


Agenda Sheet for City Council Meeting of:

02/01/2021

		Date Rec'd	1/20/2021
		Clerk's File #	OPR 2021-0053
		Renews #	
Submitting Dept	INTEGRATED CAPITAL MANAGEMENT	Cross Ref #	OPR 2021-0052
Contact Name/Phone	KATHERINE MILLER 625-6338	Project #	2019113
Contact E-Mail	KEMILLER@SPOKANECITY.ORG	Bid #	
Agenda Item Type	Contract Item	Requisition #	
Agenda Item Name	4250 - ILA - UNIVERSITY DISTRICT PDA SPRAGUE AVE PH 2		

Agenda Wording

Interlocal Agreement with the University District Public Development Authority regarding funding for the Sprague Avenue Phase 2 road project.

Summary (Background)

The interlocal agreement solidifies the University Public Development Authority (UDPDA) funds up to \$4 Million will be made available to help pay for design and construction expenses and establishes a 50/50 split.

Lease? NO Grant related? NO Public Works? NO

Fiscal Impact

Revenue \$ 2,000,000.00

Revenue \$ 2,000,000.00

Select \$

Select \$

Budget Account

3200-95107-99999-34410-86008

3200-95158-99999-34410-99999

#

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Approvals

Dept Head MILLER, KATHERINE E

Division Director SIMMONS, SCOTT M.

Finance ORLOB, KIMBERLY

Legal PICCOLO, MIKE

For the Mayor ORMSBY, MICHAEL

Council Notifications

Study Session\Other PIES 2/1/21

Council Sponsor

Distribution List

lgilberts@spokaneudistrict.org

kemiller@spokanecity.org

publicworksaccounting@spokanecity.org

mpiccolo@spokanecity.org

dbuller@spokanecity.org

eraea@spokanecity.org

icmaccounting@spokanecity.org

Approved by Spokane City Council
on: 02/01/2021

DocuSigned by:

CC56CBA4DCC84D6...
City Clerk

Return to: Office of the City Clerk
808 West Spokane Falls Blvd.
Spokane, WA 99201

City Clerk's OPR No. 2021-0053

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF SPOKANE AND THE
UNIVERSITY DISTRICT PUBLIC DEVELOPMENT AUTHORITY REGARDING
FUNDING FOR THE SPRAGUE PHASE 2B ROAD PROJECT**

THIS AGREEMENT entered into between the **City of Spokane**, a municipal corporation of the State of Washington, having offices for the transaction of business at 808 West Spokane Falls Boulevard, Spokane, Washington 99201, hereinafter referred to as "CITY," and the **University District Public Development Authority**, a public corporation created pursuant to RCW 35.21.730 - 35.21.759 by the City of Spokane and Spokane County, having offices for the transaction of business at 120 North Pine Street, Suite 292, Spokane, Washington 99202, hereinafter referred to as "UDPDA," jointly hereinafter referred to as the "PARTIES."

W I T N E S S E T H:

WHEREAS, the City of Spokane is a State of Washington first-class charter city duly incorporated and validly existing under the Constitution and laws of the State of Washington; and

WHEREAS, the City is authorized by RCW 35.21.730 to create public development authorities to (i) administer and execute federal grants or programs, (ii) receive and administer private funds, goods or services for any lawful public purpose; (iii) improve governmental efficiency and services, (iv) improve the general living conditions in the urban areas in and around the City and (v) perform any lawful public purpose or public function; and

WHEREAS, the City Council approved Ordinance No. C-35828 on November 4, 2019, approving the reformation of the UDPDA, authorizing its charter and bylaws and establishing its Board of Directors to govern the affairs of the UDPDA; and

WHEREAS, pursuant to Ordinance No. C-34470 adopted by the City Council on August 17, 2009, as amended by Ordinance No. C-35880 adopted by the City Council on January 27, 2020, as further amended by Ordinance No. C-39540 adopted by the City Council on September 21, 2020 (collectively, the "UDRA Creation Ordinance"), and within the limitations of RCW 39.104.050 and in accordance with RCW 39.104.040, the City Council created the Spokane University District Revitalization Area by ("UDRA"); and

WHEREAS, Chapter 39.34 RCW (Interlocal Cooperation Act) permits local governmental units to make the most efficient use of their powers by enabling them to cooperate on the basis of mutual advantage; and

WHEREAS, the City is authorized to implement state sales tax credits awarded to the UDRA under the State's Local Revitalization Financing (LRF) program; and

WHEREAS, the City has imposed a sales and use tax set forth in chapter 8.17 of the Spokane Municipal Code under the authority of RCW 82.14.510 and in accordance with the terms of RCW chapter 82.14; and

WHEREAS, the UDPDA Board of Directors approved in May of 2018 to provide up to \$4,000,000 in UDRA revenue to provide partial funding to construct Sprague Phase 2 which runs from Scott Street to Bernard Street; and

WHEREAS, the Sprague Phase 2 project cost was estimated to be approximately \$8,000,000, to reconstruct the roadway from Scott to Division, \$4,000,000 of which would be paid for with prepaid and future UDPDA funds; and

WHEREAS, due to presence of dense rock, Sprague Phase 2 (Scott to Division) was broken into two additional phases, A (Scott to Grant) and B(Grant to Division). It is expected that the final cost of A and B will be totaled and divided equally between the City and UDPDA. Since City funds solely paid for Phase 2A including the design of Phase 2B, it is further expected that UDPDA funds will pay for the construction of Phase 2B and upon completion of Phase 2B the final accounting and dividing up the cost sharing will occur; and

WHEREAS, the City and the UDPDA acknowledge that construction of Sprague Phase 2 will: (i) support the development of property within the UDRA, (ii) promote economic development as contemplated by RCW 35.21.703, (iii) encourage further private development to include increasing the fair market value of real property within the area, and (iv) is consistent with and carries out the purposes of RCW 36.70B.170; and

WHEREAS, it is the desire of the PARTIES to enter into this interlocal agreement to provide for UDPDA's reimbursement to the City for the costs of the Sprague Phase 2 road project in the amount of up to \$4,000,000, through the use of UDRA revenue; and

WHEREAS, the PARTIES have entered into this Agreement in consideration of the mutual benefits to be derived and to coordinate their efforts through the structure provided by the Interlocal Cooperation Act.

WHEREAS the UDPDA is a public authority organized pursuant to the laws of the State of Washington, RCW 35.21.730 through RCW 35.21.757. RCW 35.21.750 provides as follows: [A]ll liabilities incurred by such public corporation, commission, or authority shall be satisfied exclusively from the assets and properties of such public

corporation, commission, or authority and no creditor or other person shall have any right of action against the city, town, or county creating such corporation, commission or authority on account of any debts, obligations, or liabilities of such public corporation, commission, or authority.

NOW, THEREFORE, for and in consideration of the mutual promises set forth hereinafter, the PARTIES do mutually agree as follows:

SECTION NO. 1: PURPOSE

The purpose of this Agreement is to set forth the process whereby the City will be reimbursed by UDPDA for the costs of the Sprague Phase 2 road project (the "Project"). The Project included a full depth reconstruction of the roadway between Scott Street and Division Street. The Project was broken into two phases, A & B. Upon completion of the Project, the City will apply revenue generated and allocated to the UDPDA by the implementation of the local sales and use tax increment and local property tax allocation revenue within the UDRA and Ordinance Nos. C-34470, C35880 and C-39540 to UDPDA's share of the Project costs, up to a maximum contribution of \$4,000,000. It is expected that all UDRA revenue allocated to the UDPDA will be utilized for repayment of the City's costs in constructing the Project, however in the event that there are remaining UDPDA funds after Phase 2B is complete, Phase 2A costs will be reimbursed with UDPDA funds to meet the intended 50/50 split.

SECTION NO. 2: FUNDING OF PROJECT

The Project will be funded through the approximately equal contributions of the City and the UDPDA, provided, the UDPDA funding will not exceed \$4,000,000. During the construction phase, the City has previously advanced all funding to pay for Phase A of the Project and will advance the funds necessary to pay the Phase B costs of the Project. The PARTIES expressly intend to incorporate UDPDA's prior obligation to share equally in the costs of Phase A in this Agreement.

- A. **CITY FUNDING** In reliance on UDPDA's promises, the City has previously advanced funds and will provide certain additional Project funding from the proceeds of an interfund loan from the Spokane Investment Pool ("SIP") to the Arterial Streets Fund. The City intends to apply UDPDA reimbursement payments accounted for in the Arterial Street Fund to the repayment of the principal and interest that will become due on the interfund loan.

- B. **UDPDA FUNDING** In consideration of the benefits derived from the Project and the City's advance funding of the Project, UDPDA hereby covenants and pledges to the City reimbursement payments of up to \$4,000,000 for its share of Project costs, payable from the incremental local sales and use taxes received by the UDPDA pursuant to the Ordinance Nos. C-34470, C35880 and C-39540. The UDPDA hereby authorizes and directs the City Treasurer to transfer to the appropriate City funds from UDPDA's U-District Capital Project Fund such UDRA revenue due to the UDPDA pursuant to Ordinance Nos. C-34470, C35880 and C-39540, prior to the

distribution of any UDRA revenue to the UDPDA. The UDPDA further authorizes the City to allocate UDRA revenue previously collected by the City and held by the City on behalf of the UDPDA to the reimbursement of any and all previously advanced Project costs. The Treasurer shall maintain an accounting of Projects costs, UDPDA reimbursement credits and total amount due for reconciliation and final payments from UDPDA upon completion of the Project.

SECTION NO. 3: DURATION

This Agreement shall be effective on February 1, 2021 and shall continue until the UDPDA reimbursement obligation of up to \$4,000,000 has been repaid in full.

SECTION NO. 4: TERMINATION

This Agreement may only be terminated upon the full repayment of UDPDA's reimbursement obligation of up to \$4,000,000.

SECTION NO. 5: COMPENSATION

Except for the payment obligation set forth herein, there shall be no other compensation to or from either Party.

SECTION NO. 6: RESPONSIBILITIES OF THE PARTIES

The UDPDA shall be responsible for the payment to City of UDPDA's approximately equal share of the total Project costs in an amount not to exceed a total sum of \$4,000,000. In the event of a shortfall in available UDRA revenue to meet UDPDA's commitments under this Agreement, UDPDA shall remain liable for its payment obligation unless and until released by City in writing.

The City shall advance funds necessary to pay the Project costs during the construction phase. The City shall be responsible to issue public bid notice for the Project, enter into the construction contract with the selected contractor and provide construction management to oversee the construction of the Project.

The City shall submit summaries of billing to the UDPDA throughout the construction and during closeout of the Project. Costs include reimbursement of design costs, construction contract costs, inspection, contract management and other soft costs associated with the Project. Prior to the City awarding the contract, the UDPDA will notify the City in writing that they have reviewed both the low bid and the associated soft costs to construct the Project and agree to move forward to contract award. In the event that the low bid and soft costs exceed UDPDA funds, both parties will come to agreement on how to proceed prior to contract award.

SECTION NO. 7: AUDIT / RECORDS

The UDPDA and City shall each provide access to authorized City and UDPDA representatives, including the City Auditor, at reasonable times and in a reasonable manner to inspect and copy any Project records or other records related to the terms of this Agreement. In the event of conflict between this provision and related auditing provisions required under federal law applicable to this Agreement, the federal law shall prevail.

SECTION NO. 8: NOTICES

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

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

UDPDA: Lars Gilberts
CEO – University District Development Authority
Vice-Chair – University District Public Development Authority
120 North Pine Street, Suite 292
Spokane, Washington 99202

SECTION NO. 9: ASSIGNMENT

This Agreement shall be binding upon the PARTIES, their successors and assigns. No Party may assign, in whole or in part, its interest in this Agreement without the written approval of the other Party.

SECTION NO. 10: LIABILITY

The UDPDA shall indemnify, defend and hold harmless the City, its officers and employees from all claims, demands, or suits in law or equity arising from the UDPDA's intentional or negligent acts or breach of its obligations under this Agreement. The

UDPDA's duty to indemnify shall not apply to loss or liability caused by the intentional or negligent acts of the City, its officers and employees.

The City shall indemnify, defend and hold harmless the UDPDA, 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 this Agreement. The City's duty to indemnify shall not apply to loss or liability caused by the intentional or negligent acts of the UDPDA, its officers and employees.

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.

Where an officer or employee of a Party is acting under the direction and control of the other Party, the Party directing and controlling the officer or employee in the activity and/or omission giving rise to liability shall accept all liability for the other Party's officer or employee's negligence.

Each Party's duty to indemnify shall survive the termination or expiration of this Agreement.

Each Party waives, with respect to the other Party only, its immunity under Title 51 RCW, Industrial Insurance. The PARTIES have specifically negotiated this provision.

Pursuant to RCW 35.21.750, all liabilities incurred by the UDPDA shall be satisfied exclusively from the assets and properties of the UDPDA and no creditor or other person shall have any right of action against the City on account of any debts, obligations, or liabilities of the UDPDA.

SECTION NO. 11: ANTI-KICKBACK

No officer or employee of either of the PARTIES having the power or duty to perform an official act or action related to this Agreement shall have or acquire any interest in this 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 this Agreement.

SECTION NO. 12: VENUE STIPULATION

This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is mutually understood and agreed by each party that this 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 Agreement, or any provision hereto, shall be instituted only in courts of competent jurisdiction within Spokane County, Washington.

SECTION NO. 13: DISPUTE RESOLUTION

In the event of a dispute among the PARTIES regarding matters under this Agreement, each Party shall give written notice of its concern(s) to the other Party. The PARTIES shall timely, diligently, and in good faith, attempt to resolve the matter expeditiously. In the event that the relevant concerns are not resolved within thirty (30) calendar days from the original written notification (or such other time period agreed to by the PARTIES), the dispute may then be resolved through litigation in a court of competent jurisdiction.

SECTION NO. 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 Agreement.

SECTION NO. 15: NON-DISCRIMINATION

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 Agreement because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation, national origin, the presence of any sensory, mental or physical disability, or use of a service animal by a disabled person.

SECTION NO. 16: MISCELLANEOUS

- A. **NON-WAIVER:** No waiver by any party of any of the terms of this Agreement shall be construed as a waiver of the same or other rights of that party in the future. Failure by any one of the Parties to enforce this Agreement or any provision of it with regard to any provision contained herein shall not be construed as a waiver by that party of any right to do so. All remedies afforded in this Agreement or at law, except as provided herein to the contrary, shall be taken and construed as cumulative that is, in addition to every other remedy provided herein or by law.
- B. **ENTIRE AGREEMENT:** This 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 Agreement. No changes or additions to this Agreement shall be valid or binding upon the PARTIES unless such change or addition is in writing, executed by the PARTIES.
- C. **MODIFICATION:** No modification or amendment to this Agreement shall be valid until put in writing and signed with the same formalities as this Agreement.
- D. **HEADINGS:** The section headings appearing in this 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.

- E. **COUNTERPARTS:** This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same.
- F. **SEVERABILITY:** If any parts, terms or provisions of this Agreement are held by the courts to be illegal, the validity of the remaining portions or provisions shall not be affected and the rights and obligations of the PARTIES shall not be affected in regard to the remainder of the Agreement. If it should appear that any part, term or provision of this Agreement is in conflict with any statutory provision of the State of Washington, then the part, term or provision thereof that may be in conflict shall be deemed inoperative and null and void insofar as it may be in conflict therewith and this Agreement shall be deemed to modify to conform to such statutory provision.
- G. **RELATIONSHIP OF THE PARTIES:** The PARTIES intend that an independent contractor relationship will be created by this Agreement. No agent, employee, servant or representative of the UDPDA 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 the UDPDA for any purpose.
- H. **NO THIRD-PARTY BENEFICIARY:** This Agreement is made and entered into for the sole protection and benefit of the PARTIES and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

SECTION NO. 17: RCW 39.34 REQUIRED CLAUSES

- A. **PURPOSE:** See Section No. 1 above.
- B. **DURATION:** See Section No. 3 above.
- C. **ORGANIZATION OF SEPARATE ENTITY AND ITS POWERS:** No new or separate legal or administrative entity is created to administer the provisions of this Agreement.
- D. **RESPONSIBILITIES OF THE PARTIES:** See provisions above.
- E. **AGREEMENT TO BE FILED:** The City shall file this Agreement with its City Clerk.
- F. **FINANCING:** The UDPDA and the City Chief Financial Officer shall consult with each other by the first of the year regarding the financial status of the UDPDA's financial obligations under this Agreement.

