

# THE CITY OF SPOKANE



## ADVANCE COUNCIL AGENDA

MEETING OF MONDAY, SEPTEMBER 30, 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

- |   |                              |               |
|---|------------------------------|---------------|
| <p>1. Loan Agreement and other documents with Lilac Plaza Retirement Community LLC (Spokane, WA) for acquisition and rehabilitation of Lilac Plaza, a 174-unit apartment building at 7007 N. Wiscomb—\$300,000 HOME funds. (Nevada Lidgerwood Neighborhood)<br/><i>Melora Sharts</i></p>    | Approve                      | OPR 2013-0685 |
| <p>2. Report of the Mayor of pending claims and payments of previously approved obligations, including those of Parks and Library, through _____, total \$_____, with Parks and Library claims approved by their respective boards. Warrants excluding Parks and Library total \$_____.</p> | Approve & Authorize Payments | CPR 2013-0002 |

# EXECUTIVE SESSION

(Closed Session of Council)

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

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## **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.

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## **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)

**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

### RESOLUTIONS & FINAL READING ORDINANCES

(Require Four Affirmative, Recorded Roll Call Votes)

- RES 2013-0066 Regarding the redevelopment of the PFC. Joe E. Mann US Army Reserve Center USARC/AMSA 80 (Spokane, WA), approving the Redevelopment Plan for the Mann Center, and authorizing the Mayor or his designee to submit the same to the appropriate federal agency and to take necessary actions to implement the Plan upon approval by the federal agency. (Deferred from September 9, 2013 Agenda).  
*Council President Stuckart*
- RES 2013-0071 Approving settlement of Michael Best and Cherise Best v. Jared K. Cereghino and Jane Doe Cereghino and the City of Spokane, Spokane County Superior Court Cause No. 13-2-00915-8, arising out of an incident on March 8, 2010—\$70,000.  
*Sam Faggiano*
- RES 2013-0072 Authorizing payment of the Salary Savings Plan retirement incentive for Deputy Fire Chief Bob Hanna—approximately \$5,000.  
*Erin Jacobson*
- ORD C35020 Creating departments within the Parks and Recreation division; amending SMC section 3.01A.360; and adoption of new sections 3.01A.361, 3.01A.362, 3.01A.363, and 3.01A.364 to chapter 3.01A of the Spokane Municipal Code. (Deferred from September 23, 2013 Agenda).  
*Leroy Eadie*
- ORD C35030 Relating to unlawful public exposure; adopting a new section 10.06.050 to chapter 10.06 of the Spokane Municipal Code. (Deferred from September 23, 2013 Agenda).  
*Council Member Fagan / Council Member McLaughlin*
- ORD C35042 Ordering the Alley Improvements between Princeton Avenue and Heroy Avenue from Addison Street to Standard Street, establishing a local improvement district and creating a local improvement fund therefore, directing the levy of special assessments and providing a method of financing to pay the cost and expense of said improvement.  
*Gary Nelson*

### FIRST READING ORDINANCES

(No Public Testimony Will Be Taken)

- ORD C35043 Relating to the Office of Police Ombudsman; amending SMC Sections 4.32.010, 4.32.020, 4.32.040, 4.32.090, 4.32.100 and 4.32.110; repealing SMC Sections 4.32.030 and 4.32.080; and adopting new Sections 4.32.035, 4.32.085, 4.32.150 and 4.32.160 to Chapter 4.32 of the Spokane Municipal Code.  
*Council Member Salvatori / Council Member Allen*

FURTHER ACTION DEFERRED

**SPECIAL CONSIDERATIONS**

(If there are items listed you wish to speak on, please sign your name on the sign-up sheets in the Chase Gallery.)

**RECOMMENDATION**

**H1. Items relating to automated traffic safety cameras:**

- |   |  |                      |
|---|--|----------------------|
| <p>a. Final Reading Ordinance extending the automated traffic camera systems program; amending SMC section 16A.64.260; and setting an effective date.<br/> <i>Carly Cortright</i></p>   | <p>Pass Upon<br/>Roll Call<br/>Vote</p>  | <p>ORD C35040</p>    |
| <p>b. Contract extension with American Traffic Solutions, Inc. (Tempe, AZ) for Traffic Safety Camera System effective November 13, 2013, through November 12, 2018—estimated annual expense \$625,000. This is the first of two five-year optional extensions. (Deferred from September 23, 2013, Agenda)<br/> <i>Carly Cortright</i></p> | <p>Approve</p>                           | <p>OPR 2008-0120</p> |
| <p>c. Resolution 2013-0070 regarding allocation of funds from infractions issued with automated traffic safety cameras. (Deferred from September 23, 2013, Agenda)<br/> <i>Council Member Snyder</i></p>  | <p>Adopt<br/>Upon Roll<br/>Call Vote</p> | <p>RES 2013-0070</p> |

**NO HEARINGS**

**Motion to Approve Advance Agenda for September 30, 2013  
(per Council Rule 2.1.2)**

**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 September 30, 2013, Regular Legislative Session of the City Council is adjourned to Monday, October 7, 2013.

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**NOTES**



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

09/30/2013

<b>Date Rec'd</b>	DocDate
<b>Clerk's File #</b>	OPR 2013-0685
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	BT

<b>Submitting Dept</b>	COMMUNITY, HOUSING & HUMAN SERVICES
<b>Contact Name/Phone</b>	M SHARTS X6840
<b>Contact E-Mail</b>	MSHARTS@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Contract Item
<b>Agenda Item Name</b>	1669 LILAC PLAZA RETIREMENT COMMUNITY LLC - LILAC PLAZA

**Agenda Wording**

Loan Agreement & other documents with Lilac Plaza Retirement Community LLC(Spokane, WA) for acquisition & rehabilitation of Lilac Plaza, a 174-unit apartment building at 7007 N Wiscomb - \$300,000 HOME funds (Nevada Lidgerwood neighborhood)

**Summary (Background)**

The City receives HOME grants from HUD for rental housing projects affordable to low-income households. The loan agreement requires that 11 units (8 studios & 3 1-brm) benefit households at or below 30% of the area median income for at least 20 years. Other financing includes a construction loan, HUD loan assumption, tax credit equity, seller loan & deferred developer fee loan. Spokane Baptist Association Homes is the sole member of the LLC's managing member.

**Fiscal Impact**

Expense	\$ 300,000 HOME
Select	\$
Select	\$
Select	\$

**Budget Account**

#	1710-95842-59210-54201-72002
#	
#	BudgetAccount3
#	

**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>	PCED 3/4/13
<b>Other</b>	

**Distribution List**

bchilds@spokanecity.org
kmoat@spokanecity.org
msharts@spokanecity.org
gpierce@sbah.org
chrisv@communityframeworks.org
mlesesne@spokanecity.org

**Additional Approvals**

<b>Purchasing</b>	



PROPOSED BUDGET

LILAC PLAZA RETIREMENT COMMUNITY LLC  
LILAC PLAZA  
7007 N Wiscomb

Purchase-building	\$7,128,700	Low-income housing tax	
Land	290,110	credit equity	\$9,347,735
Closing/title/excise tax	147,055	Flex subsidy assumed	3,490,679
Construction	5,438,365	Seller note	3,427,714
Construction conting	815,755	Deferred developer fee	545,197
Permits/fees/hookups	40,000	Solar credit equity	58,161
Sales tax	473,138	<b>City HOME funds</b>	<b>300,000</b>
Market study	7,200		
Architect	250,000		
Environmental assessment	10,500		
Surveys	7,500		
Legal-real estate	25,000		
Relocation expenses	45,990		
Nonprofit donation	42,923		
Accounting/audit	15,000		
Loan fees, expenses	95,250		
Construction loan interest	155,000		
Construction loan legal	30,000		
Leaseup period interest	90,000		
LIHTC fees, title policy	127,000		
LIHTC legal	50,000		
Operating reserves	535,000		
Replacement reserves	100,000		
Developer fee	1,250,000		
<b>TOTAL</b>	<b>\$17,169,486</b>	<b>TOTAL</b>	<b>\$17,169,486</b>

Projected work includes, but is not limited to, roof replacement, hand rails in the exit stairs, larger dumpster/compactor, siding repairs, and systems work (repairing or replacing the ventilation system and heat exchanger, replacing the domestic water system and the original central heating boiler, and upgrading the elevators), painting the hallways and exterior, replacing corridor carpeting, seal coating the parking lot, replacing windows, and interior lighting. Work in the units includes replacing cabinets, plumbing fixtures, appliances, flooring (at least 1/3 of units), and carbon monoxide detectors.

Due to the low-income housing tax credits, the project must comply with the State's Evergreen Sustainable Development Standard. In addition, it must comply with the City's rehabilitation standards for HOME-funded projects.

A construction loan will have a lien superior to the City's during the construction period.

**CITY OF SPOKANE  
LILAC PLAZA RETIREMENT COMMUNITY LLC**

**LILAC PLAZA**

**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 **Lilac Plaza Retirement Community LLC**, a Washington limited liability company, the "Borrower", whose address is c/o Spokane Baptist Association Homes, 7007 North Wiscomb Street, Spokane, WA 99208. The managing member of the Borrower is Lilac Plaza Manager LLC. The sole member of Lilac Plaza Manager LLC is Spokane Baptist Association Homes. 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. 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 very low-income and 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 Lilac Plaza, a 175-unit apartment building located at 7007 N. Wiscomb Street in Spokane, WA (the "Project"). The abbreviated legal description of the Project is:

PORTION SECTION 29 TOWNSHIP 26 NORTH RANGE 43 EAST  
SOUTHWEST QUARTER, SPOKANE COUNTY

Assessor's Parcel Number: 36293.0084

Property Address: 7007 North Wiscomb Street, Spokane, WA 99208.

See Attachment 1 for the full legal description.

Eleven (11) of the 175 units shall be HOME-assisted, including eight (8) efficiencies and three (3)

one-bedroom units. These eleven 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 never be less than eleven (11) and units must be comparable in size, features, and number of bedrooms to those units originally identified as HOME-assisted units.

\_\_\_\_\_ (#) of the 175 units shall be reserved for resident managers. Upon completion, at least \_\_\_\_\_ (#) units in the project shall be accessible to individuals with mobility impairments and \_\_\_\_\_ (#) 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 \_\_\_\_\_, 2033, or the contract term of this Loan Agreement as extended, whichever is later. The City and Borrower, upon mutual agreement, shall have the power to extend the term of this Loan Agreement. Any extension shall not increase the overall dollar amount loaned by the City pursuant to this Loan Agreement.

## 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, payment of principal and interest to coincide with the affordability period outlined in this Loan Agreement and deferred for twenty (20) 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 twenty-year (20-year) deferral period. Such payments shall be made pursuant to the Note. If affordability is extended beyond the initial twenty-year (20-year) period, interest shall continue to accrue on the outstanding principal balance at the rate of three percent (3%) annually during any extended period of affordability. If rents for any HOME-assisted units of Borrower’s Project are raised above the level of the 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 HUD, the Washington State Housing Finance Commission, and interim construction loan from a 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

Loan Agreement - 2 of 23

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 foregoing, 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 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 financing, including potential debt forgiveness, is thirty (30) 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 the U.S. Department of Housing and Urban Development (“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 twenty (20) 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 Affordability Requirements.

- C. Rent Limit. During the Affordability Period, and the Affordability Period as extended pursuant to the terms of the Loan Agreement, rents on the eleven (11) 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 eight (8) studios and three (3) 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 \_\_\_\_\_. 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. 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.
- E. Income Limit. At initial occupancy, tenants of the eleven (11) HOME-assisted units shall have incomes not greater than thirty percent (30%) of 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.
- 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 twenty-year Affordability Period, or the Affordability Period as extended, 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 or the Affordability Period as extended.
- B. Any accessible HOME-assisted housing units under this Loan Agreement shall, for the duration of the Affordability Period or the Affordability Period as extended, 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 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 the extended 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 or the extended term of this Loan

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Agreement.

- J. Upon Project completion, the Project shall obtain a final Certificate of Occupancy, 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 eleven (11) 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 4. 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 4. 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 provisions, 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

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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 6 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.
8. Without limiting any of the foregoing, Borrower's failure to comply with the minimum wage requirements set forth in Section XVIII of this Loan Agreement.

#### 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 twenty (20) years to coincide with the minimum twenty-year (20-year) Affordability Period. 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. In exchange for an extension of the Affordability Period, the principal and interest may be forgiven for each year of the period of the extension, until it is fully forgiven or paid at the end of the maximum extended term of ten (10) years. The Borrower shall declare its intention to extend the Affordability Period for an additional year or years, to a maximum extended term of ten (10) years. The Borrower shall provide the City with a notice of intent to extend the Affordability Period for a given year by December 1 of the preceding year. If, at the end of each year, the Borrower has complied, for that year, with the Affordability Requirements as noted in the Covenant Agreement and is in compliance with all other provisions of this Loan Agreement, the Covenant Agreement, Note, and Deed of Trust, then the loan payments shall be forgiven for that year. No payments shall be forgiven for affordability periods of less than one (1) year. Borrower shall notify the City if they intend to end the Affordability Period.
  - 1. The amount of the annual loan forgiveness shall be the sum of twelve monthly payments; the monthly payments will be in an amount sufficient to amortize the principal and interest over the remaining term of the extended affordability.
- C. If the Affordability Period is not extended beyond the initial twenty (20) years through the thirtieth (30<sup>th</sup>) year, repayment of principal and interest shall be made monthly in an amount sufficient to amortize the loan over the remaining term of the extended Affordability Period.
- D. Repayment during the initial twenty-year (20-year) affordability period 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 \_\_\_\_\_.
    - 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 to temporarily 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. Tenants who are 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.
- 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, or the Affordability Period as extended, terminates. The Borrower shall permit the Department, the 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 or the Affordability Period, as extended.

## 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.

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C. The Borrower hereby represents and warrants that, 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.

#### XXV. 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 5 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.



XXVI. SEVERABILITY

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

XXVII. 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

Lilac Plaza Retirement Community LLC  
c/o Spokane Baptist Association Homes  
7007 North Wiscomb Street  
Spokane, WA 99208

XXVIII. 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.*

XXIX. 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.

XXX. 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

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THIS LOAN AGREEMENT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

IN WITNESS WHEREOF, the Parties have executed this Loan Agreement as of the Effective Date.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.)

**LILAC PLAZA RETIREMENT COMMUNITY LLC**  
**a Washington limited liability company**

By: Lilac Plaza Manager LLC,  
a Washington limited liability company, its managing member

By: Spokane Baptist Association Homes,  
a Washington nonprofit corporation, its sole member

By: \_\_\_\_\_  
R. Glen Pierce, Chief Executive Officer

STATE OF WASHINGTON        )  
  ) ss.  
County of Spokane                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013, personally appeared before me **R. Glen Pierce**, to me known to be the **Chief Executive Officer** of Spokane Baptist Association Homes, a Washington nonprofit corporation, which is the sole member of Lilac Plaza Manager LLC, a Washington limited liability company, which is the managing member of Lilac Plaza Manager LLC, a Washington limited liability company, 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 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

## ATTACHMENT 1

### LEGAL DESCRIPTION

THE FOLLOWING DESCRIBED TRACT LYING IN THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 26 NORTH, RANGE 43 EAST OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF WISCOMB STREET, AS SHOWN ON THE PLAT OF COZZA-CALKINS 1<sup>ST</sup> ADDITION, SPOKANE CO., WASHINGTON, ACCORDING TO PLAT RECORDED IN VOLUME 6 OF PLATS, PAGE 64, WHICH BEARS S00°14'03"W, 303.19 FEET FROM THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 29; THENCE CONTINUING S00°14'03" A DISTANCE OF 76.97 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, THE RADIUS OF WHICH BEARS S89°45'57"E, A DISTANCE OF 597.96 FEET; THENCE ALONG SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 13°54'40" (REC. 13°55'14"), AN ARC DISTANCE OF 145.18 FEET (REC. 145.28), TO THE BEGINNING OF A REVERSE CURVE THE RADIUS OF WHICH BEARS S76°19'23"W, A DISTANCE OF 20.00 FEET; THENCE ALONG SAID REVERSE CURVE, THROUGH A CENTRAL ANGLE OF 77°53'52" (REC. 77°56), AN ARC DISTANCE OF 27.19 FEET (REC 27.20); THENCE S64°13'15"W, 213.16 FEET (REC. 212.83) TO THE BEGINNING OF A CURVE TO THE RIGHT, THE RADIUS OF WHICH BEARS N25°46'45" A DISTANCE OF 384.26 FEET; THENCE ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 18°04'14" (REC. 18°04'14") AN ARC DISTANCE OF 121.19 FEET (REC. 121.30); THENCE N00°14'03"E, 372.65 FEET; THENCE S89°41'19"E, 300.10 FEET (REC. 300.00) TO THE POINT OF BEGINNING, IN CITY OF SPOKANE, SPOKANE COUNTY, WASHINGTON.

Tax Parcel Number: 36293.0084

Situs Address: 7007 North Wiscomb Street, Spokane, WA 99208

ATTACHMENT 2

PROPOSED BUDGET

LILAC PLAZA RETIREMENT COMMUNITY LLC

LILAC PLAZA

7007 North Wiscomb Street

Purchase-building	\$7,128,700	Low-income housing tax		
Land	290,110	credit equity	\$9,347,735	
Closing/title/excise tax	147,055	Flex subsidy assumed	3,490,679	
Construction	5,438,365	Seller note	3,427,714	
Construction conting	815,755	Deferred developer fee	545,197	Permits/f
40,000 Solar				
credit equity	58,161			
Sales tax	473,138			
Market study	7,200	<b>City HOME funds</b>	<b>300,000</b>	
Architect	250,000			
Environmental assessment	10,500			
Surveys	7,500			
Legal-real estate	25,000			
Relocation expenses	45,990			
Nonprofit donation	42,923			
Accounting/audit	15,000			
Loan fees, expenses	95,250			
Construction loan interest	155,000			
Construction loan legal	30,000			
Leaseup period interest	90,000			
LIHTC fees, title policy	127,000			
LIHTC legal	50,000			
Operating reserves	535,000			
Replacement reserves	100,000			
Developer fee	1,250,000			
<b>TOTAL</b>	<b>\$17,169,486</b>	<b>TOTAL</b>	<b>\$17,169,486</b>	

Projected work includes, but is not limited to, roof replacement, hand rails in the exit stairs, larger dumpster/compactor, siding repairs, and systems work (repairing or replacing the ventilation system and heat exchanger, replacing the domestic water system and the original central heating boiler, and upgrading the elevators), painting the hallways and exterior, replacing corridor carpeting, seal coating the parking lot, replacing windows, and interior lighting. Work in the units includes replacing cabinets, plumbing fixtures, appliances, flooring (at least 1/3 of units), and carbon monoxide detectors.

Due to the low-income housing tax credits, the project must comply with the State's Evergreen Sustainable Development Standard. In addition, it must comply with the City's rehabilitation standards for HOME-funded projects.

A construction loan will have a lien superior to the City's during the construction period.

Attachment 3  
rent table

Loan Agreement - 21 of 23

**ATTACHMENT 4**

**TIMETABLE**

Category	Milestone/Task	Deadline Month Yr/Status
Site control	Close on property.	October 2013
Financing	Funding awarded by all lenders.	Completed.
	Funding documented by all lenders	October 2013
Design/Permits	Approval of construction plans.	October 2013
	Building permits issued.	October 2013
Construction	Begin construction.	November 2013
	Complete construction.	December 2014
	Certificate of occupancy issued.	January 2015
Occupancy	Units occupied.	90 days from Certificate of Occupancy

## ATTACHMENT 5

### 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>Lilac Plaza Retirement Community LLC</u> Name of Borrower (Type or Print)	<u>Lilac Plaza</u> Program Title (Type or Print)
<u>R. Glen Pierce</u> Name of Certifying Official (Type or Print)	Signature
<u>Chief Executive Officer</u> Title of Certifying Official (Type or Print)	Date (Type or Print)



**CITY OF SPOKANE  
LILAC PLAZA RETIREMENT COMMUNITY LLC**

**LILAC PLAZA**

**PROMISSORY NOTE**

OPR #2013-0685 \_

Borrower:

Lilac Plaza Retirement Community LLC  
c/o Spokane Baptist Association Homes  
7007 N. Wiscomb Street  
Spokane, WA 99208

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 **Lilac Plaza Retirement Community LLC**, a Washington limited liability company, 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 Lilac Plaza, a 13-story, 175-unit apartment building located at 7007 North Wiscomb Street 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 ("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 three percent (3%) interest, compounded annually, on the outstanding principal balance loaned, during a twenty-year (20-year) deferral period as provided in the Loan Agreement. Said interest shall commence from

Promissory Note - 1 of 5

date of first disbursement. If affordability is extended beyond the initial twenty-year (20-year) period as provided in the Loan Agreement, interest shall continue to accrue on the outstanding principal balance at the rate of three percent (3%), compounded monthly during any extended period of affordability. 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. 20-Year Deferral Period: No payments of principal or interest shall be due from the date of this Note through \_\_\_\_\_, 2033.

B. 10-Year Payment Period: Principal and accrued interest on this Note shall be payable in approximately equal amortized installments on the first day of each month (or the first business day thereafter if the first day of the month is a weekend or a holiday for the City), commencing on \_\_\_\_\_, 2033 in the amount required to fully amortize the outstanding principal of and accrued interest on this Note (including the interest accrued) over ten (10) years.

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 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 Lilac Plaza Retirement Community LLC; a transfer of the investor member interest in the Lilac Plaza Retirement Community LLC; a replacement of the managing member of the Lilac Plaza Retirement Community LLC; and/or a transfer of the Property at the end of the compliance period to Spokane Baptist Association Homes; 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, state 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 6 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.

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

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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

**LILAC PLAZA RETIREMENT COMMUNITY LLC**  
**a Washington limited liability company**

By: Lilac Plaza Manager LLC,  
a Washington limited liability company, its managing member

By: Spokane Baptist Association Homes,  
a Washington nonprofit corporation, its sole member

Promissory Note - 4 of 5

By: \_\_\_\_\_  
R. Glen Pierce, Chief Executive Officer

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 #2013-0685 \_

**CITY OF SPOKANE  
LILAC PLAZA RETIREMENT COMMUNITY LLC**

**LILAC PLAZA \_**

**DEED OF TRUST**

Grantor: Lilac Plaza Retirement Community LLC, a Washington limited liability company

Beneficiary: City of Spokane, a Washington state municipal corporation

Assessor's Parcel No.: 36296.0084

Legal Description (abbreviated): PORTION SECTION 29 TOWNSHIP 26 NORTH RANGE 43  
EAST SOUTHWEST QUARTER, SPOKANE COUNTY  
(See Attachment 1 for full legal description.)

THIS DEED OF TRUST, made this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between **Lilac Plaza Retirement Community LLC**, a Washington limited liability company referred to herein as GRANTOR, whose address is c/o Spokane Baptist Association Homes, 7007 North Wiscomb Street, Spokane, WA 99208, **First American Title Insurance Company**, TRUSTEE, whose address is 40 East Spokane Falls Blvd., Spokane, WA 99202, 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.

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:

PORTION SECTION 29 TOWNSHIP 26 NORTH RANGE 43 EAST SOUTHWEST  
QUARTER, SPOKANE COUNTY

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: 36293.0084

Property Address: 7007 North Wiscomb Street, Spokane, WA 99208

See Attachment 1 for full legal description.

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. Grantor warrants and will defend the title to the Property against all claims and demands, subject to any prior encumbrances of record and encumbrances listed in the Priority and Subordination Agreement recorded of even date herewith. (CHECK ON TITLE OF SUBORDIN AGR AND WHEN IT WILL 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; 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 XXVII 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, 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, 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.)

BY SIGNING BELOW, Grantor accepts and agrees to the terms and covenants contained in this Deed of Trust and in any riders executed by Grantor and recorded with it.

IN WITNESS WHEREOF, the Parties have executed this Deed of Trust as of the day and year first written above.

**LILAC PLAZA RETIREMENT COMMUNITY LLC**  
a Washington limited liability company

By: Lilac Plaza Manager LLC,  
a Washington limited liability company, its managing member

By: Spokane Baptist Association Homes,  
a Washington nonprofit corporation, its sole member

By: \_\_\_\_\_  
R. Glen Pierce, Chief Executive Officer

STATE OF WASHINGTON     )  
  ) ss.  
County of Spokane         )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013, personally appeared before me **R. Glen Pierce**, to me known to be the **Chief Executive Officer** of **Spokane Baptist Association Homes**, a Washington nonprofit corporation, which is the sole member of Lilac Plaza Manager LLC, a Washington limited liability company, which is the managing member of Lilac Plaza Manager LLC, a Washington limited liability company, 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 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

**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



**ATTACHMENT 1**

**LEGAL DESCRIPTION**

THE FOLLOWING DESCRIBED TRACT LYING IN THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 26 NORTH, RANGE 43 EAST OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF WISCOMB STREET, AS SHOWN ON THE PLAT OF COZZA-CALKINS 1<sup>ST</sup> ADDITION, SPOKANE CO., WASHINGTON, ACCORDING TO PLAT RECORDED IN VOLUME 6 OF PLATS, PAGE 64, WHICH BEARS S00°14'03"W, 303.19 FEET FROM THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 29; THENCE CONTINUING S00°14'03" A DISTANCE OF 76.97 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, THE RADIUS OF WHICH BEARS S89°45'57"E, A DISTANCE OF 597.96 FEET; THENCE ALONG SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 13°54'40" (REC. 13°55'14"), AN ARC DISTANCE OF 145.18 FEET (REC. 145.28), TO THE BEGINNING OF A REVERSE CURVE THE RADIUS OF WHICH BEARS S76°19'23"W, A DISTANCE OF 20.00 FEET; THENCE ALONG SAID REVERSE CURVE, THROUGH A CENTRAL ANGLE OF 77°53'52" (REC. 77°56), AN ARC DISTANCE OF 27.19 FEET (REC 27.20); THENCE S64°13'15"W, 213.16 FEET (REC. 212.83) TO THE BEGINNING OF A CURVE TO THE RIGHT, THE RADIUS OF WHICH BEARS N25°46'45" A DISTANCE OF 384.26 FEET; THENCE ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 18°04'14" (REC. 18°04'14") AN ARC DISTANCE OF 121.19 FEET (REC. 121.30); THENCE N00°14'03"E, 372.65 FEET; THENCE S89°41'19"E, 300.10 FEET (REC. 300.00) TO THE POINT OF BEGINNING, IN CITY OF SPOKANE, SPOKANE COUNTY, WASHINGTON.

Tax Parcel Number: 36293.0084

Address: 7007 North Wiscomb Street, Spokane, WA 99208

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 #2013-0685 \_

**CITY OF SPOKANE  
LILAC PLAZA RETIREMENT COMMUNITY LLC**

**LILAC PLAZA  
HOME PROGRAM LOAN COVENANT AGREEMENT**

Grantor: Lilac Plaza Retirement Community LLC, a Washington limited liability company

Beneficiary: City of Spokane, a Washington state municipal corporation

Assessor's Parcel No.: 36296.0084

Legal Description (abbreviated): PORTION SECTION 29 TOWNSHIP 26 NORTH RANGE 43  
EAST SOUTHWEST QUARTER, SPOKANE COUNTY  
(See Attachment 1 for full legal description.)

This HOME Program Loan Covenant Agreement ("Covenant Agreement") is made this \_\_\_\_ day of \_\_\_\_  
This HOME Program Loan Covenant Agreement ("Covenant Agreement") is made this \_\_\_\_ day of \_\_\_\_  
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 **Lilac Plaza  
Retirement Community LLC**, a Washington limited liability company, as "Borrower", whose address is  
c/o Spokane Baptist Association Homes, 7007 North Wiscomb Street, Spokane, WA 99208. The managing  
member of the Borrower is Lilac Plaza Manager LLC. The sole member of Lilac Plaza Manager LLC is  
Spokane Baptist Association Homes.

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 Lilac Plaza, a 13-story, 175-unit apartment building located at 7007 North Wiscomb Street in Spokane, WA (the "Project"). Eleven of the 175 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 full legal description of the Project is attached as Attachment 1. The abbreviated legal description is:

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 twenty (20) years beginning after Project completion (the "Affordability Period"), or the term of affordability as extended, 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 twenty (20) 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 or the Affordability Period as extended:

## 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 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 the 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 the Loan Agreement or the extended term of the 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 the Loan Agreement or the extended term of the 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 twenty (20) 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, and the Affordability Period as extended pursuant to the terms of the Loan Agreement, rents on the eleven (11) 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 eight (8) studios and three (3) 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 3. 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 eleven (11) HOME-assisted units shall have incomes not greater than thirty percent (30%) of 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

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

**LILAC PLAZA RETIREMENT COMMUNITY LLC**  
a Washington limited liability company

By: Lilac Plaza Manager LLC,  
a Washington limited liability company, its managing member

By: Spokane Baptist Association Homes,  
a Washington nonprofit corporation, its sole member

By: \_\_\_\_\_  
R. Glen Pierce, Chief Executive Officer

STATE OF WASHINGTON     )  
   ) ss.  
County of Spokane         )

On this \_\_\_\_ day of \_\_\_\_\_, 2013, personally appeared before me **R. Glen Pierce**, to me known to be the **Chief Executive Officer** of Spokane Baptist Association Homes, a Washington nonprofit corporation, which is the sole member of Lilac Plaza Manager LLC, a Washington limited liability company, which is the managing member of Lilac Plaza Manager LLC, a Washington limited liability company, 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 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:**

By: Terri L. Pfister, City Clerk

**APPROVED AS TO FORM:**

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 1

### LEGAL DESCRIPTION

THE FOLLOWING DESCRIBED TRACT LYING IN THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 26 NORTH, RANGE 43 EAST OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF WISCOMB STREET, AS SHOWN ON THE PLAT OF COZZA-CALKINS 1<sup>ST</sup> ADDITION, SPOKANE CO., WASHINGTON, ACCORDING TO PLAT RECORDED IN VOLUME 6 OF PLATS, PAGE 64, WHICH BEARS S00°14'03"W, 303.19 FEET FROM THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 29; THENCE CONTINUING S00°14'03" A DISTANCE OF 76.97 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, THE RADIUS OF WHICH BEARS S89°45'57"E, A DISTANCE OF 597.96 FEET; THENCE ALONG SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 13°54'40" (REC. 13°55'14"), AN ARC DISTANCE OF 145.18 FEET (REC. 145.28), TO THE BEGINNING OF A REVERSE CURVE THE RADIUS OF WHICH BEARS S76°19'23"W, A DISTANCE OF 20.00 FEET; THENCE ALONG SAID REVERSE CURVE, THROUGH A CENTRAL ANGLE OF 77°53'52" (REC. 77°56), AN ARC DISTANCE OF 27.19 FEET (REC 27.20); THENCE S64°13'15"W, 213.16 FEET (REC. 212.83) TO THE BEGINNING OF A CURVE TO THE RIGHT, THE RADIUS OF WHICH BEARS N25°46'45" A DISTANCE OF 384.26 FEET; THENCE ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 18°04'14" (REC. 18°04'14") AN ARC DISTANCE OF 121.19 FEET (REC. 121.30); THENCE N00°14'03"E, 372.65 FEET; THENCE S89°41'19"E, 300.10 FEET (REC. 300.00) TO THE POINT OF BEGINNING, IN CITY OF SPOKANE, SPOKANE COUNTY, WASHINGTON.

Tax Parcel Number: 36293.0084

Situs Address: 7007 North Wiscomb Street, Spokane, WA 99208

Documentation for Lilac Plaza will include a  
Priority and Subordination Agreement.

A draft is not available yet.

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

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**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 Lidgerwood)	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@spokane-city.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) <b>Lilac Plaza Retirement Community LLC</b>	
	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) ▶ <b>C</b> <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see Instructions) ▶	
	Address (number, street, and apt. or suite no.) <b>7007 North Wiscomb Street</b>	Requester's name and address (optional)
	City, state, and ZIP code <b>Spokane, WA 99208</b>	List account number(s) here (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.

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

<b>Social security number</b>								
<b>Employer identification number</b>								
4	6	-	2	9	6	8	7	4

**Part II Certification**

Under penalties of perjury, I certify that:

- 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
- 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
- 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.

<b>Sign Here</b>	Signature of U.S. person ▶ <i>R. Glen Price</i>	Date ▶ <i>8-12-13</i>
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**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:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- 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:**

09/09/2013

<b>Date Rec'd</b>	DocDate
<b>Clerk's File #</b>	RES 2013-0066
<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>	Resolutions
<b>Agenda Item Name</b>	0320 MANN CENTER RESOLUTION

**Agenda Wording**

A resolution regarding the redevelopment of the PFC. Joe E. Mann US Army Reserve Center USARC/AMSA 80 (Spokane), approving the Redevelopment Plan for the Mann Center,

**Summary (Background)**

The City has previously made a recommendation to the Department of Defense approving the Redevelopment Plan and Homeless Submittal for the Mann Center to provide a public benefit conveyance of the property to the Spokane Public School. Extensive vandalism to the property caused the Spokane Public School to withdraw its application for the transfer of the Mann Center. After consultation with the Department of Defense and community meetings with the public,

**Fiscal Impact**

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

**Budget Account**

#
#
# BudgetAccount3
#

**Approvals**

<b>Dept Head</b>	WESTFALL, JENNIFER
<b>Division Director</b>	
<b>Finance</b>	LESESNE, MICHELE
<b>Legal</b>	BURNS, BARBARA
<b>For the Mayor</b>	GEMMILL, GERRY

**Council Notifications**

<b>Study Session</b>	
<b>Other</b>	
<b>Distribution List</b>	

**Additional Approvals**

<b>Purchasing</b>	



**Continuation of Wording, Summary, Budget, and Distribution**

**Agenda Wording**

and authorizing the Mayor or his designee to submit the same to the appropriate federal agency and to take any necessary actions to implement the Plan upon approve by the federal agency.

**Summary (Background)**

the City proceeded with a second Notice of Intent to develop a proposal to submit to the Department of Defense. Upon review of the proposals, the City Council adopts this resolution approving the Redevelopment Plan for the Mann Center and recommending the public benefit conveyance to the Department of Defense.

**Fiscal Impact**

Select \$

Select \$

AmtType7 \$ Amount7

AmtType8 \$ Amount8

**Budget Account**

#

#

# Budget7

# Budget8

**Distribution List**

Email16

Email17

Email18

Email19

Email20

Email21

Email22

Email23



Resolution No. 2013-0066

A resolution regarding the redevelopment of the PFC. Joe E. Mann US Army Reserve Center USARC/AMSA 80 (Spokane), approving the Redevelopment Plan for the Mann Center, and authorizing the Mayor or his designee to submit the same to the appropriate federal agency and to take any necessary actions to implement the Plan upon approve by the federal agency.

WHEREAS, through the BRAC process, the Department of Defense had designated the Mann Center for closure; and

WHEREAS, on approximately September 1, 2006, the United States Department of Defense, as the administering BRAC agency, recognized the City of Spokane as the Local Redevelopment Authority for the Mann Center; and

WHEREAS, the City created an LRA Advisory Committee (LRAAC) to guide the Mann Center disposal process, by planning and implementing a community involvement process, and by preparing a recommendation for the content of a local redevelopment plan for Mann Center; and

WHEREAS, the City Council approved Resolution No. 2008-0046 on May 5, 2008 approving the Redevelopment Plan and Homeless Submittal for the Mann Center, which was subsequently modified on February 15, 2010 pursuant to Resolution No. 2010-0003 to provide for a Public Benefit Conveyance of the property to Spokane Public Schools; and

WHEREAS, prior to the Mann Center being transferred to Spokane Public Schools, the property was extensively damaged due to vandalism, which cause Spokane Public Schools to withdraw its application for the transfer of the Mann Center pursuant to Resolution No. 2013-06 approved by the Board of Directors on February 13, 2013; and

WHEREAS, the City Council sponsored a community meeting on April 4, 2013 to solicit information and public comment regarding the preferred future use of the Mann Center and to established a process to follow for the redevelopment of the Mann Center pursuant to the federal regulations and guidelines for a recognized Local Redevelopment Authority; and

WHEREAS, after consultation with the Department of Defense, the City proceeded with issuing a second Notice of Intent to develop a proposal to submit to the Department of Defense utilizing in part the HUD homeless assistance use screening process utilized from the first initiative in 2008; and

WHEREAS, on March 18, 2013, the City Council passed Resolution No. 2013-0022 establishing a process regarding the redevelopment of the Mann Center and the acceptance of proposals regarding public benefit conveyance of the Mann Center; and

WHEREAS, a public hearing was conducted on September 9, 2013 to review the responses to the City's request for proposals regarding redevelopment of the Mann Center; --Now, Therefore,

BE IT RESOLVED by the City Council for the City of Spokane that:

- 1) the City Council, as the Local Redevelopment Authority, recommends to the Department of Defense the Mann Center Redevelopment Proposal submitted by \_\_\_\_\_ as the Redevelopment Plan and Homeless Submittal for the Mann Center, a copy of which is attached to this resolution,
- 2) the Mayor or his designee is authorized to submit the Redevelopment Plan and Homeless Submittal for the Mann Center on behalf of the City of Spokane to the appropriate federal agencies, following federal Base Realignment and Closure Act (BRAC) guidelines, and
- 3) the Mayor or his designee is authorized to take necessary action to implement the Redevelopment Plan and Homeless Submittal for the Mann Center once the Plan is approved by the federal agencies.

ADOPTED by the City Council \_\_\_\_\_, 2013.

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

Approved as to form:

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



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

09/30/2013

<b>Date Rec'd</b>	DocDate
<b>Clerk's File #</b>	RES 2013-0071
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	

<b>Submitting Dept</b>	CITY ATTORNEY
<b>Contact Name/Phone</b>	SALVATORE J. 625-6818 FAGGIANO
<b>Contact E-Mail</b>	SFAGGIANO@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Resolutions
<b>Agenda Item Name</b>	RESOLUTION APPROVING SETTLEMENT

**Agenda Wording**

Resolution approving settlement of Michael Best and Cherise Best v. Jared K. Cereghino and Jane Doe Cereghino and the City of Spokane, Spokane County Superior Court Cause No. 13-2-00915-8, arising out of an incident on March 8, 2010.

**Summary (Background)**

This claim was settled through mediation.

**Fiscal Impact**

Expense	\$ 70,000.00
Select	\$
Select	\$
Select	\$

**Budget Account**

#	5800-78100-14780-54601
#	
#	BudgetAccount3
#	

**Approvals**

<b>Dept Head</b>	BURNS, BARBARA
<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>	
<b>Distribution List</b>	
	sfaggiano@spokanecity.org
	dstragier@spokanecity.org

**Additional Approvals**

<b>Purchasing</b>	

RESOLUTION RE SETTLEMENT OF  
CIVIL CLAIM AGAINST CITY OF SPOKANE

WHEREAS, the City of Spokane is a defendant in litigation brought in the Spokane County Superior Court under the caption "Michael E. Best and Cherise Best, husband and wife, Plaintiffs, v. Jared K. Cereghino and Jane Doe Cereghino, husband and wife and the marital community composed thereof; and the City of Spokane, a Legal Subdivision of the State of Washington," Cause No. 13-2-00915-8, arising out of an incident on March 8, 2010, in the City of Spokane, as more fully described in the Complaint filed in said cause, and

WHEREAS, the City has determined to resolve all claims with Plaintiffs and any third parties who may claim a subrogated interest against the City, its officers, agents, employees and contractors, for a payment of SEVENTY THOUSAND DOLLARS (\$70,000.00).

WHEREAS, Plaintiff has agreed to accept said payment and in return to dismiss with prejudice their underlying lawsuit and any and all claims against the City defendants.

NOW THEREFORE, be it resolved by the City Council of the City of Spokane:

1. The City of Spokane authorizes that payment in the amount of SEVENTY THOUSAND and NO/100 DOLLARS (\$70,000.00), to be paid to plaintiffs through their counsel, Crary, Clark & Domanico, P.S., Trust Account, without admission of fault or liability, as a full settlement and compromise of the above-referenced litigation and/or claim, and in exchange the Plaintiffs will dismiss the underlying lawsuit with prejudice and without costs of said litigation, and provide a signed release fully extinguishing all claims by plaintiffs in connection with the case and pledging to fully protect and indemnify the City of Spokane, its officers, agents, employees, contractors, and insurers, to include Jared K. Cereghino and Jane Doe Cerghino, husband and wife, against all loss or liability in connection with said case and claim.

PASSED the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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

Approved as to form:

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



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

09/30/2013

<b>Date Rec'd</b>	DocDate
<b>Clerk's File #</b>	RES 2013-0072
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	

<b>Submitting Dept</b>	CITY ATTORNEY
<b>Contact Name/Phone</b>	ERIN JACOBSON 6889
<b>Contact E-Mail</b>	EJACOBSON@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Resolutions
<b>Agenda Item Name</b>	RESOLUTION AUTHORIZING SALARY SAVINGS PLAN

**Agenda Wording**

Resolution authorizing payment of the Salary Savings Plan retirement incentive for Deputy Fire Chief Bob Hanna.

**Summary (Background)**

The City previously approved the Salary Savings Plan for Deputy Fire Chief Bob Hanna, with a retirement deadline of the last pay period of 2013. The City seeks Council authorization for payment of the Salary Savings Plan retirement incentive without requiring his retirement before the end of 2013. The fiscal impact is due to a wage increase scheduled for the first of 2014, which will result in approximately \$5,000 increase in leave cash outs at retirement.

**Fiscal Impact**

Expense	\$ approximately \$5,000
Select	\$
Select	\$
Select	\$

**Budget Account**

#	various
#	
#	BudgetAccount3
#	

**Approvals**

<b>Dept Head</b>	BURNS, BARBARA
<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>	public safety 9-16-13

**Distribution List**

bwilliams@spokanefire.org
bhanna@spokanefire.org
ejacobson@spokanefire.org
hlowe@spokanefire.org
dhendricks@spokanefire.org

**Additional Approvals**

<b>Purchasing</b>	

RESOLUTION 2013-0072

A resolution authorizing payment of the Salary Savings Plan retirement incentive for Deputy Fire Chief Bob Hanna.

WHEREAS, the City of Spokane previously approved the Salary Savings Plan for Deputy Fire Chief Bob Hanna; and

WHEREAS, the prior approval was subject to a retirement deadline of the last pay period of 2013, as provided in the Salary Savings Plan agreement with the Spokane Association of Fire Officers, to which nonrepresented Deputy Fire Chiefs are tied per Section 03.07.310 of the Spokane Municipal Code; and

WHEREAS, the City of Spokane is actively recruiting for a replacement for Deputy Fire Chief Bob Hanna, but is unlikely to hire such replacement before the end of 2013; and

WHEREAS, Bob Hanna is willing to continue as Deputy Fire Chief beyond his original intended retirement date to allow additional time for the City to recruit and transition his replacement; and

WHEREAS, Section 03.07.310 of the Spokane Municipal Code states that the City Council may authorize additional pay for nonrepresented employees -- Now, Therefore,

BE IT RESOLVED that the City Council for the City of Spokane hereby authorizes payment of the Salary Savings Plan retirement incentive for Deputy Fire Chief Bob Hanna without requiring his retirement to occur before the end of 2013.

ADOPTED BY THE CITY COUNCIL ON \_\_\_\_\_

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

Approved as to form:

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



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

09/30/2013

<b>Date Rec'd</b>	DocDate
<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>	Final 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**

#
#
# BudgetAccount3
#

**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

**Additional Approvals**

<b>Purchasing</b>	

## ORDINANCE NO. C-35020

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, 3.01A.363 and 3.01A.364 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**

The parks recreation department performs responsible administrative and professional work for the recreation 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 committee of the park board.

Section 4. That there is adopted a new section 3.01A.364 to chapter 3.01A of the Spokane Municipal Code to read as follows:

**3.01A.364 Parks Riverfront / Entertainment**

The parks riverfront / entertainment department performs responsible administrative and professional work for the riverfront and entertainment 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 riverfront park committee 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

09-18-13  
88

# AGENDA SHEET FOR PARK BOARD MEETING OF: September 12, 2013



Submitting Division  
Finance

Contact Person:  
Leroy Eadie

Phone No.  
625-6204

**COMMITTEE**

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

RECEIVED

SEP 17 2013

CITY CLERK'S OFFICE  
SPOKANE, WA

CLERK'S FILE  
RENEWS  
CROSS REF  
ENG  
BID  
REQUISITION

OPR 2013-0672

**AGENDA WORDING:**

A Resolution supporting four exempt positions in Parks and Recreation.

**BACKGROUND:**

(Attach additional sheet if necessary)

The Parks and Recreation Department has three major divisions: Park Operations, Recreation and Entertainment, and Budget/Finance that are run by Division Managers. The Park Board supports the creation of a fourth division in Parks and Recreation as presented in the Park and Recreation Director's proposed 2014 Budget. The new division will be the Recreation Division, with Entertainment/Riverfront Park, Park Operations, and Budget/Finance being the other three divisions.

**RECOMMENDATION:** Approve

**Fiscal Impact:**

Expenditure:  
Revenue:

**Budget Account:**

Neutral  
Neutral

**ATTACHMENTS:** Include in Packets: *Resolution*

Resolution

On file for Review in Office of City Clerk:

**SIGNATURES:**

Requestor

Parks Accounting

Legal Department

Director of Parks and Recreation

**DISTRIBUTION:**

- Parks, Leroy Eadie
- Parks, Kathleen Keck
- Parks, Leesa Van Zandt

**PARK BOARD ACTION:**

APPROVED BY

SPOKANE PARK BOARD:

September 12, 2013

PARK BOARD

## CITY OF SPOKANE PARK BOARD

## RESOLUTION

A Resolution supporting four 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 the Park Board supports the creation of a fourth division (department once SMC 3.01 is amended) in Parks in Recreation as presented in the Park and Recreation Director's proposed 2014 Budget. The new division will be Recreation, with Entertainment/Riverfront Park, Park Operations, and Budget/Finance being the other three.

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.

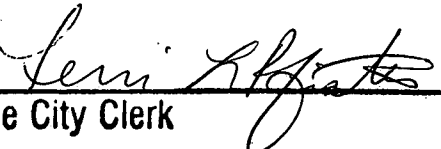
Dated this 16<sup>TH</sup> day of September, 2013.

Approved as to form:

  
Assistant City Attorney

  
Park Board President



Attest:   
Spokane City Clerk

# 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:

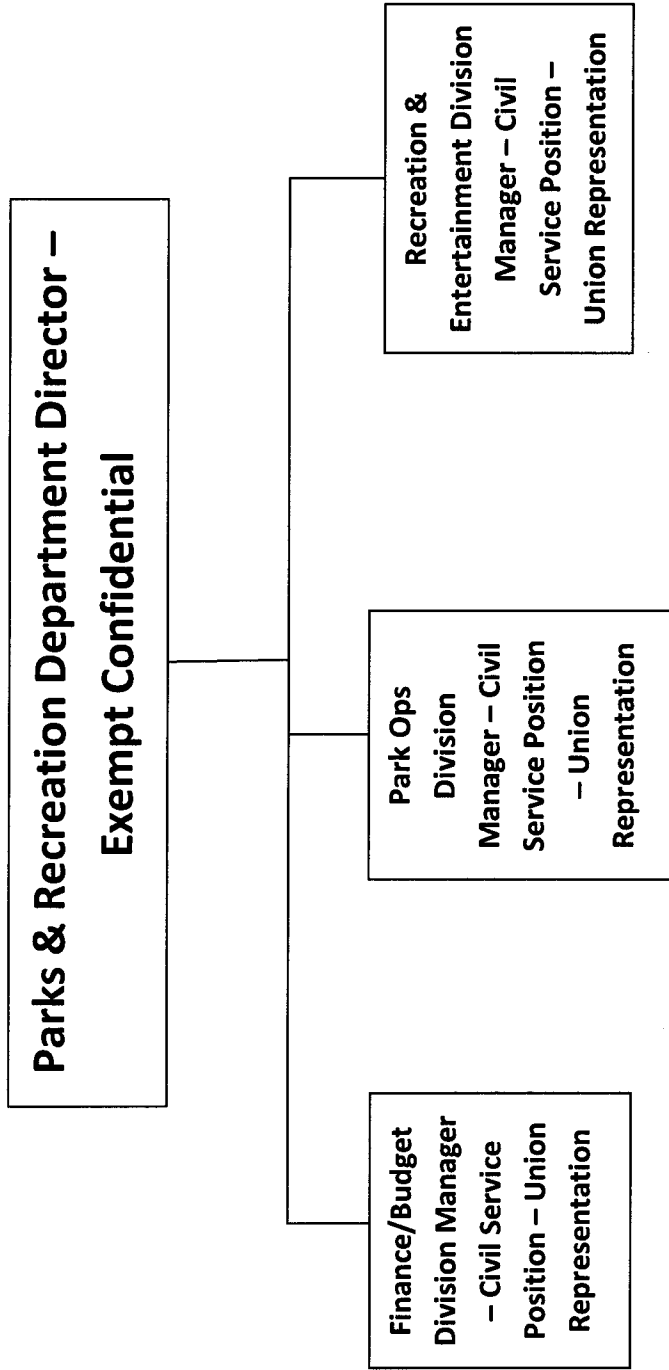
  
\_\_\_\_\_  
Assistant City Attorney

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



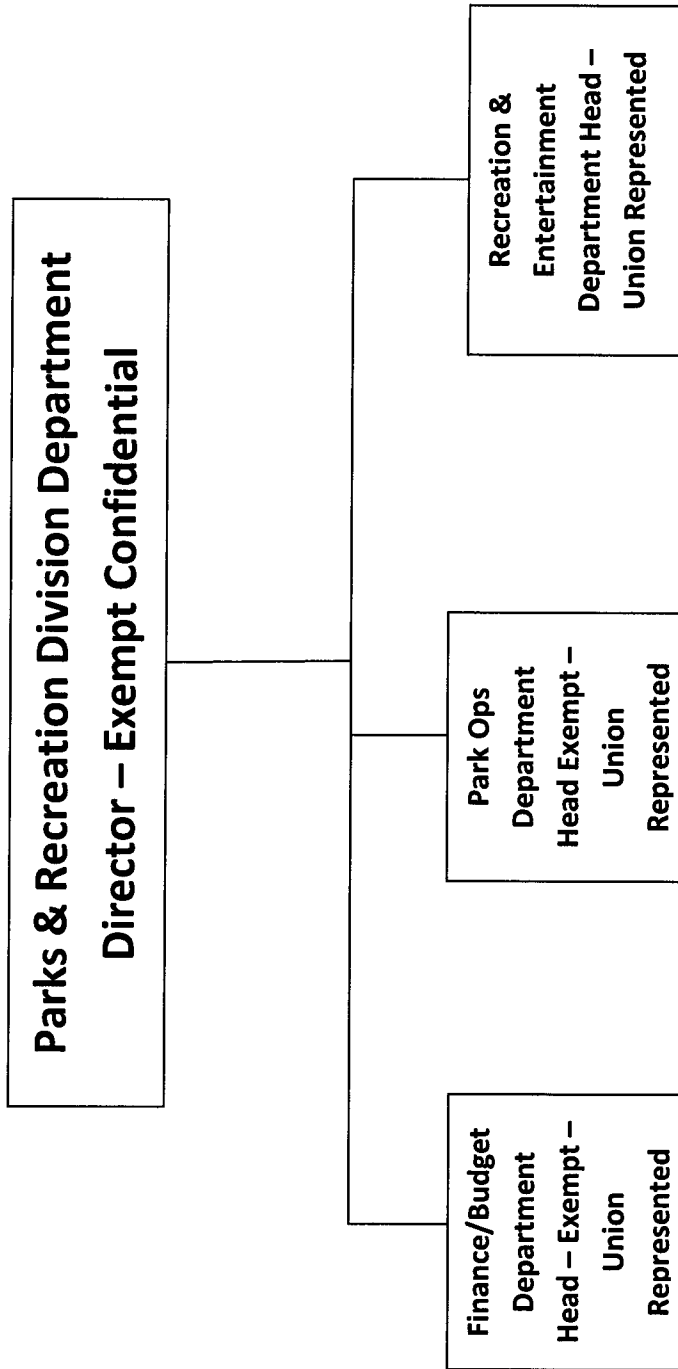


# Parks and Recreation Department Today



# 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:**

09/16/2013

<b>Date Rec'd</b>	DocDate
<b>Clerk's File #</b>	ORD C35030
<b>Renews #</b>	
<b>Cross Ref</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisitio</b>	

<b>Submitting</b>	CITY COUNCIL
<b>Contact</b>	CM FAGAN / CM MCLAUGHLIN 6257 / 6256
<b>Contact E-</b>	MFAGAN@SPOKANECITY.ORG/NMCGLAUGHLIN@SPOKANECITY.
<b>Agenda</b>	First Reading Ordinance
<b>Agenda</b>	UNLAWFUL PUBLIC EXPOSURE

**Agenda Wording**

An ordinance relating to unlawful public exposure; adopting a new section 10.06.050 to chapter 10.06 of the Spokane Municipal Code.

**Summary (Background)**

There is currently no separate charge in the SMC for unlawful public exposure. The conduct described in the proposed ordinance does not fall under the criteria of indecent exposure under SMC 10.06.025 or lewd conduct under SMC 10.06.020. The proposed ordinance will create a separate charge designated as unlawful public exposure, which would still be a criminal misdemeanor.

**Fiscal Impact**

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

**Budget Account**

#
#
# BudgetAccount3
#

**Approvals**

<b>Dept Head</b>	WESTFALL, JENNIFER
<b>Division</b>	
<b>Finance</b>	LESESNE, MICHELE
<b>Legal</b>	BURNS, BARBARA
<b>For the</b>	SANDERS, THERESA

**Council Notifications**

<b>Study Session</b>	
<b>Other</b>	
<b>Distribution List</b>	
	mfagan@spokanecity.org
	nmcglaughlin@spokanecity.org
	bstuckart@spokanecity.org
	jwestfall@spokanecity.org
	smcgrath@spokanecity.org

**Additional Approvals**

**Purchasing**



**Continuation of Wording, Summary, Budget, and Distribution**

**Agenda Wording**

Boulevard; and amending the zoning map from "Office (O-35)", "Office Retail (OR-35)" and "Residential Single Family (RSF)" to "Centers & Corridors Type 2, District Center" (CC-2, DC)."

**Summary (Background)**

**Fiscal Impact**

Select **\$**

Select **\$**

AmtType7 **\$** Amount7

AmtType8 **\$** Amount8

**Budget Account**

**#**

**#**

**#** Budget7

**#** Budget8

**Distribution List**

Email16

Email17

Email18

Email19

Email20

Email21

Email22

Email23

ORDINANCE NO. C - \_\_\_\_\_

An ordinance relating to unlawful public exposure; adopting a new section 10.06.050 to chapter 10.06 of the Spokane Municipal Code.

The City of Spokane does ordain:

Section 1. That there is adopted a new section 10.06.050 to chapter 10.06 of the Spokane Municipal Code to read as follows:

**Section 10.06.050 Unlawful Public Exposure**

- A. It is unlawful for any person to intentionally commit any act constituting unlawful public exposure or for the owner, lessee, manager, operator or other person in charge of any public place to knowingly permit, encourage, or cause to be committed, whether by commission or omission, any unlawful public exposure upon the public place.
- B. "Unlawful public exposure" means the exposure of any of the following body parts of the person without a full and opaque covering in other than a public place provided or set apart for nudity:
  - 1. Any part of the male or female genitals, pubic hair, pubic area, perineum, anus, or bottom one-half of the anal cleft;
  - 2. Any part of the areola or nipple of the female breast; or
  - 3. More than one-half of the part of the female breast located below the top of the areola.
- C. Body paint, body dye, tattoos, latex, tape, or any similar substance applied to the skin surface, any substance that can be washed off the skin, or any substance designed to simulate or which by its nature simulates the appearance of the anatomical area beneath it, is not full and opaque covering as required by this section.
- D. A violation of this section is a misdemeanor.
- E. This section is not applicable to:
  - 1. Classes, seminars, and lectures held for serious scientific, cultural or educational purposes;
  - 2. Expressive conduct such as exhibits, performances or dances that ~~are not~~ obscene, subject to time, place and manner restrictions;
  - 3. Children under ten years of age; or
  - 4. The exposure of a female breast while nursing an infant or expressing breast milk.

F. For purposes of this section, "public place" shall have the meaning as set forth in SMC 10.06.030 D (2).

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:**

09/30/2013

<b>Date Rec'd</b>	DocDate
<b>Clerk's File #</b>	ORD C35042
<b>Renews #</b>	
<b>Cross Ref #</b>	PRO 2013-0018
<b>Project #</b>	2013080
<b>Bid #</b>	
<b>Requisition #</b>	

<b>Submitting Dept</b>	HEARING EXAMINER
<b>Contact Name/Phone</b>	GARY NELSON 625-6678
<b>Contact E-Mail</b>	GNELSON@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Final Reading Ordinance
<b>Agenda Item Name</b>	0570 - LID 2013080 - FORMATION-ALLEY-PRINCETON-HEROY

**Agenda Wording**

Formation of a Local Improvements District for Improvements of the Alley between Princeton Avenue and Heroy Avenue from Addison Street to Standard Street.

**Summary (Background)**

On August 13, 2013 the Hearing Examiner held a public hearing on the above matter and on September 17, 2013 issued a decision recommending formation of the Local Improvement District (LID). Formation of this LID is consistent with the adopted policies of the City Council. The district contains a total of 21 parcels. There is one known opponent to this LID and his assessment is approximately 8.3% of the total project.

<b>Fiscal Impact</b>	<b>Budget Account</b>
Neutral \$	#
Select \$	#
Select \$	# BudgetAccount3
Select \$	#

<b>Approvals</b>		<b>Council Notifications</b>	
<b>Dept Head</b>	MCGINN, BRIAN	<b>Study Session</b>	
<b>Division Director</b>		<b>Other</b>	
<b>Finance</b>	LESESNE, MICHELE	<b>Distribution List</b>	
<b>Legal</b>	BURNS, BARBARA	arorholm@spokanecity.org	
<b>For the Mayor</b>	SANDERS, THERESA	areid@spokanecity.org	
<b>Additional Approvals</b>		mlesesne@spokanecity.org	
<b>Purchasing</b>		pdolan@spokanecity.org	
		cclark@spokanecity.org	
		htrautman@spokanecity.org	

ORDINANCE NO. C-35042

An ordinance ordering the **Alley Improvements between Princeton Avenue and Heroy Avenue from Addison Street to Standard Street**, establishing a local improvement district and creating a local improvement fund therefore, directing the levy of special assessments and providing a method of financing to pay the cost and expense of said improvement.

**THE CITY OF SPOKANE DOES ORDAIN:**

Section 1. That **Alley Improvements between Princeton Avenue and Heroy Avenue from Addison Street to Standard Street** be improved by the **paving of the same**, and that such other work be done as may be necessary in connection therewith, according to the maps, plans, drawings and specifications prepared by the Engineering Services Director of said City, and on file in the Office of the said Engineering Services Director, which said maps, plans, drawings and specifications are hereby approved and adopted.

Section 2. That the cost of said improvement, including all the necessary and incidental expenses, shall be borne by and assessed against the property included in the local improvement district hereinafter established and described and in accordance with law. The City of Spokane shall not be liable in any manner for any portion of the cost or expense of said improvement, except as may be herein provided.

Section 3. That there is hereby established a local improvement district to be known as **“Local Improvement District No. 2013080 for Alley Improvements between Princeton Avenue and Heroy Avenue from Addison Street to Standard Street,”** which said district embraces as nearly as practicable all of the lots, tracts and parcels of land and other property specially benefited by the said improvement, and described as follows:

<u>LOTS</u>	<u>BLOCK</u>	<u>ADDITION</u>
North half of Vacated Block	21	Lidgerwood Heights Addition
South half of Vacated Block	21	Lidgerwood Heights Addition

Situated in the **NW** Quarter of Section **05**, Township **25**, Range **43** East of the Willamette Meridian.

Section 4. That the sum charged against any lot, tract and parcel of land or other property in said district may be paid during the thirty (30) day period allowed for the payment of assessments without penalty, interest, or cost, and that thereafter the sum remaining unpaid may be paid in equal annual installments bearing interest at such rate or rates as authorized by the City Council, in accordance with state law and the charter and ordinances of the City of Spokane. All of which said lots, tracts and parcels of land or other property in said district are specially benefited by said improvement.



For the purpose of this improvement there is hereby created a special fund for the cost and expense of the said improvement to be designated as, **“Local Improvement District No. 2013080 for Alley Improvements between Princeton Avenue and Heroy Avenue from Addison Street to Standard Street,”** into which shall be paid the special assessments hereby authorized when collected as provided by law. The said fund shall be used for no other purpose than the redemption of warrants drawn upon and bonds issued against the fund to provide for the cost and expense of the improvement, or installment notes for same.

Section 5. That for the purpose of paying the cost and expense of said improvement there shall be issued by the City of Spokane local improvement bonds, installment notes, or warrants, said bonds, installment notes, or warrants to bear interest at such rate or rates as authorized by the City Council. Said bonds, installment notes, or warrants shall be redeemable only out of the local improvement fund created by this ordinance. In case said improvement is made by contract, said bonds, installment notes, or warrants shall be delivered to the contractor in payment of the contract price, or, the City may, at its election, sell said bonds, installment notes, or warrants and make payment in cash. If provision is made in said contract for progress payments to be made upon estimates, local improvement warrants shall be issued upon the local improvement fund created herein for the purpose of making such progress payments. The improvement bonds herein provided for may be sold by the Treasurer of the City of Spokane at public or private sale at not less than their par value and accrued interest. In such event, the proceeds thereof shall be applied in payment of the cost and expense of the improvement. No bonds shall be issued in excess of the cost of the improvement, nor shall they be issued prior to twenty (20) days after the thirty (30) days allowed for the payment of assessments without penalty, interest, or cost.

Section 6. The City Administrator is hereby directed to advertise for bids for making said improvement, reserving to the City the right to reject any and all bids. In case a satisfactory bid is received and accepted, the contract for said improvement shall provide that the same shall be completed in all things in accordance with the maps, plans, drawings and specifications for said improvement herein referred to, and shall also provide that the contractor making the improvement shall accept the bonds or warrants herein provided for at par and accrued interest in payment of the contract price for such work, to the extent of such bond or warrant issue, if the City shall so elect. In case no satisfactory bid is received, as in RCW 35.43.190 set forth, said improvement may be made by the City and payment therefore shall be made as otherwise provided herein.

Section 7. No bid, acceptance of any bid, or contract relating to said improvement shall be binding upon the City until the assessments herein provided for shall be confirmed by ordinance. The City shall not be under any obligation or duty to confirm any assessment or assessment roll and, if for any reason the same be not confirmed, the bid, acceptance of bid, or contract shall be of no force or effect.

The City shall not be liable or responsible in any manner, except to account for the local improvement bonds and fund herein provided for, and except as to the guaranty fund provided for in Ordinance No. C4155. Bondholders' remedy in case of nonpayment shall be confined to enforcement of the special assessments made for the improvement and to the guaranty fund.

Section 8. This ordinance shall take effect immediately after its passage.

**Passed the City Council** \_\_\_\_\_.

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

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

Approved as to form:

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

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

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

**CITY OF SPOKANE HEARING EXAMINER**

**RE:** Formation of a Local Improvement District for Paving of the Alley between Princeton Avenue and Heroy Avenue from Addison Street to Standard Street. ) FINDINGS, CONCLUSIONS, AND RECOMMENDATION ) ) ) ) ) LID #2013080

**SUMMARY OF PROPOSAL AND RECOMMENDATION**

**Project Description:** The purpose of this LID is to pave the alley between Princeton Avenue and Heroy Avenue from Addison Street to Standard Street. The district contains a total of 21 parcels. The project was initiated by a petition which contains signatures representing 54.17% percent of the property owners. The expected benefits of the project are dust control, adequate drainage, and better circulation for local and emergency vehicles within the assessment district. A frontage method of distributing the project costs has been used. There is one known opponent to this LID and their assessment is approximately 8.3% of the total.

**Recommendation:** That the Local Improvement District be formed as modified.

**FINDINGS OF FACT**  
**BACKGROUND INFORMATION**

**Date of Resolution:** July 15, 2013

**Estimated Cost:** The estimated project cost is \$94,638.87 and breaks down as follows:

Estimated cost of Improvement	\$ 63,360.00
Engineering Fee	22,176.00
City Clerk	256.59
City Treasurer	2,560.00
Accounting	605.80
Interest	4,118.40
Bonds	142.50
Attorney's fee	<u>1,419.58</u>
	\$ 94,638.87
 Total Estimated Project Cost	 \$ 94,638.87

## PROCEDURAL INFORMATION

**Hearing Date:** August 13, 2013

**Notices:**

Mailed: July 19, 2013  
Published: July 17<sup>th</sup> and 24, 2013  
Information Meeting: August 1, 2013

**Known Opponents:**

Richard Lagunas  
507 East Heroy Avenue  
Spokane, WA 99207

**Testimony:**

Michael Myers, Engineering Technician  
Engineering Services Department  
808 West Spokane Falls Boulevard  
Spokane, WA 99201

Cory McKinley  
539 East Heroy Ave  
Spokane, WA 99207

Richard Lagunas  
507 East Heroy Avenue  
Spokane, WA 99207

**Exhibits:**

1. Agenda sheet setting hearing
2. Map of proposed district boundaries
3. Legal description of proposed district boundaries
4. Preliminary assessment roll
5. Copy of mailed notice
6. Affidavit of Mailing
7. Affidavit of Publication with attached Resolution
8. Engineering Services Department report
9. Informational Meeting attendance roster
10. LID Formation Hearing Report

## FINDINGS AND CONCLUSIONS

To recommend approval of the formation of the proposed LID the Hearing Examiner must find that all of the criteria set forth in SMC 7.05.490 are or will be met. The Hearing Examiner has reviewed the proposed LID and the evidence of record with regard to these criteria and makes the following Findings and Conclusions:

1. All of and only the property that will be specially benefited by the proposed improvement is included within the proposed LID boundaries.

Benefits resulting from this alley being paved are that dust will be reduced and stormwater drainage will be enhanced. In addition, there will be improved access and circulation for local and emergency vehicles. This LID includes all of the property adjacent to the alley between Princeton Avenue and Heroy Avenue from Addison Street to Standard Street. These properties will be the most benefited by this paving project.

2. Formation of the LID is consistent with the adopted policies of the City Council.

It is the policy of the City Council to approve LIDs in order to eliminate unpaved streets and alleys to reduce air pollution and for other reasons. It is also the policy of the City Council to approve LIDs unless they are opposed by property owners having estimated assessments totaling greater than 60 percent of the total project.

The formation of this LID is consistent with the forgoing policies. First, the paving of the alley will serve to improve access for adjacent residents and reduce dust and air particulates, at the minimum. Second, there is only one known opponent to this LID and the estimated assessment for that property is approximately 8.3% of the total. This is well under the threshold referenced above. Therefore, under the city policies, the LID formation should be approved.

3. All procedures set forth in RCW 35.43 and SMC 7.05 have been followed.

The hearing before the Hearing Examiner was held pursuant to a resolution adopted by the City Council and was held at the time and place set by the Council. Notice of the hearing was mailed to all owners and taxpayers of record by the Engineering Services Department on July 19, 2013, and was published in a newspaper of general circulation (*The Official Gazette*) on July 17th and 24, 2013. These dates comply with the time periods required by RCW 35.43 and SMC 7.05, and the notices contained all the information required by those laws. Therefore, the procedures set forth in those laws have been met.

4. The project opponent raised bona fide objections to participation in the LID.

The only known opponent of the LID formation is Richard Lagunas, who owns the property located on the corner of Heroy Avenue and Addison Street, addressed 507 E. Heroy, and designated as Parcel No. 35052.0912.

Mr. Lagunas testified that he understood the need for paving the alley, and he could see the benefit for others along the alley. However, he opposed the LID formation because the project would not directly benefit his property or access to it. In support of his position, Mr. Lagunas emphasized the following points.

Mr. Lagunas noted that his property was located at the end of the alley, just before the alley connects to Addison. He stated that the alley provides access from the other lots to the adjoining streets, but did not benefit his property, which was at the end of the line. Mr. Lagunas's residence has an attached garage that faces Heroy with a driveway that connects his property directly to Heroy. Mr. Lagunas does not access or need to access the alley. Ultimately, Mr. Lagunas contended that the alley would really serve other owners along the alley, which have garages or

parking in the back of their lots. As a result, he objected to paying for alley improvements that he would not use or benefit from.

To better understand Mr. Lagunas's position, the Hearing Examiner conducted a site visit of his property and the other properties included in the LID. The Hearing Examiner drove the alley and around the block included in the LID. During this site visit, the Hearing Examiner noted that there was no driveway or garage in the back of the Lagunas residence. The back lot line was fenced with a cyclone fence. There was a latched gate in the back fence line, near the northeast corner of the lot. That gate is large enough to accommodate a vehicle. This does not necessarily indicate an intent to access his property through the alley, other than perhaps on an isolated basis. For example, the gate could be used to move furniture or appliances or for other occasional needs. The back yard was grassed and there were no apparent parking areas, tire tracks or other evidence that the back yard was intended to be used for parking, vehicle storage, or the like. There is no garage, storage shed, or other structure behind the residence that might require access through the alley.

All of the properties within the proposed PUD, with two exceptions, appeared to have a garage or parking area adjacent to the alley, and thus would directly use the alley and fully enjoy the benefits of the alley improvements. The two exceptions were the property of Mr. Lagunas, and the Hinkley property, located at 557 E. Heroy, which is Parcel No. 35052.0921. The Hinkley property is situated at the corner of Heroy and Standard, at the termination of the alley as it intersects with Standard. The Hinkley property has a garage facing Standard Street, with a driveway connecting directly to Standard Street. The property has a wood fence which fully screens (along with the wall of the garage) the north boundary of the Hinkley property from the alley. The fence has no apparent doors or gates through which the owner would access the alley. However, the owners of that property did not offer written or verbal comments on the LID formation. In the absence of some form of protest, it must be concluded that the owners of the Hinkley property have no objections to being included in the LID, despite potentially facing circumstances quite similar to Mr. Lagunas.

### RECOMMENDATION

Based on the Findings and Conclusions above, the Hearing Examiner recommends that the LID be formed. The Hearing Examiner further recommends that the proposed LID be modified to exclude the Lagunas property, 507 East Heroy Avenue, designated as Parcel No. 35052.0912, from inclusion in the LID, on the grounds that the benefits to the Lagunas property are not sufficient to warrant its inclusion in the local improvement district.

DATED this 17th day of September 2013




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Brian T. McGinn  
City of Spokane Hearing Examiner

07.22.13  
 2013

EXHIBIT NO. 1

 <b>Agenda Sheet for City Council Meeting of:</b> 07/15/2013		<b>Date Rec'd</b>	7/3/2013
		<b>Clerk's File #</b>	RES 2013-0054
		<b>Renews #</b>	
<b>Submitting Dept</b>	ENGINEERING SERVICES	<b>Cross Ref #</b>	PRO 2013-0018
<b>Contact Name/Phone</b>	GARY NELSON 625-6678	<b>Project #</b>	2013080
<b>Contact E-Mail</b>	GNELSON@SPOKANECITY.ORG	<b>Bid #</b>	
<b>Agenda Item Type</b>	Resolutions	<b>Requisition #</b>	
<b>Agenda Item Name</b>	0370-SET FORMATION HEARING-PRINCETON/HEROY ALLEY		
<b>Agenda Wording</b>			
Setting LID #2013080 Formation Hearing before the Hearing Examiner for August 13, 2013 at 1:30 PM for Improvements of the Alley Between Princeton Avenue & Heroy Avenue from Addison Street to Standard Street.			
<b>Summary (Background)</b>			
This department has received a valid petition requesting the formation of this LID. The petition represents 54.17% of the property owners within the assessment district.			
<b>Fiscal Impact</b>		<b>Budget Account</b>	
Select	\$		#
Select	\$		#
Select	\$		#
Select	\$		#
<b>Approvals</b>		<b>Council Notifications</b>	
<b>Dept Head</b>	TWOHIG, KYLE	<b>Study Session</b>	
<b>Division Director</b>	QUINTRALL, JAN	<b>Other</b>	
<b>Finance</b>	LESESNE, MICHELE	<b>Distribution List</b>	
<b>Legal</b>	BURNS, BARBARA	lhattenburg@spokanecity.org	
<b>For the Mayor</b>	SANDERS, THERESA*	areid@spokanecity.org	
<b>Additional Approvals</b>		rriedinger@spokanecity.org	
<b>Purchasing</b>		mhughes@spokanecity.org	
		htrautman@spokanecity.org	

ADOPTED BY SPOKANE CITY COUNCIL

7/15/2013  
*[Signature]*  
 SPOKANE CITY CLERK

**BACKGROUND**, continued:

Estimated Cost of Improvement	\$ 63,360.00
Engineering Fee	22,176.00
City Clerk	256.59
City Treasurer	2,560.00
Accounting	605.80
Interest	4,118.40
Bonds	142.50
Attorney's Fee	<u>1,419.58</u>
	\$ 94,638.87
Net Assessment to Property Owners	\$ 94,638.87

There are no outstanding L.I.D. assessments.

Projects\2013080\formation agenda







# District Map

## Alley between Princeton Ave & Heroy Ave from Addison St to Standard St

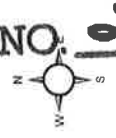
Printed by: mmymers  
Print date: 3/19/2013

### Legend

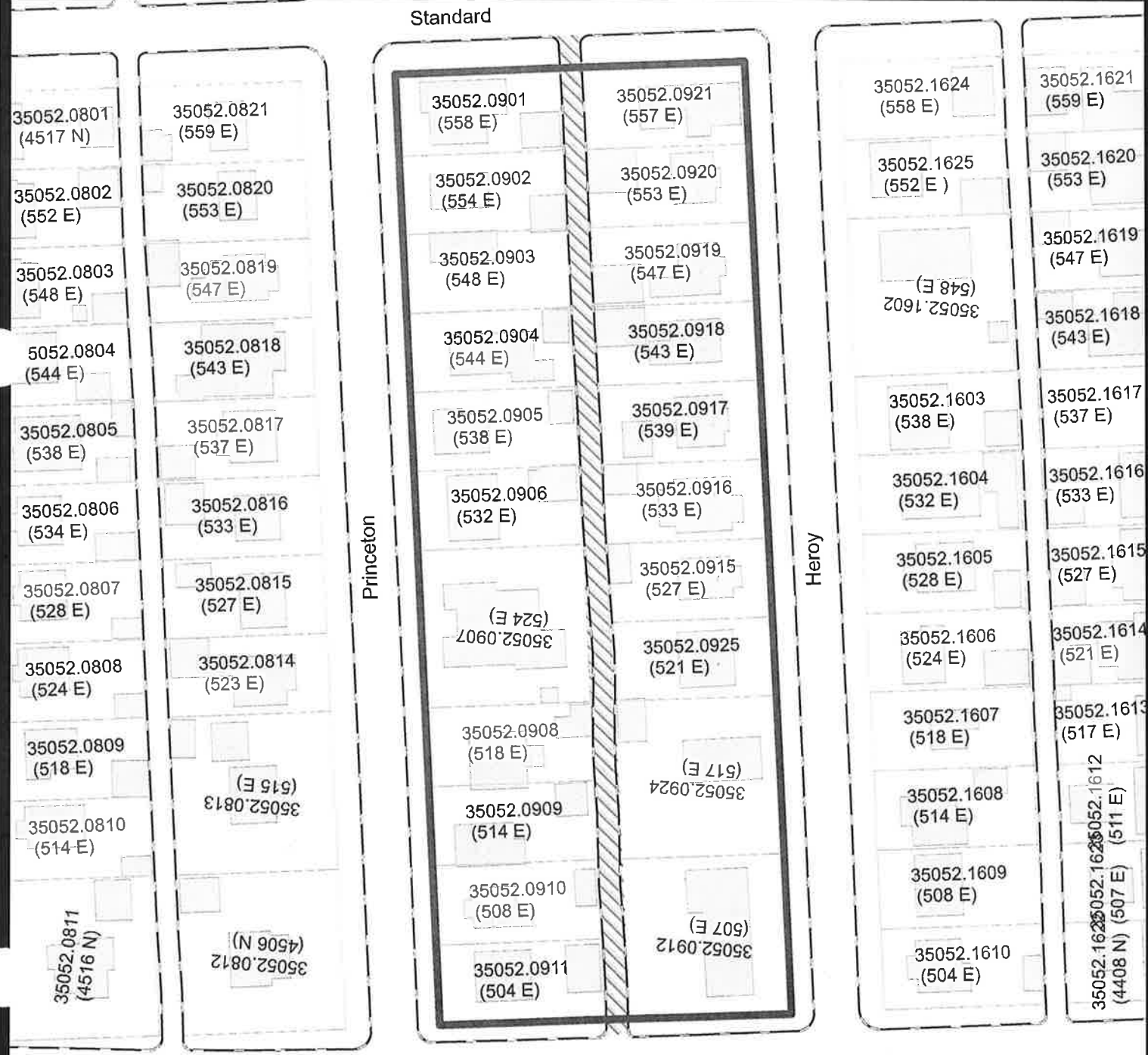
-  Building
-  Parcel Edge
-  District Boundary
-  Improvement Area

Nevada \ Lidgerwood Neighborhood  
City Council District 1

EXHIBIT NO. 2



THIS IS NOT A LEGAL DOCUMENT  
The information shown on this map is compiled  
from various sources and is subject to change  
without notice. Information shown on this map should  
not be used to determine the location of a utility  
in relationship to property lines, section lines,  
streets, etc.



ASSESSMENT DISTRICT DESCRIPTION

PROJECT NO. 2013080

Description of the assessment district for:

**Alley Improvements between Princeton Avenue and Heroy Avenue  
from Addison Street to Standard Street**

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All that property described as follows:

<u>LOTS</u>	<u>BLOCK</u>	<u>ADDITION</u>
North half of Vacated Block	21	Lidgerwood Heights Addition
South half of Vacated Block	21	Lidgerwood Heights Addition

Situated in the **NW** Quarter of Section **05**, Township **25**, Range **43** East of the Willamette Meridian.

End of Description.

By: MBM

Date: June 14<sup>th</sup>, 2013

Checked: \_\_\_\_\_

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

PBWK FILE	PROJECT DESCRIPTION
2013080 LID	ALLEY BETWEEN PRINCETON AVENUE AND HEROY AVENUE FROM ADDISON STREET TO STANDARD STREET

PBWK FILE	PROJECT DESCRIPTION	IMPROVEMENT TYPE
2013080 LID	ALLEY BETWEEN PRINCETON AVENUE AND HEROY AVENUE FROM ADDISON STREET TO STANDARD STREET	ALLEY PAVE
	ESTIMATED COST OF IMPROVEMENT.....\$	63,360.00
	DESIGN AND INSPECT EXPENSE.....\$	22,176.00
	CITY CLERK EXPENSE.....\$	256.59
	TREASURER EXPENSE.....\$	2,560.00
	ACCOUNTING EXPENSE.....\$	605.80
	INTEREST EXPENSE.....\$	4,118.40
	BONDS EXPENSE.....\$	142.50
	LEGAL EXPENSE.....\$	1,419.58
	ESTIMATED PROJECT SALES TAX.....\$	.00
	TOTAL ESTIMATED PROJECT COST.....\$	94,638.87
	TOTAL ESTIMATED NET PROJECT ASSESSMENT.....\$	94,638.87

PBWK FILE

PROJECT DESCRIPTION

2013080 LID

ALLEY BETWEEN PRINCETON AVENUE AND HERROY AVENUE FROM ADDISON STREET TO STANDARD STREET

1	PARCEL-NO	LEGAL-DESCRIPTION	PARCEL ADDRESS	P-SIGN
	05532-0901 / 35052.0901	LIDGERWOOD PK E50FT OF N1/2 B21	E 558 PRINCETON AV	Y
TAXPAYER	OWNER/PURCHASER	DISTRICT ASSESSMENT	SPECIAL ASSESSMENTS	TOTAL ASSESSMENT
RAYMOND, PAUL & MARCIA S E 558 PRINCETON AVE SPOKANE WA 99207-1565USA	RAYMOND, PAUL & MARCIA S E 558 PRINCETON AVE SPOKANE WA 99207-1565USA	3,943.28		3,943.28
2	PARCEL-NO	LEGAL-DESCRIPTION	PARCEL ADDRESS	P-SIGN
	05532-0902 / 35052.0902	LIDGERWOOD PK W50FT OF E100FT OF N1/2 B21	E 554 PRINCETON AV	Y
TAXPAYER	OWNER/PURCHASER	DISTRICT ASSESSMENT	SPECIAL ASSESSMENTS	TOTAL ASSESSMENT
WHEATLEY, CHRISTINA L E 554 PRINCETON AVE SPOKANE WA 99207	WHEATLEY, CHRISTINA L E 554 PRINCETON AVE SPOKANE WA 99207	3,943.28		3,943.28
3	PARCEL-NO	LEGAL-DESCRIPTION	PARCEL ADDRESS	P-SIGN
	05532-0903 / 35052.0903	LIDGERWOOD PK W50FT OF E150FT OF N1/2 B21	E 548 PRINCETON AV	N
TAXPAYER	OWNER/PURCHASER	DISTRICT ASSESSMENT	SPECIAL ASSESSMENTS	TOTAL ASSESSMENT
STOREY, SHANNA S 12010 QUAIL CREEK LN SPOKANE WA 99224	CHRISTENSEN, S D S 12010 QUAIL CREEK LN SPOKANE WA 99224	3,943.28		3,943.28
4	PARCEL-NO	LEGAL-DESCRIPTION	PARCEL ADDRESS	P-SIGN
	05532-0904 / 35052.0904	LIDGERWOOD PK W50FT OF E200FT OF N1/2 B21	E 544 PRINCETON AV	N
TAXPAYER	OWNER/PURCHASER	DISTRICT ASSESSMENT	SPECIAL ASSESSMENTS	TOTAL ASSESSMENT
BERUBE, JAMES A & ANN M PO BOX 662 SPOKANE VALLEY WA 99037	BERUBE, JAMES A & ANN M PO BOX 662 SPOKANE VALLEY WA 99037	3,943.29		3,943.29
5	PARCEL-NO	LEGAL-DESCRIPTION	PARCEL ADDRESS	P-SIGN
	05532-0905 / 35052.0905	LIDGERWOOD PK W50FT OF E250FT OF N1/2 B21	E 538 PRINCETON AV	Y

PBWK FILE  
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2013080 LID

PROJECT DESCRIPTION  
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ALLEY BETWEEN PRINCETON AVENUE AND HERROY AVENUE FROM ADDISON STREET TO STANDARD STREET

TAXPAYER	OWNER/PURCHASER	DISTRICT ASSESSMENT	SPECIAL ASSESSMENTS	TOTAL ASSESSMENT
WORMELL, BARRETT L & DOROTHY J E 538 PRINCETON AVE SPOKANE WA 99207	WORMELL, BARRETT L & DOROTHY J E 538 PRINCETON AVE SPOKANE WA 99207	3,943.29		3,943.29

6	PARCEL-NO	LEGAL-DESCRIPTION	PARCEL ADDRESS	P-SIGN
	05532-0906 / 35052.0906	LIDGERWOOD PK W50FT OF E300FT OF N1/2 B21	E 532 PRINCETON AV	N

TAXPAYER	OWNER/PURCHASER	DISTRICT ASSESSMENT	SPECIAL ASSESSMENTS	TOTAL ASSESSMENT
EDWARDS, EVONNE C & VEE, RONA N 8812 LEHMAN RD SPOKANE WA 99217-9659USA	EDWARD, EVONNE C / VEE, RONALD N 8812 LEHMAN RD SPOKANE WA 99208	3,943.29		3,943.29

7	PARCEL-NO	LEGAL-DESCRIPTION	PARCEL ADDRESS	P-SIGN
	05532-0907 / 35052.0907	LIDGERWOOD PK E100FT OF W300FT OF N1/2 B21	E 524 PRINCETON AV	N

TAXPAYER	OWNER/PURCHASER	DISTRICT ASSESSMENT	SPECIAL ASSESSMENTS	TOTAL ASSESSMENT
MORLEY, PATRICK E 8006 VALLEYWAY AVE SPOKANE VALLEY WA 99212-2858	MORLEY, PATRICK E 8006 VALLEYWAY AVE SPOKANE VALLEY WA 99212-2858	7,886.56		7,886.56

8	PARCEL-NO	LEGAL-DESCRIPTION	PARCEL ADDRESS	P-SIGN
	05532-0908 / 35052.0908	LIDGERWOOD PK E50FT OF W200FT OF N1/2 B21	E 518 PRINCETON AV	Y

TAXPAYER	OWNER/PURCHASER	DISTRICT ASSESSMENT	SPECIAL ASSESSMENTS	TOTAL ASSESSMENT
BERTRAM, TONI C E 518 PRINCETON AVE SPOKANE WA 99207	BERTRAM, TONI C E 518 PRINCETON AVE SPOKANE WA 99207	3,943.29		3,943.29

9	PARCEL-NO	LEGAL-DESCRIPTION	PARCEL ADDRESS	P-SIGN
	05532-0909 / 35052.0909	LIDGERWOOD PK E55FT OF W150FT OF N1/2 B21	E 514 PRINCETON AV	N

TAXPAYER	OWNER/PURCHASER	DISTRICT ASSESSMENT	SPECIAL ASSESSMENTS	TOTAL ASSESSMENT
BROOKS, KIRK E E 514 PRINCETON AVE SPOKANE WA 99207	BROOKS, KIRK E E 514 PRINCETON AVE SPOKANE WA 99207	3,943.29		3,943.29

PEWK FILE	PROJECT DESCRIPTION			
2013080 LID	ALLEY BETWEEN PRINCETON AVENUE AND HEROY AVENUEFROM ADDISON STREET TO STANDARD STREET			
10	PARCEL-NO	LEGAL-DESCRIPTION	PARCEL ADDRESS	P-SIGN
	05532-0910 / 35052.0910	LIDGERWOOD PK E45FT OF W95FT OF N1/2 B21	E 508 PRINCETON AV	Y
TAXPAYER	OWNER/PURCHASER	DISTRICT ASSESSMENT	SPECIAL ASSESSMENTS	TOTAL ASSESSMENT
WEINSTOCK, SAMUEL E 508 PRINCETON AVE SPOKANE WA 99207-1565USA	WEINSTOCK, SAMUEL E 508 PRINCETON AVE SPOKANE WA 99207-1565USA	3,943.29		3,943.29
11	PARCEL-NO	LEGAL-DESCRIPTION	PARCEL ADDRESS	P-SIGN
	05532-0911 / 35052.0911	LIDGERWOOD PK W50FT OF N1/2 B21	E 504 PRINCETON AV	Y
TAXPAYER	OWNER/PURCHASER	DISTRICT ASSESSMENT	SPECIAL ASSESSMENTS	TOTAL ASSESSMENT
GIEBEL, RITA S E 504 PRINCETON AVE SPOKANE WA 99207-1565USA	GIEBEL, RITA S E 504 PRINCETON AVE SPOKANE WA 99207-1565USA	3,943.29		3,943.29
12	PARCEL-NO	LEGAL-DESCRIPTION	PARCEL ADDRESS	P-SIGN
	.32-0912 / 35052.0912	LIDGERWOOD PK W100FT OF S1/2 B21	E 507 HEROY AV	N
TAXPAYER	OWNER/PURCHASER	DISTRICT ASSESSMENT	SPECIAL ASSESSMENTS	TOTAL ASSESSMENT
SMITH, BUDDY R E 507 HEROY AVE SPOKANE WA 99207-1535USA	SMITH, BUDDY R E 507 HEROY AVE SPOKANE WA 99207-1535USA	7,886.56		7,886.56
13	PARCEL-NO	LEGAL-DESCRIPTION	PARCEL ADDRESS	P-SIGN
	05532-0915 / 35052.0915	LIDGERWOOD PK E50FT OF W300FT OF S1/2 B21	E 527 HEROY AV	Y
TAXPAYER	OWNER/PURCHASER	DISTRICT ASSESSMENT	SPECIAL ASSESSMENTS	TOTAL ASSESSMENT
FELDHUSEN, GREG & MARY KAY W 3424 DALKE AVE SPOKANE WA 99205-7410USA	FELDHUSEN, GREG & MARY KAY W 3424 DALKE AVE SPOKANE WA 99205-7410USA	3,943.29		3,943.29
14	PARCEL-NO	LEGAL-DESCRIPTION	PARCEL ADDRESS	P-SIGN
	05532-0916 / 35052.0916	LIDGERWOOD PK W50FT OF E300FT OF S1/2 B21	E 533 HEROY AV	Y

PBWK FILE	PROJECT DESCRIPTION
2013080 LID	ALLEY BETWEEN PRINCETON AVENUE AND HEROY AVENUE FROM ADDISON STREET TO STANDARD STREET

TAXPAYER	OWNER/PURCHASER	DISTRICT ASSESSMENT	SPECIAL ASSESSMENTS	TOTAL ASSESSMENT
PENMAN FAMILY LIVING TRUST E 533 HEROY AVE SPOKANE WA 99207-1535USA	PENMAN FAMILY LIVING TRUST E 533 HEROY AVE SPOKANE WA 99207-1535USA	3,943.29		3,943.29

15	PARCEL-NO	LEGAL-DESCRIPTION	PARCEL ADDRESS	P-SIGN
	05532-0917 / 35052.0917	LIDGERWOOD PK W50FT OF E250FT OF S1/2 B21	E 539 HEROY AV	Y

TAXPAYER	OWNER/PURCHASER	DISTRICT ASSESSMENT	SPECIAL ASSESSMENTS	TOTAL ASSESSMENT
MCKINLEY, CORY R E 539 HEROY AVE SPOKANE WA 99205	MCKINLEY, CORY R E 539 HEROY AVE SPOKANE WA 99205	3,943.29		3,943.29

16	PARCEL-NO	LEGAL-DESCRIPTION	PARCEL ADDRESS	P-SIGN
	05532-0918 / 35052.0918	LIDGERWOOD PK W50FT OF E200FT OF S1/2 B21	E 543 HEROY AV	Y

TAXPAYER	OWNER/PURCHASER	DISTRICT ASSESSMENT	SPECIAL ASSESSMENTS	TOTAL ASSESSMENT
HIIBNER, ROBERT E 543 HEROY AVE SPOKANE WA 99207-1535USA	HIIBNER, ROBERT E 543 HEROY AVE SPOKANE WA 99207-1535USA	3,943.29		3,943.29

17	PARCEL-NO	LEGAL-DESCRIPTION	PARCEL ADDRESS	P-SIGN
	05532-0919 / 35052.0919	LIDGERWOOD PK W50FT OF E150FT OF S1/2 B21	E 547 HEROY AV	Y

TAXPAYER	OWNER/PURCHASER	DISTRICT ASSESSMENT	SPECIAL ASSESSMENTS	TOTAL ASSESSMENT
INGRAM, MICHAEL PO BOX 18331 SPOKANE WA 99228	INGRAM, MICHAEL PO BOX 18331 SPOKANE WA 99228	3,943.29		3,943.29

18	PARCEL-NO	LEGAL-DESCRIPTION	PARCEL ADDRESS	P-SIGN
	05532-0920 / 35052.0920	LIDGERWOOD PK W50FT OF E100FT OF S1/2 B21	E 553 HEROY AV	Y

TAXPAYER	OWNER/PURCHASER	DISTRICT ASSESSMENT	SPECIAL ASSESSMENTS	TOTAL ASSESSMENT
APATANG, DERICK T E 553 HEROY AVE SPOKANE WA 99207	APATANG, DERICK T E 553 HEROY AVE SPOKANE WA 99207	3,943.29		3,943.29

PBWK FILE

PROJECT DESCRIPTION

2013080 LID

ALLEY BETWEEN PRINCETON AVENUE AND HEROY AVENUE FROM ADDISON STREET TO STANDARD STREET

19	PARCEL-NO	LEGAL-DESCRIPTION	PARCEL ADDRESS	P-SIGN
	05532-0921 / 35052.0921	LIDGERWOOD PK E50FT OF S1/2 B21	E 557 HEROY AV	N

TAXPAYER	OWNER/PURCHASER	DISTRICT ASSESSMENT	SPECIAL ASSESSMENTS	TOTAL ASSESSMENT
HINKLEY, AMANDA M E 557 HEROY AVE SPOKANE WA 99207-1535USA	HINKLEY, AMANDA M E 557 HEROY AVE SPOKANE WA 99207-1535USA	3,943.29		3,943.29

20	PARCEL-NO	LEGAL-DESCRIPTION	PARCEL ADDRESS	P-SIGN
	05532-0924 / 35052.0924	LIDGERWOOD PK PT OF B21 E50FT OF W150FT OF S1/2 AND E50F TOF W200FT OF S1/2	E 517 HEROY AV	N

TAXPAYER	OWNER/PURCHASER	DISTRICT ASSESSMENT	SPECIAL ASSESSMENTS	TOTAL ASSESSMENT
MILLER, GREGORY G W 404 THOMAS MORE WAY SPOKANE WA 99206	MILLER, GREGORY G W 404 THOMAS MORE WAY SPOKANE WA 99206	7,886.56		7,886.56

	PARCEL-NO	LEGAL-DESCRIPTION	PARCEL ADDRESS	P-SIGN
	05532-0925 / 35052.0925	LIDGERWOOD PARK ADD E50FT OF W250FT OF S1/2 BLK 21	E 521 HEROY AV	Y

TAXPAYER	OWNER/PURCHASER	DISTRICT ASSESSMENT	SPECIAL ASSESSMENTS	TOTAL ASSESSMENT
MARTIN, DAVID W E 521 HEROY AVE SPOKANE WA 99207	MARTIN, DAVID W E 521 HEROY AVE SPOKANE WA 99207	3,943.29		3,943.29



PBWK FILE  
-----  
2013080 LID

PROJECT DESCRIPTION  
-----  
ALLEY BETWEEN PRINCETON AVENUE AND HEROY AVENUEFROM ADDISON STREET TO STANDARD STREET  
-----

SPECIAL-DESCRIPTION	ASSESSMENT-METHOD-DESCRIPTION	METHOD-CODE
-----	-----	-----
DISTRICT	FRONTAGE	FR



DEPARTMENT OF  
ENGINEERING SERVICES  
808 W. SPOKANE FALLS BLVD.  
SPOKANE, WA 99201-3343  
509.625.6700  
FAX 509.625.6349/509.625.6124  
Spokaneengineering.org

July 19, 2013

File Number: 2013080  
Parcel Number: «Parcel\_1»

Estimated Special Benefit and Assessment: \$«Assessment»

EXHIBIT NO. 5

«Name»  
«Address1»  
«Address2»

Dear Property Owner:

A letter dated May 23, 2013 was sent to you informing you that a Local Improvement District (LID) was being **proposed** in your neighborhood. This letter contains specific information regarding the **proposed** LID in your neighborhood. If the proposed LID is approved, the following improvements will be constructed: **Paving of Alley between Princeton Avenue and Heroy Avenue from Addison Street to Standard Street.** The monetary amounts provided in this letter are estimates, and if the project proceeds, your assessment will be adjusted to reflect the actual cost of the improvements.

The City Council has set August 13, 2013, as the date of the public hearing regarding the formation of the proposed assessment District to finance the proposed improvements. This hearing will be held at 1:30 P.M., in Room 2B on the 2nd Floor of the Spokane City Hall, 808 West Spokane Falls Boulevard, to determine whether or not this improvement should be carried out. You may testify at this hearing to speak in favor or opposition. Written objections or endorsements may be submitted to the Engineering Operations Manager no later than August 12, 2013. This is the only hearing to be held on the formation of this Local Improvement District and the Hearing Examiner's decision is final unless appealed to the City Council, in which case the appeal will be limited to the material presented at this hearing. A copy of the Department of Engineering Services report to the Hearing Examiner may be obtained at the Department of Engineering Services within seven days prior to the hearing. To provide an opportunity for you to become better informed and to answer questions concerning the proposed project, a meeting will be held by the Department of Engineering Services on August 1, 2013 at 1:30 P.M., in Conference Room 2A, 2nd Floor of the City Hall.

**In Summary - Dates to Note:**

**August 1, 2013 at 1:30 P.M.**  
**August 12, 2013**  
**August 13, 2013 at 1:30 P.M.**

**Informational Meeting**  
**Written objections due**  
**Hearing**

Property is to be assessed for this improvement in accordance with State law. A description of the proposed assessment district boundaries is available in the Department of Engineering Services. Actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true value and fair value that improvement adds to the property. Your estimated assessment is shown as the "Estimated Special Benefit" in the upper left hand corner of this letter.

The estimated costs for the improvement are as follows:

Construction Estimate .....	\$ 63,360.00
Design & Inspection Expense.....	22,176.00
City Clerk's Expense .....	256.59
Treasurer's Expense .....	2,560.00
Accounting Expense.....	605.80
Interest.....	4,118.40
Bonds Cost.....	142.50
Legal Expense.....	<u>1,419.58</u>

**TOTAL ESTIMATED PROJECT COST..... \$ 94,638.87**

**NET ESTIMATED PROJECT ASSESSMENT ..... \$ 94,638.87**

If the project is approved by the Hearing Examiner and ordered by the City Council, a contract will be awarded and your assessment will be computed on the actual cost of the job. On completion of the project, your assessment, or any part of it, may be paid without interest on or before the due date in accordance with billing by the City Treasurer; or it may be paid in ten annual installments plus interest charged on the unpaid balance with the first payment due one year after the due date shown on the Treasurer's statement.

After reading this letter, if you have any questions please contact me by phone or attend the informational meeting. If you will be unable to attend the informational meeting, I can arrange to meet with you at another time. I am available at the address above or at (509) 625-6700.

Sincerely,



Michael Myers  
L.I.D. Coordinator

MM/sh



DEPARTMENT OF  
ENGINEERING SERVICES  
808 W. SPOKANE FALLS BLVD.  
SPOKANE, WA 99201-3343  
509.625.6700  
FAX 509.625.6349/509.625.6124  
Spokaneengineering.org

EXHIBIT NO. 6

FORMATION  
LOCAL IMPROVEMENT DISTRICT  
CERTIFICATE OF MAILING

**ALLEY PAVING BETWEEN PRINCETON AVENUE AND  
HEROY AVENUE FROM ADDISON STREET TO  
STANDARD STREET  
2013080**

I, Kyle Twohig, Engineering Operations Manager, Department of Engineering Services, hereby certify that written notices of the hearing before the Hearing Examiner were mailed under my direction to all owners or reputed owners of the property at the time and in the manner prescribed by law, and that said notices were mailed to such owners or reputed owners more than fifteen days before the date set for the hearing.

Kyle Twohig  
Engineering Operations Manager

Letters Mailed: July 19, 2013

Formation Hearing: August 13, 2013

KT/slh

\\projects\2013080\formation mail crt.doc

**AFFIDAVIT OF PUBLICATION**

STATE OF WASHINGTON )  
COUNTY OF SPOKANE )  
CITY OF SPOKANE )

SS

**EXHIBIT NO. 7**

I, TERRI L. PFISTER, CITY CLERK of Spokane, Washington, and ex-officio editor of the *Official Gazette*, a paper published weekly by the City of Spokane, Washington, do hereby certify that the NOTICE OF ASSESSMENT ROLL HEARING attached hereto and which is hereby made a part of this proof of publication was published in said paper to wit:

On the 17th and 24th days of July 2013, and that said NOTICE OF ASSESSMENT ROLL HEARING was published in every copy of the said paper of said dates.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said City of Spokane this 24th day of July 2013.

*Terri L. Pfister*

City Clerk  
City of Spokane, Washington



(See Attached for Remainder of Affidavit)

**FORMATION HEARING NOTICE**

**RESOLUTION 2013-0054  
PRO 2013-0018  
LID NO. 2013080**

WHEREAS, In accordance with RCW 35.43, a local improvement may be ordered only by an ordinance of the City Council of the City of Spokane, pursuant to either a resolution or petition therefore; and

WHEREAS, Said resolution must set forth certain information as required by law; -- NOW, THEREFORE,

**BE IT RESOLVED** By the City Council of the City of Spokane that it is the intention of said Council, and such intention is hereby declared, to order the **Alley Improvements between Princeton Avenue and Heroy Avenue from Addison Street to Standard Street.**

**BE IT FURTHER RESOLVED** That the nature and territorial extent of said proposed improvement is as stated above.

**BE IT FURTHER RESOLVED** That the cost and expense of the said improvement is to be borne in whole or in part by the property specially benefited thereby, and the boundaries of the proposed assessment district are particularly described as follows:

All that property described as follows:

<u>LOTS</u>	<u>BLOCK</u>	<u>ADDITION</u>
North half of Vacated Block	21	Lidgerwood Heights Addition
South half of Vacated Block	21	Lidgerwood Heights Addition

Situated in the NW Quarter of Section 05, Township 25, Range 43 East of the Willamette Meridian.

BE IT FURTHER RESOLVED That a hearing on the said proposed improvement will be held before the Hearing Examiner of the City of Spokane, in the Second Floor Conference Room, Municipal Building, West 808 Spokane Falls Boulevard, on the **13th day of August, 2013 at 1:30 p.m.**, at which time and place all persons who may desire to object thereto may appear and present such objections, if any they have.

BE IT FURTHER RESOLVED That the City Engineer is directed to submit to the Hearing Examiner at or prior to the time fixed for said hearing the estimated cost and expense of said improvement and a statement of the proportionate amount thereof which should be borne by the property within the proposed assessment district, and a statement of the aggregate actual valuation of the real estate, including twenty-five percent of the actual valuation of the improvements in said district according to the valuation last placed upon it for the purpose of general taxation, together with a diagram or print showing thereon the lots, tracts and parcels of land and other property which will be specially benefited thereby, and the estimated amount of cost and expense of such improvement to be borne by each lot, tract, or parcel of land or other property, together with a statement showing the amount of special assessments outstanding and unpaid on the property within the proposed assessment district. The actual assessments levied for this improvement may vary from the assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property.

**ADOPTED by the City Council on July 15, 2013.**

Terri L. Pfister  
Spokane City Clerk

**The Hearing before the Hearing Examiner shall be the only hearing held on the Formation of the Proposed Local Improvement District and the City Council will act on the Hearing Examiner's recommendation based upon the record. A copy of the Report of the Engineering Services Department to the Hearing Examiner may be obtained at the Engineering Services Department seven days prior to the hearing. Additional information may be obtained by contacting the Engineering Services Department, 808 West Spokane Falls Boulevard, Spokane, Washington 99201; (509) 625-6700; Attention Ken Brown, P.E., Principal Engineer-Design.**

**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. 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 at least forty-eight (48) hours before the meeting date.

Publish: July 17 and 24, 2013

---

**Clerk's File No.: PRO 2013-0018**  
**LID No.: 2013080**  
**Hearing date: August 13, 2013**  
**Time: 1:30 PM**

**RESOLUTION 2013-0054**

**WHEREAS**, In accordance with RCW 35.43, a local improvement may be ordered only by an ordinance of the City Council of the City of Spokane, pursuant to either a resolution or petition therefore; and

**WHEREAS**, Said resolution must set forth certain information as required by law; -- **NOW, THEREFORE**,

**BE IT RESOLVED** By the City Council of the City of Spokane that it is the intention of said Council, and such intention is hereby declared, to order the **Alley Improvements between Princeton Avenue and Heroy Avenue from Addison Street to Standard Street.**

**BE IT FURTHER RESOLVED** That the nature and territorial extent of said proposed improvement is as stated above.

**BE IT FURTHER RESOLVED** That the cost and expense of the said improvement is to be borne in whole or in part by the property specially benefited thereby, and the boundaries of the proposed assessment district are particularly described as follows:

All that property described as follows:

<u>LOTS</u>	<u>BLOCK</u>	<u>ADDITION</u>
North half of Vacated Block	21	Lidgerwood Heights Addition
South half of Vacated Block	21	Lidgerwood Heights Addition

Situated in the NW Quarter of Section **05**, Township **25**, Range **43** East of the Willamette Meridian.

**BE IT FURTHER RESOLVED** That a hearing on the said proposed improvement will be held before the Hearing Examiner of the City of Spokane, in the Second Floor Conference Room, Municipal Building, West 808 Spokane Falls Boulevard, on the **13th** day of **August, 2013** at **1:30 p.m.**, at which time and place all persons who may desire to object thereto may appear and present such objections, if any they have.



**BE IT FURTHER RESOLVED** That the City Engineer is directed to submit to the Hearing Examiner at or prior to the time fixed for said hearing the estimated cost and expense of said improvement and a statement of the proportionate amount thereof which should be borne by the property within the proposed assessment district, and a statement of the aggregate actual valuation of the real estate, including twenty-five percent of the actual valuation of the improvements in said district according to the valuation last placed upon it for the purpose of general taxation, together with a diagram or print showing thereon the lots, tracts and parcels of land and other property which will be specially benefited thereby, and the estimated amount of cost and expense of such improvement to be borne by each lot, tract, or parcel of land or other property, together with a statement showing the amount of special assessments outstanding and unpaid on the property within the proposed assessment district. The actual assessments levied for this improvement may vary from the assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property.

**Adopted by the City Council** July 15, 2013.

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

Approved as to form:

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





**DEPARTMENT OF  
ENGINEERING SERVICES**  
808 W. SPOKANE FALLS BLVD.  
SPOKANE, WA 99201-3343  
509.625.6700  
FAX 509.625.6349/509.625.6124  
Spokaneengineering.org

**EXHIBIT NO. 8**

**LOCAL IMPROVEMENT DISTRICT (L.I.D.) FORMATION REPORT**

**FOR**

**Local Improvement District No. 2013080**

**S U M M A R Y O F P R O P O S A L A N D**  
**R E C O M M E N D A T I O N**

**Proposal:** Alley paving between Princeton Avenue and Heroy Avenue from Addison Street to Standard Street

**Recommendation:** Approve

**F I N D I N G S O F F A C T**

**B A C K G R O U N D I N F O R M A T I O N**

**Date of Resolution:** July 15, 2013

**Project Description:** Alley between Princeton Avenue and Heroy Avenue from Addison Street to Standard Street

**Reason and Purpose of Project:** This project is designed to provide neighborhood circulation, dust control, and improved quality of life within the assessment district.

**Total Project Cost:** \$ 94,638.87

**Amount Assessed to Property Owners** \$ 94,638.87

**Total Number of Parcels:** 21

## PROCEDURAL INFORMATION

**Hearing Date:** August 13, 2013

**Notice Dates:**

**Preliminary Hearing Notifications:** July 19, 2013

**Resolution Published:** July 17 & 24, 2013

**Information Meeting Date:** August 1, 2013

**Known Opponents:**

No known opponents

**Date of Report:**

August 6, 2013

**Responsible Staff Person:**

John Gomez, P.E., Senior Engineer - Design  
City of Spokane  
Department of Engineering Services  
808 West Spokane Falls Blvd.  
Spokane, WA 99201-3343  
(509) 625-6700

## FINDINGS AND CONCLUSIONS

Local Improvement Districts initiated by Resolution are subject to Spokane Municipal Code (SMC) Chapter 7.05 and may be approved only if they comply with the criteria set forth in SMC 7.05.490. The Department of Engineering Services has reviewed these criteria and all of the available evidence on the proposed L.I.D. formation and makes the follow Findings and Conclusions:

1. All of the property and only that property that will be benefited by the proposed improvement is within the proposed boundaries of the L.I.D.

The assessment district boundaries were determined based on the benefit derived. A list of all parcels included in the assessment district is shown in the assessment roll and listed in the assessment district description which are found elsewhere in this report.

2. Formation of the LID is consistent with the adopted policies of the City Council.

54.17% of the property within the assessment district has signed a petition in favor of the project and submitted it to the City Council.

3. All procedures set forth in RCW 35.43 and this Article have been followed.

On July 19, 2013 notices were sent to all property owners and taxpayers of record advising them of the estimated amount of their assessments and of the date of the hearing before the City's Hearing Examiner in accordance with RCW 35.43. Copies of this correspondence can be found elsewhere in this report. All other requirements of the appropriate R.C.W. have been met.

2013080



DEPARTMENT OF  
ENGINEERING SERVICES  
808 W. SPOKANE FALLS BLVD.  
SPOKANE, WA 99201-3343  
509.625.6700  
FAX 509.625.6349/509.625.6124  
Spokaneengineering.org

FORMATION MEETING EXHIBIT NO. 9

FOR

LOCAL IMPROVEMENT DISTRICT 2013080

ALLEY PAVING BETWEEN PRINCETON AVENUE AND HEROY AVENUE  
FROM ADDISON STREET TO STANDARD STREET

AUGUST 1, 2013, 1:30 P.M.

ATTENDANCE ROSTER

*NO ATTENDANCE*

Name	Address	Phone Number

**LID Formation Hearing Report**

Date: 8/13/2013

LID No. 2013080

Alley Improvements between Princeton Avenue & Heroy Avenue  
from Addison Street to Standard Street

- This LID was initiated by **petition**.
- Property in this District is being assessed proportionally in relation to all other properties in the LID. The **Frontage** method of assessment is being used to distribute the cost in accordance with the Revised Code of Washington, Title 35, Chapter 35.44, Section(s) .047.
- All of the property and only that property that will be benefited by the proposed improvement is being assessed.
- On July 19<sup>th</sup>, 2013 notices were sent to each owner and/or taxpayer as shown on the County's tax rolls, informing them of their estimated assessments, that an **information** meeting would be held on August 1<sup>st</sup>, 2013, and the date of this hearing.
- No parcel owners attended the **Information** meeting.
- The Engineering Services Department has received **zero** valid letters-of-protest.
- Valid parcel owners protesting this LID represent **zero** percent of the assessed cost of the project. Parcels with paving waivers & invalid parcel owners were excluded from the protest percentage.
- There are 21 parcels in this LID
- Estimated total cost of this improvement is:     \$ 94,638.87
- Estimated supplemental funding is:             - \$        0.00
- Estimated project cost to be assessed is:       \$ 94,638.87
- Individual parcel assessments range from \$ 3,943.29 to \$ 7,886.56.
- The Department recommends that this LID be formed.



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

09/30/2013

<b><u>Date Rec'd</u></b>	DocDate
<b><u>Clerk's File #</u></b>	ORD C35043
<b><u>Renews #</u></b>	
<b><u>Cross Ref #</u></b>	
<b><u>Project #</u></b>	
<b><u>Bid #</u></b>	
<b><u>Requisition #</u></b>	

<b><u>Submitting Dept</u></b>	CITY COUNCIL
<b><u>Contact Name/Phone</u></b>	STEVE SALVATORI, 625-6715 MIKE ALLEN, BEN STUCKART, NANCY MCLAUGHLIN, MIKE FAGAN
<b><u>Contact E-Mail</u></b>	RBARDEN@SPOKANECITY.ORG
<b><u>Agenda Item Type</u></b>	First Reading Ordinance
<b><u>Agenda Item Name</u></b>	0320 OPO ORDINANCE

**Agenda Wording**

An ordinance relating to the Office of Police Ombudsman; amending SMC sections 4.32.010, 4.32.020, 4.32.040, 4.32.090, 4.32.100 and 4.32.110; repealing SMC sections 4.32.030 and 4.32.080; and adopting new sections 4.32.035, 4.32.085, 4.32.150 and 4.3

**Summary (Background)**

On February 12, 2013, the citizens of Spokane voted to amend the City Charter to add a section creating a Police Ombudsman Commission and an Office of Police Ombudsman that has independent investigatory authority. The Charter amendment mandates that the duties and functions of the Office of Police Ombudsman be established by ordinance. The City and the Spokane Police Guild are currently engaged in collective bargaining for a new labor contract but have yet to agree on a contract that includes

**Fiscal Impact**

Neutral	\$
Select	\$
Select	\$
Select	\$

**Budget Account**

#
#
# BudgetAccount3
#

**Approvals**

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

**Council Notifications**

<b><u>Study Session</u></b>	
<b><u>Other</u></b>	
<b><u>Distribution List</u></b>	

**Additional Approvals**

<b><u>Purchasing</u></b>	

## agenda wording

An ordinance relating to the Office of Police Ombudsman; amending SMC sections 4.32.010, 4.32.020, 4.32.040, 4.32.090, 4.32.100 and 4.32.110; repealing SMC sections 4.32.030 and 4.32.080; and adopting new sections 4.32.035, 4.32.085, 4.32.150 and 4.32.160 to chapter 4.32 of the Spokane Municipal Code.

## agenda background

On February 12, 2013, the citizens of Spokane voted to amend the City Charter to add a section creating a Police Ombudsman Commission and an Office of Police Ombudsman that has independent investigatory authority. The Charter amendment mandates that the duties and functions of the Office of Police Ombudsman be established by ordinance.

The City and the Spokane Police Guild are currently engaged in collective bargaining for a new labor contract but have yet to agree on a contract that includes provisions for a police ombudsman ordinance that meet the requirements of the City Charter. **On May 20, 2013, the City Council approved Resolution No. 2013-0033, which** provided the City Council's support of the collective bargaining efforts between the City and the Spokane Police Guild and encourages the parties to negotiate a collective bargaining agreement that either includes terms and conditions that substantially accomplish the objectives of a proposed ordinance that was included with the resolution, or that does not preclude the City from adopting such terms and conditions by ordinance. Because the City and the Police Guild have not reached agreement on a contract that includes provisions for a police ombudsman ordinance, the City Council is proceeding forward with this ordinance, which creates an Office of Police Ombudsman Commission and establishes the duties and functions of the Police Ombudsman consistent with the City Charter.



Ordinance No. C-35043

An ordinance relating to the Office of Police Ombudsman; amending SMC sections 4.32.010, 4.32.020, 4.32.040, 4.32.090, 4.32.100 and 4.32.110; repealing SMC sections 4.32.030 and 4.32.080; and adopting new sections 4.32.035, 4.32.085, 4.32.150 and 4.32.160 to chapter 4.32 of the Spokane Municipal Code.

WHEREAS, the City of Spokane has enacted chapter 4.32 of the Spokane Municipal Code establishing an independent Office of Police Ombudsman (hereinafter "OPO"); and

WHEREAS, the OPO has been in existence for three years and has made valuable contributions to police oversight, enhanced public confidence in the City's management of the police department, and provided the mayor and council with valuable analysis and recommendations for police reforms and improvements; and

WHEREAS, Spokane's elected leaders have long shared citizen concerns and aspirations that the OPO become a credible office of police oversight that is structurally independent of the Spokane Police Department; and

WHEREAS, enhancing the credibility and effectiveness of the OPO requires that it be a true ombudsman office with the authority and capacity to conduct independent investigations into citizen complaints and concerns; and

WHEREAS, Spokane's electorate voted in February 2013 to amend the City Charter to add a section creating a Police Ombudsman Commission and an Office of Police Ombudsman that has independent investigatory authority. The Charter amendment mandates that the duties and functions of the Office of Police Ombudsman be established by ordinance. This ordinance is intended to fulfill that mandate.

NOW, THEREFORE, the City of Spokane does ordain:

Section 1. That SMC section 4.32.010 is amended to read as follows:

**4.32.010 Office of Police Ombudsman**

A. The office of police ombudsman (OPO) is established in order to:

1. ~~((Help ensure))~~ Ensure that investigation of complaints against police officers are accomplished in a timely, fair, and thorough manner;
2. Provide visible, professional, independent oversight of police officers; ~~((and))~~

3. Reassure the public that SPD internal affairs investigations into complaints and allegations of police misconduct are conducted in a timely, thorough, and objective manner; and,
  4. Provide independent oversight and policy recommendations to improve the Spokane police department.
- B. The police ombudsman and ~~((any employee))~~ employees of the OPO must, at all times, be ~~((totally))~~ completely independent. Any findings, recommendations, and requests made by the OPO must reflect the independent views of the OPO.
  - C. ~~((No person shall attempt to unduly influence or undermine the independence of the police ombudsman, or any employee of the OPO, in the performance of the duties and responsibilities set forth in this chapter.))~~ If any section, paragraph, sentence, clause or phrase of this chapter is found to be pre-empted by any existing collective bargaining agreement, it shall be deemed severed from this chapter and unenforceable until such time as the applicable collective bargaining agreement has been replaced by a successor agreement. The City shall not enter into any collective bargaining agreement that limits the duties or powers of the police ombudsman commission or the office of police ombudsman as set forth in this chapter unless such limitation is required to comply with existing federal or state law.
  - D. The OPO shall not investigate complaints which pertain to internal personnel matters.

Section 2. That SMC section 4.32.020 is amended to read as follows:

#### **4.32.020 Definitions**

- A. “Certify” or “certification process” refers to the determination by the OPO that an IA complaint investigation was timely thorough and objective, including whether IA properly advised the complainant of the availability of the OPO complaint process.
- B. ~~((A.))~~ “Chief” means the chief of the Spokane police department.
- C. “Community Impact Case” or “CIC” means an incident and/or citizen complaint that because of public visibility, media exposure and/or allegations of serious or willful misconduct on the part of one or more Spokane police officers, warrants immediate independent investigation by the OPO. The OPO will decide if and when a CIC exists, subject to confirmation by the police ombudsman commission.

- D. ~~((B-))~~ “Complainant” means any person who files a complaint against ~~((any commissioned member of the Spokane police department))~~ a police officer(s).
- E. ~~((G-))~~ “Complaint” means a complaint filed with IA or with the OPO by any person of alleged police misconduct regardless of whether the complaint has been classified as a citizen inquiry of an investigation.
- F. “Continuing pattern of unprofessional conduct” exists when there is a founded complaint of unprofessional conduct on the officer’s record, or two or more recorded allegations of unprofessional conduct against the officer within the previous five years.
- G. ~~((D-))~~ “Finding” means a conclusion reached after investigation.
- H. ~~((E-))~~ “IA” or “internal affairs” means the Spokane police department’s investigative unit, whose responsibilities and procedures are described in the Spokane police department’s policy and procedure manual, as amended from time to time, to receive and investigate allegations of misconduct by Spokane police department employees.
- I. ~~((F-))~~ “Material to the outcome,” “material statement,” and “material fact” are those facts, evidence, or statements which tend to influence the trier of fact because of its logical connection with the issue. It is a fact which tends to establish any of the issues raised by the complaint or the defenses to the complaint.
- J. ~~((G-))~~ “Mediation” means a private, informal dispute resolution process in which a neutral third person, the mediator, helps disputing parties to reach an agreement. The mediator has no power to impose a decision on the parties.
- ~~((H-))~~ “Member” means a sworn employee of the Spokane police department about whom a complaint has been submitted to the Spokane police department or the OPO.))
- K. ~~((I-))~~ “Misconduct” means conduct by a ~~((member))~~ Spokane police officer during an encounter with a citizen, which conduct violates Spokane police department regulations or orders, or other standards of conduct required of City employees.
- L. “Police Officer” means a commissioned member of the Spokane police department.
- M. ~~((J-))~~ “Policy-related issue” means a topic pertaining to the Spokane police department’s hiring and training practices, the Spokane police department’s policies and procedures, equipment, and general supervision and management

practices, but not pertaining specifically to the propriety or impropriety of a particular officer's conduct.

N. (~~K.~~) "Serious matter" means any complaint that could lead to suspension, demotion, or discharge.

Section 3. That SMC section 4.32.030 entitled "Functions and Duties" is repealed.

Section 4. That there is adopted a new section 4.32.035 to chapter 4.32 SMC to read as follows:

**4.32.035 Functions and Duties**

A. The primary role of the OPO is:

1. To actively monitor Spokane police department IA investigations of complaints and to make recommendations for improving policies and procedures based upon observations; and
2. To conduct independent investigations of complaints and issue and publish closing reports in response to complaints filed with the OPO.

B. General Provisions.

1. Receipt of complaints.  
Any person may file a complaint against a police officer(s) with either IA or the OPO, or both.
2. Investigations.
  - a. If a complaint is filed solely with IA: The OPO may actively monitor the IA investigation and, consistent with the provisions of 4.32.035(C)(2) may investigate to the extent necessary to independently certify the timeliness, objectivity and thoroughness of the IA investigation.
  - b. If a complaint is filed solely with the OPO, or with both the OPO and IA: The OPO may conduct an independent investigation at any time, regardless of IA action, as provided in this chapter.
  - c. Within the framework above, the OPO has the authority to determine what complaints to investigate, and to what extent.

3. Criminal investigations against police officers.  
Other than actions necessary to receive and catalog a complaint, the OPO shall not participate in criminal investigations against police officers. However, SPD shall promptly notify the OPO when a criminal investigation and/or prosecution against a police officer is closed. At the time of closing, the OPO may take any action on the original complaint as is authorized by this chapter.
4. Discipline against police officers.  
The OPO shall not have a role in the discipline of police officers. However, IA shall keep the OPO informed of disciplinary decisions as follows: Within three business days of issuance, IA shall provide the OPO with copies of all letters, notifications, and decisions regarding discipline against officers, which stem from a complaint.
5. Records disclosure.
  - a. The OPO shall not release the names of police officers or other individuals involved in incidents or investigations, nor any other personally identifying information.
  - b. The OPO shall not have access to legally privileged documents held by the city attorney or attorney-client communications held by the city attorney's clients.
  - c. The OPO shall not disclose confidential records and shall be subject to the same penalties as the legal custodian of the records for any unlawful or unauthorized disclosure.
  - d. Records generated and maintained by the OPO shall be considered public records subject to any applicable exemptions in the Washington Public Records Act, RCW 42.56.
  - e. Records generated in the IA complaint investigation process shall be considered public records once the investigation is closed, subject to any applicable exemptions in the Washington Public Records Act, RCW 42.56.
6. OPO rules and procedures.  
The OPO commission, on its own or upon request by the OPO may adopt, promulgate, amend, and rescind rules and procedures required for the discharge of OPO duties, including policies and procedures for receiving and processing complaints, monitoring investigations, and reporting findings, conclusions and recommendations.

7. The OPO may not levy any fees for the handling of complaints or any other duties identified in this chapter.
8. Complaints against the chief of police or the assistant police chief shall be forwarded by the OPO to the mayor to determine the subsequent investigation procedure. Any complaint against the police ombudsman may be submitted directly to the OPO commission.

C. OPO Monitoring of IA Complaint Investigations.

1. Duties of the IA to facilitate active monitoring by the OPO. Pursuant to specific provisions in this chapter, IA shall:
  - a. Provide the OPO with copies of all complaints received by the IA within three business days of receipt;
  - b. Notify all complainants at the time a complaint is filed of the existence of the OPO and of the complainant's opportunity to request an independent investigation and closing report from the OPO. This includes complaints classified by the Police Department as Citizen Inquiries;
  - c. Send the OPO signed acknowledgement from the complainant of having received the notice in subsection (C)(1)(b);
  - d. Notify the OPO immediately of critical incidents;
  - e. Notify the OPO prior to all IA interviews involving complaints and allow the OPO to attend and observe such interviews and to ask questions after the completion of IA questioning;
  - f. Within two business days of closing an investigation or determining not to initiate an investigation, provide the OPO with a complete copy of the IA complaint file, including all findings; and
  - g. Provide the OPO with unimpeded access to closed IA complaint investigation files upon request.
2. Duties and authority of the OPO in actively monitoring IA complaint investigations.
  - a. The OPO may, at the OPO's sole discretion, attend and observe all IA complaint investigation interviews, including interviews with police officers, and shall be given the opportunity to ask questions after the completion of questioning by IA.

- b. The OPO is authorized to conduct interviews and gather such information as is necessary to certify the adequacy of IA complaint investigations, after the completion of the IA investigation.
  - c. Within fifteen business days of receiving a closed IA complaint file from IA, the OPO shall certify whether the IA complaint investigation was timely, thorough and objective.
  - d. As part of the IA complaint certification process, the OPO shall determine whether IA properly advised the complainant of his/her opportunity to seek an independent investigation and closing report from the OPO.
  - e. If the OPO certifies the IA complaint investigation as timely, thorough and objective, the OPO shall promptly return the IA complaint file to IA for retention and send a certification notice to the SPD. In instances where the complainant filed the complaint with OPO, or filed complaints with IA and OPO jointly, the OPO will send a closing letter to and/or conduct a closing interview with the complainant to summarize the case findings (this is different than the closing report in SMC 4.32.035(D)(4)).
  - f. If the OPO determines that the IA complaint investigation was not timely, thorough and/or objective, the OPO shall appeal pursuant to SMC 4.32.035(C)(4).
3. Mediation.
- a. Prior to the initiation of an IA complaint investigation, the OPO may recommend to the chief that the complaint be resolved through mediation.
  - b. Mediation shall not be utilized if the complaint involves a serious matter as defined in SMC 4.32.020(N) or implicates the police officer(s) in a continuing pattern of unprofessional conduct as defined in SMC 4.32.020(F).
  - c. Notwithstanding the restrictions in subsection (C)(3)(b), mediation shall be utilized according to rules and procedures promulgated by the OPO, pursuant to SMC 4.32.035(B)(6).
4. Appeals of IA complaint investigations.
- a. In the event the chief (or chief's designee) declines to initiate an IA investigation of a complaint, the OPO may appeal that decision to the OPO commission, whose decision shall be final.

- b. In the event the OPO determines that an IA complaint investigation was not timely, thorough and/or objective pursuant to SMC 4.32.035(C)(2), the OPO may make a request with the chief that an additional IA investigation be performed. If the OPO disagrees with the chief's determination, the OPO may appeal to the OPO commission, whose decision shall be final; the IA complaint investigation shall be completed consistent with the determination of the OPO commission.
  - c. If an additional IA investigation is undertaken, the procedures governing initial investigations in SMC 4.32.035(B) and (C) shall be applied.
  - d. If an additional IA investigation is undertaken and the OPO subsequently determines that it was not timely, thorough and objective, the OPO may again request additional investigation according to this section. This process may be repeated until the OPO commission makes a determination that no further investigation is needed.
  - e. If, after the appeal process is exhausted, the OPO still finds that the IA complaint investigation was not timely, thorough and objective, the OPO shall notify the chief. A brief statement of the decision not to certify the IA investigation shall be published on the OPO website within forty-eight hours of the chief being notified.
5. OPO oversight of police department policies and procedures. The OPO may recommend changes in police department policies and may issue reports identifying trends in IA complaint investigations. To facilitate this role, IA shall promptly provide the OPO with unimpeded access to closed IA complaint investigation files, upon request. The OPO shall return closed IA complaint investigation files to IA within one year.

D. Independent OPO Complaint Investigations.

1. General authority.  
The OPO may conduct an independent investigation of any complaint filed with the OPO at any time, regardless of IA action on the complaint.
2. Receipt of complaints.
  - a. The OPO may receive complaints from IA pursuant to SMC 4.32.035(C)(1) or directly from a complainant. If a complainant files a complaint directly with the OPO, the OPO shall provide IA with a copy of the complaint within three business days.



- b. The OPO may receive and catalogue complaints concerning events that occurred more than one year prior to the filing of a complaint, but may not act upon them unless directed to do so by the OPO commission.
3. Investigation of complaints filed directly with OPO.  
The OPO may interview the complainant and any witnesses. In addition to the access to SPD officers granted under SMC 4.32.035(C)(1)(e) and (2)(a), the OPO may request voluntary interviews with SPD officers at any time and disclose both the request and the response to the request by the SPD and/or the officers to whom the request is made.
4. Closing Report.
  - a. Whenever a complaint is filed with the OPO, the OPO shall produce a closing report.
  - b. The purpose of the closing report is to summarize the OPO's conclusions regarding the substance of the complaint and any OPO recommendations regarding revision to any applicable law enforcement policy, training protocol and/or law enforcement procedure materially associated with the basis for the complaint. Except as specifically directed in this chapter, the content and length of the closing report shall be determined solely by the OPO. The OPO may include information obtained during participation in IA complaint investigation interviews in a closing report, subject to disclosure limitations in SMC 4.32.035(B)(5).
  - c. Within thirty calendar days of the closure of the IA complaint investigation or the OPO complaint investigation, whichever is later, the OPO shall send a copy of the closing report to IA, the complainant, and publish the closing report on the OPO's website.

E. Community Impact Cases.

1. The OPO may at any time identify an incident as a "community impact case" (CIC) and request confirmation by the commission. Members of the commission shall be provided all materials concerning the case for confidential review. The commission will have up to seven days to confirm the OPO's determination that the incident is a community impact case.
2. Prior to the commission's confirmation decision, the OPO shall have authority to exercise an investigation pursuant to procedures provided in SMC 4.32.035(D). In the event the commission elects not to verify the incident as a CIC, the OPO investigation shall cease, unless the incident

has subsequently resulted in a complaint filed with IA or OPO, at which point provisions governing complaint investigations govern.

3. When the commission verifies an incident as a CIC, the OPO shall conduct an independent investigation pursuant to provisions in this chapter governing OPO investigations when a complaint is filed directly with the OPO.
4. Whenever the commission verifies an incident as a CIC, the OPO shall produce a closing report as described in SMC 4.32.035(D)(4).

Section 5. That SMC section 4.32.040 is amended to read follows:

#### **4.32.040 Critical Incidents**

In the event an employee of the police department is involved as a principal, victim, witness, or custodial officer, where death or serious bodily injury results, ~~((or))~~ where deadly force was used regardless of whether any injury or death ~~((resulted))~~ results, where an officer has used an electronic control device in response to an encounter with a citizen, or where the SWAT team has been deployed, the police ombudsman shall be notified immediately and shall act as an observer to any administrative, ~~((or))~~ civil, or criminal investigation conducted by or on behalf of the department (including any investigation of Spokane police department officers by other law enforcement agencies). The police ombudsman and the chief shall develop necessary protocols for summoning the ombudsman to the incident for purposes of first-hand observation and subsequent monitoring of the investigation.

Section 6. That SMC section 4.32.080 entitled "Appointment" is repealed.

Section 7. That there is adopted a new section 4.32.085 to chapter 4.32 SMC to read as follows:

#### **4.32.085 Qualifications and Appointment**

- A. The qualifications for the police ombudsman position will minimally include the requirement of a bachelor's degree and five years of experience in criminal law and/or investigations. The position of police ombudsman will be a full-time appointed city employee as defined by ordinance.
- B. When the police ombudsman position becomes vacant or will become vacant in the near future, the office of police ombudsman commission ("commission") will undertake a candidate search. A screening committee will be established to screen, interview and select three candidates to be considered by the mayor.

The interviews and selection of the three candidates will occur during regularly scheduled meetings and be open to the public.

- C. The screening committee shall consist of the following five persons:
  - 1. the chairperson of the commission (who shall be the chairperson of the screening committee);
  - 2. a member of city council;
  - 3. a member selected by the mayor;
  - 4. a member selected by the Police Guild and;
  - 5. a member selected by the Lieutenants & Captains Assoc.
- D. The HR staff will assist the commission in the placement of the advertisements and work with the OPO staff as required.
- E. The mayor will select one of the three candidates and forward the nomination to the city council for confirmation.
- F. In the event the city council rejects the nominee, the mayor shall submit his/her second recommendation from the remaining two names submitted by the commission. If the city council rejects the second nominee, the process shall begin with a second candidate search by the committee.

Section 8. That SMC section 4.32.090 is amended to read as follows:

**4.32.090 Term**

- A. The appointment of the police ombudsman shall be for an initial three-year term.
- B. A current police ombudsman may be reappointed for additional ~~((terms not to exceed three years))~~ three-year terms upon recommendation of the mayor in consultation with the office of police ombudsman commission and confirmation by the city council. If the mayor does not recommend reappointment or the city council does not approve the reappointment prior to the expiration of the three-year appointment term, the appointment term shall expire at the end of the three-year term. If the police ombudsman is not re-appointed, he or she may continue serving on an interim until a new police ombudsman is confirmed by the city council, unless the police ombudsman has been removed per SMC 4.32.100.
- C. ~~((Should a vacancy in the position occur, due to expiration of term, resignation, sickness, death, retirement, conflict of interest, or any other reason, the mayor~~

~~may recommend an appointment for city council confirmation of an interim police ombudsman for a term not to exceed four months, in compliance with the appointment process stipulated in SMC 4.32.080. The selection committee referenced in SMC 4.32.080 must meet within thirty days of notification by the mayor of the need to appoint an interim police ombudsman.))~~ If an appointed police ombudsman is unable to perform his or her duties for a reason not subjecting him or her to removal pursuant to SMC 4.32.100, and this inability to serve is expected to last for six months, an interim police ombudsman shall be appointed by the mayor and confirmed by the city council and shall serve until such time as the police ombudsman can resume his or her duties or the police ombudsman's term expires and a new police ombudsman is appointed, whichever is sooner.

Section 9. That SMC section 4.32.100 is amended to read as follows:

#### **4.32.100 Removal**

- A. The police ombudsman may not be removed from office during ~~((his))~~ the three-year term except for misconduct, inefficiency, incompetence, inability or failure to perform the duties of the office or negligence in the performance of the duties. Compliance with the confidentiality provisions of this chapter is a condition of employment for all employees of the OPO. Inadvertent, de minimus disclosures shall not be considered a violation of this section.
- B. In such cases that warrant removal from office, removal shall be by a resolution adopted by the city council subsequent to a public hearing ~~((by either the majority of the full city council upon recommendation of the mayor or by a vote of no less than five members of the full city))~~ before the council. A hearing to consider the removal of the police ombudsman shall be initiated by either the majority vote of the full city council, or upon recommendation of the mayor, or a majority of the office of police ombudsman commission. Removal of the police ombudsman shall require a vote of no less than five members of the full city council.
- C. Nothing contained herein shall prevent the city council from ~~((either))~~ declining to approve an appointment or reappointment, ~~((or eliminating the office of police ombudsman by legislative action, both of which do))~~ which does not require the city council to consider removal for cause as set forth above.

Section 10. That SMC section 4.32.110 is amended to read as follows:

#### **4.32.110 Reporting Requirements**

- A. The police ombudsman reports, for administrative and executive ~~((functions))~~ purposes, directly to the ~~((mayor or the mayor's designee))~~ OPO commission.

- B. The police ombudsman is not an employee of the Spokane police department and shall work independently from the Spokane police department.
- C. The police ombudsman shall make monthly reports (~~jointly~~) to the office of police ombudsman commission, the mayor, the police chief, and the public safety committee regarding the activities of the OPO. In addition, the police ombudsman shall make a (~~an annual report~~) quarterly reports to the city council during a council meeting. The report shall contain:
  - 1. statistical analysis documenting the number of complaints by category, disposition, and action taken;
  - 2. analysis of trends and patterns; and
  - 3. recommendations.

Section 11. That there is adopted a new section 4.32.150 to chapter 4.32 SMC to read as follows:

**4.32.150 Office of Police Ombudsman Commission**

- A. That an office of police ombudsman commission (“commission”) be created consisting initially of five members.
- B. General Duties.  
In addition to other duties enumerated in this chapter, the commission shall:
  - 1. Participate in the selection of the OPO, as provided in this chapter;
  - 2. Approve annual and long term goals of the OPO;
  - 3. Approve OPO procedures and best practices;
  - 4. Approve the OPO annual report;
  - 5. Approve OPO recommendations to implement changes in police department policies and training;
  - 6. OPO rules and procedures.  
The OPO commission, on its own or upon request by the OPO may adopt, promulgate, amend, and rescind rules and procedures required for the discharge of OPO duties, including policies and procedures for receiving and processing complaints, monitoring investigations, and reporting findings, conclusions and recommendations.

7. Conduct and approve evaluations of the OPO and OPO personnel;
  8. Request that the OPO examine or re-examine specific incidents or issues and confirm or reject OPO requests for additional investigation by IA;
  9. Assist OPO personnel in communicating with Spokane's diverse communities and the general public about the complaint filing and investigation process;
  10. Make readily available to the public all commission reports, recommendations, and evaluations, subject to disclosure limitations in SMC 4.32.035(B)(5); and
  11. Prepare and present an annual report to the city council.
- C. The commission shall not have any authority to:
1. Participate in the police department's disciplinary process;
  2. Hear appeals of any complaints made to or investigated by the OPO; or
  3. Release or disclose any information also prohibited from disclosure by the OPO pursuant to SMC 4.32.035(B)(5).
- D. Selection of Members.
1. Two members shall be nominated by the mayor and appointed by city council; and,
  2. One member from each of the three city council districts nominated and appointed by city council.
  3. The commission may, at any time, determine that more members are necessary to carry out the duties of the commission. Upon unanimous vote of all commission members and majority approval by the city council pursuant to an amendment to this section, additional members may be added to the commission two members at a time:
    - a. One additional member nominated by the mayor and appointed by city council; and,
    - b. One additional member nominated appointed by city council.
- E. Officers.  
The commission members shall annually choose their own chair and vice-chair, who will serve from January 1st through December 31st, and shall serve in that

position for no more than three consecutive one-year terms. The chair (and vice-chair in the absence of the chair) will set the agenda for meetings, facilitate the meetings, speak on behalf of the commission and call any special meetings.

F. Qualifications.

1. Members of the commission shall be volunteers who immediately, prior to appointment, shall be:
  - a. A current resident of the city of Spokane;
  - b. Of the age of twenty-one years or older;
  - c. Able to pass an in-depth background investigation and have no convictions for crimes involving dishonesty within the past the years; and
  - d. Neither a current or former employee of the City of Spokane or Spokane police department, nor an immediate family member of a current City of Spokane or Spokane police department employee.
2. The following characteristics shall be considered during the appointment process:
  - a. An absence of any real or perceived bias, prejudice, or conflict of interest;
  - b. A record of community involvement;
  - c. A demonstrated ability to be fair, impartial and unbiased;
  - d. An ability to build working relationships and communicate effectively with diverse groups;
  - e. Education, professional and/or personal experience including but not limited to judicial, legal, investigative, mental health and law enforcement experiences with the exception that a commission member shall not have been a law enforcement officer for two years prior to his or her appointment;
  - f. Contribute to the diversity of the commission so that the makeup of the commission reflects the diversity of the people most likely to have contact with members of the police department, including geographic, racial and disability diversity.

G. Terms of Office.

1. Each commission member shall serve a three-year term and is eligible for re-appointment, except that no member shall be re-appointed after serving three consecutive full three-year terms.
2. The initial commission members will have staggered terms, with three members serving three years and two members serving two years.
3. A vacancy that occurs during the term of a member shall be filled in the same manner as the original appointment, and the appointee shall serve for the remainder of the expired term.
4. Each member shall continue to serve in such capacity until the member's successor has been duly appointed and is acting, provided, however, that the period shall not exceed ninety days past the expiration of the member's term.

H. Expectations.

1. Commission members shall participate in an appropriate training program to be established by the commission, the chief of police and/or the OPO so that they shall possess the knowledge to perform their duties.
2. Members of the commission shall agree in writing that they are subject to the City of Spokane code of ethics contained in chapter 1.04 SMC and an appropriate confidentiality agreement to be developed by the OPO and reviewed and maintained in collaboration with the commission.

I. Liability.

It is the intent of the City that the commission members be free from personal liability for acts taken within the course and scope of carrying out their official duties and functions. The city will therefore defend and indemnify members to the maximum extent permitted under the city's insurance program and indemnification policy.

J. Removal.

A member of the commission may be removed from office by the city council prior to the normal expiration of his/her term for consistent failure to perform commission member duties, for having a real or perceived bias, prejudice or conflict of interest, or for violating the statement of principles, code of conduct, or confidentiality agreement.

K. Meetings and Procedures.

1. The commission may appoint from its membership committees as necessary to perform its duties.



2. Commission members are expected to maintain a minimum of seventy-five percent meeting attendance on an annual basis.
3. The commission shall hold regular meetings with an opportunity for public comment at least quarterly, and the commission and its committees may hold additional meetings as necessary.
4. No business of the commission shall be conducted at a meeting without at least a quorum of three members.
5. All actions of the commission shall be made upon a simple majority vote of the members present.
6. Meetings of the commission shall be open to the public except when the commission has determined a closed executive session, in accordance with RCW 42.30.110, is necessary in order to carry out its business.
7. The commission shall prepare and present an annual report to the city council that:
  - a. Summarizes the commission's activities, findings, and recommendations during the preceding year;
  - b. Gives recommendations for changes to the police department's processes and policies;
  - c. Evaluates the work of the OPO, including whether the OPO is functioning as intended and performing required duties.
8. The commission may develop additional reports as deemed necessary by it, or as requested by the city council. All reports generated by the commission shall not release nor disclose any records exempt from disclosure under the Washington Public Records Act or any confidential information that city officials or employees would be legally prohibited from disclosing.
9. The commission shall evaluate the performance of the OPO. In doing so, the commission:
  - a. Shall establish criteria by which to evaluate the work of the OPO;
  - b. Shall review, comment on and assist in maintaining policies, procedures and operating principles for the OPO;
  - c. Shall monitor status reports from the OPO; and

- d. May conduct periodic evaluations of the complaint intake and handling system to identify process improvements and/or ensure complaints are being treated fairly with due diligence.

Section 12. That there is adopted a new section 4.32.160 to chapter 4.32 of the Spokane Municipal Code to read as follows:

**4.31.160 Funding**

The city council shall maintain funding necessary to appropriately staff the office of police ombudsman, including adequate staff to enable to ombudsman to perform the required duties and responsibilities of the office as well as providing staff assistance to the police ombudsman commission.

Section 13. Severability Clause. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

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:**

09/23/2013

<b>Date Rec'd</b>	DocDate
<b>Clerk's File #</b>	ORD C35040
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	

<b>Submitting Dept</b>	POLICE
<b>Contact Name/Phone</b>	CARLY 4527
<b>Contact E-Mail</b>	CCORTRIGHT@SPOKANEPOLICE.ORG
<b>Agenda Item Type</b>	First Reading Ordinance
<b>Agenda Item Name</b>	0680 EXTENSION OF AUTOMATED TRAFFIC CAMERA SYSTEMS PROGRAM

**Agenda Wording**

An ordinance extending the automated traffic camera systems program; amending SMC section 16A.64.260; and setting an effective date.

**Summary (Background)**

The City's municipal code authorization for the photored program expires November 12, 2013. This ordinance extends the program through November 12, 2018 to coordinate with the proposed contract extension with AST.

<b>Fiscal Impact</b>		<b>Budget Account</b>
Neutral	\$	#
Select	\$	#
Select	\$	# BudgetAccount3
Select	\$	#
<b>Approvals</b>		<b>Council Notifications</b>
<b><u>Dept Head</u></b>	WALKER, JOE	<b><u>Study Session</u></b>
<b><u>Division Director</u></b>	STRAUB, FRANK	<b><u>Other</u></b> PSC 9/16/2013
<b><u>Finance</u></b>	LESESNE, MICHELE	<b><u>Distribution List</u></b>
<b><u>Legal</u></b>	BURNS, BARBARA	Police - cccortright, jfranklin
<b><u>For the Mayor</u></b>	SANDERS, THERESA	Legal - bburns
<b><u>Additional Approvals</u></b>		Municipal Court - hdelany
<b><u>Purchasing</u></b>		Prosecutor - eo'hara
		ATS
		agolden
		achirowamangu



**Continuation of Wording, Summary, Budget, and Distribution**

**Agenda Wording**

**Summary (Background)**

With the reauthorization of both the ordinance and the contract, the City Council has undertaken a review of the policy regarding allocation of funding from infractions issued with automated traffic safety cameras and has determined that the allocation policy shall be revised as set forth in this resolution.

**Fiscal Impact**

Select     **\$**

Select     **\$**

AmtType7   **\$** Amount7

AmtType8   **\$** Amount8

**Budget Account**

**#**

**#**

**#** Budget7

**#** Budget8

**Distribution List**

Email16

Email17

Email18

Email19

Email20

Email21

Email22

Email23

ORDINANCE NO. C-35040

AN ORDINANCE extending the automated traffic camera systems program; amending SMC section 16A.64.260; and setting an effective date.

The City of Spokane does ordain:

- 1. Section 1. That SMC section 16A.64.260 is amended to read as follows:

**16A.64.260 Termination of Authorization for Use of Automated Traffic Safety Cameras**

The authorization granted in [SMC 16A.64.220](#) to use automated traffic safety cameras for issuance of notices of infraction for violations regarding obedience to traffic control devices shall expire on November 12, 2018 (~~(2013)~~), unless the city council takes legislative action to extend the authorization.

Section 2. Effective Date.

This ordinance shall take effect and be in force on November 13, 2013.

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:**

09/30/2013

<b>Date Rec'd</b>	DocDate
<b>Clerk's File #</b>	OPR 2008-0120
<b>Renews #</b>	
<b>Cross Ref #</b>	OPR 2008-0120
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	

<b>Submitting Dept</b>	POLICE
<b>Contact Name/Phone</b>	CARLY CORTRIGHT 835-4527
<b>Contact E-Mail</b>	CCORTRIGHT@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Special Considerations
<b>Agenda Item Name</b>	0680 AMERICAN TRAFFIC SOLUTIONS - PHOTO RED CONTRACT EXTENSION

**Agenda Wording**

Contract extension with American Traffic Solutions, INC for Traffic Safety Camera System effective 11/13/13 through 11/12/18 (OPR 2008-0120). This is the first of two five year optional extensions. Estimated annual expense is \$625,000.

**Summary (Background)**

The first of two optional five year extensions, changes include: City may terminate with 90 days notice, Spokane Police Dept (SPD) will be signatory, SPD will mail infractions/violations, Spokane Municipal Court file stamp, scan, and upload each infraction. Existing camera prices are reduced approximately 13%. This extension allows the continuation of the Traffic Safety Camera System with the cost of Police and Municipal Court additional responsibilities being offset by reduced camera pricing.

**Fiscal Impact**

Revenue	\$ 1,500,000
Expense	\$ 625,000
Select	\$
Select	\$

**Budget Account**

#	1380-21700-99999-35370-99999
#	1380-21700-21100-54201-99999
#	BudgetAccount3
#	

**Approvals**

<b>Dept Head</b>	CORTRIGHT, CARLY
<b>Division Director</b>	STRAUB, FRANK
<b>Finance</b>	LESESNE, MICHELE
<b>Legal</b>	BURNS, BARBARA
<b>For the Mayor</b>	SANDERS, THERESA

**Council Notifications**

<b>Study Session</b>	PSC 09/16/2013
<b>Other</b>	
<b>Distribution List</b>	Police: ccortright, achirowamangu, mdoval, agolden jfranklin, kclear

**Additional Approvals**

<b>Purchasing</b>	Contract Accounting: mlesesne
	Street Dept: aschenk
	Municipal Court: hdelaney
	Taxes & Licenses

**Briefing Paper  
City of Spokane  
Spokane Police Department/Public Safety Committee  
September 16, 2013**

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**Subject**

Extension of contract with American Traffic Solutions, INC. for Traffic Safety Camera System effective 11/13/2013 through 11/12/2018 (OPR 2008-0120). This is the first of two five year optional extensions. Estimated revenue is \$1,500,000, and estimated expenses are \$625,000.

**Background**

The initial five year contract with American Traffic Solutions, INC. expires on November 12, 2013. This first of two five-year extensions includes the following modifications:

- City may terminate for convenience with 90 days written notice; City would pay ATS for unamortized balance of new cameras.
- Spokane Police Department will be signatory
- Spokane Police Department will mail infractions/violation
- Spokane Municipal Court will file stamp, scan, and upload each infraction

Pricing of existing cameras has been reduced by approximately 13% to offset costs of additional Police and Municipal Court responsibilities. Pricing for additional cameras is subject to the agreement of both parties.

**Impact**

Extension of contract will allow for the continuation the Traffic Safety Camera System for an additional five years with the cost of Police and Municipal Court additional responsibilities being offset by reduced camera pricing.

**Action**

Approve extension of contract with American Traffic Solutions, INC.

**Funding**

Funding for the extension of contract with American Traffic Solutions, INC will come from the Traffic Calming Fund.

EXTENSION NO. 1

TRAFFIC SAFETY CAMERA SYSTEM

THIS EXTENSION AGREEMENT is between the CITY OF SPOKANE, a municipal corporation of the State of Washington, whose address is 808 West Spokane Falls Boulevard, Spokane, Washington 99201, as "City", and AMERICAN TRAFFIC SOLUTIONS, INC., whose address is 14861 North Scottsdale Road, Suite 109, Scottsdale, Arizona 85254-2788 (billing address is 1330 W. Southern Avenue, Suite 101, Temple, AZ 85282), as "ATS"; and jointly hereinafter referred to as the "Parties."

WITNESSETH:

WHEREAS, the City has implemented and contracted with ATS for the operation of a turnkey traffic safety camera system pursuant to section 46.63.170 of the Revised Code of Washington; and

WHEREAS, the Parties would like to exercise the first extension authorized under agreement OPR 2008-0120; -- Now, Therefore,

The Parties agree as follows:

1. SERVICES. The City continues to retain ATS to provide traffic safety camera system services described in the attached "Exhibit A – Scope of Work". ATS agrees to perform the Scope of Work according to the terms and conditions of this extension agreement.
2. DURATION. This extension agreement shall be effective from November 13, 2013 and run for a period of five (5) years ending November ~~13~~ 12, 2018, unless terminated earlier. The City, at its sole discretion, may extend the term of the agreement for one (1) additional five (5) year period for a total contract term of fifteen (15) years. Such extension shall require the approval of the Spokane City Council.
3. CONTRACT DOCUMENTS. This extension agreement, agreement OPR 2008-0120 dated March 10, 2008, ATS' proposal and the City's Request for Proposals are the contract documents. In the event of conflict, the conflict shall be resolved in favor of this extension agreement.



4. COMPENSATION.

- A. ATS shall be paid in the amounts and manner as described in the attached "Exhibit B – Compensation". The pricing shall be fixed and firm for the initial three (3) years of the extension agreement.
- B. The basis for service charge adjustments after the initial three (3) years shall be based on the following:
  - 1) Unit prices may increase by the CPI according to the average changes during the prior July - July Consumer Price Index for All Urban Consumers (CPI-U) for U.S. City average as published by the Bureau of Labor Statistics, U.S. Department of Labor;
  - 2) New Pricing shall not produce a higher profit margin than that on the extension agreement;
  - 3) ATS clearly identifies the items impacted by the increase;
  - 4) The request for an increase shall be accompanied by documentation acceptable to the City sufficient to warrant the price index request; and
  - 5) The new pricing shall remain firm for a minimum of three hundred sixty five (365) days.
- C. This extension agreement includes no reimbursable expenses.

5. COST NEUTRALITY CLAUSE.

- A. The City shall not be required to pay ATS more than the City (or ATS on the City's behalf) has collected/received in fines payments through the use of the Axis System cumulatively throughout the term of the extension agreement. For the purposes of this clause, the term "fines" applies to that portion of fines actually retained by the City according to the distribution method applicable under Washington State law.
- B. This clause will be applied as follows:
  - 1) If collections for the program during any month are less than the full amount of ATS invoices, ATS shall be entitled to the full amount of fines actually collected. ATS will maintain an accounting of any net balances owed to ATS and shall apply future collections first to the accrued balance and then to the current months invoice. At any time that ATS fees and any accrued balances are fully repaid, additional collections will be retained by the City. Any positive revenue balances generated from the program (whether reserved in cash or not by the City) will be used to offset future ATS invoices in the event of monthly deficits.

- 2) Example: if during a given year of the program, revenues minus ATS fees yield a net surplus of \$100,000, this amount would be available to pay ATS invoices for any future periods in the event that less or no revenues were to be generated in future periods. However, at the point where the (actual or paper surplus is exhausted, then no additional payments would be due until additional collected fines were available to cover the cumulative deficit. For the purposes of this clause, the accrued surplus is a calculated figure determined by subtracting ATS fees from program fines collected. The obligation to pay is not subject to the existence of cash reserves from the program, for example, if the City chooses to use or has used these surplus funds for any other uses.
- 3) This clause shall not apply should the City elect not to enforce illegal right turn on red violations or if the City elects not to pursue collections on unpaid violations, or if the City directs ATS to install cameras at a site with an initial starting violation rate of fewer than eight (8) violations per day, or if the City or Police Department waives more than ten percent (10%) of valid violations forwarded to the Police Department for acceptance.

6. WORK ORDER METHODOLOGY FOR APPROVED WORK.

- A. Work Order Procedure. ATS shall continue to provide the City the Camera Systems as specified in work orders issued under the original agreement. ATS shall provide the City new Camera Systems as specified in work orders issued under this extension agreement. Each work order shall be a written document having its own specific Scope of Work ("Work Order Scope of Work") identifying the services to be performed and the associated deliverables to be provided and payment terms. Each work order shall be subject to the terms and conditions of this extension agreement and shall be incorporated into this extension agreement by this reference. ATS shall furnish the City with an integrated turnkey solution; that is, services identified in the work orders shall be provided as a single, complete transaction and not as separate items.
- B. Notice to Proceed on Tasks Identified in Work Orders. For each new work order under this extension agreement, ATS shall commence work upon issuance of a written notice from the City.
- C. Additional Work Orders. Additional work orders issued under this extension agreement may be generated by the City for the following purposes:
  - 1) Upgrade(s) of equipment, software, or change(s) of any deliverable provided hereunder; and
  - 2) Any other items related to red light traffic safety system for which the City places an order.

D. For any work order(s) requested by either Party, ATS shall submit to the City for its review and approval a detailed proposal for the scope, implementation plan, milestones, test and acceptance procedures, as well as the cost consistent with previous work orders, the RFP and RFP response. Once this proposal is received and approved by the City, a new work order will be issued for the change or additional work. Upon the City's written approval and notice to proceed, ATS shall implement the change or additional work and invoice for the changed or additional work consistent with the City's approval notice and the terms and conditions of this extension agreement.

7. AUDIT / RECORDS. ATS shall maintain for a minimum of three (3) years following final payment all records related to its performance of the extension agreement. ATS shall provide access to authorized City representatives at reasonable times and in a reasonable manner to inspect and copy any such record. In the event of conflict between this provision and related auditing provisions required under federal law applicable to the extension agreement, the federal law shall prevail.

8. NOTICES. All notices or other communications shall be considered given on: (i) the day the notices or other communications are received when sent by personal delivery; or (ii) the third day following the day on which the notices or other communications have been mailed by certified mail delivery, receipt requested and postage prepaid addressed to the other Party at the address set forth below, or at such other address as either Party shall from time-to-time designate by notice in writing to the other Party:

CITY: Mayor or designee  
City of Spokane  
Seventh Floor, City Hall  
808 West Spokane Falls Boulevard  
Spokane, Washington 99201

Copy: Chief of Police  
Spokane Police Department  
City/County Public Safety Building  
1100 West Mallon Avenue  
Spokane, Washington 99260

ATS: American Traffic Solutions, Inc.  
1330 West Southern Avenue, Suite 101  
Tempe, Arizona 85282  
Attn: Legal Department

9. RELATIONSHIP OF THE PARTIES. The Parties intend that an independent contractor relationship will be created by this extension agreement. No agent, employee, servant or representative of ATS shall be deemed to be an employee, agent,

servant or representative of the City for any purpose. Likewise, no agent, employee, servant or representative of the City shall be deemed to be an employee, agent, servant or representative of ATS for any purpose.

10. LIABILITY.

- A. To the extent permitted by law, ATS shall indemnify, defend and hold harmless the City, its officers and employees from all claims, demands, or suits in law or equity arising from ATS' intentional or negligent acts or breach of its obligations under the extension agreement. ATS' duty to indemnify shall not apply to loss or liability caused by the intentional or negligent acts of the City, its officers and employees.
- B. To the extent permitted by law, the City shall indemnify, defend and hold harmless ATS, its officers and employees from all claims, demands, or suits in law or equity arising from the City's intentional or negligent acts or breach of its obligations under the extension agreement. The City's duty to indemnify shall not apply to loss or liability caused by the intentional or negligent acts of ATS, its officers and employees.
- C. If the comparative negligence of the Parties and their officers and employees is a cause of such damage or injury, the liability, loss, cost, or expense shall be shared between the Parties in proportion to their relative degree of negligence and the right of indemnity shall apply to such proportion.
- D. Each Party's duty to indemnify shall survive the termination or expiration of the extension agreement.
- E. Each Party waives, with respect to the other Party only, its immunity under RCW Title 51, Industrial Insurance. The Parties have specifically negotiated this provision.

11. INSURANCE. During the term of the extension agreement, ATS shall maintain in force at its own expense, each insurance noted below:

- A. Worker's Compensation Insurance in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers and Employer's Liability or Stop Gap Insurance in the amount of \$1,000,000;
- B. General Liability Insurance on an occurrence basis, with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this extension agreement. It shall provide that the City, its officers and employees are additional insureds but only with respect to ATS' services to be provided under this extension agreement; and

- C. Automobile Liability Insurance with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without sixty (60) days written notice from ATS or its insurer(s) to the City.

As evidence of the insurance coverages required by this extension agreement, ATS shall furnish acceptable insurance certificates to the City at the time it returns the signed extension agreement. The certificate shall specify that the City is an additional insured; and include applicable policy endorsements and the deductible or retention level as well as policy limits. Insuring companies or entities are subject to City acceptance and must have a rating of A- or higher by Best. ATS shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

12. ANTI-KICKBACK. No officer or employee of the City, having the power or duty to perform an official act or action related to this extension agreement shall have or acquire any interest in the extension agreement, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in the extension agreement.

13. VENUE STIPULATION. This extension agreement has been and shall be construed as having been made within the State of Washington. This extension agreement shall be governed by the laws of the State of Washington both as to interpretation and performance. Any action at law, suit in equity or judicial proceeding for the enforcement of this extension agreement, or any provision hereto, shall be instituted only in courts of competent jurisdiction within Spokane County, Washington.

14. COMPLIANCE WITH LAWS. The Parties shall observe all federal, state and local laws, ordinances and regulations, to the extent that they may be applicable to the terms of this extension agreement.

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

16. BUSINESS REGISTRATION REQUIREMENT. Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid annual business registration. ATS shall be responsible for contacting the State of Washington Business License Services at <http://bls.dor.wa.gov> or 1-800-451-7985 to obtain a business registration. If ATS does not believe it is

required to obtain a business registration, it may contact the City's Taxes and Licenses Division at (509) 625-6070 to request an exemption status determination.

17. TERMINATION OF EXTENSION AGREEMENT.

- A. For Cause. The City may terminate this extension agreement if ATS is in material breach of any terms of this extension agreement, and the breach has not been corrected according to established standards and agreed upon designs indicated in a valid Work Order within thirty (30) days from notice of breach. For purposes of this subsection, a material breach is defined as a failure to perform any work identified in Paragraph 1 of the Scope of Work (Exhibit A).
- B. For City's Convenience. The City may terminate this extension agreement in whole or in part, without cause and for any reason including the City's convenience, upon ninety (90) days written notice to ATS. For purposes of this clause, each new camera shall be valued at \$120,000.00 and shall be depreciated on a straight line basis over four (4) years. In the event of early termination for convenience, the City shall pay ATS for the unamortized balance of any new cameras.
- C. Acts of Courts or Legislature. In the event the traffic safety camera system pursuant to section 46.63.170 of the Revised Code of Washington is declared unconstitutional by a court of competent jurisdiction or becomes illegal by any other statute, the City may terminate this extension agreement in whole or in part immediately upon written notice to ATS.
- D. Acts of Insolvency. The City may terminate this extension agreement by written notice to ATS if ATS becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or is wound up or liquidated, voluntarily or otherwise.
- E. Notices. The City shall provide advance notice of termination. ATS shall continue to provide products and services as required by the City until the effective date provided in the termination notice.

18. REPRESENTATIONS AND WARRANTIES.

- A. ATS represents and warrants that it has the requisite training, skill and experience necessary to provide work and is appropriately accredited and licensed by all applicable agencies and governmental entities.
- B. ATS warrants that all materials, equipment, and/or services provided under this extension agreement shall be fit for the purpose(s) for which intended, for merchantability, and shall conform to the requirements and specifications herein.

Acceptance of any service and inspection incidental thereto by the City shall not alter or affect the obligations of ATS or the rights of the City.

19. CONFIDENTIAL INFORMATION.

- A. If the City notifies ATS of a public disclosure request, and ATS believes records are exempt from disclosure, it is ATS' responsibility to make determination and pursue a lawsuit under RCW 42.56.540 to enjoin disclosure. ATS must obtain the injunction and serve it on the City before the close of business on the tenth (10<sup>th</sup>) business day after the City sent notification to ATS. It is ATS' discretionary decision whether to file the lawsuit.
- B. If ATS does not timely obtain and serve an injunction, ATS is deemed to have authorized releasing the record. If the City has notified ATS of a public disclosure request, and ATS has not obtained an injunction and served the City with that injunction by the close of business on the tenth (10<sup>th</sup>) business day after the City sent notice, the City will then disclose the record.
- C. Notwithstanding the above, ATS must not take any action that would affect (1) the City's ability to use goods and services provided under this agreement or (2) ATS' obligations under this extension agreement.
- D. ATS will fully cooperate with the City in identifying and assembling records in case of any public disclosure request.

20. DISPUTES.

- A. Any dispute or misunderstanding that may arise under this extension agreement concerning ATS' performance shall first be resolved, if mutually agreed to be appropriate, through negotiations between ATS' Project Manager and the City's Project Manager, or if mutually agreed, referred to the City's named representative and ATS' senior executive(s). Either Party may decline or discontinue such discussions and may then pursue other means to resolve the disputes, or may by mutual agreement pursue other dispute alternatives such as alternate dispute resolution processes. Nothing in this dispute process shall in any way mitigate the rights, if any, of either Party to terminate the extension agreement in accordance with the termination provisions herein.
- B. Notwithstanding above, if the City believes in good faith that some portion of work has not been completed satisfactorily, the City may require ATS to correct the work prior to City payment. In this event, the City must clearly and reasonably provide ATS an explanation of the concern and the remedy that the City expects. The City may withhold from any payment that is otherwise due, an amount that the City in good faith finds to be under dispute, or if ATS does not provide a sufficient remedy, the City may retain the amount equal to the cost to the City for otherwise correcting or remedying the work not properly completed.

21. NON-WAIVER. No waiver by any Party of any of the terms of this extension agreement shall be construed as a waiver of the same or other rights of that Party in the future.

22. ENTIRE AGREEMENT. This extension agreement contains terms and conditions agreed upon by the Parties. The Parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this extension agreement. No changes or additions to this extension agreement shall be valid or binding upon the Parties unless the change or addition is in writing, executed by the Parties.

23. MODIFICATION. No modification or amendment to this extension agreement shall be valid until put in writing and signed with the same formalities as this extension agreement.

24. HEADINGS. The section headings appearing in this extension agreement have been inserted solely for the purpose of convenience and ready reference. In no way do they purport to, and shall not be deemed to define, limit or extend the scope or intent of the sections to which they pertain.

25. COUNTERPARTS. This extension agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but the counterparts shall together constitute but one and the same.

26. SEVERABILITY. If any provision of this extension agreement is held by the courts to be illegal or invalid, the remaining provisions shall not be affected and the rights and obligations of the Parties shall not be affected in regard to the remainder of the extension agreement.

27. ASSIGNMENT. This extension agreement shall be binding upon the Parties, their successors and assigns. No Party may assign, in whole or in part, its interest in this extension agreement without the approval of the other Party.

28. INSPECTION. All work shall be subject, at all times, to inspection by and with approval of the City, but the making (or failure or delay in making) such inspection or approval shall not relieve ATS of responsibility for performance of the work in accordance with this extension agreement, notwithstanding the City's knowledge of defective or non-complying performance, its substantiality or the ease of its discovery. ATS shall provide sufficient, safe, and proper facilities and equipment for the inspection and free access to the facilities.

29. EQUIPMENT ON TERMINATION. The Camera System shall be removed at ATS's sole expense at the end of this extension agreement, unless it is extended again.



30 PREVAILING WAGES. ATS and its subcontractors shall pay prevailing wages in accordance with chapter 39.12 RCW. ATS shall provide a Statement of Intent to Pay Prevailing Wages at the beginning of this extension agreement and an Affidavit of Wages paid at the end of the extension agreement. Subcontractors shall provide a Statement of Intent to Pay Prevailing Wages at the beginning of each work order and an Affidavit of Wages paid at the end of the each work order for work performed in the public right-of-way..

Dated: \_\_\_\_\_

CITY OF SPOKANE

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

Title: \_\_\_\_\_

Attest:

Approved as to form:

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

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

Dated: \_\_\_\_\_

AMERICAN TRAFFIC SOLUTIONS, INC.

Email Address, if available:  
\_\_\_\_\_

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

Title: \_\_\_\_\_

Attachments which are a part of this extension agreement:

- Exhibit A – Scope of Work
- Exhibit B - Compensation

## SCOPE OF WORK

### 1. DEFINITIONS:

As used in this extension agreement, the following words and terms shall, unless the context otherwise requires, have the respective meanings provided below:

“Approach” is defined as one (1) direction of travel of one (1) or more lanes on a road or a traffic intersection.

“Camera System” means a photo-traffic monitoring device consisting of camera(s) (both the Axis RLC-300 and the Axis Live Video system or - latest version (if required) and a traffic monitoring device capable of accurately detecting a traffic infraction on up to four (4) lanes at one (1) approach and which records such data on an image of such vehicle). “Camera System” shall, where the sense requires, also include any enclosure or cabinet in which the Axis™ System is stationed. As used below, the term “Red Light Stationary Camera System” is used interchangeably with the Camera System term defined here.

“Citation” means a citation issued by a competent state or municipal law enforcement agent or agency or by a court of competent jurisdiction relating to a violation documented or evidenced by the (Axis™) System.

“Operational Time” means the actual time that a Camera System is monitoring traffic.

“Person” or “persons” means any individual, partnership, joint venture, corporation, trust, unincorporated association, governmental authority or political subdivision thereof or any other form of entity.

“Violation” means failure to obey an applicable traffic law or regulation, including, without limitation, failure to obey a traffic signal, operating a motor vehicle in excess of the posted speed limit, or operating a motor vehicle without displaying a valid license plate.

### 2. DAY-TO-DAY ADMINISTRATION:

The following persons shall be responsible for the day to day administration of this extension agreement:

City:	Teresa Fuller Spokane Police Department City/County Public Safety Building 1100 West Mallon Avenue
-------	---

Spokane, Washington 99260  
Phone: (509) 835-4568  
Fax: (509) 625-4066  
Email: [tfuller@spokanepolice.org](mailto:tfuller@spokanepolice.org)

ATS: Director of Operations  
American Traffic Solutions, Inc.  
14861 North Scottsdale Road, Suite 109  
Scottsdale, Arizona 85254-2788,  
Phone: (480) 443-7000  
Fax: (480) 607-0901  
Email: [noc@atsol.com](mailto:noc@atsol.com)

The Parties may change the above contact persons upon written notice to each other.

3. CAMERA SYSTEM.

- A. ATS agrees to provide the City with Axis™ RLC-300 (or better) Red Stationary Camera Systems or latest technology.
- B. The Camera System must utilize a high-resolution digital camera (or cameras). The Camera System shall provide at least ten (10) seconds of full-motion video imaging of each violation as well as at least two (2) still images of the violation event: the first image shall clearly show the scene, including the red signal and a clear view of the vehicle with its front tires in front of the stop bar, prior to committing a violation; and the second image shall clearly show the scene, including the red signal and a clear view of the vehicle inside the intersection while the traffic signal is still red. The license plate number and details must be clearly visible in either one (1) of the two (2) images.
- C. From point of data capture, all camera photos and accompanying video sequences must be capable of secure storage and transmission, and capable of maintaining a secure chain of evidence.
- D. Unless an alternative is approved by the City's day-to-day administrator, violation detection and camera triggering must be non-invasive. Installation will be accomplished without interfering with existing roadway surfaces, with the exception of necessary conduit installation in accordance with the City's Pavement Cut Policy (ADMIN 0370-05-02).

4. GENERAL RESPONSIBILITIES - ATS.

- A. ATS shall continue to provide a turnkey solution for Red Light Stationary Camera Systems to the City wherein all reasonably necessary elements required to implement and operate the solution are the responsibility of ATS, except as otherwise provided in this extension agreement. New or previously unforeseen

requirements may, from time to time, be identified and the Parties shall negotiate in good faith to assign to the proper Party the responsibility and cost for these items. In general, if work is to be performed by the City, unless otherwise specified, the City shall not charge ATS for the cost. All other in-scope work, external to the City, is the responsibility of ATS.

- B. ATS will assist the City with evaluation of new candidate sites using the Axis VIMS system.
- C. ATS will continue the Camera Systems at the previously agreed upon approaches. In addition to the current locations, the Parties may agree from time-to-time, by additional Work Orders(s), to add to the quantities and locations where Camera Systems are installed and maintained.
- D. ATS shall obtain, at its sole expense, all required permits, licenses, and insurance required for the installation, maintenance and operation of the Camera System.
- E. ATS shall commence installation of new sites within fourteen (14) days after all approvals and required permits have been approved (the date all permits are approved shall hereinafter be referred to the "Approval Date"). The Approval Date shall be marked by the issuance of a signed letter from ATS to the City, stating that permits for a particular site or set of sites have been approved.
- F. ATS shall have all agreed-upon work completed and fully operational according to the work's agreed upon project schedule.
- G. ATS shall endeavor to hire local contractors for work associated with installation of cameras, etc.

#### 5. OPERATION RESPONSIBILITIES - ATS.

- A. ATS will operate each Camera System on a twenty-four (24) hour basis, barring downtime for maintenance and normal servicing activities.
- B. ATS shall provide necessary training (to include "train the trainer") for persons designated by the City.
- C. At no additional cost, ATS shall develop and implement a Public Awareness Campaign according to ATS' proposal. This will include providing the content and design of public education materials, Web-site design, and assistance with media kick-off events, press releases and communications as specified in its response to the City's Request for Proposals. The content must have the approval of the City. All media related issues will be coordinated by the City.

- D. ATS shall maintain a secure web site ([www.violationinfo.com](http://www.violationinfo.com)) accessible to citation recipients (defendants) by means of a Notice Number and a PIN, which will allow violation image review.
- E. The Camera System shall be capable of continuous remote monitoring to determine proper operation. ATS shall perform remote status checks and camera monitoring at least twice daily. The Camera System must automatically notify appropriate personnel of any system failure or other problem that would cause the Camera System to be inoperable. ATS will then be required to respond and repair any report of a malfunctioning system within twenty-four (24) hours of receiving notice. No existing traffic signal systems telemetry shall be used for conveyance of any Camera System information, reports, or failure notification.
- F. ATS normally shall provide technician site visits to each Stationary Camera System once per month to perform preventive maintenance checks consisting of camera enclosure lens cleaning; camera, strobe and controller enclosure cleaning; inspection of exposed wires; and general system inspection and maintenance. No ATS technician shall enter a traffic signal cabinet without the presence of a City Traffic Signal Technician.
- G. ATS shall repair a non-functional Stationary Camera System within seventy-two (72) hours of determination of a malfunction.
- H. ATS shall repair the Axis VPS system within one (1) business day from the time of the outage. Outages of City internet connections or infrastructure are excluded from this service level.
- I. In those instances where damage to a Camera System or sensors is caused by negligence on the part of the City or its authorized agent(s), ATS will provide an estimate of the cost of repair. Upon authorization to proceed with the repairs or replacement, ATS shall replace or repair any damaged equipment and invoice the City for the pre-approved repair cost. ATS shall bear the cost to replace or repair equipment damaged in all other circumstances.
- In those instances where any damage is caused by negligence on the part of ATS or its authorized agent(s), ATS will provide an estimate of the cost of repair. Upon authorization to proceed with the repairs or replacement, ATS shall replace or repair any damaged equipment at its sole expense.
- J. New Sites.
- 1) Upon completion of installation of a new site, ATS shall perform an end-to-end test for each of the contracted approaches.

- 2) Upon completion of installation and testing of all contracted approaches, ATS shall notify the City that the system is ready for acceptance.
- 3) The City shall conduct an acceptance test in accordance with the RFP specifications.
- 4) Upon successful completion of the acceptance test, the City shall issue a certificate of acceptance.

6. OPERATION RESPONSIBILITIES - CITY.

A. Street Department.

- 1) The City will purchase, install and maintain red light camera warning signs installed by ATS as part of any future work orders approved by the City.
- 2) The City shall provide access to traffic signal phase connections according to approved design. Only City Traffic Signal Technicians will perform wiring connections within the traffic signal cabinet to accomplish the red light camera installation.
- 3) The City may allow ATS to use existing street furniture and poles for the purposes of installing and operating its Camera Systems, according to approved design. A City Traffic Signal Technician must be present during installation for the Camera Systems on existing street furniture and poles at the intersections.
- 4) ATS shall provide installation drawings stamped by a licensed civil engineer where the installation will not significantly alter roadway improvements or existing utilities. ATS work product and drawings shall conform to professional norms and reflect the details of installation work to be completed.
- 5) The City shall approve or reject ATS' submitted plans within twenty (20) working days of receipt. Where more than one (1) submittal is required by ATS to meet City of Spokane Standards, each corrected submittal by ATS shall restart a fifteen (15) working day review period.
- 6) The design and installation shall meet the most current City of Spokane Design Standards and Policies and be approved through the City's Engineering Services Department. All construction and installation shall be in accordance with the most current edition of the WSDOT "Standard Specifications for Road, Bridge, and Municipal Construction" and the City of Spokane "General Provisions for Private Contracts".

- 7) The City shall process right of way use and pole attachment permit requests prepared by ATS in accordance with City established criteria. ATS shall be responsible for all applicable fees to process required permits unless waived by the City prior to application of the permits.
- 8) No open trenching at concrete intersections for conduit installations will be allowed. Any open trenching in other areas must follow City of Spokane guidelines and the City's Pavement Cut Policy.
- 9) ATS shall use only City of Spokane signal / lighting conduit from controller cabinet to the junction box that is nearest the signal controller cabinet.
- 10) ATS will not be allowed to use other City of Spokane conduit.

B. Police Department:

- 1) The Spokane Police Department shall process each potential violation in accordance with Washington State laws and City ordinances within three (3) business days of its appearance in the Police Review Queue, using Axis™ to determine which violations will be issued as Infractions or Notices of Violations. The City and ATS shall mutually agree on rejection criteria.
- 2) Police Department workstation computer monitors for infraction review and approval should provide a resolution of 1280 x 1024.
- 3) For optimal data throughput, Police Department workstations should be connected to a high-speed internet connection with bandwidth of T-1 or greater.
- 4) The Police Department shall provide signatures of all authorized police users who will review events and approve infractions on forms provided by ATS.
- 5). The Police Department shall be the signatory on the issued infractions and violations.
- 6) In the event that remote access to the ATS Axis VPN System is blocked by City network security infrastructure, the City Information Technology Department shall coordinate with ATS to facilitate appropriate communications while maintaining required security measures.
- 7) The Police Department shall mail at least one (1) first-issued infraction or notice of violation per chargeable event. Each infraction or notice of violation shall be delivered by first class mail to the registered owner within the statutory period. The Police Department shall also mail subsequent

infractions or notices to drivers identified in declarations of non-responsibility or by rental car companies. For mail not delivered due to address problems, ATS will mail the infraction or notice again if the U.S. Postal Service provides it with better information. Mailing costs will be at City expense.

7. INFRACTION PROCESSING - ATS.

- A. ATS shall provide the City with access to ATS's automated web-based citation processing system (Axisis).
- B. ATS shall provide the City with access to ATS's automated web-based billing, payment and accounting system (BPA Link).
- C. ATS shall obtain in-state vehicle registration information necessary to issue infractions assuming that it is named as the City's agent and the state provides the registration data at no cost.
- D. Where obtainable, ATS shall provide out-of-state vehicle registration necessary to issue infractions at no cost to the City.
- E. ATS shall send a Notice of Hearing, within the time allowed by court rule, to all registered owners who elect to contest or mitigate their citation.
- F. ATS shall provide to the City, on a daily basis, a pdf file containing all Notice of Violations approved by the Spokane Police Department.
- G. ATS will designate rental car companies as registered owners. Notices of violation (not citations) shall initially be issued to rental car companies. ATS will issue citations to designated drivers if the rental car company identifies the driver. If the rental car company does not identify the driver within the time allowed by statute, ATS will issue a citation to the rental car company.
- H. ATS shall process all inbound transfer of liability forms and rental car driver identification forms, and ATS shall reissue a new notice to the identified party.
- I. ATS shall issue warning notices to violators for thirty (30) days at the outset of a new site.
- J. The Axisis™ system, which provides the City with the ability to run and print a report, shall include reports including, but not be limited to:
  - 1) Issuance Rate Report
  - 2) Location Performance Summary Report



- 3) Location Performance Detail Report
- 4) Violation Reject Report
- 5) Document Aging Report

ATS will work with the City to design other management reports that are descriptive of infraction, hearing and collection activity as requested.

- K. ATS shall provide the City with, or train a local expert witness, to testify in court on matters relating to the accuracy, technical operations, and effectiveness of the Axis™ System.
- L. ATS shall provide a website and help line to help the City resolve any problems encountered regarding its Red Light Camera System and/or citation processing. The help line shall function during normal business hours.
- M. ATS shall provide violators with the ability to view violations online. Information and forms regarding affidavits of non-liability shall be provided online and the affidavits shall be directed to and processed by ATS/Axis.
- N. ATS shall commence collection actions and notify the Washington State Department of Licensing of registration suspensions (if authorized by legislation in the future) and other legal and customary means necessary to compel payment of unpaid infractions
- O. ATS shall operate an electronic payment portal for the purpose of accepting debit/credit card, electronic check (ACH) payments over the Internet. The fees, if any, for these transactions will be paid by the user through the application of a convenience fee.
- P. ATS shall receive all requests for hearings and shall schedule the hearings in Axis and shall be responsible for rescheduling hearings according to Court policy. After the hearing is scheduled, ATS shall send a Notice of Hearing the next business day. See Section 7-E above. Mailing costs will be at ATS' expense.
- Q. ATS shall process payments of infractions received by mail. ATS shall process payments of infractions made through ATS's website. See Section 7-0 above.

8. INFRACTION PROCESSING – CITY OF SPOKANE MUNICIPAL COURT.

- A. The Police Department shall deliver to the Municipal Court signed infractions within five (5) business days. The Municipal Court shall file stamp, scan and upload each infraction to its associated infraction number.

- B. The Municipal Court shall provide to ATS, on a weekly basis (or as otherwise agreed), an electronic file containing all infractions that have been adjudicated at the contested or mitigated hearings and the resulting disposition of the infraction.
- C. The Municipal Court shall provide a judge or hearing officer and court facilities to hear disputed citations
- D. The Municipal Court shall provide information to citizens regarding the disposition of citations that were contested or mitigated and adjudicated by a judge or hearing officer. Citizens who have questions about payments, disputes, or ATS or Axis technology will be referred to ATS's website and /or toll-free telephone numbers provided by ATS for that purpose.
- E. In the event that remote access to the ATS Axis VPN System is blocked by City network security infrastructure, the City Information Technology Department shall coordinate with ATS to facilitate appropriate communications while maintaining required security measures.

COMPENSATION

1. PAYMENT.

- A. ATS shall submit requests for payment to the City for its services on a monthly basis. The payment request shall be accompanied by evidence satisfactory to the City justifying the request for payment, including a report of Work accomplished and tasks completed, and an itemization of eligible expenses with copies of receipts and invoices. Invoices must show a breakdown of services provided and price for each.
- B. Payment by the City will be due thirty (30) days after receipt of the ATS' invoice. Requests for payment shall be made to:

Teresa Fuller and Angela Golden  
 Spokane Police Department  
 City/County Public Safety Building  
 1100 West Mallon Avenue  
 Spokane, Washington 99260.

2. CONTRACT PRICING. The pricing covers fixed and variable costs of the system installation, maintenance and operation.

Description of Pricing	Fee*
Flat Monthly Fee for each Red Light Camera – up to 4 lanes	\$4,000
Flat Monthly Fee for each Red Light Camera – 5 lanes (2 systems)	\$4,100
Flat Monthly Fee for each School Zone Fixed Site Speed Camera Fee includes a 4-lane site and up to 800 issued citations per month per camera (if implemented)	TBD
Flat Monthly Fee for each Mobile Speed Camera (City Operator) Fee includes up to 800 issued citations per month per camera (if implemented)	TBD
Fee per notice issued over 800 per month per camera	\$5
Lockbox Check Payment Processing (per payment processed)	Waived
On-Line EPayment Processing (Visa, MasterCard, Debit, E Check) Convenience fee charged to user	Free to City

\* The above pricing is for cameras existing on November 13, 2013. If additional cameras are proposed during the term of the extension, the parties shall agree on the pricing to be applicable for the additional camera(s). Also, if the City, at a future date, is no longer required to be a signatory to the infractions, the parties agree to revisit the above pricing and negotiate revisions thereto in good faith.

3. SUPPLEMENTAL SERVICES. Delinquency Collections – Twenty- five percent (25%) of recovered revenue fee for collection services. Collections are defined as any ATS activities beyond the first two (2) notices.



**Agenda Sheet for City Council Meeting of:**  
09/30/2013

<b>Date Rec'd</b>	DocDate
<b>Clerk's File #</b>	RES 2013-0070
<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>	JON SNYDER 625-6254
<b>Contact E-Mail</b>	JSNYDER@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Resolutions
<b>Agenda Item Name</b>	0320 PHOTO RED REVENUE ALLOCATION

**Agenda Wording**

A resolution regarding allocation of funds from infractions issued with automated traffic safety cameras.

**Summary (Background)**

The previous City Council authorization for use of automated traffic safety cameras has been extended to November 12, 2018 by the City Council. The Council has also agreed to extend the contract with American Traffic Solutions for the same time period. The Council has previously passed resolutions setting forth how the funding from the use of automated traffic safety cameras will be used.

<b>Fiscal Impact</b>		<b>Budget Account</b>	
Select	\$	#	
Select	\$	#	
Select	\$	#	BudgetAccount3
Select	\$	#	
<b>Approvals</b>		<b>Council Notifications</b>	
<b>Dept Head</b>	WESTFALL, JENNIFER	<b>Study Session</b>	
<b>Division Director</b>		<b>Other</b>	
<b>Finance</b>	LESESNE, MICHELE	<b>Distribution List</b>	
<b>Legal</b>	BURNS, BARBARA		
<b>For the Mayor</b>	SANDERS, THERESA		
<b>Additional Approvals</b>			
<b>Purchasing</b>			



# Continuation of Wording, Summary, Budget, and Distribution

## Agenda Wording

## Summary (Background)

With the reauthorization of both the ordinance and the contract, the City Council has undertaken a review of the policy regarding allocation of funding from infractions issued with automated traffic safety cameras and has determined that the allocation policy shall be revised as set forth in this resolution.

## **Fiscal Impact**

Select \$

Select \$

AmtType7 \$ Amount7

AmtType8 \$ Amount8

## **Budget Account**

#

#

# Budget7

# Budget8

## **Distribution List**

Email16

Email17

Email18

Email19

Email20

Email21

Email22

Email23

RESOLUTION NO. 2013-0070

A resolution regarding allocation of funds from infractions issued with automated traffic safety cameras.

WHEREAS, on February 22, 2010, the City Council passed Resolution No. 2010-01 regarding the allocation of funds from infractions issued with automated traffic safety cameras for traffic calming measures; and

WHEREAS, the City Council enacted SMC 16A.64.220 authorizing the use of automated traffic safety cameras for issuance of notices of infraction for violations; and

WHEREAS, the City Council has recently reauthorized the use of automated traffic safety cameras through November 12, 2018; and

WHEREAS, the City Council has recently decided to extend the contract with American Traffic Solutions, LLC to provide traffic safety camera system services; and

WHEREAS, with the reauthorization of automated traffic safety cameras and the renewal of the contract with American Traffic Solutions, LLC, the City Council has undertaken a review of the policy regarding allocation of funding from infractions issued with automated traffic safety cameras and has determined that the allocation policy shall be revised as set forth in this resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPOKANE that the funds collected from infractions issued with automated traffic safety cameras and maintained in the Automated Traffic Safety Camera Expenditure Fund pursuant to SMC 7.08.148 shall be allocated and expended as follows:

- 1) Funding shall first be allocated annually to reimburse the Police and Public Works and Utilities departments for their direct costs associated with administering the automated traffic safety camera program.
- 2) \$100,000 per City Council District per year for a total of \$300,000 for traffic calming measures consistent with the policies and procedures set forth in Resolution No. 2010-01.
- 3) \$100,000 to the Spokane Police Department to fund an additional traffic enforcement officer.
- 4) \$50,000 toward the C.O.P.S. program in addition to the current City funding.
- 5) \$20,000 for graffiti abatement, contingent upon the City administration and the City Council developing a graffiti abatement program by June 30, 2014. If such a program is not developed, the \$20,000 shall be allocated toward traffic calming measure projects.

- 6) New flexible matching fund for excess Photo Red money: Photo Red proceeds will likely exceed \$470,000. Excess funds will be used to supplement or match, at City Council discretion, larger neighborhood traffic calming projects, neighborhood business districts, streetscape improvements, or other redevelopment projects or community development projects related to public safety. Funds would only be used for one-time expenses and not ongoing operations.

BE IT FURTHER RESOLVED that Resolution No. 2010-01 shall continue in effect except where it may conflict with this resolution, in which case this resolution shall prevail.

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

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

Approved as to form:

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