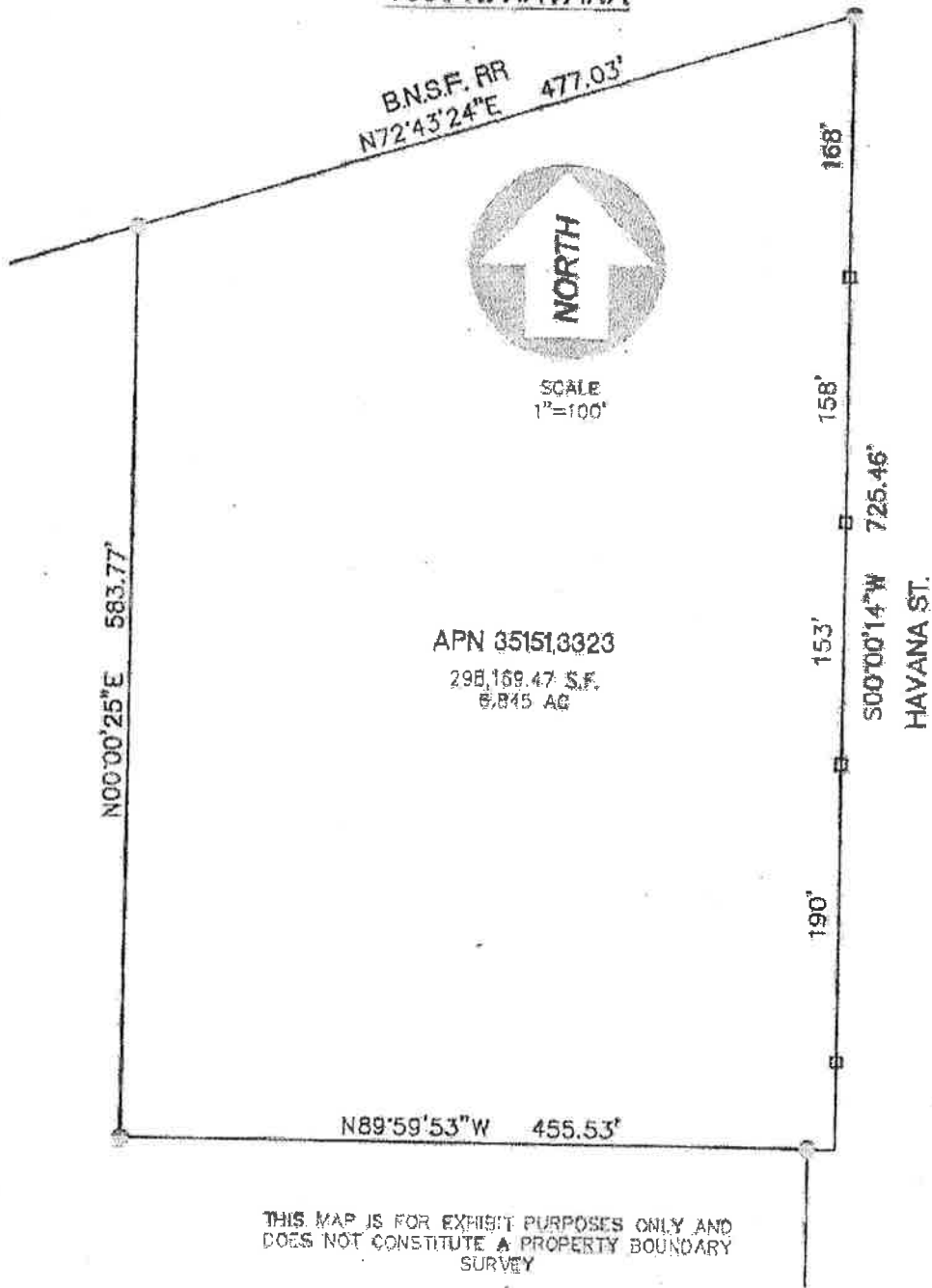
Principals:  
Stanley R. Stirling  
Mark A. Aronson, P.E.  
Ronald G. Pace, P.E.  
Chris H. Mansfield, P.E.

Chief Financial Officer:  
Edwin G. Wagnild

Senior Associates:  
Scott M. Busch, P.E.  
Frank R. Ide, A.S.L.A.  
Thomas K. Stirling

Associates:  
Kayla M. Ames  
Dane W. Carsten, P.L.S.  
Michael J. Leaming, P.E.  
Michael F. Morse, P.E.  
David M. Seese, P.L.S.  
Mark A. Soltzer, P.E.

EXHIBIT FOR  
1001 N. HAVANA





**Kiemle & Hagood Company**  
 601 W Main Avenue, Suite 400  
 Spokane, WA 99201  
 Phone: (509) 838-6541  
 Fax: (509) 458-4014

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**THIRD ADDENDUM/AMENDMENT TO  
 PURCHASE AND SALE AGREEMENT**

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The following is part of the Purchase and Sale Agreement dated May 24, 2013 (the "Agreement") between Havana Properties, LLC, a Washington limited liability company ("Buyer") and City of Spokane ("Seller") regarding the sale of the property known as 1001 N. Havana, Spokane, WA (the "Property").

IT IS AGREED BETWEEN THE BUYER AND SELLER AS FOLLOWS:

1. The sale closing shall be August 23, 2013.

ALL OTHER TERMS AND CONDITIONS of the Agreement remain unchanged.

INITIALS: Buyer JB Date 7-31-13 Seller BAC Date 7/31/13  
 Buyer \_\_\_\_\_ Date \_\_\_\_\_ Seller \_\_\_\_\_ Date \_\_\_\_\_





July 9, 2013

Mr. Mark Lucas  
Mr. Mike Livingston  
Kiemle & Hagood Company  
601 W. Main Avenue, Suite 400  
Spokane, WA 99201

RE: REAL ESTATE PURCHASE AND SALE AGREEMENT  
DATED MAY 24, 2013 – SALE OF 1001 N.HAVANA

Dear Mark & Mike:

Havana Properties, LLC hereby waives all of Buyer's contingencies and is hereby prepared to close the transaction in accordance with the above referenced Purchase and Sale Agreement.

Please forward this letter to the City of Spokane as well as First American Title so they can begin preparation of closing documents.

Sincerely,

Jeff Bosma  
Havana Properties, LLC

A handwritten signature in black ink that reads 'Jeff Bosma' in a cursive script.

WWW.FASTWAYFREIGHT.COM

P. O. BOX 40142, SPOKANE, WA 99220 • 1001 N. HAVANA SPOKANE, WA 99202 • (509) 534-9351 • FAX (509) 534-6975 • 1-800-531-9351



**Agenda Sheet for City Council Meeting of:**  
08/19/2013

<b>Date Rec'd</b>	8/8/2013
<b>Clerk's File #</b>	OPR 2013-0611
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	CR 13709

<b>Submitting Dept</b>	COMMUNITY, HOUSING & HUMAN SERVICES
<b>Contact Name/Phone</b>	M SHARTS X6325
<b>Contact E-Mail</b>	MSHARTS@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Contract Item
<b>Agenda Item Name</b>	1669 THE DELANEY GROUP LLC

**Agenda Wording**

Loan Agreement & other documents with The Delaney Group LLC(Spokane, WA)for acquisition & rehabilitation of The Delaney, an 83-unit apartment building at 242 W Riverside Ave - \$300,000 HOME funds (Downtown neighborhood)

**Summary (Background)**

The City receives HOME grants from HUD for rental housing projects affordable to low-income households. The loan agreement requires that ten units (1 efficiency, 9 1-bdrm) benefit households at or below 30% of the area median income for at least 10 years. The loan at 3% interest will be repaid in 2 years. Other financing includes tax credit equity, construction loan, deferred developer fee loan & seller loan. Catholic Housing Services of Eastern WA is the sole member of LLC's managing member.

**Fiscal Impact**

**Budget Account**

Expense	\$ 300,000 HOME	#	1710-95842-59210-54201-72002
Select	\$	#	
Select	\$	#	
Select	\$	#	

**Approvals**

**Council Notifications**

<b>Dept Head</b>	ALLARD, JERRIE	<b>Study Session</b>	PCED 3/4/13
<b>Division Director</b>	MALLAHAN, JONATHAN	<b>Other</b>	

**Finance**

**Distribution List**

<b>Legal</b>	BURNS, BARBARA	bchilds@spokanecity.org
<b>For the Mayor</b>	SANDERS, THERESA	kmoat@spokanecity.org
<b>Additional Approvals</b>		msharts@spokanecity.org
<b>Purchasing</b>		rmccann@ccspokane.org
		chrisj@ccsww.org

PROJECT BUDGET

THE DELANEY GROUP LLC  
THE DELANEY

242 West Riverside Avenue

Land	\$270,000	Low-Income Housing Tax	
Building	740,000	Credit equity	\$5,544,018
Closing, title, survey	23,200	Historic Tax Credit equity	1,100,147
Construction	4,284,500	Seller note	710,000
Contingency	304,115	Deferred developer fee loan	239,325
Land improvements	60,000		
Sales tax	404,430	<b>City HOME funds</b>	<b>300,000</b>
Permits, fees	20,000		
Furniture, fixtures, equip	74,700		
Appraisal, mkt study, ESA I	24,500		
Architectural, engineering	70,000		
Legal	55,000		
Organizational costs	15,000		
Accounting/audit	15,000		
Marketing/lease-up	15,000		
Soft cost contingency	40,000		
Insurance	57,215		
Tenant relocation	210,000		
Constr loan fees, inspections	5,000		
Testing, inspections	4,000		
Equity bridge loan, fees	209,801		
LIHTC fees & costs	61,668		
LIHTC nonprofit donation	19,000		
HOME loan interest	18,000		
Operating reserves	200,361		
Developer fee	693,000		
<b>TOTAL</b>	<b>\$7,893,490</b>	<b>TOTAL</b>	<b>\$7,893,490</b>

Projected work includes energy and ventilation upgrades (new windows, additional building and pipe insulation, new air conditioning units, new baseboard heaters and wall units, ventilating fans), improved accessibility (wider doorways, improved bathroom layouts, adaptable or accessible countertop heights and appliances), safety upgrades (GFIs, hardwired fire detectors and CO detectors, guardrail replacement), water efficiency improvements (toilets, fixtures, fixing leaks, valves), systems upgrades (mechanical, electrical, heating). Site improvements include parking lot striping and signage. Other improvements include new cabinets and countertops, new flooring, work on the brick exterior, common area HVAC work, and updating the lobby, lounge, and activity room with an internet café and fitness center.

**CITY OF SPOKANE  
THE DELANEY GROUP LLC**

**THE DELANEY\_  
HOME PROGRAM LOAN AGREEMENT**

This HOME Program Loan Agreement (the "Loan Agreement") is made effective this \_\_\_ day of \_\_\_\_\_.

This HOME Program Loan Agreement (the "Loan Agreement") is made effective this \_\_\_ day of \_\_\_\_\_ municipal corporation (the "City"), whose address is City of Spokane, c/o Community, Housing and Human Services Department (the "Department"), 808 W. Spokane Falls Blvd., Room 650, Spokane, WA 99201, and The Delaney Group LLC, a Washington limited liability company the "Borrower", whose address is c/o Catholic Housing Services of Eastern Washington, 12 E. Fifth Avenue, P.O. Box 2253, Spokane, WA 99210-2253. The managing member of the Borrower is The Delaney Group Manager LLC. The sole member of The Delaney Group Manager LLC is Catholic Housing Services of Eastern Washington. Borrower and City are together referenced as the "Parties". This Loan Agreement is part of a transaction further reflected in a Promissory Note (the "Note") and a HOME Program Loan Covenant Agreement ("Covenant Agreement"). The City's disbursements under the Loan Agreement are further secured by a Deed of Trust which provides a security interest in the Project, as Project is defined in Section I herein below ("Deed of Trust"). The terms of said documents are incorporated herein as if fully set forth herein, and together shall be referenced as the "Related Documents." The capitalized terms in said documents shall have the same meaning in this Loan Agreement unless the context clearly suggests otherwise. In the event of conflict in the terms of any of these documents, the terms most favorable to the City shall apply.

WITNESSETH: The Parties hereby agree to diligently fulfill the following duties and to perform the following services in accordance with all of the conditions, terms and requirements of this Loan Agreement.

**I. PURPOSE**

- A. The purpose of this Loan Agreement is to expand the supply of decent, safe, sanitary, and affordable housing for extremely low-income households pursuant to the HOME Investment Partnerships Program (24 CFR part 92 et seq., CFDA #14.239) ("HOME").
- B. To accomplish the purpose of this Loan Agreement, the City shall provide a portion of the financing for the Borrower's acquisition and rehabilitation of The Delaney, an eight-story apartment building with 83 studio and one-bedroom apartments, located at 242 West Riverside Avenue in Spokane, WA (the "Project"). The legal description of the Project is:

Lots 16, 17 and 18, Block 5, Havermale's Addition, according to the plat thereof recorded in Volume "A" of Plats, Page 22, records of Spokane County, Washington.

Situate in the City of Spokane, County of Spokane, State of Washington.

Assessor's Parcel Number: 35184.0912; 35184.0913 and 35184.0914.  
Address: 242 West Riverside Avenue, Spokane, WA 99201

Ten of the eighty-three units will be HOME-assisted, including one (1) efficiency and nine (9) one-bedroom units. These ten units shall be considered as “floating units”, meaning that units originally designated as HOME-assisted units may change over time. The number of HOME-assisted units in the Project may not be less than ten (10) and units must be comparable in size, features, and number of bedrooms to those units originally identified as HOME-assisted units.

One (1) of the eighty-three units shall be reserved for resident managers. Upon completion, at least five (5) units in the project shall be accessible to individuals with mobility impairments and zero (0) additional unit(s) shall be accessible to individuals with sensory impairments pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

- C. The Project is expected to conform to the estimates noted in the Project Budget, attached hereto as “Attachment 1” and incorporated herein. All additional costs over and above the sum noted as compensation for this Loan Agreement shall be borne by the Borrower.

## II. CONTRACT TERM

This Loan Agreement shall run from \_\_\_\_\_, 2013, through \_\_\_\_\_, 2023, or the duration of the Covenant Agreement, whichever is later.

## III. LOAN

The City shall loan the Borrower a sum not to exceed THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00) from HOME funds (the “Loan”), to be disbursed as provided herein, with payment of principal and interest deferred for two (2) years.

## IV. INTEREST

Borrower agrees to pay interest on the outstanding principal balance loaned at the rate of three percent (3%) per annum, such interest computed from the time of disbursement(s) and compounded monthly during the two- (2-) year deferral period. Such payments shall be made pursuant to the Note. If rents for any HOME-assisted units of Borrower’s Project are raised above the level of the Affordability Requirements described under Section VIII of this Loan Agreement (the “Affordability Requirements”), or any other provisions, covenants, terms, conditions or restrictions of this Loan Agreement are not adhered to, then the rate on the outstanding balance shall be increased to the prevailing prime lending rate as published in The Wall Street Journal, plus three percent (3%) for the remaining term of the Loan, compounded monthly.

## V. SECURITY/SUPPORT

- A. Borrower shall assure and maintain the City’s security position on the underlying real estate as evidenced by the Deed of Trust, which is subordinate only to housing covenant agreements or regulatory agreements and/or deeds of trust from the Washington State Housing Finance Commission and interim construction financing provided by Wells Fargo Bank. The sum of all loans against the Project, including the City’s, cannot exceed ninety percent (90%) of the lesser of estimated value upon completion or cost.
- B. The Affordability Requirements shall be recorded as a *covenant running with the land*, and shall apply without regard to the term of any loan or mortgage or transfer of ownership.
- C. The Affordability Requirements may terminate upon foreclosure or transfer in lieu of foreclosure at

the sole election of the Director of Community, Housing and Human Services for the City of Spokane (the "Director"). In the event of a pending or threatened foreclosure, the City is hereby granted an option and a right of first refusal to purchase the Project, for a price equal to the amount then owed on the instrument being foreclosed upon, before foreclosure or deed in lieu of foreclosure to preserve affordability. The City further reserves the right to revive any affordability restrictions according to the original terms of this Loan Agreement if, during the original Affordability Period (as defined herein), the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Project or property.

- D. Borrower shall keep in force, continuously, insurance covering the Project and property legally described above, listing the City of Spokane as policy beneficiary, pursuant to Section IX of this Loan Agreement.

## VI. FUNDING DISBURSEMENTS

- A. The timing and disbursement of HOME funds shall be determined by the City in its sole discretion, consistent with the provisions of this Loan Agreement. Without limiting the forgoing, funding disbursements are subject to the following conditions:
1. City HOME funds shall be disbursed only after completion of all requirements imposed by the United States Department of Housing and Urban Development ("HUD"), as determined by the City in its sole discretion, and upon completion of an environmental review by the City.
  2. All loaned funds must be utilized within twenty-four (24) months from the date this Loan Agreement is executed.
  3. Funds shall not be loaned until needed for payment of eligible project costs, as defined by 24 CFR §92.206 and as further defined in the Program Description of the City's Multifamily Housing Program. In case of a dispute between the Parties regarding when the funds shall be disbursed, the Director's determination shall govern.
- B. The maximum term of the Loan Agreement and Related Documents is ten (10) years from Project completion, as defined in Section VIII of this Loan Agreement.
- C. Notwithstanding any other provision of this Loan Agreement, except as approved by the City, prior to the drawdown or disbursement of any City HOME funds hereunder, the Borrower shall provide documentation, in a form acceptable to the City, that the following actions have been taken to the City's satisfaction:
1. Recording of the Covenant Agreement and Deed of Trust.
  2. The Borrower has in place all applicable construction, land use, environmental, zoning permits and/or other federal, state and local governmental approvals as necessary for undertaking the activity for which the specific draw request is to be used.
  3. For projects including acquisition of land and/or buildings, an appropriate appraisal must be reviewed and approved by the City.
  4. Notwithstanding any provision in this Loan Agreement, the Borrower and the City hereto agree and acknowledge that this Loan Agreement does not constitute a commitment of funds or site approval until satisfactory completion of environmental review and receipt by the City of a

release of funds from HUD under 24 CFR Part 58. The Borrower and the City further agree that the provision of any funds to the Project shall be conditioned upon the City's determination to proceed with, modify, or cancel the project based on the results of a subsequent environmental review. The Borrower shall not spend any funds on physical or choice-limiting actions, including property acquisitions, demolition, movement, rehabilitation, conversion, repair, or construction prior to the environmental clearance as described herein. Violation of this provision may result in the denial of any funds under this Loan Agreement. The Borrower shall perform all the required mitigation measures referenced in the environmental review record completed by the City.

5. As applicable, the Borrower shall demonstrate, to the City's satisfaction, full compliance with the minimum wage requirements set forth in Section XVIII herein below.

D. Notwithstanding the foregoing, a retainage of ten percent (10%) of the total amount allocated under this Loan Agreement shall be held by the City until all permits have been received, final inspections are complete, a final Certificate of Occupancy is issued, the Borrower accepts the work, federal requirements are fully satisfied, and all other obligations under this Loan Agreement or related agreements are carried out to the satisfaction of the Director.

#### VII. INCOME DETERMINATIONS

- A. For purposes of this Loan Agreement, tenant "annual income" is defined pursuant to 24 CFR part 92.203(b)(1), less income adjustments pursuant to 24 CFR part 5.611.
- B. Initial tenant annual income determinations shall be made by the Borrower pursuant to 24 CFR part 92.203(a)(1)(i). Subsequent tenant income determinations shall be made by the Borrower pursuant to 24 CFR part 92.203(a)(1)(ii) and 24 CFR part 92.252(h).
- C. Rent increases and annual income recertifications shall be governed by the terms outlined in the Affordability Requirements.

#### VIII. AFFORDABILITY REQUIREMENTS

- A. HOME Affordability Period. The HOME Affordability Period, established pursuant to 24 CFR part 92.252, is ten (10) years, beginning after Project completion, as determined by the Director. "Project Completion" means that all necessary title transfer requirements and construction work have been performed; the Project complies with the requirements of 24 CFR part 92, including the property standards under 24 CFR part 92.251; the final drawdown of HOME funds has been disbursed for the Project; and the project completion information has been entered in the disbursement and information system established by HUD.
- B. City Affordability Period. The City Affordability Period is ten years, beginning after Project Completion, as determined by the Director. The HOME Affordability Period and City Affordability Period shall run concurrently. Collectively, the two periods are hereinafter referred to as the "Affordability Period." Upon expiration of the HOME Affordability Period, the City Affordability Period shall continue (unless the City Affordability Period is coterminous with the HOME Affordability Period), but HUD will no longer monitor compliance with the Affordability Requirements.
- C. Rent Limit. During the Affordability Period, rents on the ten (10) HOME-assisted units shall not exceed thirty percent (30%) of the adjusted income of a family whose annual income equals thirty

percent (30%) of Spokane area median income (“AMI”), as defined by HUD and adjusted for family size, unit size (by number of bedrooms), tenant-paid utilities and tenant-supplied appliances. These units shall include one (1) efficiency unit and nine (9) one-bedroom units. Should the HUD rents decline below the initial project rents, the Borrower’s rents do not need to be reduced below the initial rents. A table of current HUD rents is attached to this Loan Agreement as Attachment 2. The adjustment for tenant-paid utilities and tenant-supplied appliances is based upon the Section 8 existing housing allowance for tenant-furnished utilities and other services as published annually by HUD and issued by the Spokane Housing Authority or twelve (12) months of documented actual utility costs as acceptable to the City's Community, Housing and Human Services Department.

However, any HOME-assisted unit receiving federal or state project-based rental assistance, where the tenant pays not more than thirty percent (30%) of the household’s adjusted income as a contribution toward rent, shall be limited to the maximum rent allowed under the federal or state project-based rental assistance program.

- D. Income Limit. At initial occupancy, tenants of the ten (10) HOME-assisted units shall have incomes not greater than thirty percent (30%) of the Spokane area median income (“AMI”) as defined by HUD. If any of these tenants’ incomes increases to a level exceeding fifty percent (50%) of AMI, then the tenant’s rent shall increase to thirty percent (30%) of fifty percent (50%) of AMI and the next available HOME-assisted unit shall be made available to families at or below thirty percent (30%) of AMI. Furthermore, if any of these tenants’ incomes increases and exceeds sixty-five percent (65%) of AMI, then the tenant’s rent shall increase to thirty percent (30%) of sixty-five percent (65%) of AMI. In addition, if any of these tenants’ incomes increases and exceeds eighty percent (80%) of AMI, then the tenant’s rent shall increase to thirty percent (30%) of the tenant's adjusted monthly income and the tenant’s lease shall not be renewed upon expiration and with at least ninety (90) days' written notice.\_
- E. LIHTC Rent Clause. For tenants of low-income tax credit assisted units (if low-income housing tax credits are awarded to the Project or portions of the Project), any increases in rent associated with tenant income shall be governed solely by section 42 of the Internal Revenue Code of 1986, as amended.
- F. Income Certifications. All tenants' incomes shall be recertified annually by the Borrower. Any applicable rent increases will be effective upon the next lease renewal, and are subject to thirty (30) days' written notice.
- G. Additional Affordability Requirements. The Project must comply with the affordable housing requirements of 24 CFR §92.252.
- H. Relocation. Tenants in occupancy prior to the Project are subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (“URA”), 42 USC 4601 et seq. and the regulations promulgated thereunder. All relocation payments and expenses shall be borne by the Borrower.

## IX. INSURANCE

The Borrower shall keep the Project and all improvements now existing or hereafter erected thereon continuously insured as required in the Deed of Trust, the Note and the Covenant Agreement and this Loan Agreement, naming the City as mortgagee and/or loss payee. The insurance requirements apply during the ten-year Affordability Period or during any such time as there are outstanding sums due under the Note,



whichever is longer.

#### X. PROPERTY STANDARDS

- A. All HOME-assisted housing under this Loan Agreement shall meet all applicable Federal, State and local code requirements and housing quality standards, rehabilitation standards, ordinances, and zoning ordinances at the time of Project completion and for the duration of the Affordability Period.
- B. Any accessible HOME-assisted housing units under this Loan Agreement shall, for the duration of the Affordability Period, meet the accessibility requirements at 24 CFR part 8 and the design and construction requirements at 24 CFR part 100.205.
- C. The Borrower shall comply with the provisions of 24 CFR part 92.251.

#### XI. COVENANTS

Borrower shall:

- A. Maintain rents pursuant to the Affordability Requirements.
- B. Maintain all required insurance.
- C. Maintain Project financial reports, Project financial records, and provide all other information and documentation that the City of Spokane may reasonably request.
- D. Make prompt payment of all taxes and financial liabilities.
- E. Not hypothecate or encumber Project assets in any way, except to the extent provided for under this Loan Agreement or as approved of by the Director in writing. The Director may withhold such approval at his/her discretion.
- F. Promptly provide rent and tenant income information at initial tenant occupancy and annually throughout the term of this Loan Agreement, or as otherwise requested by the City.
- G. Comply with all applicable federal, state, and local regulations and requirements, including, but not limited to Uniform Administrative Requirements, Federal Labor Standards, Davis-Bacon and Related Acts, Uniform Relocation Act requirements applicable as of the date of the execution of this Loan Agreement, and the provisions of the Lead-Based Paint Poisoning Prevention Act.
- H. Comply with all HOME program project requirements pursuant to 24 CFR part 92 et seq.
- I. Maintain housing in compliance with HUD Section 8 Housing Quality Standards and local code requirements throughout the term of this Loan Agreement.
- J. Upon Project completion, the Project shall complete the final inspections and obtain final approvals on all construction permits, meet all licensing requirements needed to operate the facility as proposed by Borrower in its various funding applications, and meet HUD Section 8 Housing Quality Standards, minimum rehabilitation standards, and all applicable state and local codes and ordinances.

- K. Cause each of the ten (10) HOME–assisted units to be occupied by income-eligible households within 12 months after the Project is completed. If any of such units remains vacant six months following completion, the Borrower shall identify and develop an enhanced marketing plan and report this information to the Director (who shall forward such plan and information to HUD).

The Borrower shall cause the Covenant Agreement (which shall contain the foregoing covenants) to be recorded as a covenant running with the land.

## XII. PROJECT TIMETABLE

- A. The Borrower agrees to complete work required in accordance with the timetable set forth in Attachment 3. Timely completion of the work is an integral and essential part of performance. The expenditure of HOME funds is subject to Federal deadlines and failure to meet deadlines could result in the loss of the Federal funds. By the acceptance and execution of this Loan Agreement, the Borrower agrees that the Project will be completed as expeditiously as possible and make every effort to ensure the project will proceed and will not be delayed. Failure to meet these deadlines can result in cancellation of this contract and revocation of HOME funds. Since it is mutually agreed that time is of the essence, the Borrower shall cause appropriate provisions to be included in all contracts or subcontracts relative to the work tasks in Attachment 3. It is intended that such provisions included in any subcontracts be, to the fullest extent permitted by law and equity, binding for the benefit of the City and enforceable by the City against the Borrower and its successors and assigns to the Project or any part thereof or any interest therein.
- B. In the event the Borrower is unable to meet the above schedule or complete the above services due to delays resulting from Acts of God, untimely review and approval by the City and other governmental authorities having jurisdiction over the Project, or other delays that are not caused by the Borrower, the City shall grant a reasonable extension of time for completion of the work. It shall be the responsibility of the Borrower to notify the City promptly in writing whenever a delay is anticipated or experienced, and to inform the City of all facts and delays related to the delay.

## XIII. DEFAULT

- A. The following shall be considered “Events of Default” for purposes of this Loan Agreement:
1. Failure of Borrower to make any principal and interest payment within ten (10) days after such payment is due.
  2. Failure to perform, observe or comply with the Affordability Requirements, Income Determinations, or any other provision(s), related covenants, terms, conditions or restrictions of this Loan Agreement or any agreement relating to the Project (i.e., the occurrence of an event of default under other indebtedness secured by the Project property) or any part thereof, and failure to fully cure the same within the period of time, if any, permitted for cure and, if no period for cure is otherwise provided for, within sixty (60) days of written notice from the City of such failure, requesting the same to be remedied; provided, after a second non-compliance of any provision in a five- (5-) year period, only fourteen (14) days written notice is needed.
  3. Failure to perform required maintenance or performance of any act by Borrower which would, in the City's opinion, adversely affect the value of the Project.

4. Sale, transfer, lease, or other conveyance of the Project or any portion thereof, including assumptions and subordinations, without obtaining the prior written consent of the Director. The provisions of this provision are subject to the provisions of paragraph 7 of the Note.
5. Filing a voluntary or involuntary petition not dismissed within ninety (90) days after filing under the United States Bankruptcy Code by or against the Borrower.
6. Any representation, warranty, or disclosure made to the City or any other Project lender which proves to be materially false or misleading as of the date made, whether or not such representation, warranty or disclosure appears in this Loan Agreement.
7. Failure to maintain and keep in force adequate amounts of insurance as is usual in the business carried on by the Borrower, or as required herein.

#### XIV. REMEDIES

- A. Upon the occurrence of an event of default not timely cured after notice, the City may, in addition to any other remedies which the City may have hereunder or under this Loan Agreement or by law or equity, at its option and upon written notice to the Borrower, take any or all of the following actions:
  1. Immediately terminate any further advance of Loan funds.
  2. Declare the debt incurred hereunder and under the Related Documents immediately due and payable and commence collection proceedings against the Borrower.
  3. Seek judicial appointment of a receiver.
  4. Foreclose under the security documents or instruments, judicially or non-judicially.
  5. File suit against the Borrower.
  6. Seek specific performance or injunctive relief to enforce performance of the undertakings, duties, and agreements provided in this Loan Agreement or any related security document or instrument, whether or not a remedy at law exists or is adequate.
- B. All remedies of the City provided for herein are cumulative and shall be in addition to all other rights and remedies provided by law or in equity or by this Loan Agreement. The exercise of any right or remedy by the City shall not in any way constitute a cure or waiver of default under this Loan Agreement or any other related Project agreement, or invalidate any act done pursuant to any notice of default, or prejudice the City in the exercise of any of its rights unless, in the exercise of such rights, the City realizes all amounts owed to it by the Borrower.
- C. A failure to declare or a delay in declaring a default shall not constitute a waiver of any rights or remedies or excuse any failure by the Borrower to strictly comply with its obligations under this Loan Agreement or any other related Project agreement or document.
- D. Notwithstanding anything to the contrary contained within this Loan Agreement, Borrower's investor member shall have the right, but not the obligation, to cure defaults of Borrower.

## XV. REPAYMENT

- A. Payment of principal and interest shall be deferred for two (2) years. Payment is due upon maturity pursuant to Paragraph 3 of the Note. Payment of principal, interest, and fees shall be made in lawful money of the United States of America in immediately available funds to the City of Spokane, at the Community, Housing and Human Services Department, 808 W. Spokane Falls Blvd., Room 650, Spokane, WA 99201, or at such other place as the City may designate to Borrower in writing.
- B. The Loan may be prepaid without penalty.
- C. Repayment shall not extinguish the Affordability Requirements.

## XVI. NONDISCRIMINATION/RENT SUBSIDY

Neither the Borrower nor any of its agents shall refuse to lease HOME-assisted units to a certificate or voucher holder under 24 CFR part 982 – Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program or to the holder of a comparable document evidencing participation in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document.

## XVII. FAITH-BASED ACTIVITIES AND ORGANIZATIONS

The Parties agree as follows regarding faith-based activities and organizations, pursuant to 24 CFR 92.257:

- A. Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the HOME program. Neither the Federal government nor a State or local government receiving funds under HOME programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.
- B. Organizations that are directly funded under the HOME program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the assistance funded under this Loan Agreement. If an organization conducts such activities, the activities must be offered separately, in time or location, from the assistance funded under this Loan Agreement, and participation must be voluntary for the beneficiaries of the assistance provided.
- C. A religious organization that participates in the HOME program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct HOME funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities, without removing religious art, icons, scriptures, or other religious symbols. In addition, a HOME-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.
- D. An organization that participates in the HOME program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

- E. HOME funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOME funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities as described herein. Where a structure is used for both eligible and inherently religious activities, HOME funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to HOME funds. Sanctuaries, chapels, or other rooms that a HOME-funded religious congregation uses as its principal place of worship, however, are ineligible for HOME-funded improvements. Disposition of real property after the term of the loan or grant, or any change in use of the property during the term of the loan or grant, is subject to government-wide regulations governing real property disposition (see 24 CFR parts 84 and 85).
- F. If a state or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

XVIII. COMPLIANCE WITH LAWS

- A. The Borrower shall comply with all HOME Program requirements as outlined in 24 CFR part 92 et seq., as may be amended from time to time.
- B. The Borrower shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), the Fair Housing Act (42 U.S.C. 3601 et seq.), E.O. 11063 (3 CFR, 1959-1963 Comp., p. 652), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD regulations issued pursuant thereto.
- C. The Borrower shall comply with the nondiscrimination, equal opportunity, disclosure requirements, drug-free workplace, and debarred, suspended or ineligible contractor requirements of 24 CFR part 92.350.
- D. The Borrower shall comply with the affirmative marketing and minority outreach program of 24 CFR part 92.351.
- E. The Borrower shall comply with the National Environmental Policy Act of 1969, as outlined in 24 CFR 92.352 and Borrower agrees to implement City-identified conditions on safeguards to protect and enhance environmental quality or minimize adverse environmental impacts.
- F. Minimum Wages.
  - 1. Davis-Bacon [] Applicable [] Not Applicable. If the “Applicable” box is checked, the following provisions should apply:
    - a. The Borrower shall pay prevailing wages, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5), to all laborers and mechanics employed in the development of the Project.
    - b. All contracts relating to the Project shall contain a provision requiring the payment of such wages, as predetermined by the Secretary of Labor under the Davis-Bacon Act, 40 USC 276(a) under wage decision [DECISION #], modification [MODIFICATION #], dated

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- c. The Borrower shall pay overtime, as applicable, pursuant to the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332).
  - d. The Borrower shall comply with all regulations issued under the Davis-Bacon Act and the Contract Work Hours and Safety Standards Act, all Federal laws and regulations pertaining to labor standards, Federal Labor Standards, HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), and 24 CFR part 92.354, as applicable.
  - e. The Borrower shall provide contracts with the prime contractor and major subcontractors as soon as these contracts are available and the contracts shall evidence compliance with Federal Labor Standards.
  - f. These prevailing wage requirements do not apply to volunteers or sweat equity pursuant to 24 CFR part 92.354(a) and (b).
  - g. Borrower shall reimburse the City for all costs incurred by the City in administering Borrower's compliance with applicable Davis-Bacon, Federal Labor Standards, and Related Acts.
2. State Minimum Wage. When Washington State prevailing wages apply, the Borrower shall comply with all State requirements under RCW 39.12 to the satisfaction of the State of Washington. When applicable, the higher of Washington State prevailing wages or Davis-Bacon wages shall apply.
- G. The Borrower shall minimize tenant displacement pursuant to 24 CFR part 92.353, and shall comply with the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended ("URA") (42 U.S.C. 4601 et seq.) and the regulations promulgated thereunder at 49 CFR part 24 et seq. The Borrower shall pay tenant relocation payments and expenses pursuant to 24 CFR part 92.353.
- 1. Tenants in occupancy prior to rehabilitation shall be required to pay not more than the previous rent, or if increased, the new rent and estimated average utility costs shall not exceed thirty percent (30%) of the gross income of all adult members of the household for at least one (1) year from Project completion. Tenants who are moved temporarily to another unit to facilitate the rehabilitation shall also be given advance written notice, provided with a suitable unit, and reimbursed for eligible relocation expenses incurred in connection with the move. A "Displaced Person," as defined under the URA and HOME, displaced from the Project, shall be given advance written notice, advisory services, comparable housing referrals, and be provided with moving expense reimbursements and replacement housing payments, in accordance with the requirements of the URA and HOME.
- H. The Borrower shall comply with the lead-based paint provisions of 24 CFR part 92.355. The Borrower is responsible for any payments and expenses related to any testing, maintenance, and abatement activities that may be required under this regulation.
- I. The Borrower shall comply with the conflict of interest provisions of 24 CFR part 92.356. Pursuant

to 24 CFR 92.356, the Borrower certifies that no person (1) who is an employee, agent, consultant, officer or elected or appointed official of the Borrower, or any designated public agencies, or any subrecipient which is receiving HOME funds and (2) who exercises or has exercised any functions or responsibilities with respect to HOME assisted activities or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure and for one (1) year thereafter.

- J. The Borrower shall comply with the equal employment opportunities for low- and very low-income persons pursuant to 24 CFR part 135.
- K. The Borrower shall comply with the Fair Housing Act as implemented by 24 CFR parts 100-115, as applicable.

XIX. TENANT AND PARTICIPANT PROTECTIONS

- A. Leases between the Borrower and a tenant shall not be for less than one (1) year, except where approved by the Director, and on mutual agreement between Borrower and tenant.
- B. Leases between the Borrower and a tenant shall not contain any of the following provisions:
  - 1. Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.
  - 2. Agreement by the tenant that Borrower may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the Borrower and tenant. This prohibition does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. Borrower may dispose of this personal property in accordance with Washington state law.
  - 3. Agreement by the tenant not to hold the Borrower or the Borrower's agents legally responsible for any action or failure to act, whether intentional or negligent.
  - 4. Agreement by the tenant that the Borrower may institute a lawsuit against a tenant or affecting a tenant's interests without notice to tenant.
  - 5. Agreement by the tenant that the Borrower may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the Borrower and tenant.
  - 6. Agreement by the tenant to waive any right to a trial by jury.
  - 7. Agreement by the tenant to waive the tenant's right to appeal, or otherwise challenge in court, a court decision in connection with the lease; and,
  - 8. Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the Borrower against the tenant. The tenant, however, may be

obligated to pay costs if the tenant loses.

- C. Borrower may not terminate the tenancy or refuse to renew the lease of a tenant except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional housing; or for other good cause. To terminate or refuse to renew tenancy, Borrower must serve written notice upon the tenant specifying the grounds for the action at least thirty (30) days before the termination of tenancy.
- D. Borrower shall select tenants from a written waiting list in the chronological order of their application, insofar as is practicable, and give prompt written notification to any rejected applicant of the grounds for any rejection.

#### XX. TENANT PARTICIPATION PLAN

If the Borrower is a Community Housing Development Organization (“CHDO”) as defined by 24 CFR 92.2, the Borrower shall adhere to a fair lease and grievance procedure approved by the City and shall provide a plan for and follow a program of tenant participation in management decisions pursuant to 24 CFR part 92.303.

#### XXI. UNIFORM ADMINISTRATIVE REQUIREMENTS/PROJECT REQUIREMENTS

- A. The Borrower shall comply with the applicable uniform administrative requirements of 24 CFR part 92.505 if the Borrower is organized as a non-profit organization.
- B. The Borrower shall comply with all applicable Project requirements of Subpart F of 24 CFR part 92 et seq.
- C. The Borrower shall comply with the requirements of OMB Circular No. A-122 and the following requirements of 24 CFR part 84: §§ 84.2, 84.5, 84.13 through 84.16, 84.21, 84.22, 84.26 through 84.28, 84.30, 84.31, 84.34 through 84.37, 84.40 through 84.48, 84.51, 84.60 through 84.62, 84.72, and 84.73, if the Borrower is organized as a non-profit organization.
- D. The Borrower shall maintain all tenant and Project records for the most recent five- (5-) year period until five (5) years after the Affordability Period terminates. The Borrower shall permit the Department, HUD, and the Comptroller General of the United States, or their authorized representatives, access to all books, records, and papers of the Borrower pertinent to the Project. The Borrower shall keep and retain records sufficient to document invoices of all expenditures, project beneficiary data, and all other records required to be kept pursuant to 24 CFR §92.508.
- E. The Borrower shall permit the Department, HUD, the Comptroller General of the United States, or their authorized representatives, site visits at all times upon reasonable notice throughout the Affordability Period.

#### XXII. ASSIGNMENT

The Borrower shall not assign, transfer, subordinate or sublet any obligation of this Loan Agreement nor shall it sell or otherwise transfer any property subject to this Loan Agreement without prior written consent of the Director, who may withhold such consent at his/her discretion. The provisions of this Loan Agreement shall apply to all persons or entities performing obligations set forth by this Loan Agreement, including approved persons or entities to whom or to which the Borrower assigns, transfers, or sublets



services as above. Such approved persons or entities shall be subject to the provisions for faith-based activities and organizations as outlined in this Loan Agreement, as applicable.

### XXIII. HAZARDOUS SUBSTANCES/REPRESENTATIONS AND WARRANTIES

- A. The Borrower shall not cause or permit the presence, use, disposal, storage, or release of any "Hazardous Substances" (as defined below) on or in the Property except for the presence, use, storage and disposal of reasonable quantities of such Hazardous Substances as are generally used in the ordinary course of operating, maintaining or developing properties such as the Property, all of which Borrower represents, warrants and covenants shall be used, stored and disposed of in accordance with commercially reasonable practices and all applicable laws. The Borrower shall not perform any act, nor allow, cause or permit the performance of any act, affecting the Property when such act constitutes a violation of any federal, state or local Environmental Law, ordinance or rule. As used in this provision, "Environmental Law" means federal laws, state laws and local codes, laws, and/or ordinances of the jurisdiction where the Property is located that relate to health, safety, or environmental protection.
- B. The Borrower shall promptly give the City written notice of any investigation, claim, demand, lawsuit, or other action by any governmental or regulatory agency or private party involving the Property, and any hazardous substance or Environmental Law of which the Borrower has actual knowledge. If the Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any hazardous substance affecting the Property is necessary, the Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law and shall bear all costs and expenses thereof.
- C. The Borrower hereby represents and warrants that, except as disclosed in the Phase I Environmental Site Assessment dated June 20, 2013 by Allwest Testing and Engineering, to the best of the Borrower's knowledge and belief, and after reasonable investigation and inquiry, the Project has never been and is not being used to make, store, handle, treat, dispose of, generate, or transport Hazardous Substances in violation of any applicable law, which Hazardous Substances have not been or will not be abated according to all applicable law and regulations related thereto prior to tenant occupancy of the rehabilitated project. To the best of Borrower's knowledge and belief, and after reasonable investigation and inquiry, there has not been a release of Hazardous Substances on, from, or near the Project, which release has not been or will not be abated to levels acceptable under all applicable law and regulations related thereto prior to tenant occupancy of the rehabilitated project. The Borrower has never received any notification, citation, complaint, violation, or notice of any kind from any person relating or pertaining to the making, storing, handling, treating, disposing, generating, transporting, or release of Hazardous Substances, for which there has not been or will not be abatement to levels acceptable under all applicable law and regulations related thereto prior to tenant occupancy. Borrower represents and warrants that any asbestos and lead-based paint found within the Project will be abated to levels acceptable under applicable law prior to tenant occupancy of the rehabilitated project. "Hazardous Substances" means (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, et seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, et seq.), as amended from time to time, and regulations promulgated thereunder; (iii) "oil, petroleum products and their by-products" as defined under Washington law as amended from time to time, and regulations promulgated thereunder; (iv) any "hazardous substance" as defined under Washington law, as amended from time to time, and regulations promulgated thereunder; (v) any "asbestos material" as defined under Washington law, as amended from time to time, and

regulations promulgated thereunder and/or as defined by 40 C.F.R. Section 61.141, as amended from time to time; (vi) any “radon gas” in excess of levels recommended in U. S. Environmental Protection Agency Guidance Documents, as modified from time to time, or lower levels as provided by any applicable law or regulation now or hereafter in effect; (vii) any “infectious waste” as defined under Washington law, as amended from time to time, and regulations promulgated thereunder; (viii) any substance the presence of which on any property attributable to the operations of the Borrower is prohibited, restricted or regulated by any law or regulation similar to those laws, regulations and/or documents set forth above, including without limitation, polychlorinated biphenyls (“PCBs”) and lead-based paints; and (ix) any other substance which by law or regulation requires special handling in its collection, generation, storage, transportation, treatment or disposal.

#### XXIV. DEBARMENT AND SUSPENSION

The Borrower shall comply with the provisions of 24 CFR Part 24 that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract by any federal department or agency. Additionally, the Borrower shall not use, directly or indirectly, any of the funds provided by this contract to employ, award contracts to, or otherwise engage the services of, or fund any contractor/subcontractor during any period that the contractor/subcontractor is debarred, suspended or ineligible under the provisions of 24 CFR Part 24. Using the System for Award Management (<https://www.sam.gov>), the City has determined, as of the date of this contract that the Borrower is not excluded from federal procurement and non-procurement programs. The Borrower has provided in Attachment 4 its certification that it is in compliance with and shall not contract with individuals or organizations which are debarred, suspended, or otherwise excluded from or ineligible from participation in Federal Assistance Programs under Executive Order 12549 and “Debarment and Suspension”, codified at 29 CFR part 98.

#### XXV. SEVERABILITY

The invalidity of any clause, part or provision of this Loan Agreement shall not affect the validity of the remaining portions thereof.

#### XXVI. NOTICES

All notices given pursuant to this Loan Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the Parties hereto at the addresses set forth below, or to such other place as a Party may from time to time designate in writing:

City of Spokane  
Community, Housing and Human Services Department  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201-3339

The Delaney Group LLC  
c/o Catholic Housing Services of Eastern Washington  
12 E. Fifth Avenue  
P.O. Box 2253  
Spokane, WA 99210-2253

All notices to Borrower shall also be delivered to Borrower’s investor member:

USA Delaney LLC  
c/o The Richman Group  
340 Pemberwick Road  
Greenwich, Connecticut 06831  
Attention: Joanne D. Flanagan, Esq.

#### XXVII. INDEMNIFICATION

The Borrower shall protect, defend, indemnify, and hold harmless the City, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of the Borrower, its officers, employees or agents, in its performance and/or non-performance of its obligations under this Loan Agreement. The Borrower agrees that its obligations under this indemnification shall extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. ***This agreement to indemnify is a separate agreement, shall survive any foreclosure action, attempted transfer or the like, is a legal obligation of the Borrower and action may be brought thereon independently of any other remedy at law or provided for herein.***

#### XXVIII. TERMINATION

In accordance with 24 CFR part 85.43, this Loan Agreement may be suspended or terminated if the Borrower materially fails to comply with any term of this Loan Agreement. This Loan Agreement may be terminated for convenience in accordance with 24 CFR part 85.44.

#### XIX. EXECUTION IN COUNTERPARTS

This Loan Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, TO EXTEND CREDIT, TO MODIFY OR AMEND ANY AGREEMENT TERMS, TO RELEASE ANY GUARANTOR, TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT OR FORBEAR FROM EXERCISING ANY REMEDIES, OR TO MAKE ANY OTHER FINANCIAL ACCOMMODATION RELATED TO THIS LOAN AGREEMENT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

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**CITY OF SPOKANE**

By: David A. Condon, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

By: Terri L. Pfister, City Clerk

By: Assistant City Attorney

STATE OF WASHINGTON )  
 ) ss.  
County of Spokane )

On this \_\_\_\_ day of \_\_\_\_\_, 2013, personally appeared before me **David A. Condon and Terri L. Pfister**, to me known to be the Mayor and City Clerk, respectively, of and for the City of Spokane, Washington, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument.

GIVEN under my hand and official seal the day and year in this certificate above written.

NOTARY PUBLIC, in and for the State of Washington, residing at  
My Commission expires

ATTACHMENT I

PROJECT BUDGET

THE DELANEY GROUP LLC

THE DELANEY

242 West Riverside Avenue

Land	\$270,000	Low-Income Housing Tax	
Building	740,000	Credit equity	\$5,544,018
Closing, title, survey	23,200	Historic Tax Credit equity	1,100,147
Construction	4,284,500	Seller note	710,000
Contingency	304,115	Deferred developer fee loan	239,325
- Land improvements	60,000		
Land improvements	60,000		
Permits, fees	20,000		
Furniture, fixtures, equip	74,700		
Appraisal, mkt study, ESA I	24,500		
Architectural, engineering	70,000		
Legal	55,000		
Organizational costs	15,000		
Accounting/audit 15,000			
Marketing/lease-up	15,000		
Soft cost contingency	40,000		
Insurance	57,215		
Tenant relocation 210,000			
Constr loan fees, inspections	5,000		
Testing, inspections	4,000		
Equity bridge loan, fees	209,801		
LIHTC fees & costs	61,668		
LIHTC nonprofit donation	19,000		
HOME loan interest	18,000		
Operating reserves	200,361		
Developer fee	693,000		
<b>TOTAL</b>	<b>\$7,893,490</b>	<b>TOTAL</b>	<b>\$7,893,490</b>

Projected work includes energy and ventilation upgrades (new windows, additional building and pipe insulation, new air conditioning units, new baseboard heaters and wall units, ventilating fans), improved accessibility (wider doorways, improved bathroom layouts, adaptable or accessible countertop heights and appliances), safety upgrades (GFIs, hardwired fire detectors and CO detectors, guardrail replacement), water efficiency improvements (toilets, fixtures, fixing leaks, valves), systems upgrades (mechanical, electrical, heating). Site improvements include parking lot striping and signage. Other improvements include new cabinets and countertops, new flooring, work on the brick exterior, common area HVAC work, and updating the lobby, lounge, and activity room with an internet café and fitness center.



Attachment 2  
rent table

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### ATTACHMENT 3

#### TIMETABLE

Category	Milestone/Task	Deadline Month Yr/Status
Site Control	Close on property.	August 2013
Financing	Funding awarded by all lenders.	Completed.
	Close project financing	August 2013
Design/Permits	Final Plans & Specifications.	June 2013
Construction	Select contractor.	Completed.
	Begin construction.	August 2013
	Complete construction.	May 2014
	Certificate of occupancy issued.	May 2014
Occupancy	Lease up & Tax Credit Qualification.	August 2014

**ATTACHMENT 4**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY AND VOLUNTARY EXCLUSION**

1. The undersigned (i.e., signatory for the Borrower) certifies, to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  - b. Have not within a three-year period preceding this contract been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
  - c. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and,
  - d. Have not within a three-year period preceding this contract had one or more public transactions (federal, state, or local) terminated for cause or default.

Where the undersigned is unable to certify to any of the statements in this contract, it shall attach an explanation to this contract.

2. The undersigned agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the City.

3. The undersigned further agrees by signing this contract that it will include the following clause, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

1. The lower tier contractor certified, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
2. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this exhibit, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. The undersigned may contact the City for assistance in obtaining a copy of these regulations.

5. I understand that a false statement of this certification may be grounds for termination of the contract.

<u>The Delaney Group LLC</u> Name of Borrower (Type or Print)	<u>The Delaney</u> Program Title (Type or Print)
 Name/Title of Certifying Official (Type or Print)	 Signature/Date (Type or Print)

**CITY OF SPOKANE  
THE DELANEY GROUP LLC**

**THE DELANEY**

**PROMISSORY NOTE**

OPR #2013-

Borrower:

The Delaney Group LLC  
c/o Catholic Housing Services of Eastern Washington  
12 E. Fifth Avenue  
P.O. Box 2253  
Spokane, WA 99210-2253

Lender:

City of Spokane  
Community, Housing and Human Services Department  
808 W. Spokane Falls Blvd., Room 650  
Spokane, WA 99201

Principal:

\$300,000.00

Date:

1. PROMISE TO REPAY: FOR VALUE RECEIVED, the undersigned **The Delaney Group LLC**, a Washington limited liability company, hereinafter referred to as "Borrower", promises to repay to the order of the **City of Spokane**, a Washington state municipal corporation, or its successors and assigns (hereinafter called "Lender") the maximum principal sum of **THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00)** or so much of said sum or sums as may now or hereafter be loaned or disbursed to the Borrower by the Lender, for the purpose of providing a portion of the financing for the Borrower's acquisition and rehabilitation of The Delaney, an eight-story apartment building with 83 studio and one-bedroom apartments located at 242 West Riverside Avenue in Spokane, WA (the "Project"). This Promissory Note (the "Note") is part of a transaction further reflected in a HOME Program Loan Agreement ("Loan Agreement") and HOME Program Loan Covenant Agreement ("Covenant Agreement") of even date herewith. Lender's disbursements under the Loan Agreement and the Note are further secured by a Deed of Trust (the "Deed of Trust"). The terms of said documents are incorporated herein as if fully set forth herein, and together shall be referenced as the "Related Documents". The capitalized terms in said Related Documents shall have the same meaning in this Note unless the context clearly suggests otherwise. In the event of conflict or ambiguity in the terms of any of these documents, the terms most favorable to Lender shall apply.

2. INTEREST: In addition to repayment of principal sums loaned, Borrower agrees to pay interest, commencing on the date money is first disbursed under the Loan Agreement, at a rate of three percent (3%) per annum. If rents for any HOME-assisted unit of the Project are raised above the level of the Affordability Requirement defined in the Loan Agreement, or any other provisions, covenants, terms, conditions or restrictions of the Loan Agreement are not adhered to, then the rate on the outstanding balance shall be increased to the prevailing prime lending rate as published in The Wall Street Journal, plus three percent (3%), compounded monthly, for the period of noncompliance, as determined by the Director of Community, Housing and Human Services for the City of Spokane (the "Director").

3. REPAYMENT; MATURITY:

A. 2-Year Deferral Period: No payments of principal or interest shall be due from the date of this Note through \_\_\_\_\_, 2015.

B. Maturity: Principal and accrued interest on this Note shall be due on \_\_\_\_\_, 2015. Such payment shall not extinguish the requirements of the Related Documents.

C. Prepayment: The Borrower may pay all or any portion of the outstanding principal of the Note at any time, without penalty.

D. Late Charges: A late charge of thirty dollars (\$30.00) will be added to any payment received after the 10<sup>th</sup> day of the month in which it is due in addition to any other remedy.

E. Application of Payments: Payments received will first be applied to late charges, then to interest, and finally to principal.

F. Place of Payment: Payments of principal, interest, and fees shall be made in lawful money of the United States of America in immediately available funds to the City of Spokane, at the Community, Housing and Human Services Department, 808 W. Spokane Falls Blvd., Room 650, Spokane, WA 99201, or at such other place as Lender may designate in writing according to the schedule noted above.

4. THIS NOTE IS secured by the Deed of Trust of even date herewith, duly filed for record in the County of Spokane, Washington.

5. THIS LOAN IS made for the purpose of the acquisition and rehabilitation of the property described in the Deed of Trust and Loan Agreement. As a condition of receiving this loan, Borrower agrees to abide by all of the terms and conditions of this Note, the Deed of Trust, the Loan Agreement and associated Covenant Agreement, incorporated herein by reference as if fully set forth.

6. IF THE BORROWER SHALL default in the payment of any amount due under this Note, and such default is not cured within ten (10) days after such payment is due, or if any other Event of Default occurs under the Deed of Trust, the Loan Agreement or the Covenant Agreement and such default is not cured within the cure period, if any, applicable thereto, the entire unpaid principal amount of this Note, together with accrued interest, shall immediately become due and payable, at Lender's option, upon notice to the Borrower. Failure of Lender to exercise such option shall not constitute a waiver of default. If Lender exercises its option to declare the entire amount of Borrower's loan immediately due and payable as provided above, Borrower agrees to pay Lender's cost and expenses of collection, including reasonable attorney's fees and court costs. If this Note is reduced to judgment, the judgment shall bear interest at the maximum rate permissible on judgments in the State of Washington.

7. IF THE BORROWER voluntarily sells, transfers, leases or otherwise conveys the Project or any portion thereof, to any person/persons or entity/entities (the "Transferee"), other than by leasing or renting for residential tenant use as contemplated by various provisions of the Loan Agreement or by leasing the

radio tower located on the roof, or for any other incidental use (to the extent permissible under all applicable federal and state laws and regulations), an Event of Default shall occur under the terms of this Note and the Related Documents unless the Borrower obtained prior written consent of the Director. The remedies provided for Default may be exercised at the discretion of the Director. An unauthorized transfer also occurs if Borrower grants a junior security interest without obtaining the prior written consent of the Director. However, the following actions are consented to and shall not trigger loan acceleration or cause an event of default: the admission of the investor members to The Delaney Group LLC; a transfer of the investor member interest in The Delaney Group LLC; a replacement of the managing member of The Delaney Group LLC; and/or a transfer of the Property at the end of the compliance period to Catholic Housing Services of Eastern Washington or Catholic Charities of Spokane; provided, however, that such actions are subject to, and must be taken in compliance with, the provisions of Paragraph XXIV of the Loan Agreement, which, among other things, states that neither the Borrower nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract by any federal department or agency. Any sale, transfer, leasing or other disposition of the Project in violation of this Section 7 shall not relieve the Borrower of any obligation or obligations under this Note or any Related Document. The Borrower hereby agrees that upon any sale, transfer, lease or other disposition of the Project, the Borrower shall transfer all records, accounts, electronic data or other documents pertaining to the Project, including documents related to Borrower's compliance with this Note and any Related Document, to the Transferee or its designated agent. Failure by the City to exercise any of its rights and remedies under this Note or any Related Documents shall not be construed as a waiver of any kind. The Director's written consent may be conditioned upon the following, at the Director's sole discretion:

- (a) reasonable evidence satisfactory to the Director that the Borrower is not then in default under any document related to this transaction beyond any applicable grace period or cure period;
- (b) an opinion of counsel for the Transferee, delivered to the City, to the effect that the Transferee (i) has assumed in writing and in full, all duties and obligations of the Borrower under this Note, the Loan Agreement and the Covenant Agreement, and (ii) that this Note and the Related Documents constitute the legal, valid and binding obligations of the Transferee;
- (c) a showing that written assumption of the Transferee and/or the written agreement of the Transferee complies with all provisions of local, state and federal laws, ordinances and regulations applicable to the Borrower under this Note and Related Documents;
- (d) a showing that the Borrower or the Transferee is not in arrears on any payments due and owing to the City or is in default under this Note or any of the Related Documents, beyond any applicable grace period or cure period;
- (e) a showing that the Borrower or the Transferee do not have a history of instances of non-compliance with any non-monetary provision of this Note or any of the Related Documents, which were not cured after notice thereof and within the applicable cure period or grace period; and/or,
- (f) a showing that the Borrower or the Transferee do not have a documented history of instances of failure to make payments due and owing to the City which are not paid within a reasonable period after notice thereof.

8. EXCEPT AS OTHERWISE provided in the Loan Agreement, this Note is not assignable or assumable without the express written consent of the Lender.

9. EACH MAKER AND endorser of this Note hereby waives demand and presentment for payment, notice of nonpayment, protest, notice of protest, notice of dishonor, bringing of suit, and diligence in taking action to collect any amounts called for hereunder and in the handling of properties, rights or collateral at any time existing in connection herewith. Each maker and endorser expressly agrees that this Note or any payment thereunder may be extended from time to time, and consent to the acceptance of further security for



this Note, including other types of security, all without in any way affecting the liability of each maker and endorser hereof. The right to plead any statutes of limitation as a defense to any demand on this Note, or any guaranty thereof or to any agreement to pay the same or to any demand secured by the Deed of Trust or other security, securing the Note, or any and all obligations or liabilities arising out of or in connection with said Note or Deed of Trust by any parties hereto is expressly waived by each and every of the makers, endorsers, guarantors or sureties.

10. IF ANY PROVISION, or a part thereof, of this Note is declared by a court of competent jurisdiction to be invalid, the invalid provision or part thereof shall be stricken, with the remainder of the provision and other provisions of this Note surviving with full force and effect.

11. BORROWER RATIFIES and reaffirms all information previously submitted in Borrower's loan application or financial statement, and by signing this Note, Borrower represents and warrants to Lender that the information provided is true and correct and that there has been no adverse change in Borrower's financial condition as disclosed to Lender in Borrower's most recent application or financial statement.

12. THIS NOTE HAS been issued, executed and delivered in the State of Washington and shall be governed by and construed in accordance with the laws of the State of Washington, except to the extent that the laws of the United States of America may prevail. Venue to enforce any provision shall be in the Spokane County Superior Court.

13. ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, TO EXTEND CREDIT, TO MODIFY OR AMEND ANY AGREEMENT TERMS, TO RELEASE ANY GUARANTOR, TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT OR FORBEAR FROM EXERCISING ANY REMEDIES, OR TO MAKE ANY OTHER FINANCIAL ACCOMMODATION RELATED TO THIS NOTE ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

14. PRIOR TO SIGNING THIS NOTE, BORROWER HAS READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. BORROWER AGREES TO ALL TERMS AND CONDITIONS OF THIS NOTE AND ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS NOTE.

IN WITNESS WHEREOF, the Borrower executed this Promissory Note on this \_\_\_\_\_ day of  
IN WITNESS WHEREOF, the Borrower executed this Promissory Note on this \_\_\_\_\_ day of

**THE DELANEY GROUP LLC**, a Washington limited liability company

By: The Delaney Group Manager LLC  
Its: Managing Member

By: Catholic Housing Services of Eastern Washington  
Its: Sole Member

By:  
Name: Dr. Robert J. McCann

Promissory Note - 4 of 5

Title: President

-

Promissory Note - 5 of 5

AFTER RECORDING MAIL TO:

City of Spokane  
Department of Community, Housing and Human Services  
808 W. Spokane Falls Blvd., Room 650  
Spokane, WA 99201

OPR #2013-\_\_

**CITY OF SPOKANE  
THE DELANEY GROUP LLC**

**THE DELANEY\_**

**DEED OF TRUST**

Grantor: The Delaney Group LLC  
Beneficiary: City of Spokane, a Washington state municipal corporation  
Assessor's Parcel No.: 35184.0912; 35184.0913 and 35184.0914  
Abbrev. Legal Description: Lots 16, 17 and 18, Block 5, Havermale's Add.  
(Full Legal on Pg. 2)

Related Documents: N/A

THIS DEED OF TRUST, made this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between **The Delaney Group LLC**, a Washington limited liability company referred to herein as GRANTOR, whose address is c/o Catholic Housing Services of Eastern Washington, 12 E. Fifth Avenue, P.O. Box 2253, Spokane, WA 99210-2253, **Stewart Title of Spokane**, TRUSTEE, whose address is 606 West Third Avenue, Spokane, WA 99201, and the **City of Spokane**, Washington, a Washington state municipal corporation, BENEFCIARY, whose address is City of Spokane, c/o Community, Housing and Human Services Department, 808 W. Spokane Falls Blvd., Room 650, Spokane, WA 99201. The managing member of the Grantor is The Delaney Group Manager LLC. The sole member of The Delaney Group Manager LLC is Catholic Housing Services of Eastern Washington.

This Deed of Trust is part of a transaction further reflected in a HOME Program Loan Agreement ("Loan Agreement"), HOME Program Loan Covenant Agreement ("Covenant Agreement"), and Promissory Note, secured by this Deed of Trust. The terms of said agreements are incorporated into this Deed of Trust, and the capitalized terms in said agreements shall have the same meaning in this Deed of Trust unless the context clearly suggests otherwise. In the event of conflict in the terms of any of these documents, the terms most favorable to Beneficiary shall apply.

WITNESSETH: Grantor hereby irrevocably grants and conveys to Trustee in trust, with power of sale, the following described real property (the "Property") in Spokane County, Washington:

Lots 16, 17 and 18, Block 5, Havermale's Addition, according to the plat thereof recorded in Volume "A" of Plats, Page 22, records of Spokane County, Washington.

Situate in the City of Spokane, County of Spokane, State of Washington.

which real property is not used principally for agricultural or farming purposes, together with all the tenements, hereditaments, easements, fixtures and appurtenances now or hereafter thereunto belonging or in any way appertaining, and the rents, issues, and profits thereof.

Assessor's Parcel Number: 35184.0912; 35184.0913 and 35184.0914.  
Property Address: 242 West Riverside Avenue, Spokane, WA 99201

This Deed of Trust is for the purpose of securing performance of each agreement of Grantor herein contained and as further contained in the Loan Agreement, Covenant Agreement, and Promissory Note, secured by this Deed of Trust, and for the purpose of securing payment of the sum of **THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00)** with interest, in accordance with the terms of a Promissory Note of even date herewith, payable to Beneficiary, and made by Grantor, and all renewals, modifications, and extensions thereof, and also such further sums as may be advanced or loaned by Beneficiary to Grantor, or any of his/her/their successors or assigns, together with interest thereon at such rate as shall be agreed upon. This Deed of Trust also secures to Beneficiary: (a) the payment of other sums, with interest, advanced to protect the security of this Deed of Trust; and (b) the performance of Grantor's covenants and agreements under this Deed of Trust and the Promissory Note, Covenant Agreement and Loan Agreement of even date herewith.

GRANTOR COVENANTS that Grantor is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property that the Property is unencumbered, except for encumbrances of record and encumbrances listed in the Priority and Subordination Agreement recorded of even date herewith. Grantor warrants and will defend the title to the Property against all claims and demands, subject to any prior encumbrances of record.

COVENANTS: Grantor and Beneficiary covenant and agree as follows:

**1. PAYMENT OF PRINCIPAL AND INTEREST; PREPAYMENT AND LATE CHARGES.**

Grantor shall promptly pay when due the principal of and interest on the debt evidenced by the Promissory Note and any late charges due under the Promissory Note.

**2. APPLICATION OF PAYMENTS.** Unless applicable law provides otherwise, all payments received by Beneficiary under Paragraph 1 shall be applied: first, to any late charges due under the Promissory Note; second, to interest due; and third, to principal due under the Promissory Note.

**3. CHARGES; LIENS.** Grantor shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property, which may attain priority over this Deed of Trust, including utility charges, whether or not reflected in a recorded lien. Grantor shall pay these obligations on time directly to the person or entity owed payment. Grantor shall promptly furnish to Beneficiary upon request copies of all notices of amounts to be paid under this Paragraph. If Grantor makes these payments directly, Grantor shall promptly furnish to Beneficiary upon request receipts evidencing the payments. Grantor shall promptly discharge any lien which has priority over this Deed of Trust unless: (a) Grantor agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Beneficiary; (b) Grantor contests in good faith the lien in legal proceedings, or defends against enforcement of the lien in legal proceedings, which, in the

Beneficiary's opinion, operate to prevent the enforcement of the lien; or (c) Grantor secures from the holder of the lien an agreement satisfactory to Beneficiary subordinating the lien to this Deed of Trust, or (d) Beneficiary has executed an agreement subordinating its interest. If Beneficiary determines that any part of the Property is subject to a lien, which may attain priority over this Deed of Trust, Beneficiary may give Grantor a notice identifying the lien. Grantor shall satisfy the lien or take one or more of the actions set forth above within ten business (10) days of the giving of the notice. Should Grantor fail to pay when due any taxes, assessments, insurance premiums, recorded or unrecorded liens, encumbrances, or other charges against the Property, Beneficiary may pay the same, and the amount so paid, with interest at the rate set forth in the Promissory Note secured hereby, shall be added to and become a part of the debt secured in this Deed of Trust.

**4. HAZARD OR PROPERTY INSURANCE.** A. Grantor shall keep the improvements now existing or hereafter erected on the Property continuously insured against loss by fire, hazards included within the term "extended coverage", and any other hazards, including floods or flooding, for which the Beneficiary requires insurance. This insurance shall be maintained in the amounts and for the periods that Beneficiary requires in order to maintain adequate protection for the Property, but no act or omission by the Beneficiary shall relieve Grantor of the primary duty to procure adequate insurance. In no event shall such insurance be less than the full replacement cost of the Property (*i.e.*, 100% of replacement cost). The insurance carrier providing the insurance shall be chosen by the Grantor subject to Beneficiary's approval. All policies shall be held by the Beneficiary, and have loss payable first to the Beneficiary, as its interest may appear, and then to the Grantor. If Grantor fails to maintain coverage as described above, Beneficiary may, at Beneficiary's option, obtain coverage to protect Beneficiary's rights in the Property in accordance with Paragraph 7.

B. All insurance policies and renewals shall be acceptable to Beneficiary and shall include a standard mortgage clause. If Beneficiary requires, Grantor shall promptly give to Beneficiary all receipts of paid premiums and renewal notices. In the event of loss, Grantor shall give prompt notice to the insurance carrier and to Beneficiary. Beneficiary may make proof of loss if not made promptly by Grantor.

C. Unless Beneficiary and Grantor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Beneficiary's security is not lessened thereby. If the restoration or repair is not economically feasible or if Beneficiary's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with any excess paid to Grantor. If Grantor abandons the Property or does not answer within thirty (30) days notice from the Beneficiary that the insurance carrier has offered to settle a claim, then Beneficiary may collect the insurance proceeds. Beneficiary may, in its sole discretion, use the proceeds to restore or repair the Property or to pay sums secured by this Deed of Trust, whether or not then due. The 30-day period will begin when the notice is given. Such application of proceeds by the Beneficiary shall not cause discontinuance of any proceedings to foreclose this Deed of Trust. In the event of foreclosure, all rights of the Grantor in insurance policies then in force shall pass to the purchaser at the foreclosure sale.

D. Unless Beneficiary and Grantor otherwise agree in writing, any application of insurance proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in Paragraph 1 or change the amount of the payments. If under Paragraph 20, the Property is acquired by Beneficiary, Grantor's right to any insurance policies or proceeds resulting from damage to the Property prior to the acquisition shall pass to Beneficiary to the extent of the sums secured by this Deed of Trust immediately prior to the acquisition.

**5. FLOOD INSURANCE.** If the Property is located in a one hundred year FEMA Flood Zone, Grantor

shall maintain flood insurance throughout the term of the Loan in an amount not less than the total amount of the Loan or the maximum amount of coverage available through the National Flood Insurance Program, furnishing proof of same upon request by Beneficiary.

**6. OCCUPANCY, PRESERVATION, MAINTENANCE AND PROTECTION OF THE PROPERTY; LOAN APPLICATION; LEASEHOLDS.** Grantor shall cause the Property to be occupied, established, and used as decent, safe, sanitary and affordable housing for low-income families pursuant to the HOME Investment Partnerships Program (24 CFR part 92 et seq.) throughout the term of the loan as described in the Promissory Note and Covenant Agreement. Grantor covenants and agrees to keep the Property in good condition and repair, to permit no waste thereof, to complete any building, structure, or improvement being built now or hereafter thereon, to restore or replace promptly any building, structure, or improvement thereon which may be damaged or destroyed, and to comply with all laws, ordinances, regulations, covenants, conditions, and restrictions affecting the Property. Grantor shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Beneficiary's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Deed of Trust or Beneficiary's security interest. Grantor may cure such a default and reinstate, as provided in Paragraph 17 by causing the action or proceeding to be dismissed with a ruling that, in Beneficiary's good faith determination, precludes forfeiture of Grantor's interest in the Property or other material impairment of the lien created by this Deed of Trust or Beneficiary's security interest. Grantor shall also be in default if Grantor, during the loan application process, gave materially false or inaccurate information or statements to Beneficiary (or failed to provide Beneficiary with any material information) in connection with the loan evidenced by the Promissory Note. If this Deed of Trust is on a leasehold, Grantor shall comply with all the provisions of the lease. If Grantor acquires fee title to the property, the leasehold and the fee title shall not merge unless Beneficiary agrees to the merger in writing.

**7. PROTECTION OF BENEFICIARY'S RIGHTS IN THE PROPERTY.** A. If Grantor fails to perform the covenants and agreements contained in this Deed of Trust, the Loan Agreement and/or the Covenant Agreement, or there is a legal proceeding which, in the Beneficiary's good faith judgment, may affect Beneficiary's rights in the Property (including but not limited to proceedings in bankruptcy, probate, for condemnation or forfeiture, or to enforce laws or regulations), then Beneficiary shall have the right to take whatever action it deems necessary and appropriate to protect the value of the Property and Beneficiary's rights in the Property. Although Beneficiary may take action under this Paragraph 7, Beneficiary is not obligated to do so.

B. Any amounts caused to be disbursed by Beneficiary under this Paragraph 7 shall become additional debt secured by this Deed of Trust. Unless Grantor and Beneficiary agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Promissory Note rate and shall be payable with interest upon notice from Beneficiary to Grantor requesting payment.

C. Grantor covenants and agrees to defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including the cost of title search and any and all attorney's fees actually incurred, in any such action or proceeding, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

D. Grantor further covenants and agrees to pay any and all costs, fees, and expenses in connection with this Deed of Trust, including the expenses of the Trustee incurred in enforcing the obligations secured hereby and Trustee's and attorney's fees actually incurred, as provided by statute.

**8. INSPECTIONS.** Beneficiary or its agent may make reasonable entries upon and inspections of the

Property, subject to all applicable landlord/tenant laws. Beneficiary shall give Grantor notice at least 24 hours prior to an inspection; provided, however, such right to notice does not apply to Beneficiary when acting in its regulatory capacity or when exercising its police powers.

**9. CONDEMNATION.** A. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property or any part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Beneficiary. In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust and other liens as approved of by the Beneficiary, whether or not then due, with any excess paid to Grantor. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Deed of Trust immediately before the taking, unless Grantor and Beneficiary otherwise agree in writing, the sums secured by this Deed of Trust shall be reduced by the amount of the proceeds multiplied by the following fraction: (i) the total amount of the sums secured immediately before the taking, divided by (ii) the fair market value of the Property immediately before the taking. Any balance shall be paid to Grantor. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Grantor and Beneficiary otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Deed of Trust whether or not the sums are then due.

B. If the Property is abandoned by Grantor, or if, after notice by Beneficiary to Grantor that the condemnor offers to make an award or settle a claim for damages, and Grantor fails to respond to Beneficiary within thirty (30) days after the date the notice is given, Beneficiary is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust, whether or not then due.

C. Unless Beneficiary and Grantor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in Paragraph 1 or change the amount of such payments.

**10. GRANTOR NOT RELEASED; FORBEARANCE BY BENEFICIARY NOT A WAIVER.**

Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Beneficiary to any successor in interest of Grantor shall not operate to release the liability of the original Grantor or of Grantor's successors in interest. Beneficiary shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Grantor or Grantor's successors in interest. Any forbearance by Beneficiary in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

**11. SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; CO-SIGNERS.**

The covenants and agreements of this Deed of Trust shall bind and benefit the successors and assigns of Beneficiary and Grantor, except as otherwise provided for in this Deed of Trust. Grantor's covenants and agreements shall be joint and several.

**12. LOAN CHARGES.** If the loan secured by this Deed of Trust is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit, and; (ii) any sums already collected from Grantor which exceeded permitted limits will be refunded to Grantor. Beneficiary may choose

to make this refund by reducing the principal owed under the Promissory Note or by making a direct payment to Grantor. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Promissory Note.

**13. NOTICES.** Grantor shall promptly give Beneficiary written notice of any and all Project defaults (regardless of whether the default is related to the financing provided by Beneficiary and the various agreements governing the terms of such financing, or whether the default is related to any of the various other parties or entities providing financing to the Project under their various agreements), investigations, claims, demands, lawsuits, licensing issues relating to the operation of the building or care facility, or other actions by any governmental or regulatory agency or private party involving the Property, and any hazardous substance or Environmental Law (as defined in Paragraph 19 of this Deed of Trust) of which Grantor has actual or constructive knowledge. Any notice provided for in this Deed of Trust shall be given pursuant to the procedures outlined in the Loan Agreement and shall be delivered to the parties specified in Section XXVI of the Loan Agreement.

**14. GOVERNING LAW; SEVERABILITY.** This Deed of Trust shall be governed by federal law and the laws of the State of Washington. In the event that any provisions of this Deed of Trust or the Promissory Note conflict with applicable law, such conflict shall not affect other non-conflicting provisions of this Deed of Trust or the Promissory Note, which shall continue in full force and effect.

**15. GRANTOR'S COPY.** Grantor hereby acknowledges receipt of a conformed copy of the Loan Agreement, Covenant Agreement, Promissory Note, and of this Deed of Trust.

**16. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN GRANTOR.** A. Except as provided in the Promissory Note, if all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest of Grantor is sold or transferred and Grantor is not a natural person) without Beneficiary's prior written consent, or if any other default occurs under this Deed of Trust, the Promissory Note, the Loan Agreement or the Covenant Agreement, Beneficiary may, at its option, require immediate payment in full of all sums secured by this Deed of Trust. However, this option shall not be exercised by Beneficiary if exercise is prohibited by federal law as of the execution date of this Deed of Trust. By accepting payment of any sum secured by this Deed of Trust after payment is due, Beneficiary does not waive the right to require prompt payment when due of all other sums so secured or to declare default for failure to so pay.

B. If Beneficiary exercises the above option, Beneficiary shall give Grantor notice of acceleration. The notice shall provide a cure period of not less than thirty (30) days from the date the notice is delivered or mailed within which Grantor must pay all sums secured by this Deed of Trust. If Grantor fails to pay these sums prior to the expiration of this period, Beneficiary may invoke any and all remedies permitted by this Deed of Trust without further notice or demand on Grantor.

C. The provisions of this paragraph 16 are subject to and modified by the provisions of paragraph 7 of the Promissory Note.

**17. GRANTOR'S RIGHT TO REINSTATE FOLLOWING ACCELERATION.** If Grantor meets the conditions outlined in this paragraph, Grantor shall have the right to have enforcement by acceleration of this Deed of Trust discontinued at any time prior to the earlier of: (i) 10 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Deed of Trust; or (ii) entry of a judgment enforcing this Deed of Trust. The conditions which Grantor must meet are that Grantor shall: pay Beneficiary all sums which then would be due under this Deed of Trust and



the Promissory Note as if no acceleration had occurred; cure any default of any other covenants or agreements; pay all expenses incurred in enforcing this Deed of Trust, including, but not limited to, reasonable attorneys' fees, and; take such action as Beneficiary may reasonably require to assure that the lien of this Deed of Trust, Beneficiary's rights in the Property, and Grantor's obligation to pay the sums secured by this Deed of Trust continue unchanged. Upon reinstatement by Grantor, this Deed of Trust and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration caused by Grantor's selling or transferring all or any part of the Property or any interest in it (or if a beneficial interest of Grantor is sold or transferred and Grantor is not a natural person) without Beneficiary's prior written consent.

**18. NO FURTHER ENCUMBRANCES.** A. For the purposes of protecting Beneficiary's security and keeping the Property free from junior and subordinate financing liens, Grantor agrees and understands that any sale, conveyance, further encumbrance (including the granting of easements and any and all other matters affecting title except for easements required for delivery of services or utilities to the Property) or other transfer of title to the Property, or any interest therein (whether voluntary or by operation of law), without Beneficiary's prior written consent, shall be an Event of Default under this Deed of Trust.

**B. Notice is hereby given to all third parties that any mortgage or other Deed of Trust that they may receive against the Property without the prior written approval and acknowledgment of the Beneficiary of this Deed of Trust shall be null and void and without force or effect.**

**19. HAZARDOUS SUBSTANCES; REPRESENTATIONS AND WARRANTY.** A. Grantor shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (as defined in this Paragraph 19) on or in the Property, except for the presence, use, storage and disposal of reasonable quantities of such Hazardous Substances as are generally used in the ordinary course of operating, maintaining or developing properties such as the Property, all of which Indemnitor represents, warrants and covenants shall be used, stored and disposed of in accordance with commercially reasonable practices and all applicable laws. Grantor shall not perform any act, nor allow, cause or permit the performance of any act, affecting the Property when such act constitutes a violation of any federal, state or local Environmental Law, ordinance or rule. As used in this Paragraph 19, "Environmental Law" means federal laws, state laws and local codes, laws, and/or ordinances of the jurisdiction where the Property is located that relate to health, safety, or environmental protection.

B. Grantor shall promptly give Beneficiary written notice of any investigation, claim, demand, lawsuit, or other action by any governmental or regulatory agency or private party involving the Property, and any hazardous substance or Environmental Law of which Grantor has actual knowledge. If Grantor learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any hazardous substance affecting the Property is necessary, Grantor shall promptly take all necessary remedial actions in accordance with Environmental Law and shall bear all costs and expenses thereof.

C. The Grantor hereby represents and warrants that, except as disclosed in the Phase I Environmental Site Assessment dated June 20, 2013 by Allwest Testing and Engineering, to the best of the Grantor's knowledge and belief, and after reasonable investigation and inquiry, the Project has never been and is not being used to make, store, handle, treat, dispose of, generate, or transport Hazardous Substances in violation of any applicable law, which Hazardous Substances have not been or will not be abated according to all applicable law and regulations related thereto prior to tenant occupancy of the rehabilitated project. To the best of Grantor's knowledge and belief, and after reasonable investigation and inquiry, there has not been a release of Hazardous Substances on, from, or near the Property, which release has not been or will not be abated to levels acceptable under all applicable law and regulations related thereto prior to tenant occupancy of the

rehabilitated project. The Grantor has never received any notification, citation, complaint, violation, or notice of any kind from any person relating or pertaining to the making, storing, handling, treating, disposing, generating, transporting, or release of Hazardous Substances, for which there has not been or will not be abatement to levels acceptable under all applicable law and regulations related thereto prior to tenant occupancy. Grantor represents and warrants that any asbestos and lead-based paint found within the Project will be abated to levels acceptable under applicable law prior to tenant occupancy of the rehabilitated project. "Hazardous Substances" means (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, et seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, et seq.), as amended from time to time, and regulations promulgated thereunder; (iii) "oil, petroleum products and their by-products" as defined under Washington law as amended from time to time, and regulations promulgated thereunder; (iv) any "hazardous substance" as defined under Washington law, as amended from time to time, and regulations promulgated thereunder; (v) any "asbestos material" as defined under Washington law, as amended from time to time, and regulations promulgated thereunder and/or as defined by 40 C.F.R. Section 61.141, as amended from time to time; (vi) any "radon gas" in excess of levels recommended in U. S. Environmental Protection Agency Guidance Documents, as modified from time to time, or lower levels as provided by any applicable law or regulation now or hereafter in effect; (vii) any "infectious waste" as defined under Washington law, as amended from time to time, and regulations promulgated thereunder; (viii) any substance the presence of which on any property attributable to the operations of the Grantor is prohibited, restricted or regulated by any law or regulation similar to those laws, regulations and/or documents set forth above, including without limitation, polychlorinated biphenyls ("PCBs") and lead-based paints; and (ix) any other substance which by law or regulation requires special handling in its collection, generation, storage, transportation, treatment or disposal.

**20. ACCELERATION; REMEDIES.** A. Beneficiary shall give notice to Grantor, with a copy to Grantor's investor member, prior to acceleration, following Grantor's breach of any covenant or agreement noted in this Deed of Trust, the Loan Agreement or the Covenant Agreement. The notice shall specify: (a) the nature of the default; (b) the action required to cure the default; (c) a date, not less than thirty (30) days from the date the notice is given to Grantor, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property at public auction to the highest bidder, in accordance with the Deed of Trust Act of the State of Washington (RCW 61.24 or as hereafter amended). The notice shall further inform Grantor of applicable rights to reinstate after acceleration, rights to bring a court action to assert the nonexistence of a default or any other defense Grantor wishes to assert prior to acceleration and sale, and of any other matters required by applicable law to be included in the notice. If the default is not cured on or before the date specified in the notice, Beneficiary, at its option, may require immediate payment in full of all sums secured by this Deed of Trust without further demand and may invoke the power of sale and any other remedies permitted under the Loan Agreement, the Covenant Agreement, the Promissory Note, this Deed of Trust or by applicable law. Beneficiary shall be entitled to collect from Grantor all expenses incurred in pursuing the remedies provided in this Paragraph 20, including, but not limited to, attorneys' fees and costs of title evidence. If Grantor's investor member makes any such payment or otherwise cures of a default, Beneficiary will accept such action as curing such default on the same basis as if such payment or cure were made directly by Borrower.

B. If Beneficiary invokes the power of sale, Beneficiary shall give written notice to Trustee of the occurrence of an event of default. Upon instruction from the Beneficiary to do so, Trustee shall cause the trust Property to be sold, in accordance with the Deed of Trust Act of the State of Washington, at public auction to the highest bidder. Beneficiary or its designee may purchase the Property at any sale. Trustee and Beneficiary

shall take such action regarding notice of sale and shall give such notices to Grantor and to other persons as applicable law may require.

C. Trustee shall deliver to the purchaser a Trustee's Deed conveying the Property without warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Deed of Trust; and (c) any excess to the person or persons legally entitled to it or to the clerk of the superior court of the county in which the sale took place.

D. The power of sale conferred by this Deed of Trust and by the Deed of Trust Act of the State of Washington is not an exclusive remedy. Beneficiary may cause this Deed of Trust to be foreclosed as a mortgage.

**21. RECONVEYANCE.** Upon payment of all sums secured by this Deed of Trust, Beneficiary shall request Trustee to reconvey the Property to the person entitled thereto and shall surrender this Deed of Trust and all Promissory Notes evidencing the debt secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs.

**22. SUBSTITUTE TRUSTEE.** In the event of the death, incapacity, disability, or resignation of Trustee, or at Beneficiary's reasonable discretion, Beneficiary may appoint in writing a successor trustee, and upon the recording of such appointment in the mortgage records of the county in which this Deed of Trust is recorded, the successor trustee shall be vested with all powers of the original trustee. The trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of an action or proceeding in which Grantor, Trustee, or Beneficiary shall be a party unless such action or proceeding is brought by the Trustee.

**23. USE OF PROPERTY.** The Property is not used principally for agricultural or farming purposes.

**24. BINDING EFFECT.** This Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but on his/her/their heirs, devisees, legatees, administrators, executors, and assigns. The term "Beneficiary" shall mean the holder and owner of the Promissory Note secured hereby, whether or not named as Beneficiary herein.

**25. ORAL AGREEMENTS OR ORAL COMMITMENTS.** ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, TO EXTEND CREDIT, TO MODIFY OR AMEND ANY AGREEMENT TERMS, TO RELEASE ANY GUARANTOR, TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT OR FORBEAR FROM EXERCISING ANY REMEDIES, OR TO MAKE ANY OTHER FINANCIAL ACCOMMODATION RELATED TO THIS INSTRUMENT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.)



**BENEFICIARY - CITY OF SPOKANE**

By: David A. Condon, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

By: Terri L. Pfister, City Clerk

By: Assistant City Attorney

STATE OF WASHINGTON )  
 ) ss.  
County of Spokane )

On this \_\_\_\_ day of \_\_\_\_\_, 2013, personally appeared before me **David A. Condon and Terri L. Pfister**, to me known to be the **Mayor and City Clerk**, respectively, of and for the City of Spokane, Washington, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument.

GIVEN under my hand and official seal the day and year in this certificate above written.

NOTARY PUBLIC, in and for the State of  
Washington, residing at  
My Commission expires

WHEN RECORDED RETURN TO:  
CITY OF SPOKANE  
COMMUNITY, HOUSING AND HUMAN SERVICES DEPARTMENT  
808 W. SPOKANE FALLS BLVD., ROOM 650  
SPOKANE, WASHINGTON 99201-3339

OPR #2013-\_\_ \_\_\_\_\_

**CITY OF SPOKANE  
THE DELANEY GROUP LLC**

**THE DELANEY**

**HOME PROGRAM LOAN COVENANT AGREEMENT**

Grantor: The Delaney Group LLC

Beneficiary: City of Spokane, a Washington state municipal corporation

Assessor's Parcel No.: 35184.0912; 35184.0913 and 35184.0914

Abbrev. Legal Description: Lots 16, 17 and 18, Block 5, Havermale's Add.  
(Full Legal on Pg. 2)

Related Documents: N/A

This HOME Program Loan Covenant Agreement ("Covenant Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the **City of Spokane**, Washington, a Washington municipal corporation (the "City"), whose address is City of Spokane, c/o Community, Housing and Human Services Department, 808 W. Spokane Falls Blvd., Room 650, Spokane, Washington 99201-3339, and **The Delaney Group LLC**, a Washington limited liability company, herein referred to as "Borrower," whose address is c/o Catholic Housing Services of Eastern Washington, 12 E. Fifth Avenue, P.O. Box 2253, Spokane, WA 99210-2253.

**I. STIPULATIONS**

1. This Covenant Agreement is part of the consideration for the financial assistance provided by the City to the Borrower for the Borrower's acquisition and rehabilitation of The Delaney, an eight-story apartment building with 83 studio and one-bedroom apartments, located at 242 West Riverside Avenue in Spokane, WA (the "Project"). Ten of the eighty-three units will be HOME-assisted.

2. This Covenant Agreement is part of a transaction further reflected in a Promissory Note (the "Promissory Note") and a HOME Program Loan Agreement ("Loan Agreement") of even date herewith. The City's disbursements under the Loan Agreement are further secured by a Deed of Trust (the "Deed of Trust"). The terms of said documents are incorporated herein as if fully set forth herein, and together shall be referenced as the "Related Documents." The capitalized terms in said agreements shall have the same meaning in this Covenant Agreement unless the context clearly suggests otherwise. In the event of conflict

in the terms of any of these documents, the terms most favorable to the City shall apply.

3. The Project is legally described as follows:

Lots 16, 17 and 18, Block 5, Havermale's Addition, according to the plat thereof recorded in Volume "A" of Plats, Page 22, records of Spokane County, Washington.

Situate in the City of Spokane, County of Spokane, State of Washington.

4. This Covenant Agreement shall be filed and recorded in the official public land records of Spokane County, Washington, and shall constitute a restriction upon the use of the property and Project described herein, subject to and in accordance with the terms of this Covenant Agreement for ten years beginning after Project completion (the "Affordability Period"), pursuant to the terms of the Loan Agreement.

5. The covenants contained herein are to be taken and construed as *covenants running with the land* and shall pass to and be binding upon the Borrower, its successors in interest, assigns, heirs or lessees of the Project, beginning on the date this Covenant Agreement is executed. Each and every contract, deed or other instrument covering or conveying the property or Project, or any portion thereof, shall be conclusively held to have been executed, delivered and accepted subject to such covenants regardless of whether such covenants are set forth in such contract, deed or other instrument.

NOW, THEREFORE, it is hereby covenanted, for ten (10) years beginning after Project Completion, the Borrower agrees to the following covenants running with the land which shall bind the Borrower, its heirs, assigns, lessees and successors in interest through the Affordability Period:

## II. COVENANTS

Borrower agrees to and shall diligently execute or cause to be executed the following covenants, which *covenants shall run with the land*:

- A. Maintain rents as noted in Affordability Requirements.
- B. Maintain all required insurance.
- C. Maintain Project financial reports, Project financial records, and provide all other information and documentation that the City of Spokane may reasonably request.
- D. Make prompt payment of all taxes and financial liabilities.
- E. Not hypothecate or encumber Project assets in any way, except to the extent provided for under this Loan Agreement or as approved of by the Director of Community, Housing and Human Services of the City of Spokane (the "Director") in writing. The Director may withhold such approval at his/her discretion.
- F. Promptly provide rent and tenant income information at initial tenant occupancy and annually throughout the term of this Loan Agreement, or as otherwise requested by the City.
- G. Comply with all applicable federal, state, and local regulations and requirements, including, but not

limited to Uniform Administrative Requirements, Federal Labor Standards, Davis-Bacon and Related Acts, Uniform Relocation Act requirements applicable as of the date of the execution of this Covenant Agreement, and the provisions of the Lead-Based Paint Poisoning Prevention Act.

- H. Comply with all HOME program project requirements pursuant to 24 CFR part 92 et seq.
- I. Maintain housing in compliance with HUD Section 8 Housing Quality Standards and local code requirements throughout the term of this Loan Agreement.
- J. Upon Project completion, the Project shall complete the final inspections and obtain final approvals on all construction permits, meet all licensing requirements needed to operate the facility as proposed by Borrower in its various funding applications, and meet HUD Section 8 Housing Quality Standards, minimum rehabilitation standards, and all applicable state and local codes and ordinances.

### III. INCOME DETERMINATIONS

- A. For purposes of this Covenant Agreement, tenant “annual income” is defined pursuant to 24 CFR part 92.203(b)(1), less income adjustments pursuant to 24 CFR part 5.611.
- B. Initial tenant annual income determinations shall be made by the Borrower pursuant to 24 CFR part 92.203(a)(1)(i). Subsequent tenant income determinations shall be made by the Borrower pursuant to 24 CFR part 92.203(a)(1)(ii) and 24 CFR part 92.252(h).
- C. Rent increases and annual income recertifications shall be governed by the terms outlined in the Affordability Requirements below.

### IV. AFFORDABILITY REQUIREMENTS

- A. HOME Affordability Period. The HOME Affordability Period, established pursuant to 24 CFR part 92.252, is ten (10) years, beginning after Project completion, as determined by the Director. “Project Completion” means that all necessary title transfer requirements and construction work have been performed; the Project complies with the requirements of 24 CFR part 92, including the property standards under 24 CFR part 92.251; the final drawdown of HOME funds has been disbursed for the Project; and the project completion information has been entered in the disbursement and information system established by HUD.
- B. City Affordability Period. The City Affordability Period is ten years, beginning after Project Completion, as determined by the Director. The HOME Affordability Period and City Affordability Period shall run concurrently. Collectively, the two periods are hereinafter referred to as the “Affordability Period.” Upon expiration of the HOME Affordability Period, the City Affordability Period shall continue, but HUD will no longer monitor compliance with affordability requirements (unless the City Affordability Period is coterminous with the HOME Affordability Period).
- C. During the Affordability Period, rents on the ten (10) HOME–assisted units shall not exceed thirty percent (30%) of the adjusted income of a family whose annual income equals thirty percent (30%) of Spokane area median income (“AMI”), as defined by HUD and adjusted for family size, unit size by number of bedrooms, tenant-paid utilities and tenant-supplied appliances. These units shall include one (1) efficiency unit and nine (9) one-bedroom units. Should the HUD rents decline below



the initial project rents, the Borrower's rents do not need to be reduced below the initial rents. A table of current HUD rents is attached to the Loan Agreement as Attachment 2. The adjustment for tenant-paid utilities and tenant-supplied appliances is based upon the Section 8 existing housing allowance for tenant-furnished utilities and other services as published annually by HUD and issued by the Spokane Housing Authority or twelve (12) months of documented actual utility costs as acceptable to the City's Community, Housing and Human Services Department.

However, any HOME-assisted unit receiving federal or state project-based rental assistance, where the tenant pays not more than thirty percent (30%) of the household's adjusted income as a contribution toward rent, shall be limited to the maximum rent allowed under the federal or state project-based rental assistance program.

- D. At initial occupancy, tenants of the ten (10) HOME-assisted units shall have incomes not greater than thirty percent (30%) of the Spokane area median income ("AMI") as defined by HUD. If any of these tenants' incomes increases to a level exceeding fifty percent (50%) of AMI, then the tenant's rent shall increase to thirty percent (30%) of fifty percent (50%) of AMI and the next available HOME-assisted unit shall be made available to families at or below thirty percent (30%) of AMI. Furthermore, if any of these tenants' incomes increases and exceeds sixty-five percent (65%) of AMI, then the tenant's rent shall incur a rent increase to thirty percent (30%) of sixty-five percent (65%) of AMI. In addition, if any of these tenants' incomes increases and exceeds eighty percent (80%) of AMI, then the tenant's rent shall increase to thirty percent (30%) of the tenant's adjusted monthly income and the tenant's lease shall not be renewed upon expiration and with at least ninety (90) days' written notice.
- E. For tenants of low-income housing tax credit assisted units (if low-income housing tax credits are awarded to the Project or portions of the Project), any increases in rent associated with tenant income shall be governed solely by section 42 of the Internal Revenue Code of 1986.
- F. All tenants' incomes shall be recertified annually by the Borrower. Any applicable rent increases will be effective upon the next lease renewal, and are subject to thirty (30) days' written notice.
- G. The Project must comply with the affordable housing requirements of 24 CFR §92.252.
- H. Tenants in occupancy prior to the Project are subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended ("URA"), 42 USC 4601 et seq. and the regulations promulgated thereunder. All relocation payments and expenses shall be borne by the Borrower.

#### V. DEFAULT

Without limiting other remedies available to the City under the Related Documents, if a violation of any of the foregoing covenants occurs, the City may, after thirty (30) days written notice, the default meanwhile not having been cured, institute and prosecute any proceeding at law or in equity or as otherwise provided for in this Covenant Agreement, or Related Documents, to abate, prevent, or enjoin any such violation or to compel specific performance by the Borrower of its obligations hereunder. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation hereof at any later time.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, TO EXTEND CREDIT, TO MODIFY OR AMEND ANY AGREEMENT TERMS, TO RELEASE ANY GUARANTOR, TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT OR FORBEAR FROM EXERCISING ANY REMEDIES, OR TO MAKE ANY OTHER FINANCIAL ACCOMMODATION RELATED TO THIS AGREEMENT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

IN WITNESS WHEREOF, the Parties have executed this Agreement on this \_\_\_\_ day of  
IN WITNESS WHEREOF, the Parties have executed this Agreement on this \_\_\_\_ day of

**BORROWER**

**THE DELANEY GROUP LLC**, a Washington limited liability company

By: The Delaney Group Manager LLC  
Its: Managing Member

By: Catholic Housing Services of Eastern Washington  
Its: Sole Member

By:  
Name: Dr. Robert J. McCann  
Title: President

STATE OF WASHINGTON )  
 ) ss.  
County of Spokane )

On this \_\_\_\_ day of \_\_\_\_\_, 2013, personally appeared before me **Dr. Robert J. McCann**, to me known to be the **President of Catholic Housing Services of Eastern Washington**, which is the sole member of **The Delaney Group Manager LLC**, which is the managing member of **The Delaney Group LLC**, who executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said person and the Borrower, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute the said instrument.

GIVEN under my hand and official seal the day and year in this certificate above written.

NOTARY PUBLIC, in and for the State of  
Washington, residing at  
My Commission expires

**CITY OF SPOKANE**

By: David A. Condon, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

By: Terri L. Pfister, City Clerk

By: Assistant City Attorney

STATE OF WASHINGTON )  
 ) ss.  
County of Spokane )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013, personally appeared before me **David A. Condon and Terri L. Pfister**, to me known to be the **Mayor and City Clerk**, respectively, of and for the **City of Spokane**, Washington, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument.

GIVEN under my hand and official seal the day and year in this certificate above written.

NOTARY PUBLIC, in and for the State of  
Washington, residing at  
My Commission expires

AFTER RECORDING RETURN TO:

Catholic Housing Services of Eastern Washington  
P.O. Box 2253  
Spokane WA 99210 – 2253  
Attn: Glori Houston

**PRIORITY AND SUBORDINATION AGREEMENT**

*(The Delaney)*

- Grantors:**
1. WASHINGTON STATE HOUSING FINANCE COMMISSION
  2. CITY OF SPOKANE
  3. WELLS FARGO BANK, NATIONAL ASSOCIATION
  4. THE DELANEY
  5. CATHOLIC HOUSING SERVICES OF EASTERN WASHINGTON
  6. THE DELANEY GROUP LLC

- Grantees:**
1. WASHINGTON STATE HOUSING FINANCE COMMISSION
  2. CITY OF SPOKANE
  3. WELLS FARGO BANK, NATIONAL ASSOCIATION
  4. THE DELANEY
  5. CATHOLIC HOUSING SERVICES OF EASTERN WASHINGTON

**Abbrev. Legal:** Lot 16, 17, and 18, Block 5 Havermale’s Addition, Spokane County Washington

**Tax Parcel No:** 35184.0912, 35184.0913, and 35184.0914

**Reference Numbers:**

**Extended Use Agreement:** \_\_\_\_\_

**HOME Covenant:** \_\_\_\_\_

**Wells Fargo Deed of Trust:** \_\_\_\_\_

**HOME Deed of Trust:** \_\_\_\_\_

**Seller Deed of Trust:** \_\_\_\_\_

## PRIORITY AND SUBORDINATION AGREEMENT

THIS PRIORITY AND SUBORDINATION AGREEMENT (“Agreement”) is made as of \_\_\_\_\_, 2013 by and among the **WASHINGTON STATE HOUSING FINANCE COMMISSION**, a Washington public body corporate and politic (the “Commission”); **CITY OF SPOKANE** (“City”), a Washington municipal corporation; **WELLS FARGO BANK, NATIONAL ASSOCIATION** (“Wells Fargo”), a \_\_\_\_\_ corporation; and **THE DELANEY**, a Washington nonprofit corporation (the “Seller”) (all of the preceding parties are collectively, “Lenders”); **THE DELANEY GROUP LLC**, a Washington limited liability company (“Owner”) and **CATHOLIC HOUSING SERVICES OF EASTERN WASHINGTON**, a Washington nonprofit corporation (“CHSEW”). This Agreement is made with reference to the following facts:

### RECITALS

**A. Owner’s Interest.** Owner owns the real property legally described below (the “Property”):

Lot 16, 17 and 18, Block 5, Havermale’s Addition, according to the plat thereof recorded in Volume “A” of Plats, Page 22, records of Spokane County, Washington.

Situate in the City of Spokane, County of Spokane, State of Washington.

The term “Mortgaged Property” as used herein shall include the Property, all improvements on the Property, easements, appurtenances, and related documents, and all personal property granted as security for any of the loans referred to below.

**B. Commission’s Interests.** Owner has obtained financing for the Project through the use of Low Income Housing Tax Credits (“LIHTC”). In connection with the LIHTC, Owner has executed a Regulatory Agreement (“Extended Use Agreement”) with the Commission (the “Extended Use Agreement”), recorded under Spokane County recording number \_\_\_\_\_.

**C. City’s Interest.** The City and Owner have entered into a HOME Program

Loan Agreement, providing for a loan of \$300,000 from the City to the Owner (the "City Loan"). The City Loan is evidenced by a promissory note dated as of \_\_\_\_\_, 2013 (the "HOME Note"). The HOME Note is secured by that certain deed of trust dated as of \_\_\_\_\_, 2013 recorded under Spokane County recording number \_\_\_\_\_ (the "HOME Deed of Trust"). Pursuant to the City Loan, Owner has granted to the City land use restrictive covenants through the HOME Program Loan Covenant Agreement (the "HOME Covenant"), recorded under Spokane County recording number \_\_\_\_\_. All documents identified in this Paragraph C and any documents executed by Owner in connection therewith are collectively referred to as the "City Loan Documents."

**D. Wells Fargo's Interest.** Wells Fargo has made a loan to Owner in the approximate amount of [\$6,000,000] (the "Wells Fargo Loan"). The Wells Fargo Loan is made pursuant to that certain Building Loan Agreement dated as of \_\_\_\_\_, 2013. The Wells Fargo Loan is evidenced by a promissory note dated as of \_\_\_\_\_, 2013 (the "Wells Fargo Note"). The Wells Fargo Note is secured by, among other security documents, that certain construction deed of trust (the "Wells Fargo Deed of Trust") recorded under Spokane County recording number \_\_\_\_\_. All documents identified in this Paragraph D are referred to collectively as the "Wells Fargo Loan Documents."

**E. Seller's Interest.** In connection with the sale of the Property from the Seller to Owner, The Seller has made a loan to Owner in the approximate amount of [\$830,000] (the "Seller Loan"). The Seller Loan is evidenced by a promissory note dated as of \_\_\_\_\_, 2013 (the "Seller Note"). The Seller Note is secured by that certain deed of trust (the "Seller Deed of Trust") recorded under Spokane County recording number \_\_\_\_\_. All documents identified in this Paragraph E are referred to collectively as the "Seller Loan Documents"

**F. CHSEW's Interest.** CHSEW is the optionee under an unrecorded right of first refusal agreement (the "Option") to acquire the Property at the end of the initial low income housing tax credit compliance period.

**G. Purpose.** The parties wish to enter into this Agreement in order to establish their respective rights and priorities regarding the Mortgaged Property, all as more fully set forth herein.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements and undertakings herein contained, the parties agree as follows:

1. **Priorities**. Regardless of the time each party's interest in the Mortgaged Property was or shall be created or recorded, such interests have and shall have the following priorities:

**A. First Priority**. The Extended Use Agreement shall have first priority. The rights and interests of the City under the HOME Covenant and the City Loan Documents, the rights and interests of Wells Fargo under the Wells Fargo Loan Documents, the rights and interests of the Seller under the Seller Loan Documents, and the rights and interests of CHSEW under the Option are all hereby made subordinate and subject to the rights and interests of the Commission under the Extended Use Agreement.

**B. Second Priority**. The HOME Covenant shall have second priority. The rights and interests of the City under the City Loan Documents (other than the HOME Covenant), the rights and interests of Wells Fargo under the Wells Fargo Loan Documents, the rights and interests of the Seller under the Seller Loan Documents, and the rights and interests of CHSEW under the Option, are all hereby made subordinate and subject to the rights and interests of the City under the HOME Covenant.

**C. Third Priority**. The Wells Fargo Deed of Trust shall be third in priority. The rights and interests of the City under the City Loan Documents (other than the HOME Covenant), the rights and interests of the Seller under the Seller Loan Documents, and the rights and interests of CHSEW under the Option, are all hereby made subordinate and subject to the rights and interests of Wells Fargo under the Wells Fargo Loan Documents.

**D. Fourth Priority**. The HOME Deed of Trust shall be fourth in priority. The rights and interests of the Seller under the Seller Loan Documents and the rights and interests of CHSEW under the Option are hereby made subordinate and subject to the rights and interests of the City under the City Loan Documents.

**E. Fifth Priority**. The Seller Deed of Trust shall be fifth in priority. The rights and interests of CHSEW under the Option are hereby made subordinate and subject to the rights and interests of the Seller Deed of Trust.

**F. Sixth Priority**. The Option shall be sixth in priority.

The parties agree that the Lenders do not have any obligation to each other to advance funds or to see to the application of their respective loan proceeds and that any application of such proceeds contrary to the terms of any loan documents shall not defeat the subordinations granted herein in whole or in part. The parties also agree that nothing contained in this Agreement shall impair the right of any party to pursue any right or remedy available to it in any of the agreements, covenants, and deeds of trust or options referenced herein.

**2. Insurance or Condemnation Proceeds.** Notwithstanding any provision of the Wells Fargo Deed of Trust or other Wells Fargo Loan Document to the contrary, in the event of any damage to, destruction of, or taking or condemnation (including deed in lieu thereof) of the Property or any portion thereof, any insurance or condemnation proceeds shall be applied first to repair or restoration of the Property and any amounts secured by any party's deed of trust shall not be accelerated as a result of any casualty loss or condemnation, unless:

(a) At the time of the casualty loss or condemnation, there is an Event of Default (as defined therein) under the Wells Fargo Deed of Trust;

(b) After consultation among the Lenders, the Lenders determine that repair or restoration of the Property is not feasible or that adequate funds are not available therefor, which determination shall occur no later than fourteen (14) days after consultation among the Lenders; or

(c) After consultation among the Lenders, Wells Fargo (or its assignee or successor in interest) determines that the conditions for permitting release of proceeds for repair, completion or restoration set forth in the Wells Fargo Deed of Trust have not been met;

provided that such repair or restoration proceeds with reasonable dispatch once condemnation or insurance proceeds are available. Any funds to be applied to repair or restoration shall be held and administered by Wells Fargo in accordance with the Wells Fargo Loan Documents, and Wells Fargo shall be entitled to reasonable compensation for its services in connection with the administration of such funds, as set forth in the Wells Fargo Deed of Trust, provided that if applicable law does not permit a Lender to hold such proceeds then Wells Fargo shall have the right to designate an insurance trustee to administer the proceeds consistent with the Wells Fargo Deed of Trust subject to applicable law.

**3. Cross-Defaults.** Any default under the Wells Fargo Loan Documents, the City



Loan Documents or the Seller Loan Documents, after notice of default shall have been given thereunder, and that is not cured or waived within the applicable cure period set forth therein, shall constitute an event of default under the other Lenders' loan documents at the option of such Lender (“Cross-Default”). Unless and until there shall be a Cross-Default under this Section, each Lender agrees not to accelerate indebtedness of the Owner or seek remedies under loan documents against the Owner or the Property based solely upon a breach or default by the Owner under another Lender’s documents described herein.

**4. Subordinate Lenders’ Agreement to Standstill.** Until the Wells Fargo Note has been repaid in full, each Lender other than Wells Fargo agrees for the benefit of Wells Fargo that if a default occurs and is continuing under documents other than the Wells Fargo Loan Documents, the other Lenders shall not, without the Wells Fargo’s prior written consent, accelerate its respective loan, commence foreclosure proceedings with respect to the Property, collect rents, appoint (or seek the appointment of) a receiver or institute any other enforcement action with respect to the Property.

**5. Reliance; Owner’s Consent.** It is understood by the parties hereto that the parties hereto would not enter into their respective loan documents without this Agreement. Owner consents to all the terms hereof. By executing this Agreement, each party hereby acknowledges and consents to the execution of, and where appropriate, the recording of, the loan documents described in Paragraphs B, C, D and E of the Recitals herein.

**6. Actions by Wells Fargo; Certain Waivers.** Wells Fargo, without the consent of or notice to any other Lender, may release any or all parties liable for any obligation secured by the Wells Fargo Loan Documents, or release any or all security for the obligations secured by the Wells Fargo Loan Documents, all without affecting the subordinations under this Agreement. The Lenders and the Owner waive any right to require marshaling of assets or to require Wells Fargo to proceed against or exhaust any specific security for the obligations secured by the Wells Fargo Loan Documents, and waive any defense arising out of the loss or impairment of any right of subrogation to the lien of the Wells Fargo Loan Documents. However, Wells Fargo agrees not to voluntarily subordinate the lien of the Wells Fargo Deed of Trust or any portion thereof to any other liens or encumbrances on the Property without the written consent of Lenders and the Owner which consent may consist of such Lenders’ subordination to the same lien or encumbrance.

**7. Rents.** All Lenders understand that the Owner has assigned all leases, income, rents, and profits of the Property in connection with the Wells Fargo Loan Documents. The

parties agree that upon an Event of Default under the Wells Fargo Loan Documents, Wells Fargo shall have the absolute right to collect all rents and profits from the Property as provided in the Wells Fargo Documents.

**8. Miscellaneous.**

**A. Entire Agreement.** This Agreement constitutes the entire agreement among the parties with respect to the priority of each party's interests in the Mortgaged Property and all prior understandings and agreements on that subject are superseded hereby.

**B. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

**C. Notices.** All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when hand-delivered within normal business hours, when actually received by facsimile transmission during normal business hours, or two (2) business days after deposit in the U.S. mail, postage prepaid, (one (1) business day if sent by overnight courier) to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate by notice to the other parties. No transferee or successor of a party hereto shall be entitled to notices or opportunity to cure defaults hereunder unless notice of the transfer is given in accordance with this subsection.

**D. Successors; Assignment.** This Agreement is for the benefit of the Lenders and their respective successors and assigns, and any provision hereof may be waived or modified by agreement of the Lenders (or by any two or more of them, if the other(s) are unaffected thereby) without the consent of Owner and without affecting the priority of the liens and interests of the Lenders. The heirs, administrators, assigns and successors-in-interest of the parties shall be bound by this Agreement. This Agreement may be assigned by a party only as a part of an assignment of such party's loan documents or option described in this Agreement.

**E. Amendment.** This Agreement may be amended only by a writing signed by the parties hereto, but this clause shall not impair the validity of any further agreements among fewer than all of the parties hereto as among themselves.

**F. Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and whether or not all parties execute each counterpart.

**G. Completion of Recording Information.** If this Agreement is signed without completion of certain recording information called for above, any party hereto or any title insurance company acting on the instructions of any party is hereby authorized to insert such information prior to recording this Agreement.

*(Signatures on following pages)*

-



My appointment expires

-

IN WITNESS WHEREOF, the parties hereto have entered into this Priority and Subordination Agreement as of the day and year first above written.

**WELLS FARGO BANK, NATIONAL ASSOCIATION**

By:  
Name:  
Title:

WELLS FARGO BANK NATIONAL ASSOCIATION  
Community Lending & Investment  
5400 LBJ Freeway, Suite 1000  
City, State Zip  
Ref : Loan # 1009691

***WELLS FARGO ACKNOWLEDGMENT***

STATE OF \_\_\_\_\_ |  
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 said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

*(Signature of Notary)*

*(Legibly Print or Stamp Name of Notary)*

Notary public for the State of Washington

My appointment expires \_\_\_\_\_

-

IN WITNESS WHEREOF, the parties hereto have entered into this Priority and Subordination Agreement as of the day and year first above written.

**CITY OF SPOKANE**, a Washington municipal corporation

By:  
Name: David A. Condon  
Title: Mayor

**Attest:**

**Approved as to form:**

By:  
Name: Terri L. Pfister  
Title: City Clerk

By:  
Name: James Richman  
Title: Assistant City Attorney

City of Spokane  
Community, Housing and Human Services Dept.  
808 W. Spokane Falls Blvd., Rm. 650  
Spokane, WA 99201

***CITY ACKNOWLEDGMENT***

STATE OF WASHINGTON

COUNTY OF SPOKANE

ss.

I certify that I know or have satisfactory evidence that **David A. Condon and Terri L. Pfister** are the persons who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the **Mayor** and **City Clerk**, respectively, of the **CITY OF SPOKANE**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



Dated this \_\_\_\_ day of \_\_\_\_\_, 2013.

*(Signature of Notary)*

*(Legibly Print or Stamp Name of Notary)*

Notary public in and for the State of Washington

My appointment expires \_\_\_\_\_

-

IN WITNESS WHEREOF, the parties hereto have entered into this Priority and Subordination Agreement as of the day and year first above written.

**THE DELANEY**, a Washington nonprofit corporation

By:  
Name:  
Title:

□

***THE DELANEY ACKNOWLEDGMENT***

STATE OF WASHINGTON

ss.

COUNTY OF SPOKANE

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of THE DELANEY, a Washington nonprofit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2013.

*(Signature of Notary)*

*(Legibly Print or Stamp Name of Notary)*

Notary public in and for the State of Washington  
My appointment expires

IN WITNESS WHEREOF, the parties hereto have entered into this Priority and Subordination Agreement as of the day and year first above written.

**CATHOLIC HOUSING SERVICES OF  
EASTERN WASHINGTON**, a Washington  
nonprofit corporation

By:  
Name: Dr. Robert J. McCann  
Title: President

□

***CATHOLIC HOUSING SERVICES ACKNOWLEDGMENT***

STATE OF WASHINGTON                   |  
  | ss.  
COUNTY OF SPOKANE

I certify that I know or have satisfactory evidence that Dr. Robert J. McCann is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the President of Catholic Housing Services of Eastern Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2013.

*(Signature of Notary)*

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington

My appointment expires \_\_\_\_\_

-

IN WITNESS WHEREOF, the parties hereto have entered into this Priority and Subordination Agreement as of the day and year first above written.

**THE DELANEY GROUP LLC**, a Washington limited liability company

By: The Delaney Group Manager LLC  
Its: Managing Member

By: Catholic Housing Services of Eastern Washington  
Its: Sole Member

By: \_\_\_\_\_  
Name: Dr. Robert J. McCann  
Title: President

□

***OWNER ACKNOWLEDGMENT***

STATE OF WASHINGTON

ss.

COUNTY OF SPOKANE

I certify that I know or have satisfactory evidence that Dr. Robert J. McCann is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the President of Catholic Housing Services of Eastern Washington, which is the the sole member of The Delaney Group Manager LLC, which is the managing member of The Delaney Group LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
*(Signature of Notary)*

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington  
My appointment expires \_\_\_\_\_

-

**BRIEFING PAPER**  
**City of Spokane**  
**Planning, Community & Economic Development Committee**  
**March 4, 2013**

---

**Subject**

Update on affordable rental housing projects, which have been allocated federal HOME funds through the Community, Housing, and Human Services Dept. and are expected to come before City Council in 2013.

**Background**

The City receives an allocation of federal funds from the U. S. Department of Housing and Urban Development (HUD) through its HOME Investment Partnerships Program, which is administered by the Community, Housing, and Human Services Dept. Eligible uses include the construction, rehabilitation, and acquisition of rental properties, which are affordable to low-income tenants. Eligible recipients include for-profit and non-profit housing providers and housing authorities.

**Impact**

HOME funds are the City's primary funding source for affordable housing development. Long-term requirements relating to rents and tenant incomes are imposed and a number of other federal requirements apply. Local funds are critical in obtaining other public funds, such as from WA State's Housing Trust Fund or the WA State Housing Finance Commission.

The attached table shows affordable housing projects that have been approved by Council, and pending projects which have been allocated funds and will come before Council soon. These projects were reviewed and approved by the Community, Housing, and Human Services Board at its 12/5/12 meeting, with its recommendation for approval by City Council. Pending projects are:

- The Delaney is an 83-unit building, originally constructed in 1912 as offices and currently occupied by low-income seniors. It is managed by Catholic Housing Services of Eastern Washington. A single asset entity will be formed to acquire, refinance, and renovate the building. Renovation work includes major systems, improvements to units and common areas, and reconfiguring the 83 units to be 71 units. The project has received an allocation of low-income housing tax credits and is working with HUD to refinance and to renew project-based rental assistance. Work is needed to meet federal requirements and local HOME program rehabilitation standards. Eleven units will be HOME units

with rents at 30% AMI. The HUD funds and tax credits will also have affordability restrictions.

- Lilac Plaza is a 175-unit, 13-story building, originally constructed in 1972 and renovated in 1997. It is currently occupied by low-income seniors and people with disabilities and managed by Spokane Baptist Association Homes. A single asset entity will be formed to acquire, refinance, and renovate the building. Renovation work includes major systems, and improvements to units and common areas. The project has received an allocation of low-income housing tax credits and is working with HUD to refinance and to renew project-based rental assistance. Currently, 100 units have project-based rental assistance. Eleven units will be HOME units with rents at 30% AMI. The HUD funds and tax credits will also have affordability restrictions.
- Vasilenko's Cook Rancher is the construction of a 5-bedroom single family residence which will be affordable to households at or below 50% of area median income.

### **Action**

Loan documents relating to The Delaney, Lilac Plaza and the Cook Rancher should be on the Council agenda for action before the end of the year.

### **Funding**

The HUD HOME program began in 1992 and the City's annual allocation of HOME funds ranged from \$1.4 to \$1.8 million from 1995 to 2011, and was reduced to \$963,593 in 2012. HOME's eligible uses include: rental housing (acquisition, rehabilitation, or construction), single family housing rehabilitation, tenant-based rental assistance, and homebuyer assistance.

The HOME Program is subject to a number of federal requirements and federal regulations. The Catalogue of Federal Domestic Assistance Number (CFDA) is 14.239. Additional HOME program information is available at: <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/>.

Most uses of HOME funds require a 25% match from non-federal sources. The match requirement is evaluated at the program level, not the level of each project. Thus far, the City has easily met the program match requirement.



**Approved by City Council**

Project name	Owner/Sponsor	Ownership type	City HOME funds	Total cost	Leverage 1 to X	Total no. of units	Unit type/ approx sq ft	Cost/ unit	Cost/ sq ft	Tenant income level	Allocation date	Council approval
Clare View Seniors 3214 E 44th (Southgate)	Clare View Seniors Apts LP/ Spokane Housing Ventures	Non-profit sponsor/ for-profit owner, LIHTC	\$400,000	\$11,051,214	26.6	61	10 1bd/641sf 50 2bd/870sf	\$181,167	\$166	ELI, VLI-40, LI-60	Oct-11	2012-747 10/1/2012
Pioneer Park Place 424 W 7th (Downtown/Cliff Cannon)	Pioneer Park Place GP LLC/ Community Frameworks	Non-profit sponsor/ for-profit owner, LIHTC, HUD 811	\$262,000	\$6,398,220	23.4	29	20 1bd/520-690sf 8 2bd/715-720sf	\$220,628	\$242	ELI, VLI-40, VLI-50, LI-60	Oct-11	2013-0073 2/4/2013
Sprague Union Terrace 1420-24 E Sprague (East Central)	Inland Empire Residential Resources	Non-profit	\$500,000	\$7,269,806	13.5	37	5 stu/400sf 29 1bd/575-585sf 3 2bd/995sf	\$196,481	\$193	ELI, VLI-50	May-11	2012-221 *6/20/2011 3/26/2012
	<b>Total</b>		<b>\$1,162,000</b>	<b>\$24,719,240</b>	<b>20.3</b>	<b>127</b>						

**Pending (allocated funds by Project Selection Advisory Committee)**

Project name	Owner/Sponsor	Ownership type	City HOME funds	Total cost	Leverage 1 to X	Total no. of units	Unit type & approx sq ft	Cost/ unit	Cost/ sq ft	Tenant income level	Allocation date	CHHS Board approval
The Delaney 242 W Riverside (Downtown)	Catholic Housing Services of Eastern Washington	Non-profit sponsor/ for-profit owner, LIHTC	\$300,000	\$7,566,586	24.2	71	70 1bd/414-440 sf 1 mngr	\$106,572	\$133	ELI, VLI-40, VLI-60	Nov-12	12/5/2012
Lilac Plaza 7007 N Wisconsin (Nevada Lidenwood)	Spokane Baptist Association Homes	Non-profit sponsor/ for-profit owner, LIHTC	\$300,000	\$7,269,806	23.2	175	126 stu/360-440sf 49 1bd/470-612sf	\$41,542	\$58	ELI, VLI-50, mkt	Nov-12	12/5/2012
Luhn House 2236 W Pacific (Brown's Addition)	Volunteers of America	Non-profit	\$37,500	\$235,000	5.3	1	1 6bd/4379sf	\$235,000	\$54	ELI, VLI-50	Oct-11	preceded CHHS Board
Cook Rancher 3403 S Cook (Lincoln Hts)	Vasilenko	For-profit	\$100,000	\$135,280	0.4	1	1 5bd/1868sf	\$135,280	\$72	VLI-50	Nov-12	12/5/2012
	<b>Total</b>		<b>\$737,500</b>	<b>\$15,206,672</b>	<b>19.6</b>	<b>248</b>						

Income levels relate to Spokane area median income (AMI):

- Extremely low-income (ELI)
- Very low-income (VLI-40)
- Very low-income (VLI-50)
- Low-income (LI-60)
- Low-income (LI-80)
- Market (MKT)
- Household income at or below 30% AMI.
- Household income at or below 40% AMI.
- Household income at or below 50% AMI.
- Household income at or below 60% AMI.
- Household income at or below 80% AMI.
- Unrestricted income.

LIHTC  
HUD 811  
Owners of low-income housing tax credits are for-profit single asset entities. Non-profits may be the managing member or general partner.  
Owners of HUD 811/202 projects are single asset entities owned and controlled by non-profits.

\*City Council approval of the reservation of HOME CHDO funds. Final approval of loan was 3/26/2012.

Prepared by Community Development Department, City of Spokane  
Contact: Meilora Sharts at 509.625.6325 or msharts@spokanecity.org  
Information as of 2/26/13

## Request for Taxpayer Identification Number and Certification

Give Form to the  
 requester. Do not  
 send to the IRS.

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return) <i>Delaney Group LLC</i>	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input checked="" type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <input type="checkbox"/> Other (see instructions) ▶ _____	
	<input type="checkbox"/> Exempt payee	
	Address (number, street, and apt. or suite no.) <i>12 E 5th Ave</i>	
City, state, and ZIP code <i>Spokane WA 99205</i>		
List account number(s) here (optional)		
Requester's name and address (optional)		

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number								

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Employer identification number								
46	-	1	7	1	9	0	8	4

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here	Signature of U.S. person ▶ <i>Crystal Hultzer</i>	Date ▶ <i>8/7/13</i>
-----------	---	----------------------

### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

#### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.



**Agenda Sheet for City Council Meeting of:**  
08/19/2013

<b>Date Rec'd</b>	8/7/2013
<b>Clerk's File #</b>	CPR 2013-0003
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	

<b>Submitting Dept</b>	ACCOUNTING
<b>Contact Name/Phone</b>	PAM DOLAN 6034
<b>Contact E-Mail</b>	PDOLAN@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Claim Item
<b>Agenda Item Name</b>	5600-ACCOUNTING-PAYROLL

**Agenda Wording**

Report of the Mayor of pending payroll claims of previously approved obligations through: August 3, 2013.  
Payroll check #515407 through check #515819 \$5,805,548.24

**Summary (Background)**

N/A

<b>Fiscal Impact</b>	<b>Budget Account</b>
Expense \$ 5,805,548.24	# N/A
Select \$	#
Select \$	#
Select \$	#

<b>Approvals</b>		<b>Council Notifications</b>	
<b>Dept Head</b>	DOLAN, PAM	<b>Study Session</b>	
<b>Division Director</b>	DUNIVANT, TIMOTHY	<b>Other</b>	
<b>Finance</b>	LESESNE, MICHELE	<b>Distribution List</b>	
<b>Legal</b>	DALTON, PAT		
<b>For the Mayor</b>	SANDERS, THERESA		

<b>Additional Approvals</b>			
<b>Purchasing</b>			

**PAYROLL RECAP BY FUND**  
**PAY PERIOD ENDING AUGUST 3, 2013**

FUND	FUND NAME	TOTAL
0100	GENERAL FUND	
0030	POLICE OMBUDSMAN	5,227.20
0070	ADMINISTRATIVE SERVICES	0.00
0140	ARTS	0.00
0230	CIVIL SERVICE	16,804.03
0260	CITY CLERK	11,490.41
0300	HUMAN SERVICES	0.00
0320	COUNCIL	19,687.92
0330	PUBLIC AFFAIRS / COMMUNICATIONS	8,473.55
0350	COMMUNITY CENTERS	0.00
0370	ENGINEERING SERVICES	158,808.16
0380	ENTERTAINMENT FACILITIES	1,112.06
0410	FINANCE	32,295.20
0440	FIRE	906,790.58
0450	CD/HS DIVISION	15,272.54
0470	HISTORIC PRESERVATION	2,908.80
0500	LEGAL	111,317.36
0520	MAYOR	23,131.20
0550	NEIGHBORHOOD SERVICES	7,113.20
05601	MUNICIPAL COURT	84,740.37
05602	PARKING VIOLATIONS	6,708.81
0570	OFFICE OF HEARING EXAMINER	5,218.40
0580	OFFICE OF YOUTH	0.00
0620	HUMAN RESOURCES	25,703.55
0650	PLANNING SERVICES	44,360.98
0680	POLICE	1,155,176.62
0690	PROBATION SERVICES	30,902.40
0700	PUBLIC DEFENDERS	68,202.10
0750	ECONOMIC DEVELOPMENT	6,584.00
0770	REAL ESTATE & FACILITIES	0.00
0780	BUSINESS & DEVELOPMENT SERVICES	0.00
0860	TREASURER	0.00
0890	WEIGHTS & MEASURES	0.00
	TOTAL GENERAL FUND	2,748,029.44



FUND	FUND NAME	TOTAL
1100	STREET	228,579.47
1200	CODE ENFORCEMENT	27,500.76
1300	LIBRARY	178,723.97
1390	URBAN FORESTRY FUND	9,837.70
1400	PARKS AND RECREATION	352,783.51
1460	PARKING METER	23,012.44
1510	LAW ENFORCEMENT INFO SYSTEM FUND	37,324.00
1530	LAW ENFORCEMENT BLOCK GRANT FUND	96.00
1540	HUMAN SERVICES GRANTS	0.00
1620	PUBLIC SAFETY & JUDICIAL GRANT	6,833.43
1630	COMBINED COMMUNICATIONS CENTER	60,460.20
1650	COMMUNITY & ECONOMIC DEVELOPMENT	0.00
1680	CD/HS	31,130.40
1820	WIA DISLOCATED WORKERS FUND	0.00
1830	WIA GOVERNORS GRANT FUND	0.00
1840	WIA ADMINISTRATIVE COST POOL	0.00
1970	EMS FUND	186,884.61
4100	WATER	377,627.28
4300	SEWER	436,013.58
4480	REFUSE	404,356.71
4490	SOLID WASTE	18,887.81
4600	GOLF	54,116.13
4700	GENERAL SERVICES FUND	103,685.29
5100	FLEET SERVICE	82,915.52
5200	PUBLIC WORKS & UTILITY FUND	54,073.97
5300	MIS	132,112.66
5600	ACCOUNTING SERVICES	140,894.03
5800	RISK MANAGEMENT	0.00
5810	WORKER'S COMPENSATION	11,367.52
5830	SELF-FUNDED MEDICAL/DENTAL	7,300.00
5900	ASSET MANAGEMENT	54,884.29
6060	CITY RETIREMENT	4,672.00
6750	REGIONAL PLAN	29,079.92
6780	EMS PROGRAM DIRECTOR	2,365.60
	TOTAL	<u>5,805,548.24</u>



**Agenda Sheet for City Council Meeting of:**

08/19/2013

<b>Date Rec'd</b>	8/8/2013
<b>Clerk's File #</b>	CPR 1992-0059
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	

<b>Submitting Dept</b>	MAYOR
<b>Contact Name/Phone</b>	JENNY MORTON 625.6250
<b>Contact E-Mail</b>	JJMORTON@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Boards and Commissions Appointments
<b>Agenda Item Name</b>	APPOINTMENT TO BICYCLE ADVISORY BOARD

**Agenda Wording**

Appoint Katherine Burke to serve a three-year term to begin immediately and expire August 19, 2016.

**Summary (Background)**

\*

<b>Fiscal Impact</b>		<b>Budget Account</b>
Select	\$	#
Select	\$	#
Select	\$	#
Select	\$	#
<b>Approvals</b>		<b>Council Notifications</b>
<b>Dept Head</b>		<b>Study Session</b>
<b>Division Director</b>		<b>Other</b>
<b>Finance</b>		<b>Distribution List</b>
<b>Legal</b>		jwestfall@spokanecity.org
<b>For the Mayor</b>	SANDERS, THERESA*	schesney@spokanecity.org
<b>Additional Approvals</b>		gwenchel@spokanecity.org
<b>Purchasing</b>		jjmorton@spokanecity.org



**Agenda Sheet for City Council Meeting of:**

08/19/2013

<b>Date Rec'd</b>	8/8/2013
<b>Clerk's File #</b>	CPR 2004-0017
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	

<b>Submitting Dept</b>	MAYOR
<b>Contact Name/Phone</b>	JENNY MORTON 625.6250
<b>Contact E-Mail</b>	JJMORTON@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Boards and Commissions Appointments
<b>Agenda Item Name</b>	REAPPOINTMENT TO HOTEL MOTEL COMMISSION

**Agenda Wording**

Appoint Wayne Paupst to serve a three-year term to begin immediately and expire August 19, 2016.

**Summary (Background)**

\*

<b>Fiscal Impact</b>		<b>Budget Account</b>	
Select	\$		#
Select	\$		#
Select	\$		#
Select	\$		#
<b>Approvals</b>		<b>Council Notifications</b>	
<b>Dept Head</b>		<b>Study Session</b>	
<b>Division Director</b>		<b>Other</b>	
<b>Finance</b>		<b>Distribution List</b>	
<b>Legal</b>		jwestfall@spokanecity.org	
<b>For the Mayor</b>	SANDERS, THERESA*	jjmorton@spokanecity.org	
<b>Additional Approvals</b>			
<b>Purchasing</b>			



**Agenda Sheet for City Council Meeting of:**

08/19/2013

<b>Date Rec'd</b>	8/7/2013
<b>Clerk's File #</b>	RES 2013-0062
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	

<b>Submitting Dept</b>	COMMUNITY, HOUSING & HUMAN SERVICES
<b>Contact Name/Phone</b>	JERRIE ALLARD 625-6325
<b>Contact E-Mail</b>	JALLARD@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Resolutions
<b>Agenda Item Name</b>	1680 HUMAN SERVICES GRANT FUNDS/STATE AND FEDERAL GRANT RESOURCES

**Agenda Wording**

A resolution establishing the City Council's human services funding priorities for the 2014 Human Services Grant (HSG).

**Summary (Background)**

The CHHS Board will be concluding their process to develop proposed human services grant funding priorities at their 8/7/13 mtg. In order to maintain the timeline for a coordinated RFP that includes the HSG funds along with state and federal grant resources, the Board is seeking Council adoption of the HS priorities at its 8/19/13 mtg. A briefing paper along with a draft Resolution will be submitted to the Clerk's office following the CHHS Board mtg and will be included in the full agenda packet

**Fiscal Impact**

Select	\$
Select	\$
Select	\$
Select	\$

**Budget Account**

#
#
#
#

**Approvals**

<b>Dept Head</b>	ALLARD, JERRIE
<b>Division Director</b>	MALLAHAN, JONATHAN
<b>Finance</b>	LESESNE, MICHELE
<b>Legal</b>	BURNS, BARBARA
<b>For the Mayor</b>	SANDERS, THERESA

**Council Notifications**

<b>Study Session</b>	4/25/13 & 8/15/13
<b>Other</b>	

**Distribution List**

**Additional Approvals**

<b>Purchasing</b>	



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

A resolution establishing the City Council's human services funding priorities for the 2014 Human Services Grant Program.

WHEREAS, on June 19, 2006, the City Council passed Resolution 2006-0070 calling for the City Council to annually establish its priorities of areas of human services to be funded from the City's Human Services grant funds, and;

WHEREAS, on July 9, 2007, the City Council passed Resolution 2007-0076, approving minor changes to the priorities in order to be responsive to the downtown housing crisis at that time, and;

WHEREAS, on June 28, 2008, the City Council passed Resolution 2007-0070, approving minor changes to the priorities, and;

WHEREAS, on August 24, 2009, the City Council passed Resolution 2009-0069, approving minor changes to the priorities and adding funding principles, and;

WHEREAS, on August 16, 2010, the City Council passed Resolution 2010-0052, approving minor modifications of the priorities and funding principles, and;

WHEREAS, on September 10, 2012, the City Council created the Community, Housing and Human Services Board, assigning the duties and responsibilities of the Human Services Board to the Community, Housing and Human Services Board, and;

WHEREAS, the Community, Housing and Human Services Board has completed its review of current trends and human services data regarding the annual funding priorities and is proposing the following statement to serve as the priority for the 2014 funding cycle;

High priority service needs that support low income individuals and households, including homeless shelters, food banks, health care, neighborhood-based services and other programs that address emergency needs.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPOKANE that the City Council adopts the recommended priority statement to guide the Human Services Grant Program allocations t with general funds allocated in the 2014 budget:

APPROVED BY CITY COUNCIL ON \_\_\_\_\_

---

City Clerk

Approved as to form:

---

Assistant City Attorney

# Community, Housing and Human Services Board



## Vision

To provide opportunities that enhance the quality of life for Spokane's extremely low to moderate income populations.

## Mission

To provide leadership and foster partnerships that support the City's investments in services, affordable housing and economic opportunities to foster the highest level of self-sufficiency and quality of life for Spokane's extremely low to moderate income households.

## Board Priorities

- Focusing our efforts and resources to benefit low to moderate income citizens
- Access to basic needs such as food, shelter, housing and health care
- Preserve and expand affordable housing
- Promote economic self-sufficiency
- Support vibrant neighborhoods
- Targeted area capital investments that improve quality of life

## Overarching Principles

Foster collaboration

Promote innovation

Ensure measureable results

Leverage resources

Strengthen community safety-net and quality of life

Enhance coordination of housing and services



# 2014 Coordinated Grant Process Funding Priorities



## Public/Human Services Grant Programs

High priority service needs that support low to moderate income individuals and households, including homeless shelters, food banks, health care, neighborhood-based services and other programs that address emergency needs.

## Capital, Housing & Economic Development

- High priority capital needs that support vibrant neighborhoods and public facilities which serve low to moderate income households.
- Preserve and expand affordable housing for high need, homeless and low to moderate income households.
- Increase economic security and self-sufficiency for low to moderate income households while enhancing community assets through targeted infrastructure investments.

## Homelessness Grant Programs

Applications must align with The Road Home and HUD's goals toward ending homelessness.

High priority populations include homeless families, youth, veterans, chronically homeless and those with extensive barriers to housing.

Strategies include coordinated assessment, rapid re-housing, housing first, transitional housing and permanent supportive housing for those needing more intensive services and emergency shelter when no other means of housing is available.



## **BRIEFING PAPER**

### **City of Spokane**

Community, Housing and Human Services Department (CHHS)

*RE: CHHS Board Proposed Funding Principles and Priorities  
2014 Human Services General Fund Grant*

August 8, 2013

---

#### **Subject**

City Council approval of the proposed Community, Housing and Human Services Board funding priorities for the 2014 Human Services Grant Program.

#### **Background**

In 2012, the City consolidated the Human Services, Community Development Boards and the Homeless Governance Council into one Board, the Community, Housing and Human Services Board (CHHS). The CHHS board assumed the responsibility of recommending to City Council the funding priorities for the Human Services Grant process.

Current City resolution (2006-0070) calls for funding priorities for Human Services grants to be set annually by the City Council in consideration of recommendations submitted by the Board. Priorities are to be needs driven, community-based, of the mind-set of basic needs or of a safety-net approach, and in accordance with long-term intentions. The Board was tasked with evaluating these priorities and proposing any changes they feel are necessary to guide the 2014 funding cycle of the grant program.

Over the past few months, the Board has followed a process that was cooperatively established by members of the City Council and the CHHS board for this purpose. It has reviewed human services needs and trends as well as how the human services priorities fit within the context of the boards overall investments addressing community development, housing, public services and homelessness goals and strategies.

At its August 7, 2013 meeting, the CHHS Board approved their over-arching priorities and principles along with their recommended 2014 Human Services Grant program funding priorities (attached).

#### **Action**

The Board is seeking City Council approval of their recommended 2014 Human Services funding priorities.

#### **Fiscal Impact**

The amount of the dollars available for the Human Services Grant program will be determined through the 2014 budgeting process.

**Staff Recommendation**

Approve as presented.

**Timeline**

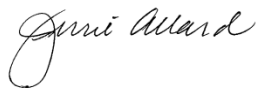
August 15, 2013: 2<sup>nd</sup> Study Session with City Council

August 19, 2013: Anticipated Council Vote on proposed human services priorities

August 20, 2013: Release of 2014 Coordinated Request for Proposals, including human services grant funds

January 2014: Human Services funding recommendations brought forward to Council for consideration

Respectfully Submitted,



Community, Housing and Human Services Director

See attached



OFFICE OF THE CITY CLERK  
808 W. SPOKANE FALLS BLVD  
SPOKANE, WASHINGTON 99201-3342  
509.625.6350

August 6, 2013

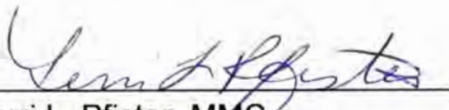
City Clerk File No.:  
ORD C35018

COUNCIL ACTION MEMORANDUM

RE: FINAL READING ORDINANCE C35018 RELATING TO THE CITY'S USE OF SURVEILLANCE EQUIPMENT

During the Spokane City Council 3:30 p.m. Briefing Session held Monday, August 5, 2013, Council President Stuckart requested a motion **to defer** Final Reading Ordinance C35018 to August 19, as he is still working with the City Attorney's Office, some community members, and the Prosecutor's Office to make sure the ordinance contains completely correct language.

**Motion** by Council Member Fagan, seconded by Council Member Allen, to so move (to defer Final Reading Ordinance C35018 to August 19); **carried unanimously.**

  
Terri L. Pfister, MMC  
Spokane City Clerk



**Agenda Sheet for City Council Meeting of:**  
07/29/2013

<b>Date Rec'd</b>	7/17/2013
<b>Clerk's File #</b>	ORD C35018
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	

<b>Submitting Dept</b>	CITY COUNCIL
<b>Contact Name/Phone</b>	BEN STUCKART 625.6258
<b>Contact E-Mail</b>	BSTUCKART@SPOKANECITY.ORG
<b>Agenda Item Type</b>	First Reading Ordinance
<b>Agenda Item Name</b>	0320 DRONE ORDINANCE

**Agenda Wording**

AN ORDINANCE relating to the City of Spokane's use of surveillance equipment; requiring City departments to obtain City Council approval prior to acquiring certain surveillance equipment.

**Summary (Background)**

This ordinance creates a new chapter in the SMC regulating the acquisition and use of surveillance equipment, including drones. The ordinance will require city departments to obtain City Council approval by resolution for the acquisition, deployment and installation of surveillance equipment. City departments shall develop operational protocols for the use of surveillance equipment at the time the department seeks City Council approval, including data management protocol.

<b>Fiscal Impact</b>		<b>Budget Account</b>	
Select	\$		#
Select	\$		#
Select	\$		#
Select	\$		#
<b>Approvals</b>		<b>Council Notifications</b>	
<b><u>Dept Head</u></b>	WESTFALL, JENNIFER	<b><u>Study Session</u></b>	
<b><u>Division Director</u></b>		<b><u>Other</u></b>	
<b><u>Finance</u></b>	LESESNE, MICHELE	<b>Distribution List</b>	
<b><u>Legal</u></b>	BURNS, BARBARA		
<b><u>For the Mayor</u></b>	SANDERS, THERESA		
<b>Additional Approvals</b>			
<b><u>Purchasing</u></b>			





# Continuation of Wording, Summary, Budget, and Distribution

## **Agenda Wording**

requiring departments to adopt written protocols that address data retention, storage and access of any data obtained through the use of certain surveillance equipment, and adopting a new chapter 1.08 to title 1 of the Spokane Municipal Code.

## **Summary (Background)**

The ordinance shall not prevent a city department from acquiring and using surveillance equipment, except for drones, that is used on a temporary basis for criminal investigation purposes or pursuant to a lawfully issued search warrant. This ordinance shall not apply to surveillance equipment installed on park property under the jurisdiction of the Parks Department or library property under the jurisdiction of the Library Board with the exception of surveillance cameras mounted on drones or unmanned aircrafts.

## **Fiscal Impact**

<b><u>Fiscal Impact</u></b>		<b><u>Budget Account</u></b>
Select	\$	#
Select	\$	#
Select	\$	#
Select	\$	#

## **Distribution List**


## ORDINANCE NO. C35018

AN ORDINANCE relating to the City of Spokane's use of surveillance equipment; requiring City departments to obtain City Council approval prior to acquiring certain surveillance equipment; requiring departments to propose protocols related to proper use and deployment of certain surveillance equipment for Council review, requiring departments to adopt written protocols that address data retention, storage and access of any data obtained through the use of certain surveillance equipment, and adopting a new chapter 1.08 to title 1 of the Spokane Municipal Code.

WHEREAS, the previous installation of video cameras by the City on City property and facilities have raised concerns over privacy and the lack of public process leading up to the decisions to use certain surveillance equipment; and

WHEREAS, while surveillance equipment may help promote public safety in some contexts, such as red light cameras and dashboard video cameras in police vehicles, the benefits of such technologies should be balanced with the need to protect privacy and anonymity, free speech and association, and equal protection; and

WHEREAS, while the courts have established that people generally do not have a reasonable expectation of privacy in public settings, the City should be judicious in its use of surveillance equipment to avoid creating a constant and pervasive surveillance presence in public life; and

WHEREAS, all City departments should seek approval from the City Council prior to the acquisition and operation of certain surveillance equipment; and

WHEREAS, City departments should also propose specific protocols for Council review and approval that address the appropriate use of certain surveillance equipment and any data captured by such equipment; and

WHEREAS, City departments should also develop protocols for retaining, storing, and accessing data captured by surveillance equipment consistent with state law; - - Now, Therefore,

The City of Spokane does ordain:

Section 1. That there is adopted a new chapter 1.08 to title 1 of the Spokane Municipal Code to read as follows:

## **Chapter 1.08 Acquisition and Use of Surveillance Equipment**

### Sections:

- 1.08.010 Definitions
- 1.08.020 Council Approval for City Department Acquisition and Operations of Surveillance Equipment
- 1.08.030 Data Management Protocols for Surveillance Equipment
- 1.08.040 Acquisition and Use of Surveillance Equipment Related to Law Enforcement Investigations
- 1.08.050 Prior Use of Surveillance Equipment

### **1.08.010 Definitions**

The following definitions apply to this chapter 1.08 SMC.

- A. "Data management protocols" generally means procedures governing how data collected by surveillance equipment will be retained, stored, indexed and accessed. Information comprising data management protocols includes, at a minimum, the information required in SMC 1.08.030.
- B. "Operational protocols" generally means procedures governing how and when surveillance equipment may be used and by whom. Information comprising operational protocols includes, at a minimum, the information required in SMC 1.08.020.
- C. "Surveillance equipment" means equipment capable of capturing or recording data, including images, videos, photographs or audio operated by or at the direction of a City department that may deliberately or inadvertently capture activities of individuals on public or private property, regardless of whether "masking" or other technology might be used to obscure or prevent the equipment from capturing certain views. "Surveillance equipment" includes drones or unmanned aircraft and any attached equipment used to collect data. "Surveillance equipment" does not include:
  - 1. a handheld or body-worn device used by law enforcement,
  - 2. a camera installed in or on a police vehicle,
  - 3. a camera installed in or on any vehicle, such as fire trucks, emergency vehicles, utility vehicles and street maintenance vehicles intended for the safe operation of the vehicles;
  - 4. a camera installed along a public right-of-way intended to record traffic patterns and/or traffic violations,

5. a camera intended to record activity inside or at the entrances to City buildings for security purposes, and
6. a camera installed to monitor and protect the physical integrity of City infrastructure, such as City fire stations and utility service facilities.

**1.08.020 City Council Approval for City Department Acquisition and Operations of Surveillance Equipment**

- A. Any City department intending to acquire surveillance equipment shall obtain city council approval pursuant to a resolution prior to acquisition. Prior to deployment or installation of the surveillance equipment, City departments shall obtain city council approval pursuant to a resolution of operational protocols, unless applicable operational protocols were previously approved by a resolution. In requesting approval for acquisition of surveillance equipment, City departments shall include proposed operational protocols containing the following information for the city council's consideration, along with any other information specifically requested by the city council:
1. A clear statement describing the purpose and use of the proposed surveillance equipment.
  2. The type of surveillance equipment to be acquired and used.
  3. The intended specific location of such surveillance equipment if affixed to a building or other structure.
  4. How and when a department proposes to use the surveillance equipment, such as whether the equipment will be operated continuously or used only under specific circumstances, and whether the equipment will be installed permanently or temporarily
  5. A description of the privacy and anonymity rights affected and a mitigation plan describing how the department's use of the equipment will be regulated to protect privacy, anonymity, and limit the risk of potential abuse.
  6. A description of how and when data will be collected and retained and who will have access to any data captured by the surveillance equipment.
  7. The extent to which activity will be monitored in real time as data is being captured and the extent to which monitoring of historically recorded information will occur.
  8. A public outreach plan for each community in which the department intends to use the surveillance equipment that includes opportunity for

public meetings, a public comment period, and written agency response to these comments.

9. If a department is requesting to acquire or use drones or other unmanned aircraft, it shall propose the specific circumstances under which they may be deployed, along with clearly articulated authorization protocols.
  10. If more than one department will have access to the surveillance equipment or the data captured by it, a lead department shall be identified that is responsible for maintaining the equipment and ensuring compliance with all related protocols. If the lead department intends to delegate any related responsibilities to other departments and city personnel, these responsibilities and associated departments and personnel shall be clearly identified.
  11. Whether a department intends to share access to the surveillance equipment or the collected data with any other government entity.
  12. A description of the training to be provided to operators or users of the surveillance equipment.
- B. Upon review of the information required under this section, and any other information deemed relevant by the city council, the city council may approve the acquisition and operation of surveillance equipment, approve the acquisition of surveillance equipment and require future city council approval for operations, deny the acquisition or use of surveillance equipment for the purpose proposed, or take other actions.

#### **1.08.030 Data Management Protocols for Surveillance Equipment**

- A. Prior to operating surveillance equipment acquired after the effective date of this chapter, City departments shall submit written protocols for managing data collected by surveillance equipment to the city council. The city council may require that any or all data management protocols required under this section be approved by resolution. These data management protocols shall address the following:
1. The time period for which any data collected by surveillance equipment will be retained.
  2. The methods for storing recorded information, including how the data is to be labeled or indexed. Such methods must allow for the department personnel to readily search and locate specific data that is collected and determine with certainty that data was properly deleted, consistent with applicable law.

3. How the data may be accessed, including who will be responsible for authorizing access, who will be allowed to request access, and acceptable reasons for requesting access.
4. A viewer's log or other comparable method to track viewings of any data captured or collected by the surveillance equipment, including the date, time, the individuals involved, and the reason(s) for viewing the records.
5. A description of the individuals who have authority to obtain copies of the records and how the existence and location of copies will be tracked.
6. A general description of the system that will be used to store the data.
7. A description of the unit or individuals responsible for ensuring compliance with SMC 1.08.030 and when and how compliance audits will be conducted.

#### **1.08.040 Acquisition and Use of Surveillance Equipment Related to Law Enforcement Investigations**

Notwithstanding the provisions of this chapter, City departments may acquire or use surveillance equipment(excluding drones) that is used on a temporary basis for criminal investigative purposes or pursuant to a lawfully issued search warrant, or under exigent circumstances as defined in case law. The provisions of this chapter shall not apply to surveillance equipment installed on park property under the jurisdiction of the park board and library property under the jurisdiction of the library board of trustees. The exemptions from the provisions of this chapter set forth above do not apply to surveillance cameras mounted on drones or other unmanned aircraft.

#### **1.08.050 Prior Use of Surveillance Equipment**

- A. Unless the city council previously approved operational protocols by resolution for department surveillance equipment, each City department operating surveillance equipment prior to the effective date of this chapter shall propose written operational protocols consistent with SMC 1.08.020 no later than thirty days following the effective date of this chapter for city council review and approval by resolution.
- B. Each department operating surveillance equipment prior to the effective date of this chapter shall adopt written data management protocols consistent with SMC 1.08.030 no later than thirty days following the effective date of this chapter and submit these protocols to the city council for review and possible approval by resolution

Section 2. Following one year after the effective date of this ordinance, the city council will review its implementation as it applies to city department use of surveillance equipment.

PASSED BY THE CITY COUNCIL ON \_\_\_\_\_, 2013.

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

Attest:

Approved as to form:

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

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

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

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



**Agenda Sheet for City Council Meeting of:**

08/05/2013

<b>Date Rec'd</b>	7/24/2013
<b>Clerk's File #</b>	ORD C35020
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	

<b>Submitting Dept</b>	PARKS & RECREATION
<b>Contact Name/Phone</b>	LEROY EADIE 625-6204
<b>Contact E-Mail</b>	LEADIE@SPOKANECITY.ORG
<b>Agenda Item Type</b>	First Reading Ordinance
<b>Agenda Item Name</b>	1400 ORDINANCE CREATING DEPARTMENTS WITHIN THE PARKS & RECREATION DIVISION

**Agenda Wording**

Ordinance creating departments within the Parks and Recreation division; amending SMC section 3.01A.360; and adoption of new sections 3.01A361, 3.01A362 and 3.01A.363 to chapter 3.01A of the Spokane Municipal Code.

**Summary (Background)**

On May 9, 2013 Park Board approved a resolution supporting the City Council's reclassification of the Parks Division (both existing or redefined) Manager existing and future positions in Spokane Parks and Recreation as exempt employees in order to allow the Director the ability to assemble a management team that can meet all the demands of providing Parks and Recreation services for the citizens of Spokane.

**Fiscal Impact**

Select	\$
Select	\$
Select	\$
Select	\$

**Budget Account**

#
#
#
#

**Approvals**

<b>Dept Head</b>	EADIE, LEROY
<b>Division Director</b>	
<b>Finance</b>	LESESNE, MICHELE
<b>Legal</b>	BURNS, BARBARA
<b>For the Mayor</b>	SANDERS, THERESA

**Council Notifications**

<b>Study Session</b>	
<b>Other</b>	6/19/2013 Finance Committee

**Distribution List**

leadie@spokanecity.org
pdalton@spokanecity.org
jfaught@spokanecity.org
hlowe@spokanecity.org
gkibbey@spokanecity.org



## ORDINANCE NO. C35020

AN ORDINANCE creating departments within the Parks and Recreation division; amending SMC section 3.01A.360; and adopting new sections 3.01A.361, 3.01A.362 and 3.01A.363 to chapter 3.01A of the Spokane Municipal Code.

The City of Spokane does ordain:

Section 1. That SMC section 3.01A.360 is amended to read as follows:

### **3.01A.360 Parks and Recreation**

- A. The procurement, disposition, improvement and management of parks, playgrounds, designated boulevards, designated parkways, trees in streets and other rights-of-way, and other designated public places is vested in the park board. The park board and its committees perform their function through the ~~((department))~~ division of parks and recreation. The park board is also authorized by Spokane city charter to adopt a budget for the parks and recreation ~~((department))~~ division.
- B. The parks and recreation ~~((department))~~ division serves as administrative staff to, and receives policy direction from, the park board and receives administrative direction from the mayor. The parks and recreation ~~((department))~~ division ~~((performs))~~ oversees a complement of duties at the direction of the park board, including but not limited to:
1. design, development and maintenance of parks, gardens, the arboretum, swimming pools and recreational grounds and facilities;
  2. development and management of the urban forestry program;
  3. operation and management of the municipal golf courses;
  4. operation and development of a variety of recreational programs serving the public;
  5. operation, maintenance and promotion of grounds facilities and activities at Riverfront Park;
  6. acquisition and long-range planning for future parks and open spaces as well as recreational services; and
  7. promotion, public relations, financial control and reporting.

- C. The municipal golf courses may be operated directly by the parks and recreation ((~~department~~)) division or may be operated by licensed golf professionals under contract with the ((~~department~~)) division.

Section 2. That there is adopted a new section 3.01A.361 to chapter 3.01A of the Spokane Municipal Code to read as follows:

### **3.01A.361 Parks Finance / Budget**

The parks finance / budget department performs responsible administrative and professional work for the finance and budget functions of the parks and recreation division, which includes monthly financial reporting to the division director and park board, oversight of all accounting practices and procedures in the division, formulation of accounting and financial methods and procedures as needed, preparation of the annual budget with guidance and direction from the division director, and serving as administrative staff to the finance committee of the park board.

Section 3. That there is adopted a new section 3.01A.362 to chapter 3.01A of the Spokane Municipal Code to read as follows:

### **3.01A.362 Parks Operations**

The parks operations department performs responsible administrative and professional work for the parks operations functions of the parks and recreation division, which includes supervision of technical and supervisory personnel, drafting of policies and procedures as needed, negotiating and administering contracts, preparing and administering an annual budget adopted by the park board, and serving as administrative staff to the land committee of the park board.

Section 3. That there is adopted a new section 3.01A.363 to chapter 3.01A of the Spokane Municipal Code to read as follows:

### **3.01A.363 Parks Recreation / Entertainment**

The parks recreation / entertainment department performs responsible administrative and professional work for the recreation and riverfront park functions of the parks and recreation division, which includes supervision of technical and supervisory personnel, drafting of policies and procedures as needed, negotiating and administering contracts, preparing and administering an annual budget adopted by the park board, and serving as administrative staff to the recreation and riverfront park committees of the park board.

PASSED BY THE CITY COUNCIL ON \_\_\_\_\_

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

Attest:

Approved as to form:

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

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

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

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

# AGENDA SHEET FOR PARK BOARD MEETING OF: May 9, 2013

Submitting Division  
Administration

Contact Person  
Leroy Eadie

Phone No.  
625-6204



**COMMITTEE**

- Riverfront
- Golf
- Recreation
- Land
- Urban Forestry
- North Bank Ad-Hoc
- Finance

CLERK'S FILE  
RENEWS  
CROSS REF  
ENG  
BID  
REQUISITION

OPR 2013-0450

*Ng 6.11.2013*

**AGENDA WORDING:**

A resolution supporting creation of exempt positions in Parks and Recreation.

**BACKGROUND:**

(Attach additional sheet if necessary)

Park Board wishes to support the City Council's codification through SMC 3.01A Parks and Recreation as a City Division/Department with reporting Departments that reflect the existing and future organizational structure.

**RECOMMENDATION:** Approve Resolution

**Fiscal Impact:**

**Budget Account**

Expenditure:  
Revenue:  
 Budget neutral

**ATTACHMENTS:** Include in Packets: Resolution  
On file for Review in Office of City Clerk:

**SIGNATURES:**

Requestor

*Kathleen Keck*  
\_\_\_\_\_  
Parks Accounting

*Tim Dunivant*  
\_\_\_\_\_  
Legal Department

*Jacki Faught*  
\_\_\_\_\_  
Director of Parks and Recreation

**DISTRIBUTION:**

Parks, Kathleen Keck  
Risk Manager, Tim Dunivant

Parks, Leroy Eadie  
Legal, Pat Dalton

Parks, Jacki Faught

**PARK BOARD ACTION:**

**RECEIVED**

JUN 11 2013

CITY CLERK'S OFFICE  
SPOKANE, WA

APPROVED BY

SPOKANE PARK BOARD:

*Jacki Faught*  
\_\_\_\_\_  
MAY 9 2013  
PARK BOARD

## **CITY OF SPOKANE PARK BOARD**

### **RESOLUTION**

A Resolution supporting creation of exempt positions in Parks and Recreation

WHEREAS, the Park Board is empowered by the City Charter to lay out, establish, purchase, procure, accept, and have the care, management control and improvement of, all parks and grounds used for park purposes, all boulevards, connecting parks and structures thereon, and all parkways, and

WHEREAS the Park Board is empowered by the City Charter to exercise supervision over all shade trees, shrubs and plants of all kinds on or in the streets and public places of the city, and over all resting places, water stations, playgrounds and parade grounds, and

WHEREAS the Park Board is empowered by the City Charter to make rules and regulations for the use of parks and provide for the enforcement of such rules and regulations, and

WHEREAS the Park Board is empowered by the City Charter to improve and adorn parks and park property and do all things necessary or proper to render the parks or other property of value to the public, and

WHEREAS the Park Board is empowered by the City Charter to grant concessions, leases and privileges under such restrictions and for such compensation as it shall prescribe, and

WHEREAS the Park Board is empowered by the City Charter to adopt an annual budget for Parks and Recreation, and

WHEREAS, the Parks and Recreation Department has an annual Park Fund operating budget of over \$17.5 million (inclusive of the 8% from the General Fund as mandated by City Charter), and an annual Golf Fund operating budget of over \$3 million, and

WHEREAS, the Parks and Recreation Department has three major divisions: Park Operations, Recreation and Entertainment, and Budget/Finance run by Division Managers who have a greater annual salary and responsibility than many other exempt Department Directors within the City, and,

WHEREAS the Parks and Recreation Department has over 80 full time employees and hundreds of temporary seasonal employees of which the Director is the only exempt employee, and,

WHEREAS the Park Board needs a Director who can assemble the best team of Park's Division Managers possible, and

WHEREAS Parks and Recreation is the only major Department in the City of Spokane that only has one exempt employee, and

WHEREAS future Park Division Manager positions created within the Parks and Recreation Department's Budget shall also be exempt, and

WHEREAS the Park Board understands that if approved these exempt positions would no longer be Civil Service classified positions yet they will still be represented by the Managerial and Professional Association.

WHEREAS this resolution supports the City Council's codification through SMC 3.01 Parks and Recreation as a City Division/Department with Departments that reflect the existing and future organizational structure.


NOW THEREFORE, IT IS HEREBY RESOLVED that the Park Board supports the City Council's reclassification of Park Division (both existing or redefined Divisions) Manager existing and future positions in Spokane Parks and Recreation as exempt employees in order to allow the Director the ability to assemble a management team that can meet all the demands of providing Parks and Recreations services for the citizens of Spokane. It is the intent of the Park Board that if future Park's Division Manager Positions are created in the Spokane Parks and Recreation Department that those positions also be exempt.

Dated this 9<sup>th</sup> day of May, 2013.

  
\_\_\_\_\_  
Park Board President

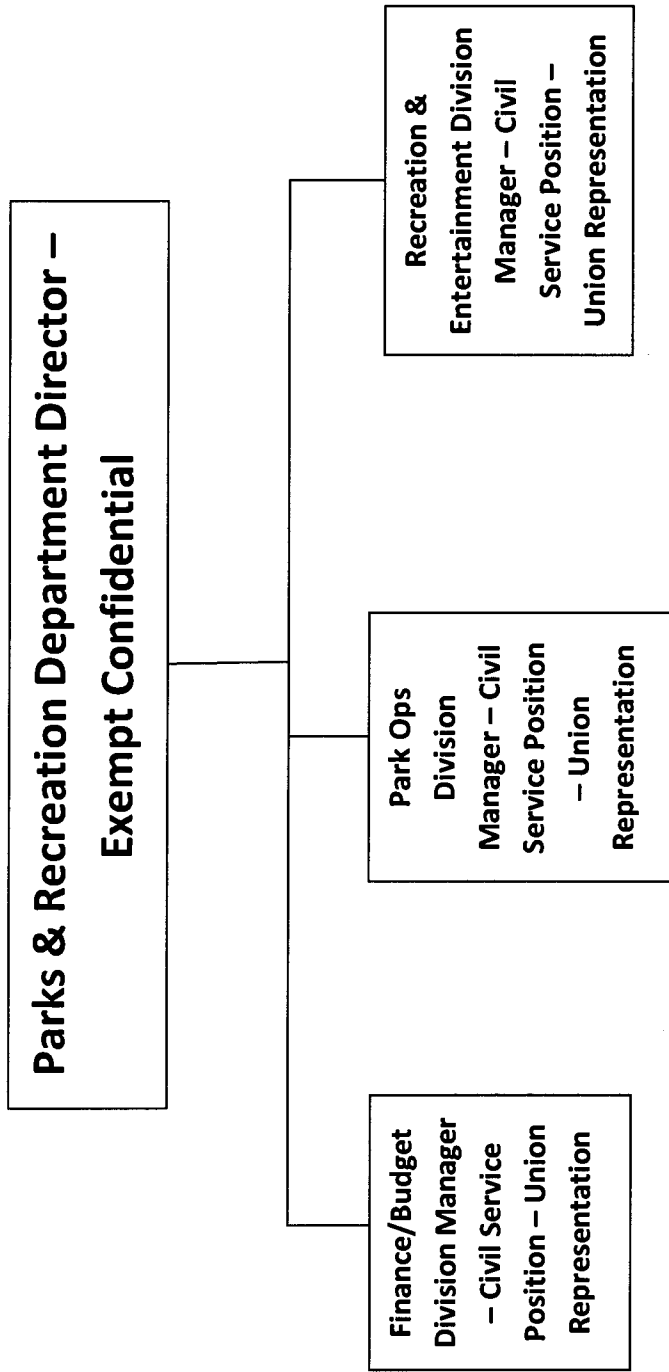
Approved as to form:

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

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

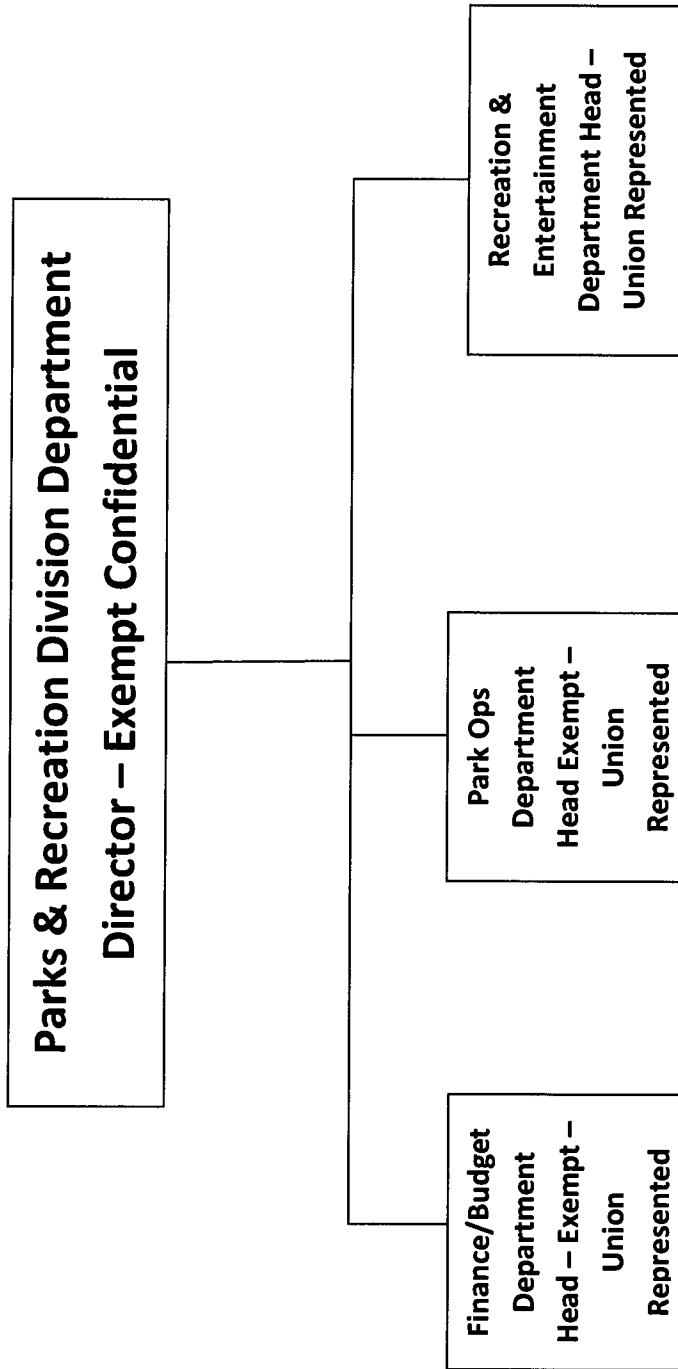


# Parks and Recreation Department Today



# Parks and Recreation Division Department Tomorrow

(per SMC 3.01)



## Notes:

Total # of exempt positions that could be created in Parks by statute is 8.

It is currently the intent to have 4 exempt positions in Parks, which are all in the existing adopted budget.

Any new positions would have to be approved in the Park Budget by the Park Board.

Salary or benefits will not change for the 3 positions that are proposed to become exempt





**Agenda Sheet for City Council Meeting of:**  
08/19/2013

<b>Date Rec'd</b>	8/7/2013
<b>Clerk's File #</b>	ORD C35021
<b>Renews #</b>	
<b>Cross Ref #</b>	RES 2012-0079
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	

<b>Submitting Dept</b>	WASTEWATER MANAGEMENT
<b>Contact Name/Phone</b>	DALE ARNOLD 625-7900
<b>Contact E-Mail</b>	DARNOLD@SPOKANECITY.ORG
<b>Agenda Item Type</b>	First Reading Ordinance
<b>Agenda Item Name</b>	4310 LOW IMPACT DEVELOPMENT

**Agenda Wording**

An ordinance regarding low impact development and amending SMC sections 13.03.1112; 13.03.1137; 17A.020.120; 17C.110.410; 17C.120.230; 17C.130.230; 17C.200.060; 17D.060.030; 17H.010.020; 17H.010.030 and adopting a new section 17D.060.300 to (cont.)

**Summary (Background)**

The proposed SMC amendments encourage and incentivize the use of low impact development (LID) in Spokane. Ordinance language was created pursuant to a Consent Decree with the Spokane Riverkeeper and in preparation of future NPDES permit requirements to allow developers to use LID to meet stormwater management requirements. The proposed amendments include provisions for stormwater fee discounts, allows for the use of pervious concrete on sidewalks, encourages LID in street layout (cont.)

<b>Fiscal Impact</b>		<b>Budget Account</b>	
Neutral	\$		#
Select	\$		#
Select	\$		#
Select	\$		#
<b>Approvals</b>		<b>Council Notifications</b>	
<b>Dept Head</b>	ARNOLD, DALE	<b>Study Session</b>	July 29, 2013
<b>Division Director</b>	ROMERO, RICK	<b>Other</b>	
<b>Finance</b>	LESESNE, MICHELE	<b>Distribution List</b>	
<b>Legal</b>	BURNS, BARBARA	pdolan@spokanecity.org	
<b>For the Mayor</b>	SANDERS, THERESA	Tax & Licenses	
<b>Additional Approvals</b>		darnold@spokanecity.org	
<b>Purchasing</b>		lhendron@spokanecity.org	
		rromero@spokanecity.org	
		eschoedel@spokanecity.org	
		lschmidt@spokanecity.org	



# Continuation of Wording, Summary, Budget, and Distribution

## **Agenda Wording**

chapter 17D of the Spokane Municipal Code.

## **Summary (Background)**

design, and adopts the Eastern Washington LID Guidance Manual as an optional reference for guidance on the design of stormwater facilities.

## **Fiscal Impact**

Select \$

Select \$

Select \$

Select \$

## **Budget Account**

#

#

#

#

## **Distribution List**


ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE regarding low impact development and amending SMC sections 13.03.1112; 13.03.1137; 17A.020.120; 17C.110.410; 17C.120.230; 17C.130.230; 17C.200.060; 17D.060.030; 17H.010.020; 17H.010.030 and adopting a new section 17D.060.300 to chapter 17D of the Spokane Municipal Code; and setting an effective date..

WHEREAS, in December 2009, the Riverkeeper, a program of the Center for Justice in Spokane, Washington, filed a 60-day notice with the City of Spokane alleging violation of the City's Phase II Permit from the Washington State Department of Ecology and the federal Clean Water Act; and

WHEREAS, on August 23, 2011, the City of Spokane and the Riverkeeper entered into a Consent Decree ("Consent Decree") in an effort to improve the water quality of the Spokane River consistent with the goal and objectives of the Clean Water Act; and

WHEREAS, as part of the Consent Decree, the City of Spokane is required to by August 23, 2013, develop a draft ordinance with monetary and other incentives for encouraging Low Impact Development (LID); and present the draft ordinance to City Council for consideration; and

WHEREAS, simultaneously to this process, the Eastern Washington LID Guidance Manual is being prepared to provide site planning tools, best management practices and information for creating a strong LID program and will be incorporated into the LID ordinance process; and

WHEREAS, the City of Spokane has developed a Draft LID Ordinance which outlines incentives for encouraging Low Impact Development; -- Now, Therefore,

The City of Spokane does ordain:

Section 1. That SMC section 13.03.1137 is amended to read as follows:

**13.03.1137 Stormwater Charge**

A. All premises served within the City's storm sewer service area shall pay a storm

sewer user or stormwater charge except as provided herein.

1. The stormwater charge is computed based upon classification of the account or premises served as domestic or commercial.
2. The minimum charge is at least one domestic user charge for all accounts, notwithstanding any other provision.
3. The storm sewer user charge is calculated by the director ((for storm sewer service to all premises)) in accord with SMC 13.03.1008.

B. Commercial Stormwater Charge Discounts.

1. For those subject to a commercial charge, the director shall grant a ten percent discount upon application by the customer, and a showing of approved on-site stormwater detention facility.
  - a. Such facilities may include drywells, detention ponds, grassy swales, and the like.
  - b. An additional ten percent discount shall be granted to those qualifying under the first discount category, who also apply therefore and demonstrate approved on-site stormwater treatment practices, such as grassy swales.
2. ((To the extent not already addressed in subsection (B)(1) of this section, where a customer shows that it pays City sewer utility system charges for storm or surface water sewer utility system service for a)) Commercial charges for a new or remodeled commercial building that utilizes a permissive rainwater harvesting system or vegetated roof, as recognized by the director, ((such charges)) shall be reduced by ten percent.
  - a. To be eligible for a reduction under this subsection (B)(2), the permissive rainwater harvesting system or vegetated roof must be properly sized to utilize all of the available roof surface of the building.
  - b. For purposes of administration, a “commercial building” is presumed to be a building on premises billed “commercial user”

stormwater user charges under SMC 13.03.1008(B).

- c. "New or remodeled" shall mean a building built new or substantially remodeled. ((after July 26, 2003.))

3. The director may grant an additional ten percent discount on application by the customer, showing the use of low impact development facilities for stormwater management.

a. Such facilities may include permeable pavement, bioretention areas, infiltration planters, and other low impact development Best Management Practices as approved by the Washington State Department of Ecology and City of Spokane. Bio-infiltration swales (commonly referred to as grassy swales) are not eligible for this discount.

b. Facility maintenance is required for continuation of this discount. Maintenance requirements for low impact development facilities can be found in the Eastern Washington Low Impact Development Guidance Manual and/or manufacturer guidelines.

C. To obtain a discount under subsection (B) of this section, a customer must file a completed written application on forms approved by the director and pay an inspection fee ((every two years depending)) based on the number of impervious ((acreages)) acres to be inspected. All discounts are prospective from the date of inspection and shall not exceed the maximum allowable discount of forty percent. The fee for inspections:

1. up to one impervious acre: Zero dollars,
2. one to five impervious acres: Fifty dollars,
3. five to ten impervious acres: One hundred dollars,
4. ten to twenty impervious acres: Two hundred dollars, and
5. over twenty impervious acres: Four hundred dollars.

The inspection certification approving discount eligibility under subsection (B)(1)

is good for the functional life of the facility. The inspection certification approving discount eligibility under subsections (B)(2) and/or (B)(3) is good for ((two)) five years. The director administers this program with such additional rules as he shall provide, and may assess additional charges for administrative costs not encompassed herein.

- D. No general stormwater service charges under SMC 13.03.1008 are made to customers receiving such service from the Spokane International Airport (SIA) authority at Geiger Field and vicinity, where the airport authority maintains good and sufficient stormwater service for said customers and the authority accepts full and continuing responsibility for the design, construction, maintenance, operation, upkeep, and replacement of all stormwater facilities in such area, and where the authority accepts full and separate responsibility for compliance with all stormwater permit and regulatory requirements of all jurisdictional regulatory agencies, including the Washington State department of ecology's stormwater management and control permit regulations and requirements.

Section 2. That SMC section 13.03.1112 is amended to read as follows:

**13.03.1112                    “Commercial User Charge”**

“Commercial user charge” means the charge applied to a commercial user service account for the cost of treating the volume of wastewater from that service account of a standard strength of BOD, SS and P, plus a surcharge for the treatment of wastewater of more than standard wastewater strength as determined by wastewater monitoring, from a specific commercial user. Stormwater, also listed with commercial user charges, are:

- A. General Stormwater Service Charges.  
These are imposed for right-of-way maintenance and operations functions relating to stormwater management and control, fairly apportioned to the commercial user's benefit enjoyed/burden created; and
- B. A CSO (Combined Sewer Overflow) Stormwater User Surcharge.  
The CSO Stormwater surcharge is only imposed on commercial users within the CSO service area as reflected in the GIS map on file with the director of wastewater management, which commercial (or industrial) uses also contribute stormwater flows directly into the combined sewer system.

1. CSO Stormwater User Surcharge Discounts

a. Where a customer pays CSO stormwater user surcharges for a new or remodeled commercial building that utilizes a permissive rainwater harvesting system or vegetated roof, as recognized by the director, such charges shall be reduced by ten percent.

i. To be eligible for a reduction under this subsection the permissive rainwater harvesting system or vegetated roof must be properly sized to utilize all of the available roof surface of the building.

ii. For purposes of administration a “commercial building” is defined to be a building on premises billed “CSO stormwater user surcharge” under SMC 13.03.1008(B).

iii. “New or remodeled” shall mean a building built new or substantially remodeled.

b. The director shall grant an additional ten percent discount on application by the customer showing the use of low impact development facilities for stormwater management.

i. Such facilities may include permeable pavement, bioretention areas, infiltration planters, and other low impact development best management practices as approved by the Washington state department of ecology and the City of Spokane.

II. Facility maintenance is required for continuation of this discount. Maintenance requirements for low impact development facilities can be found in the Eastern Washington Low Impact Development Guidance Manual and/or manufacturer guidelines

C. To obtain a discount under subsection (B)(1) of this section, a customer must file a completed written application on forms approved by the director and pay an inspection fee depending on the number of impervious acres to be inspected. All discounts are prospective from the date of inspection and shall not exceed

the maximum allowable discount of twenty percent. The fee for inspection is:

1. up to one impervious acre: Zero dollars;
2. one to five impervious acres: Fifty dollars;
3. five to ten impervious acres: One hundred dollars;
4. ten to twenty impervious acres: Two hundred dollars, and
5. over twenty impervious acres: Four hundred dollars.

The inspection certification approving discount eligibility under subsection (B)(1) is good for five years. The director administers this program with such additional rules as he shall provide, and may assess additional charges for administrative costs not encompassed herein.

- D. The commercial user charges are set forth in SMC 13.03.1008.

Section 3. That SMC section 17C.020.120 is amended to read as follows:

**17A.020.120 "L" Definitions**

- A. Land Surveyor.  
An individual licensed as a land surveyor pursuant to chapter 18.43 RCW.
- B. Land Use Codes.  
Those provisions of this code that relate to:
1. zoning,
  2. subdivision,
  3. shorelines management,
  4. stormwater control,
  5. flood zones,



6. critical areas,
7. signs,
8. skywalks, and

include chapter 17D.020 SMC, chapter 17D.050 SMC, chapter 17D.060 SMC, chapter 17D.090 SMC, chapter 17E.010 SMC, chapter 17E.020 SMC, chapter 17E.030 SMC, chapter 17E.040 SMC, chapter 17E.060 SMC, chapter 17E.070 SMC, and chapter 17G.080 SMC.

C. Landscape Plan.

A scale drawing showing site improvements and landscaping required under chapter 17C.200 SMC the following elements:

1. Footprint of all structures.
2. Final site grading.
3. All parking areas and driveways.
4. All sidewalks, pedestrian walkways, and other pedestrian areas.
5. Location, height, and materials for all fences and walls.
6. Common and scientific names of all plant materials used, along with their size at planting and location of all plant materials on the site.

D. Landslide.

Rapid sliding of large masses of rock, soil, or material on steep mountain slopes or from high cliffs.

E. Latah Formation.

Sedimentary layer of claystone to fine-grained sandstone in which very finely laminated siltstone is predominant. The fresh rock ranges in color from various shades of gray to almost white, tan and rust. Much of the finer grained layers contain leaf imprints and other plant debris. Because of its generally poorly consolidated state, the Latah rarely outcrops. It erodes rapidly and therefore is usually covered with later deposits or in steeper terrain hidden under the rubble

of overlying basaltic rocks.

- F. Launch Ramp.  
An inclined slab, set of pads, rails, planks, or graded slope used for launching boats with trailers or by hand.
- G. "Ldn" means a day-night average sound level and serves as a basic measure for quantifying noise exposure, namely, the A-weighted sound level averaged over a twenty-four hour time period, with a ten decibel penalty applied to nighttime (ten p.m. to seven a.m.) sound levels.
- H. Leak Detection.  
A procedure for determining if the material in a primary container has escaped into the outside environment or has invaded an interstitial space in a multiple containment system.
- I. Levee.  
A natural or artificial embankment on the bank of a stream for the purpose of keeping floodwaters from inundating adjacent land. Some levees have revetments on their sides.
- J. Level of Service Standard.  
The number of units of capacity per unit of demand. The level of service standards used on concurrency tests are those standards specified in the adopted City of Spokane comprehensive plan.
- K. Lighting Methods.
  - 1. Direct.  
Exposed lighting or neon tubes on the sign face. Direct lighting also includes signs whose message or image is created by light projected onto a surface.
  - 2. Indirect.  
The light source is separate from the sign face or cabinet and is directed to shine onto the sign.
  - 3. Internal.  
The light source is concealed within the sign.

L. Lighting Plan.

A general site plan that includes:

1. location of all lighting fixtures on the site;
2. manufacturer's model identification of each lighting fixture;
3. manufacturer's performance specifications of each fixture;
4. a photometric plan of the installed fixtures, which demonstrates that all illumination is confined within the boundaries of the site.

M. Limited Industrial.

Establishments primarily engaged in on-site production or assembly of goods by hand manufacturing involving the use of hand tools and small-scale equipment and may have the incidental direct sale to consumers of those goods produced on-site. Typical uses include:

1. on-site production of goods by hand or artistic endeavor;
2. placement of digital or analog information on a physical or electronic medium;
3. manufacture, predominantly from previously prepared materials, of finished products or parts, provided the noise, light, smell, or vibration does not extend beyond the site; and
4. research of an industrial or biotechnical nature.

All activity must be conducted totally within the structure with no outdoor storage.

N. Listed Species.

A fish or wildlife species on a state or federal species of concern list. Possible designations could include endangered, threatened and sensitive.

O. Littoral Drift.

The natural movement of sediment, particularly sand and gravel, along

shorelines by wave action in response to prevailing winds or by stream currents.

P. Local Access Street.

A street that provides access from individual properties to collector and minor arterials.

Q. Lot.

1. "Lot" is a parcel or tract of land so designated on a recorded plat or assessors plat, or:
  - a. in an unplatted area, a tract having frontage on a public street or private street within a planned unit development or binding site plan and having the minimum size and dimensions required for a building site by the zoning code; or
  - b. a building site designated as such on an approved planned development plan; or
  - c. an unplatted area, legally created, and having the minimum size and dimensions required for a building site by the zoning code, but that does not have frontage on a public street.
2. A tract consisting of more than one contiguous lot may be considered as one lot for development purposes, subject to interpretation of the location of the front and rear yards.
3. A "corner lot" is a lot bounded on two adjacent sides by intersecting public streets.
4. An "inside lot" is a lot other than a corner lot.
5. A "through lot" is a lot bounded on opposite sides by parallel or approximately parallel public streets.

R. Lot Depth.

The depth of a lot is the horizontal distance between the front lot line and the rear lot line measured in the mean direction of the side lot lines.

S. Lot Lines.

The property lines along the edge of a lot or site.

1. "Front lot line" means a lot line, or segment of a lot line, that abuts a street.

- a. ((1.)) On a corner lot, the front lot line is the shortest of the lot lines that abut a street. If two or more street lot lines are of equal length, then the applicant or property owner can choose which lot line is to be the front.
- b. ((2.)) However, a through lot has two front lot lines regardless of whether the street lot lines are of equal or unequal length.

2. "Rear lot line" means a lot line that is opposite a front lot line.

- a. A triangular lot has two side lot lines but no rear lot line.
- b. For other irregularly shaped lots, the rear lot line is all lot lines that are most nearly opposite the front lot line.

3. "Side lot line" means a lot line that is neither a front nor rear lot line.

a. On a corner lot, the longer lot line, which abuts a street, is a side lot line.

4. "Side street lot line" means a lot line that is both a side lot line and a street lot line.

5. "Street lot line" means a lot line, or segment of a lot line, that abuts a street.

- a. "Street lot line" does not include lot lines that abut an alley.
- b. On a corner lot, there are two (or more) street lot lines.
- c. Street lot lines can include front lot lines and side lot lines.

T. Lot Width.

The width of a lot is the horizontal distance between the side lot lines measured

on a line intersecting at right angles the line of the lot depth thirty feet from the front lot line.

U. Low Impact Development (LID).

((1. A method of managing stormwater that aims to mimic the predevelopment hydrologic conditions of the site by using existing soil, vegetation, and topography to detain runoff and remove pollutants.

1. ((2.)) ((LID is an approach to land development (or re-development) that works with nature to manage stormwater as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features, minimizing effective imperviousness to create functional and appealing site drainage that treat stormwater as a resource rather than a waste product (EPA definition))) LID is a stormwater and land use management strategy that strives to mimic pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed stormwater management practices that are integrated into a project design.

V. Low Visual Impact Facility.

For the purposes of administration of this code, a low visual impact facility includes a small diameter (three feet or less) antenna or antenna array located on top of an existing pole or on a replacement pole. (See also SMC 17A.020.010, Alternative Tower Structure.)

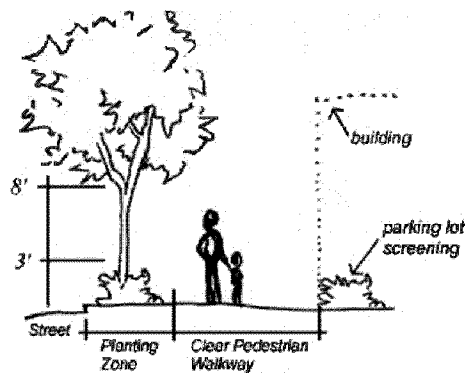
W. Lowest Floor.

The lowest floor of the lowest enclosed area (including the basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of SMC 17E.030.140.

Section 4. That SMC section 17C.110.410 is amended to read as follows:

**17C.110.410 Sidewalks**

- A. Purpose.  
To provide continuous, safe, and consistent pedestrian system with connectivity to the street right-of-way and the neighborhood.
- B. Sidewalk Implementation.
  - 1. Sidewalks shall have the minimum dimension of five feet, even if part of the width is located on private property. This dimension shall be applied to the clear, unobstructed pathway between the planting behind the curb and building facades or parking lot screening. (R)



- 2. Sidewalks shall be continuous, without gaps between developments. (R)
- 3. Unless otherwise required or where larger plaza areas are provided, sidewalk paving materials shall be consistent with the street frontage improvements of adjacent developments. (P)
- 4. Sidewalks within the public right-of-way shall be concrete, two-foot grid, standard sidewalk color and float finish. (R)
- 5. Pervious concrete may be used in the design and construction of sidewalks, where feasible.

Section 5. That SMC section 17C.130.230 is amended to read as follows:

**17C.120.230 Setbacks and Sidewalks**

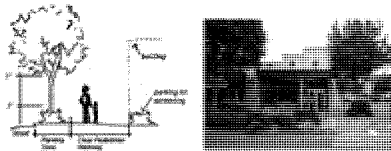
- A. Purpose.

The required structure setbacks promote streetscapes that are consistent with the desired character of the different commercial zones. The setback requirements for areas that abut single-family residential zones promote commercial development that will maintain light, air and the potential for privacy for adjacent single-family residential zones. The sidewalk standards provide a continuous, safe, and consistent street frontage character along the street right-of-way.

**B. Setback and Required Sidewalk Width Standards.**

The setback standards for all structures are stated in Table 17C.120-2 and as stated below.

1. Structures shall be no closer than twelve feet from the back of the curb except as provided in subsection (B)(3) of this section.
2. Sidewalks are required to be constructed and shall be at least twelve feet wide and consist of a clear walking path at least seven feet wide (in addition to planting zone for street trees per SMC 17C.200.050). Part of the sidewalk width may be located on private property. The sidewalk dimension shall be measured from back of curb to building facades or parking lot screening.



3. The required sidewalk width may be reduced by approval of the planning director if the existing sidewalk (distance between the curb and the building) is less than twelve feet wide between the back of curb and the existing building setback line of adjacent building(s). In no case shall the setback be reduced below nine feet from the back of the curb unless on-street parking exists between the building and the street.
4. Unless otherwise required or where larger plaza areas are provided, sidewalk paving material shall be concrete, two-foot grid, standard sidewalk color, and float finish.
5. Pervious concrete may be used in the design and construction of sidewalks, where feasible.



C. Exception to the Setback Standards.

1. Where a site is split between more than one zone and a structure is proposed that will cross an internal lot line that is also a zoning line, no setbacks are required from that lot line.
2. Detached Accessory Structures.  
The setback standards for detached accessory structures are stated in SMC 17C.120.300. Fences are addressed in SMC 17C.120.310. Sign standards are in chapter 17C.240 SMC, Signs.

D. Extensions Into Required Structure Setbacks.

The following features attached to structures are allowed as exceptions to the setback standards except they shall not reduce the required sidewalk width of subsection (B) of this section.

1. Minor Projections of Features Attached to Structures.
  - a. Minor Projections Allowed.  
Minor features of a structure, such as eaves, chimneys, fire escapes, bay windows, uncovered stairways, wheelchair ramps and uncovered decks or balconies, may extend into a required structure setback up to twenty percent of the depth of the setback. However, they may not be within three feet of a lot line when a setback is required. Bays and bay windows extending into the setback also must meet the following requirements:
    - i. Each bay and bay window may be up to twelve feet long, but the total area of all bays and bay windows on a building facade cannot be more than thirty percent of the area of the facade.
    - ii. At least thirty percent of the area of the bay which faces the property line requiring the setback must be glazing or glass block.
    - iii. Bays and bay windows must cantilever beyond the foundation of the structure; and

- iv. The bay may not include any doors.
  - b. **Full Projection Allowed.**  
In addition to subsection (D)(1)(a) of this section, the following features are allowed to project farther into required structure setbacks:
    - i. Canopies, marquees, awnings and similar features may fully extend into a street setback and may extend into the public right-of-way subject to the requirements of SMC 17F.040.140.
    - ii. Uncovered stairways and wheelchair ramps that lead to one entrance on the street-facing facade of a building may fully extend into a street setback.
    - iii. Uncovered decks and stairways that are no more than forty-two inches above the ground may fully extend into a required structure setback; and
    - iv. On lots that slope down from the street, vehicular and pedestrian entry bridges that are no more than forty-two inches above the average sidewalk elevation may fully extend into a required structure setback.
    - v. Balconies may extend into public rights-of-way as allowed in the building code.
  - c. **Projections Not Allowed.**  
Attached mechanical structures such as heat pumps, air conditioners, emergency generators and water pumps are allowed in a street setback but not in a required setback from an abutting residential zone.
2. Underground structures are permitted in all setbacks.

Section 6. That SMC section 17C.130.230 is amended to read as follows:

## 17C.130.230 Setbacks and Sidewalks

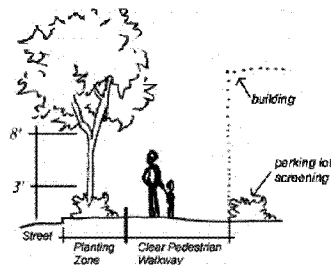
### A. Purpose.

The required structure setbacks promote streetscapes that are consistent with the desired character of the different industrial zones. The setback requirements for areas that abut single-family residential zones promote commercial development that will maintain light, air, and the potential for privacy for adjacent single-family residential zones. The sidewalk standards provide a continuous, safe, and consistent street frontage character along the street right-of-way.

### B. Setback and Required Sidewalk Width Standards.

The setback standards for all structures are stated in Table 17C.130-2, Industrial Zones Development Standards, and as stated below.

1. Structures shall be no closer than twelve feet from the back of the curb except as provided in subsection (B)(3) of this section.
2. Sidewalks are required to be constructed and shall consist of a clear walking path at least five feet wide (in addition to a minimum five-foot wide planting zone for street trees). Part or all of the sidewalk width may be located on private property. The sidewalk dimension shall be applied to the clear, unobstructed pathway between the planting behind the curb and building facades or parking lot screening.



3. The required sidewalk width may be reduced by approval of the planning director if the existing sidewalk (distance between the curb and the building) is less than twelve feet wide between the back of curb and the existing building setback line of adjacent building(s). In no case shall the setback be reduced below nine feet from the back of the curb unless on-street parking exists between the building and the street.

4. Unless otherwise required or where larger plaza areas are provided, sidewalk-paving material shall be concrete, two-foot grid, standard sidewalk color and float finish.
5. Pervious concrete may be used in the design and construction of sidewalks, where feasible.

C. Exceptions to the Setback Standards.

1. Where a site is split between more than one zone and a structure is proposed that will cross an internal lot line that is also a zoning line, no setbacks are required from that lot line.
2. Detached Accessory Structures.  
The setback standards for detached accessory structures are stated in SMC 17C.130.300. Fences are addressed in SMC 17C.130.310. Sign standards are in chapter 17C.240 SMC, Sign Code.

D. Extensions into Required Structure Setbacks.

The following features attached to structures are allowed as exceptions to the setback standards except they shall not reduce the required sidewalk width of SMC 17C.130.230.

1. Minor Projections of Features Attached to Structures.
  - a. Minor Projections Allowed.  
Minor features of a structure, such as eaves, chimneys, fire escapes, bay windows, uncovered stairways, wheelchair ramps, and uncovered decks or balconies may extend into a required structure setback up to twenty percent of the depth of the setback. However, they may not be within three feet of a lot line when a setback is required. Bays and bay windows extending into the setback also must meet the following requirements:
    - i. Each bay and bay window may be up to twelve feet long, but the total area of all bays and bay windows on a building facade cannot be more than thirty percent of the area of the facade.

- ii. At least thirty percent of the area of the bay which faces the property line requiring the setback must be glazing or glass block.
  - iii. Bays and bay windows must cantilever beyond the foundation of the structure; and
  - iv. The bay may not include any doors.
- b. Full Projection Allowed.
- In addition to subsection (D)(1)(a) of this section, the following features are allowed to project farther into required structure setbacks:
- i. Canopies, marquees, awnings, and similar features may fully extend into a street setback and may extend into the public right-of-way subject to the requirements of SMC 17F.040.140.
  - ii. Uncovered stairways and wheelchair ramps that lead to one entrance on the street-facing facade of a building may fully extend into a street setback.
  - iii. Uncovered decks and stairways that are no more than forty-two inches above the ground may fully extend into a required structure setback; and
  - iv. On lots that slope down from the street, vehicular and pedestrian entry bridges that are no more than forty-two inches above the average sidewalk elevation may fully extend into a required structure setback.
  - v. Balconies may extend into public rights-of-way as allowed in the building code.
- c. Projections Not Allowed.
- Attached mechanical structures such as heat pumps, air conditioners, emergency generators, and water pumps are allowed in a street setback but not in a required setback from an abutting

residential zone.

2. Underground structures are permitted in all setbacks.

Section 7. That SMC section 17C.200.060 is amended to read as follows:

### **17C.200.060 Stormwater Drainage**

Vegetated stormwater facilities, such as ((“Infiltration” or)) “bio-infiltration” swales, bioretention areas, and infiltration planters, as defined by the State of Washington Department of Ecology’s “best management practices,” ((required for the handling of storm water drainage)) may be incorporated into the required landscape areas, provided neither the stormwater management ((drainage functionality)) nor the landscape requirements are compromised.

Section 8. That SMC section 17D.060.030 is amended to read as follows:

### **17D.060.030 Standards**

- A. The director determines stormwater control design standards and regulations (also referenced as "standards"), including those for onsite stormwater facilities, and determines their applicability to particular areas of the City of Spokane, plats and premises, consistent with the legislative findings of this chapter.
- B. Standards References.  
The following documents are hereby adopted by reference. They address general requirements and may be modified or supplemented in other specific sections.
  1. Standard Specifications of the Washington State department of transportation, latest edition.
  2. General Special Provisions of the City of Spokane, latest edition.
  3. City of Spokane Design Standards and Standard Plans, latest edition.
  4. The Spokane Regional Stormwater Manual, latest edition.
  5. Guidance for UIC Wells that Manage Stormwater by Washington State

department of ecology dated December 2006 (Publication Number 05-10-067).

6. Spokane Aquifer Water Quality Management Plan. Spokane County, Washington "208" Program. County engineers office.

The above standard references are on file with the director.

- C. Low Impact Development is not a requirement at this time, however if low impact development techniques are used, then the Eastern Washington Low Impact Development Guidance Manual should be followed.
- D. The standard references are periodically republished. Between a general republication the department of engineering services maintains an updated copy and may publish modifications or updates in the Official Gazette. The department of engineering services also maintains a distribution list of parties requesting such updates. Unless otherwise ordered, the changes are effective thirty calendar days from the date of the Official Gazette issue in which they are published

Section 9. That SMC section 17H.010.020 is amended to read as follows:

**17H.010.020            Design Variance Requests**

- A. Deviations from the standards in this section must be submitted in writing to the ((director of engineering services)) city engineer and approved prior to the submittal of engineering plans for review.
- B. The decision criteria for a design variance request are provided below:
  1. Is the proposed variance part of an overall, thoughtful and comprehensive approach to the design of the project as a whole?
  2. Is the variance necessary to better address aspects of the site or its surroundings?
  3. Is the specific change superior in design quality and function to that potentially achieved by the development standard as written?

4. Does the proposal meet the intent and the general direction set forth by the development standard as written?
  5. Will the proposal require additional maintenance or repair by the City or a property owners' association compared to a standard street section?
  6. Does the proposal provide acceptable levels of accessibility, safety and convenience for all street users, including pedestrians, bicycles, vehicles and emergency service providers?
  7. Does the site design provide for adequate on-street and off-street parking to serve the area?
  8. Does the proposal provide a benefit to the community including improved safety, improved site design, the creation of street canopies through landscaping or secondary lot access through the use of alleys?
  9. Does the proposal use low impact development (LID) techniques and manage stormwater as outlined in the Eastern Washington LID Guidance Manual and the Spokane Regional Stormwater Manual?
- C. Situations where the street design is constrained by topography, the size and shape of the property, the presence of critical areas or environmental resources, existing development, or existing narrow rights-of-way will be evaluated on a case-by-case basis.
- D. Potential additional cost to meet these development standards is not in itself justification for a design variance.

Section 10. That SMC section 17H.010.030 is amended to read as follows:

**17H.010.030 Street Layout Design**

- A. Street design is governed by the comprehensive plan and city design standards.
- B. Streets shall be designed in light of topography and existing and planned



street patterns. It is encouraged that low impact development principles be considered, evaluated and utilized where practical as described in the Eastern Washington Low Impact Development Guidance Manual.

- C. Adequate access shall be provided to all parcels of land. The street system shall facilitate all forms of transportation including pedestrians, bicycles, vehicles and emergency services.
- D. When property is divided into large parcels, streets shall be laid out so as to allow the addition of future streets in a consistent pattern in the event of redivision.
- E. Street names should be logical, consistent and understandable to satisfy the needs of emergency and delivery vehicles. Street names must be approved by the City and comply with the requirements of chapter 17D.050 SMC, Roadway Naming.
- F. The layout of new streets shall provide for the continuation of existing streets in adjoining subdivisions. If a public street or right-of-way terminates at a plat boundary, provisions shall be made for the extension of the public street to the adjacent property or to another public street in a manner consistent with public mobility and utility infrastructure needs.
- G. Street layout shall provide for future extension of streets into areas which are presently not subdivided.
- H. Traffic generators within the project should be considered and the street system designed appropriately. Individual projects may require a traffic study subject to chapter 17D.080 SMC, Voluntary Impact Fees, chapter 17D.010 SMC, Concurrency Certification, or chapter 17E.050 SMC, SEPA.
- I. The minimum centerline distance between intersections shall be one hundred fifty feet.
- J. Bordering arterial routes should be considered and design continuity provided.
- K. When any parcels in a subdivision adjoin an existing or proposed arterial

street, the hearing examiner may require access by way of frontage streets and may restrict access to the arterial.

- L. Subdivisions comprised of more than thirty lots shall include two access points acceptable to the city fire department and the director of engineering services.
- M. A grid pattern featuring more street intersections and shorter block lengths should be implemented wherever possible.
- N. Block lengths should not exceed six hundred sixty feet.
- O. A block width should allow for two tiers of lots between parallel streets and double frontage lots should be avoided.
- P. Permanent dead-end or cul-de-sac streets may be allowed when the property is isolated by topography or the configuration of existing platted lots and streets. Dead-ends and cul-de-sacs will be reviewed in every case for connectivity

Section 11. That there is adopted a new SMC section 17D.060.300 to read as follows:

**17D.060.300**            **Low Impact Development**

- A. The purpose of this section is to provide additional and optional stormwater management techniques beyond the standard best management practices listed in the Spokane Regional Stormwater Manual. These low impact development techniques strive to mimic pre-disturbance hydrological processes by emphasizing site conservation, use of on-site natural features, site planning, and distributed stormwater management practices.
- B. The Eastern Washington Low Impact Development Guidance Manual is hereby adopted by reference, as hereafter amended. This guidance manual addresses general requirements and may be modified or supplemented in other specific sections. This reference is on file with the director.
- C. Low impact development is encouraged for site development and

redevelopment. Compliance with the Basic Requirements of the Spokane Regional Stormwater Manual shall be met regardless of best management practices used. Certain low impact development techniques may be used to fulfill the basic requirements set forth in the Spokane Regional Stormwater Manual, as approved by the director.

Examples include, but are not limited to:

1. Bioretention areas and infiltration planters may be used to meet Basic Requirement No. 3 – Water Quality Treatment and Basic Requirement No. 4 – Flow Control.
  2. Flow-through planters may be used to meet Basic Requirement No. 3.
  3. Dispersion is generally not appropriate within City limits; however, it may be used to meet Basic Requirement 4.
  4. Rain gardens are non-engineered landscaped depressions designed to capture stormwater from small, adjacent contributing areas such as those found at residences. Rain gardens do not necessarily meet basic requirements and can be used where basic requirements do not apply.
  5. Permeable pavement may be used to meet Basic Requirement 4 only (unless an additional department of ecology-approved treatment mechanism is installed).
  6. Vegetated roofs may be address Basic Requirement 4.
- D. Low impact development is an emerging practice and specific design considerations will be updated over time. A supplemental resource to the Eastern Washington Low Impact Development Guidance Manual is the Washington Stormwater Center.

Section 12. Effective Date. This ordinance shall take effect and be in full force on October 1, 2013.

Passed by the City Council on \_\_\_\_\_.

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

Attest:

Approved as to form:

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

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

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

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

**Spokane City Plan Commission  
Findings of Fact, Conclusions, and Recommendations  
Proposed Amendments to Chapters 13.03; 17A.020; 17C.110; 17C.120;  
17C.130; 17C.200; 17D.060; 17H.010; and adding new section 17D.060.300  
regarding Low Impact Development to the Spokane Municipal Code**

**A recommendation from the City Plan Commission to the City Council to approve the draft Low Impact Development ordinance which amends Spokane Municipal Sections 13.03.1112; 13.03.1137; 17A.020.120; 17C.110.410; 17C.120.230; 17C.130.230; 17C.200.060; 17D.060.030; 17H.010.020; 17H.010.030 and adopting new section 17D.060.300 Low Impact Development.**

**Findings of Fact:**

**A.** The Washington State Legislature passed the Growth Management Act (GMA) in 1990, requiring among other things, the development of a Comprehensive Plan (RCW 36.70A).

**B.** The City of Spokane adopted a Comprehensive Plan in May of 2001 that complies with the requirements of the Growth Management Act.

**C.** Under the Growth Management Act, comprehensive plans may be amended no more frequently than once a year. However, pursuant to Spokane Municipal Code (SMC) 17G.020.040 Amendment Exceptions, subsection G, "Changes to development regulations that are consistent with the comprehensive plan or are necessary to implement the comprehensive plan" may be considered more frequently than once a year.

**D.** City of Spokane Comprehensive Plan, Natural Environment Chapter 9, Goal NE 1 Water Quality states: *Protect the Spokane Valley - Rathdrum Prairie Aquifer and other water sources so they provide clean, pure water.* Policy NE 1.2 Stormwater Techniques states: *Identify innovative stormwater techniques that protect ground and surface water from contamination and pollution.*

**E.** City of Spokane Comprehensive Plan, Natural Environment Chapter 9, Goal NE 4 Surface Water states: *Provide for clean rivers that support fish and aquatic life and that are healthy for human recreation.* Policy NE 4.3 Impervious Surface Reduction states: *Continue efforts to reduce the rate of impervious surface expansion in the community.*

**F.** Spokane Municipal Code, Title 17G, Administration and Procedures, Chapter 17G.025 Unified Development Code Amendment Procedures were used to prepare this proposed amendment to the Unified Development Code.

**G.** In December 2009, the Spokane Riverkeeper, a program of the Center for Justice in Spokane, Washington, filed a 60-day notice of intent to sue the City of

Spokane alleging violations of the City's Phase II Permit from the Washington State Department of Ecology and the federal Clean Water Act.

**H.** On August 23, 2011, the City of Spokane and the Spokane Riverkeeper entered into a Consent Decree in an effort to improve water quality of the Spokane River consistent with the goals and objectives of the Clean Water Act.

**I.** As part of the Consent Decree, the City of Spokane is required by August 23, 2013, to develop a draft ordinance with monetary or other incentives for encouraging low impact development (LID) and present the draft ordinance to the City Council for consideration.

**J.** Spokane Municipal Code requires any changes to Chapter 17 SMC be vetted through the City of Spokane Plan Commission.

**K.** Simultaneously to this process, the Eastern Washington Low Impact Development Guidance Manual is being prepared to provide site planning tools, maintenance requirements, best management practices and information for creating a strong low impact development program and will be incorporated into the low impact development ordinance process.

**L.** In addition to the Consent Decree requirements, the City of Spokane is also subject to the National Pollutant Discharge Elimination System (NPDES) Eastern Washington Phase II Municipal Stormwater Permit. The permit requires the City of Spokane to allow developers to use low impact development by December 31, 2017.

**M.** A Public Participation Plan (PPP) was developed to identify the public involvement opportunities for developing incentives useful to the community. A resolution supporting the PPP was passed by City Council September 24, 2012 (RES 2012-0079).

**N.** Low impact development utility bill inserts were sent to City of Spokane Citizens in the May 2012 utility billing statements. A complimentary web page on Wastewater's website including more information on low impact development was created at this time.

**O.** Low impact development brochures were put into pre-development packages starting July 2012. They are also available in the Permit Center, and links to a PDF of the brochure are in three different locations on the Planning & Development website as well as the Wastewater website.

**P.** Stakeholders Group Meetings were held on September 9, 2012; January 16, 2013; and May 29, 2013.

**Q.** The City's Technical Advisory Committee Meetings were held to review the ordinance concepts and language, as well as the Eastern Washington Low Impact Development Guidance Manual on July 30, 2012; December 12 & 13, 2012; February 20, 2013; and May 14, 2013.

**R.** The Low Impact Development Subcommittee met one to two times per month between the months of November 2011 and June 2013.

**S.** The City's integrated planning team was consulted on May 15, 2013.

**T.** The Spokane City Plan Commission held a workshop to study the proposed amendment on May 22, 2013 and June 12, 2013.

**U.** Notice of the SEPA determination and proposed adoption of the revisions to the SMC Chapters 13.03; 17A.020; 17C.110; 17C.120; 17C.130; 17C.200; 17D.060; 17H.010; and adding new section 17D.060.300 and announcement of the Plan Commission's July 10, 2013 hearing was published in the Spokesman Review on June 26 and July 3, 2013.

**V.** A State Environmental Policy Act (SEPA) Checklist and Determination of Non-Significance were released on May 22, 2013 for the Low Impact Development Ordinance Revisions. The public comment period for the SEPA determination ended on June 5, 2013.

**W.** On June 12, 2013, the Washington State Department of Commerce and appropriate state agencies were given the required 60-day notice before adoption of proposed changes to the Unified Development Code. An acknowledgement letter from the Department of Commerce was received by the City on June 12, 2013.

**X.** The final Eastern Washington Low Impact Development Guidance Manual was published on June 30, 2013.

**Y.** The City Plan Commission held a Public Hearing on July 10, 2013 to obtain public comments on the proposed amendments; deliberations followed. Two public testimonies that favored the proposed amendment were heard by the Plan Commission. Six written testimonies received in favor of the proposed amendment.

### **Conclusions:**

**A.** The Plan Commission has reviewed all public testimony received during the public hearings and has made changes to the draft documents during deliberations to address the testimony as considered appropriate.

**B.** The Plan Commission has found that the proposed amendments meet the approval criteria for text amendments to the Unified Development Code:

SMC 17G.025.010 (F) Approval Criteria:

1. The proposed amendment is consistent with the applicable provisions of the comprehensive plan; and
2. The proposed amendment bears a substantial relation to public health, safety, welfare, and protection of the environment.

**C.** The proposed amendments, as amended, have been reviewed by the City Plan Commission and found to be in conformance with the goals and policies of the City's 2001 Comprehensive Plan, as well as the Spokane Municipal Code Chapter 17G.025.

### **Recommendations:**

By unanimous vote, the Plan Commission recommends to the City Council the approval of the proposed amendment to the Unified Development Code, with changes as deliberated.

A handwritten signature in black ink that reads "Michael Ekins". The signature is written in a cursive, flowing style.

**Michael Ekins, President  
Spokane Plan Commission**

**July 10, 2013**



# Commercial Stormwater Discount Matrix

Rate: \$900.26/impervious acre/year

Code	Amendment?	Discount	Description	Explanation	Examples
13.03.1137 <b>(B)(1) and (a)</b>	Existing	10% (\$90/acre/yr)	Stormwater detention	SRSM Basic Requirement 4: Flow Control. This requires stormwater to be retained on-site. This requirement can be met through a number of different facility types, as long as stormwater does not leave the site.	Drywells, stormwater ponds, grassy swales
13.03.1137 <b>(B)(1)(b)</b>	Existing	10% (\$90/acre/yr)	Stormwater treatment	SRSM Basic Requirement 3: Water Quality Treatment. This requires stormwater to be treated. Grassy swales that provide treatment <i>in addition</i> to detention are designed differently. They are performing two functions.	Grassy swales designed for treatment, oil/water separators, filtration
13.03.1137 <b>(B)(2)</b>	Existing, but modified to include vegetated roofs	10% (\$90/acre/yr)	Roof rainwater harvesting and vegetated roofs	Rainwater harvesting collects stormwater from the roof and stores it for later use such as irrigation. Vegetated roofs capture a large percentage of roof rainwater through plant and soil absorption.	Cisterns (above ground and underground), green roofs
13.03.1137 <b>(B)(3)</b>	New	10% (\$90/acre/yr)	LID	Additional 10% for meeting stormwater requirements by using LID facilities.	Bioretention areas, infiltration planters, permeable pavement. Grassy swales are not eligible for this discount. It is intended for those going above and beyond standard practice.

Notes:

SRSM = Spokane Regional Stormwater Manual. Requirements of this manual must still be met regardless of type of facility used to meet it.

# CSO Stormwater User Surcharge Discount Matrix

Rate: \$791.88/impervious acre/year

Code	Amendment?	Discount	Description	Explanation	Examples
13.03.1112 <b>(B)(1)(a)</b>	New	10% (\$79/acre/yr)	Roof rainwater harvesting and vegetated roofs	Rainwater harvesting collects stormwater from the roof and stores it for later use such as irrigation. Vegetated roofs capture a large percentage of roof rainwater through plant and soil absorption.	Cisterns (above ground and underground), green roofs
13.03.1112 <b>(B)(1)(b)</b>	New	10% (\$79/acre/yr)	LID	Additional 10% for meeting stormwater requirements by using LID facilities. This discount is for areas other than the roof surface.	Bioretention areas, infiltration planters, permeable pavement. Grassy swales are not eligible for this discount. It is intended for those going above and beyond standard practice.

**Notes:**

SRSM = Spokane Regional Stormwater Manual. Requirements of this manual must still be met regardless of type of facility used to meet it.

## Draft LID Ordinance Financial Impact Analysis

<b>Total Number of Accounts</b>	<b>3,806</b>
<b>Total Impervious Area</b>	<b>269,459</b>

<b>Total Number of Accounts also paying CSO Surcharge</b>	<b>461</b>
<b>Total Impervious Area also paying CSO Surcharge</b>	<b>21,214</b>

\*\*\*\*Accounts paying CSO Surcharge are also paying one of the regular commercial stormwater charges

### Accounts Getting Stormwater Discounts

<b>Discount</b>	<b>% of Customers</b>	<b>% of Imperious Area</b>
No Discount	91.09%	74.07%
10% Discount	2.68%	4.01%
20% Discount	6.23%	21.91%
<b>Total</b>	<b>100.00%</b>	<b>100.00%</b>

### 1 Annual Revenues Under Current Rate Structure

Commercial Stormwater	2,310,083
CSO Surcharge	356,961
<b>Total</b>	<b>2,667,044</b>

### 2 Projected Revenues with Increased Utilization of Discounts

**Assume that all customers receiving the 20% discount add rooftop LID and LID on the ground to receive a 40% discount**

Commercial Stormwater	2,203,579.30
CSO Surcharge	356,961.00
<b>Total</b>	<b>2,560,540.30</b>

<b>Effect on Revenue from Discount</b>	<b>(106,504)</b>
--	------------------

\*\*\*Revenue projections are based on percentage of impervious area receiving additional discount



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000  
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

July 3, 2013

Lynn Schmidt  
Wastewater Management Department  
909 East Sprague Avenue  
Spokane, WA 99202

**RE: City of Spokane Low Impact Development Ordinance revisions**

Dear Ms. Schmidt:

The Washington State Department of Ecology (Ecology) supports the proposed revisions to the City of Spokane's (City) ordinances that eliminate barriers to the construction of Low Impact Development (LID) stormwater facilities.

The proposed changes enable the City to be a leader in Ecology's efforts to encourage use of LID techniques in the collection and treatment of Stormwater.

If you have any questions, please contact Douglas C. Howie, P.E. at [douglas.howie@ecy.wa.gov](mailto:douglas.howie@ecy.wa.gov), or (360) 407-6444.

Sincerely,

Bill Moore, P.E., Manager  
Program Development Services Section  
Water Quality Program

cc: Douglas C. Howie, P.E., Ecology, HQ  
Jim Bellatty, Ecology, ERO  
Grant Pfeifer, Ecology, ERO



July 2, 2013

Ms. Lynn Schmidt  
Low Impact Development Subcommittee Chair  
Wastewater Management Department  
909 E. Sprague Avenue  
Spokane, WA 99201

RE: Draft LID Ordinance Revisions  
Public Hearing - City Plan Commission  
July 10, 2013

Dear Lynn:

Coffman Engineers, Inc. (CEI) is pleased to submit this letter of general support for the proposed ordinance revisions to incorporate Low Impact Development (LID) guidelines for the City of Spokane. We understand the nature and genesis for this ordinance as both an allowance to implement LID best management practices as well as meeting the Consent Decree agreed with Spokane Riverkeepers. Coffman supports sustainable site development practices. However, on behalf of our clients, we strongly encourage that this ordinance remain optional and *not become a requirement of development in the future*. As shown in staff's simple Case Study, the costs to design/construct LID strategies can be significant with little chance for payback or return on investment - even with the proposed commercial Stormwater Charge discounts. In addition, there are significantly more operation/maintenance costs associated with LID site development and systems.

We look forward to opportunities to utilize these new guidelines as requests for LID are made by our clients. Thank you for the opportunity to provide comments and be part of the Stakeholders discussions. We look forward to working with City staff on future site development projects. Please let me know if you have any questions or comments regarding this letter.

Sincerely,

COFFMAN ENGINEERS, INC.



Thomas L. Arnold, P.E., LEED AP  
Principal - Civil Department



July 1, 2013

Re: Draft Low Impact Development Ordinance Revisions

Dear City of Spokane,

The Lands Council would like to voice its support for the changes to the Spokane Municipal Code to encourage the use of low impact development (LID) in Spokane. LID is a stormwater and land use management strategy that strives to keep treat storm runoff by emphasizing the use of on-site natural features, site planning, and distributed stormwater management practices. Techniques such as harvesting rainwater can also conserve water and lower irrigation costs.

The Lands Council believes that LID is an important tool to helping the city implement an Integrated Clean Water Plan, which in turn will improve water quality in the Spokane River. We believe the changes to the municipal code will encourage and incentivize the use of techniques to keep stormwater on site and could lead to cost savings for property owners and developers.

These changes are needed to guide property owners and developers in using LID techniques.

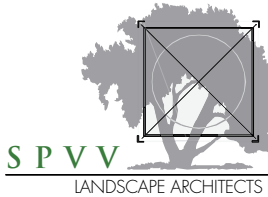
We are appreciative of the efforts that the city is making to improve stormwater management and believe LID can also add to the aesthetics of the city and quality of life for Spokane residents.

Sincerely,

Mike Petersen  
Executive Director

*25 W. Main Ave., Ste. 222 Spokane, WA 99201, Tel. (509) 838-4912, Fax (509) 838-5155, <http://www.landscouncil.org>*





July 3, 2013

Lynn Schmidt  
Wastewater Management Department  
909 East Sprague Avenue  
Spokane, WA 99202

**RE: LID Ordinance**

Dear Lynn:

I'm writing in support of the proposed Low Impact Development guidelines for the City of Spokane. As landscape architects, and in particular, landscape architects working with in a region with a sole-source aquifer, we have strived for many years to implement many of the practices within the guideline documents to protect our surface and subsurface waters and to be resource wise. I appreciate the amount of work involved to get to this point, and commend all who utilize sustainable site development practices.

I would ask however, that these guidelines be available as *optional* development strategies, rather than mandated requirements on projects. In our experience, LID can be the "right" solution for some projects, but not for others. The higher-than-average development costs of LID strategies, the relatively inexperienced base of contractors able to complete some of the types of work, the shorter lifespan of some of the technologies, and the significantly higher cost of some of the types of work have illustrated to us that only in some cases is there an acceptable return on investment when implementing LID strategies. As we are charged with protecting and enhancing the health, safety and welfare of the public, we must consider these higher development costs in the financial welfare of our clients and the public. I understand there are discount strategies that are possible to achieve, but the draft information that I have seen to date only discusses the potential reduction in ongoing yearly stormwater fees, and does not address the initial cost of development, which can be quite high. Some may find this misleading in terms of the program—I would encourage the City to make available some realistic information on the up front costs of these technologies.

SPVV looks forward to working with our clients where LID options can create environmental benefits along with being feasible over the longer term. I think that the LID option can allow designers to create work unique to the Spokane area within a larger framework that protects our groundwater, our rivers and streams; and offer incentives to specific projects that allow the entire project to succeed, where they might not have without LID.

Please contact me at your convenience if you have any questions or comments.

Many thanks,

A handwritten signature in black ink that reads "Thomas C. Sherry".

Thomas C. Sherry, President  
SPVV Landscape Architects

July 3, 2013

Lynn Schmidt, PE  
Stormwater Permit Coordinator  
Wastewater Management Department  
909 East Sprague Avenue  
Spokane, WA 99202

Re: Letter of Support City of Spokane Low Impact Development Ordinance

Dear Ms. Schmidt and to the City of Spokane Planning Commission and City Council Members:

I wish to express my support for the adoption of the City of Spokane's Low Impact Development (LID) Ordinance.

I am the Technical Advisor for the Environmental Resources Program at the Spokane Regional Health District. A significant portion of my duties involves assessing the public health hazards presented by the Spokane River and advising the public on matters pertaining to those hazards such as heavy metals in river sediment and polychlorinated biphenyls (PCB's) impacting local fish consumption. Additionally I determine the length and severity of hazards associated with wastewater and sewage overflows which periodically impact the Spokane River via Combined Source Overflows (CSO's).

Adoption of the Low Impact Development ordinance will have a very constructive influence on the safety, improved quality and environmental health of the Spokane River and will be a positive local achievement in the interests of public health. By adopting the LID Ordinance this will enable the construction of LID storm water control methods that provide storm water treatment at its source, and greatly reduce the discharges of contaminated storm water and sewage affecting the Spokane River.

Sincerely,

ENVIRONMENTAL PUBLIC HEALTH DIVISION

A handwritten signature in black ink, appearing to read "Michael F. LaScuola", written in a cursive style.

Michael F. LaScuola REHS-RS  
Technical Advisor  
Environmental Resources Program  
Spokane Regional Health District



July 3, 2013

Lynn Schmidt, PE  
Stormwater Permit Coordinator  
Wastewater Management Department  
909 East Sprague Avenue  
Spokane, WA 99202

Re: Letter of Support City of Spokane Low Impact Development Ordinance

Dear Ms. Schmidt and the City of Spokane Planning Commission and City Council Members:

I am writing to support adoption of the ordinance to promote Low Impact Development (LID) in the City of Spokane.

I work with small businesses (mostly in the City of Spokane) to provide pollution prevention technical assistance under Ecology's Local Source Control program, in conjunction with Urban Waters Initiative. The Urban Waters Initiative and Local Source Control programs were implemented by Ecology in Spokane County starting in 2007, to address the management of hazardous business waste and reduce contaminants discharged to the Spokane River in stormwater. The contaminants of concern include Polychlorinated Biphenyls (PCB's), Dioxins, Furans, PBDE's (Polybrominated Diphenyl Ethers – flame retardants) and metals (zinc, copper, etc.).

Currently in the city, the stormwater from many commercial property parking lots discharges to Underground Injection Containers (UIC's), also known as dry wells. Drywells bypass a significant depth of soil and do not provide pre-treatment of contaminated stormwater runoff. Commercial properties also discharge stormwater to street storm drains which either flow directly to the river untreated or into the combined sewage system for treatment at the wastewater treatment plant. LID bio-retention areas and infiltration planters, however, are capable of providing stormwater treatment at the source. In the LID research conducted at the WSU Washington Stormwater Center in Puyallup, properly constructed and maintained LID structures have shown very promising results in the removal of contaminants from stormwater.

Adoption of the Low Impact Development ordinance would enhance the environment and human health by encouraging the construction of LID stormwater structures to provide stormwater treatment on site, and reduce the discharges of contaminated stormwater to the Spokane River. This would contribute to improved river water quality and improved suitability of fish in the river for human consumption. In addition, encouraging the replacement of drywells with LID structures would provide improved stormwater treatment in water discharged to the ground to protect the Spokane Valley Rathdrum Prairie Aquifer, the source of the region's drinking water.

Sincerely,

ENVIRONMENTAL PUBLIC HEALTH DIVISION

A handwritten signature in black ink, appearing to read "Sandra J. Phillips", written in a cursive style.

Sandra J. Phillips  
EHS/Local Source Control Specialist  
Environmental Resources Program  
Spokane Regional Health District

BRIEFING PAPER  
Public Works Committee  
Wastewater Management  
June 10, 2013

---

Subject

Ordinance revisions to encourage the use of Low Impact Development (LID) for stormwater management in the City of Spokane.

Background

In December 2009 the Spokane Riverkeeper filed a 60 day Notice of Intent to Sue with the City alleging violation of the City's Phase II Permit from the Washington State Department of Ecology and the Federal Clean Water Act. In August 2011, the City of Spokane and the Spokane Riverkeeper entered into a Consent Decree to resolve the allegations and to improve water quality in the Spokane River. Pursuant to the Consent Decree, the City of Spokane is required to develop a draft ordinance with monetary or other incentives for encouraging LID. This ordinance must be presented to City Council by August 19, 2013 for its consideration.

The Washington State Department of Ecology defines LID as a stormwater and land use management strategy that strives to mimic pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed stormwater management practices that are integrated into a project design.

In addition to the Consent Decree requirements, the City of Spokane is also subject to the National Pollutant Discharge Elimination System (NPDES) Eastern Washington Phase II Municipal Stormwater Permit. The permit requires the City of Spokane to allow developers to use LID by December 31, 2017.

Simultaneously with the City of Spokane's process, several jurisdictions in Eastern Washington are developing an Eastern Washington LID Guidance Manual through a grant from the Department of Ecology.

Draft ordinance language has been developed by the City's Low Impact Development Subcommittee and Technical Advisory Committee. Included are provisions for stormwater fee discounts, allowance for the use of pervious concrete on sidewalks, encouragement to use LID in street layout design, and adoption of the Eastern Washington LID Guidance Manual as an optional reference for guidance on the design of stormwater facilities.

A Public Participation Plan was developed and outlines the opportunities for public involvement and input to the draft ordinance and Eastern Washington LID Guidance Manual. The LID Subcommittee also developed and distributed a utility bill insert, brochure, and website to introduce the citizens of Spokane to LID techniques.

To solicit public input to the draft ordinance content, the Subcommittee formed a Stakeholder Group. This group consists of representatives from the development community, construction and engineering firms, utilities, large institutional property owners, professional groups, environmental groups, and state agencies.

#### Impact

To allow and to encourage the use of LID for stormwater management. LID can benefit water quality in the Spokane River and aquifer by filtering out stormwater pollutants and emphasizing site conservation.

#### Action

Recommended approval

#### Funding

Funding is provided in the Wastewater Management budget.