

AGREEMENT
BETWEEN THE CITY OF OLYMPIA
AND URBAN OLYMPIA 5 LLC

THIS AGREEMENT (this “Agreement”) is entered into this ____ day of February, 2016, by and between the CITY OF OLYMPIA, a municipal corporation of the State of Washington (the “City”) and URBAN OLYMPIA 5 LLC, a limited liability corporation organized under the laws of the State of Washington (the “Developer”) (and together, the “Parties”).

WHEREAS, the City issued a Request for Letters of Interest and Qualifications for Predevelopment Activities dated November 23, 2015 (the “RFI/RFQ”) with respect to the development of an area between 4th Avenue and 5th Avenue east and west of Water Street in Olympia (the “Water Street Redevelopment Area” or “Area”) as part of the City’s continuing efforts to revitalize its downtown pursuant to and in accordance with the Community Renewal Law codified at Chapter 35.81 RCW; and

WHEREAS, the Developer submitted a response to the RFI/RFQ and was chosen by the City to assist in the promulgation of a development plan for the Area (the “Area Plan”) in accordance with the RFI/RFQ; and

WHEREAS, the RFI/RFQ generally describes the obligations of the Developer and the City in the promulgation of the Area Plan; and

WHEREAS, by this Agreement the Parties intend to set forth more detailed understandings and conditions which will govern, among other things, the scope and content of the Area Plan, the payment by the City of predevelopment costs to the Developer, the coordination of the Area Plan with the City’s ongoing downtown planning effort (the “Downtown Strategy”), the process for public participation in and City Council consideration of the Area Plan, and the Developer’s exclusive negotiating opportunity to acquire City property within the Area upon acceptance of the Area Plan by the City, and other related terms and conditions.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND CONDITIONS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

I. OBLIGATIONS OF THE DEVELOPER

A. Scope of Work. The Parties agree to and accept the scope of work for predevelopment activities associated with the development of the Area Plan, which is attached hereto and incorporated herein as **Exhibit A** (the “Scope of Work”). The Scope of Work includes the timing and delivery of interim work products, the respective roles and responsibilities of the City and the Developer, opportunities and timelines for participation,

review and comment by the public and consideration by the City Council. The Scope of Work further establishes when payment by the City for predevelopment costs, as outlined in Section II hereof, will be made against completion of deliverables. The Parties agree to work diligently to meet their respective deadlines and to do all things reasonably required to develop the Area Plan in accordance with the schedule set forth in the Scope of Work. In the event that the terms of this Agreement and the Scope of Work are later found to conflict, the terms of the Scope of Work shall control. Further, where timelines for task completion are specified in the Scope of Work, such timelines shall be measured from the date that this Agreement is fully executed by the City and the Developer.

B. Area Plan. The Area Plan will consist of a proposed development program, including details on use mix, preliminary ideas on building scale and massing, and development feasibility in a pro forma spreadsheet. The Developer will identify any code changes or public investment necessary or desirable to make development consistent with the Area Plan feasible. Drawings and plans should include the following:

1. Shared parking needs and costs;
2. Footprints of buildings, parking, and location of vehicular and pedestrian access;
3. Conceptual elevations and renderings that take into account the design guidelines;
4. Cross section showing a typical structure;
5. Typical floor plan;
6. Pedestrian circulation and access to the surrounding community;
7. Architectural features and elements; and
8. Anticipated energy efficiency measures and LEED designation to be sought.

The Area Plan shall take into account market feasibility, property ownership and use, compatibility with adjacent downtown areas, and consistency with the Downtown Strategy.

C. Downtown Strategy. In addition to the Area Plan being consistent with and in furtherance of the Downtown Strategy, the Developer agrees to actively participate in the development of the Downtown Strategy in accordance with the Scope of Work. The Developer's participation is intended to inform the Downtown Strategy by describing its implications to the Area Plan and by providing insight into market conditions affecting downtown development and investment. The Parties see the parallel development of the Area

Plan and the Downtown Strategy as a unique opportunity to integrate market realities and private sector perspectives into planning for the Area and greater downtown.

D. Review and Revision. The Developer shall provide ample opportunity for meaningful comment by the City's Director, Community Planning and Development Department, and its Economic Development Director or their designees (together, the "City Staff") and public participation in the development of the Area Plan to facilitate the building of consensus around the Area Plan. The means by which public review and comment will be solicited and a timeline for completing City Staff comment, public participation, and review of the Area Plan are set forth in the Scope of Work.

II. OBLIGATIONS OF THE CITY

A. City Review. The City commits to the review timelines set forth in the Scope of Work by City Staff to ensure timely feedback to the Developer. The City also agrees to facilitate and support public participation in the Area Plan development in accordance with the roles and responsibilities, and timelines set forth in the Scope of Work.

B. Council Review. The City will make a reasonable good faith effort to ensure timely review and consideration of the Area Plan by the City Council after review by City Staff consistent with the timeline set forth in the Scope of Work.

C. Predevelopment Funding. The City will provide up to \$25,000 to the Developer in predevelopment matching grant funding for promulgation of the Area Plan and \$10,000 in predevelopment funding to offset the cost of the Developer's participation in the development of the Downtown Strategy. Such funding will be made available in compliance with the terms of the Scope of Work.

III. DEVELOPER'S RIGHT TO ACQUIRE CITY PROPERTY

Upon approval by the City Council of a final Area Plan, the City will identify City property within the Area, if any, that may be offered for sale pursuant to the Area Plan to a private developer. The City agrees that if the City Council approved Area Plan is substantially derived from the Developer's proposal, then it will negotiate the terms of sale of City property so identified exclusively with the Developer or its assigns for a period of six months, unless extended in writing by the Parties. The City also agrees that upon execution of this Agreement, it will not offer for sale any property owned by the City within the Area for six months or the date of this Agreement or until the date of City Council review and approval of the Area Plan, whichever is longer. If the City Council rejects the proposed Area Plan or approves an alternate area plan that is not substantially derived from the proposed Area Plan, then the Developer's right of exclusive negotiation for the purchase of City property in the Area under this provision shall terminate effective as of the date of City Council action. The City will exercise good faith in determining whether an alternate area plan is substantially derived from the proposed Plan by the Developer, but the City's determination, absent bad faith, will be final.

IV. USE AND OWNERSHIP OF PLANS AND DESIGNS

The City shall have the right to use all plans, designs and other intellectual property resulting from this Agreement and pertaining to development of the Area Plan regardless of the extent to which it pays predevelopment costs described above. The Developer shall retain joint ownership with the City of all plans, designs, and other intellectual property created in conjunction with performance of its obligations under this Agreement. The City's right to use plans, designs, and other intellectual property as provided for herein shall terminate immediately should (1) the City Council fail to approve the Area Plan or (2) approve an alternate area plan not substantially derived from the proposed Plan by the Developer.

V. DISPUTE RESOLUTION

If at any time during the term of this Agreement, either party determines that the other is failing to cooperate in accordance with its terms, the aggrieved party shall give the other party written notice thereof specifying the basis for its determination, and the parties shall meet and confer in good faith to attempt to resolve any concerns or issues related to such determination. If the parties are not in good faith able to agree to a mutually acceptable resolution with thirty (30) days after such notice is given, the matter shall be subjected to mediation with a neutral, mutually acceptable professional mediator in Olympia, Washington, with such mediation to be completed with sixty (60) days after expiration of the 30-day good faith negotiation period. Each party shall bear one half of the cost of the mediator. Neither party shall exercise any other remedies or take any judicial or administrative action against the other nor issue any public statements concerning its determination or any related issue nor shall either party be in breach of this Agreement during any such 30-day good faith negotiation period so long as they are negotiating in good faith or during the ensuing 60-day mediation period so long as they are cooperating with such mediation process.

VI. ENVIRONMENTAL REVIEW OF AREA PROPERTY

A. Environmental Testing – City Properties. The City agrees to perform environmental characterization and site assessment testing of all City-owned property within the Area at its sole expense.

B. Environmental Testing – Privately Owned Properties. The City shall perform environmental characterization and site assessment testing of privately owned properties in the Area for all properties for which the owner is willing to grant access for this purpose, up to a maximum City cost of \$60,000.00.

C. Duty to Provide Testing Results. The City shall complete the environmental testing called for by this section and provide the results to the Developer prior to any negotiation of terms and conditions of Developer's acquisition of Area property as contemplated by this Agreement.

D. Development of Remediation Plan and Schedule. The City shall develop an environmental remediation plan and schedule for all tested sites within the Area Plan, up to a maximum City cost of \$120,000.00.

VII. MUTUAL INDEMNITY AND HOLD HARMLESS

A. To the extent allowed by law, the Developer shall protect, defend, indemnify and save harmless the City and its officers, agents, and employees from and against any and all claims, costs and/or losses whatsoever occurring or resulting from the negligent tortious acts or omissions of the Developer and its officers, agents and employees in connection with or in support of the Developer's performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The Developer will also defend, indemnify, and save harmless the City and its officers, agents and employees from any and against any and all claims made by the Developer's employees arising from their employment with the Developer.

B. To the extent allowed by law, the City shall protect, defend, indemnify and save harmless the Developer and its officers, agents, directors, and employees from and against any and all claims, costs and/or losses whatsoever occurring or resulting from the negligent tortious acts or omissions of the City and its officers, agents and employees in connection with or in support of the City's performance of this Agreement, except for injuries and damages caused by the sole negligence of the Developer.

C. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Developer and the City, its officers, officials, agents, and employees, the Developer's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Developer's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Developer's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

VIII. GOVERNING LAW AND VENUE

This Agreement will be construed and interpreted in accordance with the laws of the State of Washington. Any mediation, arbitration or legal proceeding that arises out of or in connection with this Agreement will be initiated and maintained in Olympia, Washington. Each party consents to jurisdiction and venue in such courts and waives the right to claim that any such court is an inconvenient forum.

IX. NOTICES

Whenever this Agreement provides for notice to be provided by one party to another, such notice shall be in writing and directed to the City Attorney and the Developer at the addresses set forth below, or at such other addresses as to which an addressee party may hereafter give notice to the other party.

If to the City:	Olympia City Attorney Olympia City Hall 601 4 th Avenue East Olympia, WA 98501
With copy to:	Director Community Planning and Development Department Olympia City Hall 601 4 th Avenue East Olympia, WA 98501
If to the Developer:	Urban Olympia 5 LLC Attn: Walker John 407 Adams Street SE, Suite 201 Olympia, WA 98501
With a copy to:	Thomas Architecture Studio Attn: Ron Thomas, AIA, President 109 Capitol Way North Olympia, WA 98501
And with copy to:	Phillips Burgess PLLC Attn: Heather Burgess 724 Columbia St. NW, Ste. 320 Olympia, WA 98501

X. COUNTERPARTS

This Agreement may be executed in counterpart originals, each of which shall be deemed original, with the same effect as if the signatures thereto were on the same instrument.

XI. ENTIRE AGREEMENT AND MODIFICATIONS

This Agreement constitutes all of the understandings and agreements of any nature existing between the parties with respect to the development of the Area Plan. Unless otherwise provided for herein, no amendments, changes, alternatives or modifications of this Agreement shall be effective unless they are in writing executed by the City and the Developer.

CITY OF OLYMPIA,
a municipal corporation

URBAN OLYMPIA 5 LLC,
a limited liability corporation
of the State of Washington

By _____
Its _____

By _____
Its _____

Approved as to form:

By _____
Its _____

EXHIBIT A
SCOPE OF WORK

DRAFT