

**RIGHT-OF-WAY USE AGREEMENT  
BETWEEN THE CITY OF OLYMPIA  
AND VINE STREET INVESTORS, LLC**

THIS AGREEMENT is made and entered into on the date of the last authorizing signature affixed hereto, by and between the City of Olympia, a Washington municipal corporation, hereinafter referred to as "Olympia" and Vine Street Investors, LLC, a Washington limited liability company, hereafter referred to as "Vine Street." This agreement is intended to provide the terms by which Vine Street may use the unopened City right-of-way for parking purposes.

**WITNESSETH:**

There exists within the City of Olympia a platted right-of-way known as Quince Street, southerly of 8<sup>th</sup> Avenue and northerly of the south line of 9<sup>th</sup> Avenue, which right-of-way has never been opened for public use.

Vine Street is a developer of private buildings and the owner of the underlying fee over which said unopened right-of-way runs. Vine Street seeks to use the property in question for parking for Vine Street customers until such time as Olympia elects to vacate the street or requires it to be opened and used as a public street.

Olympia has determined that use of unopened right-of-way for parking purposes is consistent with proper use of said right-of-way until such time as the City decides to open the right-of-way to public use.

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

1. Olympia hereby grants to Vine Street the right to temporarily use the unopened right-of-way of, as described below, for parking purposes:

That part of Quince Street lying South of the South line of Eighth Avenue and North of the South line of Ninth Avenue, said street being adjacent to Blocks 33, 34, 45 and 46 of Swan's Addition to Olympia as recorded in Volume 1 of Plats, Page 37, Records of Thurston County. In the City of Olympia, Thurston County, Washington. Parcel No. 78203300500

2. The term of this Agreement will be for four (4) years from the date of this Agreement unless it is terminated by the City prior to that date. The City can terminate this Agreement at its discretion by providing written notice of such termination. The effective date of such a termination will be 120 days after the date of receipt by Vine Street of the notice of termination. Upon receipt of a termination

notice, Vine Street shall take the necessary action to ensure that the street may be opened when the termination notice becomes effective. Required street improvements shall be per paragraph 10 of this Agreement.

3. In consideration therefor, Vine Street shall annually pay to Olympia, on or before May 23 of each year, the amount provided for in Exhibit A, attached hereto and incorporated by reference. Exhibit A also includes payment for Vine Street's use of the right of way between agreements, prior to full execution of this 2020 agreement.
4. Vine Street shall construct and maintain parking on said right-of-way at its own expense and shall maintain said facilities in good repair. Olympia is to be liable for no costs or expense of construction, maintenance, or otherwise by reason of this Agreement.
5. Olympia retains the right to construct underground utilities through the entire length and breadth of the right-of-way, but shall, upon completion of any such construction during the term of this Agreement, restore the site to the condition created by Vine Street.
6. Vine Street, its successors and assigns, agrees to defend, indemnify, and hold Olympia harmless from any claim, suit, action, damages, liability, or expense incurred by reason of Vine Street's construction, use, or maintenance of the property for parking facilities. The intent of this paragraph is that Vine Street, its successors, and assigns, will have full, complete, and exclusive care and responsibility for the premises, its construction and use; therefore, ensuring that Olympia will incur no expense by reason of Vine Street's use of the property. Vine Street shall maintain insurance in sufficient amounts to ensure liability coverage.
7. It is recognized that Vine Street may impose restrictions on the use of the temporary parking facilities, including limited the use to be made thereof.
8. This Agreement may be assigned by Vine Street to any successor in interest of taking fee ownership in the surrounding property. To secure a release from liability under this Agreement, Vine Street shall advise Olympia of such change and secure Olympia's consent in writing to the assignment of this Agreement. Such consent shall not be unreasonably withheld if the assignee is a purchaser for value of the surrounding property.
9. Vine Street has the option to petition again for the vacation of the right-of-way described herein and if said petition be granted, the vacated right-of-way shall be sold to abutting property owners as provided under Olympia's Municipal Code.

10. The possibility exists that public interest may require that Quince Street be opened for use as a public right-of-way in which event Vine Street shall improve the right-of-way to Olympia Standards for the length of Vine Street's abutting property. Vine Street shall take immediate action to open the street and construct same to Olympia standards upon notice given by Olympia to Vine Street that the street, if not vacated, is needed for right-of-way purposes. If the street construction is required, Vine Street shall landscape the right of way in accordance with the City's criteria for landscaping parking lots.
11. Vine Street shall post a bond in the form of an assigned savings account or stand-by irrevocable letter of credit in an amount equal to 125% of the cost of improving the referenced right-of-way plus landscaping to Olympia standards. The Public Works Director shall set the amount of bond and Vine Street shall have the opportunity to occupy and use the right-of-way as provided in this Agreement only after the bond has been posted.

The bond referenced in the paragraph above may be released upon the happening of either of two events: (a) Olympia takes such action as is required to vacate the referenced right-of-way, or (b) Olympia has accepted, in writing, the roadway that is constructed by Vine Street after receiving notice pursuant to paragraph 10 of this Agreement.

12. If this Agreement shall be determined invalid by a court of competent jurisdiction, the parties agree that Olympia shall not be liable to Vine Street or its successors in interest for any damages occasioned thereby and Vine Street and successors in interest hereby specifically waive any claim therefor.
13. Any exclusive occupancy prior to the effective date of this Agreement that falls within the scope of this Agreement that is consistent with its terms is hereby ratified and confirmed.
14. In the event a leasehold tax is imposed for occupation of the right of way for the purposes outlined in this Agreement, Vine Street agrees to pay said leasehold taxes to the State of Washington for any time period of Vine Street's exclusive use whether or not there has been a right of way use agreement in place.


**CITY OF OLYMPIA:**

*I hereby declare under penalty of perjury pursuant to the laws of the State of Washington that I have read the foregoing Right of Way Use Agreement, I am authorized to execute the same, I know the contents thereof, and I sign the same as my free act and deed.*

\_\_\_\_\_  
Steven J. Burney, City Manager

\_\_\_\_\_  
Date

**Approved as to Form:**

  
\_\_\_\_\_  
Deputy City Attorney

**VINE STREET INVESTORS:**

*I hereby declare under penalty of perjury pursuant to the laws of the State of Washington that I have read the foregoing Right of Way Use Agreement, I am authorized to execute the same, I know the contents thereof, and I sign the same as my free act and deed.*

  
\_\_\_\_\_  
Jeremiah B. McKinley, Vice President

Date: 05/16/2020

**EXHIBIT A**  
**QUINCE STREET RIGHT OF WAY AGREEMENT PAYMENTS**

**March 23, 2018 - May 22, 2020**

**Retroactive Payments**

Annual increase calculated on change in CPI prior to 3/23/2019.

Annual increase is 4% as of 3/23/2019.

<u>Period</u>	<u>Current CPI</u>	<u>Previous CPI</u>	<u>% Δ</u>	<u>2017-2018 Payment</u>	<u>2018-2019 Payment</u>	<u>Leasehold Excise Tax*</u>	<u>Payment Due</u>
3/23/2018- 3/22/2019	264.477	255.471	3.5%	\$5,218.60	\$5,401.25	\$693.52	\$6,094.77
				<u>2018-2019 Payment</u>	<u>2019-2020 Payment</u>	<u>Leasehold Excise Tax*</u>	<u>Payment Due</u>
3/23/2019– 3/22/2020			4.0%	\$5,401.25	\$5,617.30	\$721.26	\$6,338.56
				<u>2019-2020 Payment</u>	<u>2 months with 4% Increase</u>	<u>Leasehold Excise Tax*</u>	<u>Payment Due</u>
3/23/2020- 5/22/2020			4.0%	\$5,617.30	\$973.67	\$125.02	\$1,098.69

\*Leasehold Excise Tax rate = 0.1284 per State Department of Revenue

**May 23, 2020 - May 22, 2021**

**Annual Payment (to increase 4% annually)**

<u>Period</u>	<u>New Payment</u>	<u>Lease Tax Amount</u>	<u>Total Due</u>
5/23/2020-5/22/2021	\$5,617.30	\$721.26	\$6,338.56

**Total Due to City of Olympia at Signing of Lease:**

<u>Due for period 3/23/2018-5/22/2020</u>	<u>Due for Period 5/23/2020-5/22/2021</u>	<u>Total Due</u>
<b>\$11,992.22**</b>	<b>\$6,338.56</b>	<b>\$18,330.78</b>

\*\*Does not include Leasehold Excise Tax to be paid to State Dept. of Revenue by Vine Street Investors for any time period VSI occupied the right of way, regardless of whether there was a formal agreement in place.