



City of Tukwila
***Community Development &
 Neighborhoods Committee***

- ◆ De'Sean Quinn, Chair
- ◆ Dennis Robertson
- ◆ Verna Seal

<u>Distribution:</u>	
D. Quinn	Mayor Ekberg
D. Robertson	D. Cline
V. Seal	R. Bianchi
K. Hougardy	C. O'Flaherty
Z. Idan	L. Humphrey

AGENDA

TUESDAY, FEBRUARY 12, 2019 – 5:30 PM
HAZELNUT CONFERENCE ROOM
 (At east entrance of City Hall)

Item	Recommended Action	Page
1. PRESENTATION(S)		
2. BUSINESS AGENDA		
a. An agreement with the Museum of Flight for lodging tax funds. <i>Brandon Miles, Business Relations Manager</i>	a. Forward to 2/19 Consent Agenda.	Pg.1
b. Request for amendment to the Development Agreement for Airmark Apartments/Hotel Interurban. <i>Nora Gierloff, Deputy Community Development Director</i>	b. Committee consideration/ decision.	Pg.11
c. Briefing on the Shoreline Master Program update. <i>Nora Gierloff, Deputy Community Development Director</i>	c. Discussion only.	Pg.43
3. ANNOUNCEMENTS		
4. MISCELLANEOUS		

Next Scheduled Meeting: *Tuesday, February 26, 2019*



The City of Tukwila strives to accommodate individuals with disabilities.

Please contact the City Clerk's Office at **206-433-1800** (TukwilaCityClerk@TukwilaWA.gov) for assistance.



INFORMATIONAL MEMORANDUM

TO: **Community Development and Neighborhoods**

FROM: **Brandon Miles, Business Relations Manager**

CC: **Mayor Ekberg**

DATE: **February 5, 2019**

SUBJECT: **2019 Museum of Flight Lodging Tax Contract**

ISSUE

Authorize the Mayor to enter into an agreement with the Museum of Flight (MoF) for 2019 lodging tax funding.

BACKGROUND

At the February 11 Special Meeting the City Council in anticipated to approve the lodging tax application request from the MoF¹. The following outlines the funding request for the MoF.

Museum of Flight, Destination Moon, (\$100,000)

Museum of Flight, a non-profit, is recognized as one of the premier aviation and space museums in the world. The Museum is home to over 150 air and space craft spanning all genres and time periods. Over the last year the Museum has averaged just over 630,000 visitors.

Funding for 2019 is requested to support marketing and event activities for the Smithsonian's traveling exhibit "**Destination Moon - The Apollo 11 Mission.**" The Apollo 11 command module **Columbia**—the only portion of the historic spacecraft to complete the first moon-landing and safely return to Earth—along with more than 20 other mission artifacts will be exhibited at The Museum of Flight from April 13 – September 2, 2019, including the 50th anniversary of the Moon landing – July 20. This iconic capsule left the Smithsonian's National Air and Space Museum for the first time in 46 years, in April 2018, for a two-year traveling exhibition. This exhibit will be in Tukwila on the 50th Anniversary of Neil Armstrong's famous first step.

The Museum of Flight is one of only four stops for Destination Moon during its national tour, and the only West Coast destination—of the tour. This event is expected to attract visitors from the entire west coast and across the country.

LTAC reviewed the request at its January 22, 2019 meeting and recommends providing funding as requested.

Discussion

All recipients of lodging tax funds are required to enter a service contract with the City. Since this agreement is over \$40,000 it requires the City Council review before the Mayor can execute the Agreement. The Agreement has been reviewed by legal.

¹ The application was originally scheduled to be presented to the City Council on February 4. Because of cancelation of the meeting, due to snow, the application was scheduled for the February 11 Special Meeting.

FINANCIAL IMPACT

Total expenditure is \$100,000, which will come from the City's Lodging Tax Fund. The City's LTAC and City Council have already reviewed and approved the funding request application. As a reminder, lodging tax funds are generated from eligible room nights at hotels and motels within the City. Per State Law, the funds can only be used for tourism promotion activities.

RECOMMENDATION

Authorize the Mayor to sign the Agreement. Forward to the to the February 19, 2019 consent agenda.

ATTACHMENTS

- A. 2019 Agreement between the City of Tukwila and Museum of Flight.



City of Tukwila

6200 Southcenter Boulevard, Tukwila WA 98188

Contract Number:

CONTRACT FOR LODGING TAX FUNDING

This Agreement is entered into by and between the City of Tukwila, Washington, a non-charter optional municipal code city hereinafter referred to as "the City," and Museum of Flight, hereinafter referred to as "the Contractor," whose principal office is located at 9404 East Marginal Way S; Tukwila, WA 98108.

WHEREAS, the City imposes a special excise tax under Chapter 82.08 Revised Code of Washington (RCW), known as the "lodging tax," on furnishing of lodging in hotels, motels and similar business enterprises, as authorized under Chapter 67.28 RCW; and

WHEREAS, the City is authorized to use the lodging tax revenue for tourism promotion, as defined by Chapter 67.28 RCW; and

WHEREAS, Contractor is able to help promote the City to both overnight and day visitors, driving business to Tukwila restaurants, hotels, retailers, and entertainment establishments; and

WHEREAS, on January 22, 2019 the City's Lodging Tax Advisory Committee considered and approved Contractor's request to obtain lodging tax revenue for tourism promotion; and

WHEREAS, the City concurs with the Lodging Tax Advisory Committee's recommendation, with the City Council approving the funding request application at its February 4, 2019 regular meeting, to provide lodging tax revenue to Contractor for tourism promotion; and

WHEREAS, it is appropriate for the City to compensate the Contractor for the costs of promoting tourism (both day and overnight) in the City; and

IN CONSIDERATION OF the mutual benefits and conditions hereinafter contained, the parties hereto agree as follows:

1. **Scope and Schedule of Services to be Performed by Contractor.** Contractor shall perform those services described on Exhibit A attached hereto and incorporated herein by this reference as if fully set forth. In performing such services, Contractor shall at all times comply with all Federal, State, and local statutes, rules and ordinances applicable to the performance of such services and the handling of any funds used in connection therewith. Contractor shall request and obtain prior written approval from the City if the scope or schedule is to be modified in any way.

Should any of the events or activities outlined in Exhibit A be canceled, modified, or the scale of the event or activities reduced, the City may at its sole discretion reduce its sponsorship funding commitment.

2. **Compensation and Method of Payment.** The City shall pay Contractor for services rendered according to the rate and method set forth on Exhibit B attached hereto and incorporated herein by this reference. The total amount to be paid shall not exceed \$100,000.

3. **Duration of Agreement.** This Agreement shall be in full force and effect for a period commencing February 4 2019, and ending March 30, 2020, unless sooner terminated under the provisions hereinafter specified.

4. **Independent Contractor.** Contractor and City agree that Contractor is an independent contractor with respect to the services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither Contractor nor any employee of Contractor shall be entitled to any benefits accorded City employees by virtue of the services provided under this Agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Contractor, or any employee of the Contractor.

5. **Indemnification.** Contractor shall defend, indemnify and hold the City, its officers, agents, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. 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 Contractor and the City, its officers, officials, employees, and volunteers, Contractor's liability hereunder shall be only to the extent of Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes Contractor'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.

6. **Insurance.** Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees or subcontractors. Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
 - A. **Minimum Scope of Insurance.** Contractor shall obtain insurance of the types and with the limits described below:
 1. **Automobile Liability** insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident. Automobile liability insurance shall cover all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
 2. **Commercial General Liability** insurance with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit. Commercial General Liability insurance shall be as least at broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit using ISO form CG 25 03 05 09 or an equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20

10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

- B. **Other Insurance Provision.** The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.
- C. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.
- D. **Verification of Coverage.** Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of the work. Upon request by the City, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this Agreement and evidence of all subcontractors' coverage.
- E. **Subcontractors.** Contractor shall have sole responsibility for determining the insurance coverage and limits required, if any, to be obtained by subcontractors, which determination shall be made in accordance with reasonable and prudent business practices.
- F. **Notice of Cancellation.** The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation, within two business days of their receipt of such notice.
- G. **Failure to Maintain Insurance.** Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

8. Record Keeping and Reporting.

- A. The Contractor shall maintain accounts and records, including personnel, property, financial and programmatic records which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed in the performance of this Agreement and other such records as may be deemed necessary by the City to ensure the performance of this Agreement.
- B. These records shall be maintained for a period of seven (7) years after termination hereof unless permission to destroy them is granted by the office of the archivist in accordance with RCW Chapter 40.14 and by the City.

9. Audits and Inspections. The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review or audit by law during the performance of this Agreement.

10. Termination. This Agreement may at any time be terminated by the City giving to the Contractor thirty (30) days written notice of the City's intention to terminate the same. Failure to provide products on schedule may result in contract termination. If the Contractor's insurance coverage is canceled for any reason, the City shall have the right to terminate this Agreement immediately.

11. **Discrimination Prohibited.** Contractor, with regard to the work performed by it under this Agreement, will not discriminate on the grounds of race, religion, creed, color, national origin, age, veteran status, sex, sexual orientation, gender identity, marital status, political affiliation, the presence of any disability, or any other protected class status under state or federal law, in the selection and retention of employees or procurement of materials or supplies.
12. **Assignment and Subcontract.** Contractor shall not assign or subcontract any portion of the services contemplated by this Agreement without the written consent of the City.
13. **Entire Agreement; Modification.** This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the City and the Contractor and supersedes all prior negotiations, representations, or agreements written or oral. No amendment or modification of this Agreement shall be of any force or effect unless it is in writing and signed by the parties.
14. **Severability and Survival.** If any term, condition or provision of this Agreement is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Agreement, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Agreement, shall survive termination of this Agreement.
15. **Notices.** Notices to the City of Tukwila shall be sent to the following address:

City Clerk, City of Tukwila
 6200 Southcenter Blvd.
 Tukwila, Washington 98188

With a copy to:

Office of Economic Development
 City of Tukwila
 6200 Southcenter Blvd.
 Tukwila, WA 98188

Notices to the Contractor shall be sent to the address provided by the Contractor upon the signature line below.

16. **Applicable Law; Venue; Attorney's Fees.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be properly laid in King County, Washington. The prevailing party in any such action shall be entitled to its attorney's fees and costs of suit.

DATED this _____ day of _____, 20____.

CITY OF TUKWILA

CONTRACTOR

 Allan Ekberg, Mayor

By: _____

Printed Name and Title: _____

ATTEST/AUTHENTICATED:

Address: _____

City Clerk, Christy O'Flaherty

APPROVED AS TO FORM:

Office of the City Attorney

Exhibit "A"

Museum of Flight Destination Moon 2019 Scope of Services

The City shall be provided the following benefits under this Agreement.

- Inspire level logo recognition on "title wall" of exhibit entrance: March 15, 2019 deadline
- Logo recognition in promotional spots:
 - Billboards (Puget Sound, Portland, Spokane, and Vancouver BC regions)
 - Transit (Puget Sound area)
 - South Lake Union Trolley wrap
 - Banner on the south exterior wall of Great Gallery (tentative as of 1/16/19)
- Logo in Destination Moon visitor guide. March 1, 2019 deadline
- Logo recognition at events directly related to the exhibit, such as Opening Weekend and Preview events.
- Acknowledgment in Aloft, the Museum member magazine circulation 19,000. Included issues would be based on proposal approval date.
- Social Media posts to recognize sponsorship
- Complimentary tickets for up to 10 guests to select special events held in conjunction with Destination Moon: The Apollo 11 Mission.
- Special group-sales rate for timed tickets to Destination Moon
- Link on Destination Moon web page to other Tukwila tourism opportunities (opportunities to be provided by City of Tukwila)
- Opportunity for Tukwila to use custom logo with tagline *"Proud home of The Museum of Flight"*
- All regional/local radio spots produced by the Museum of Flight promoting "Destination Moon" will be scripted to state the location of the exhibit is in "Tukwila" If a location is mentioned.
- All press releases produced by the Museum and issued after execution of this contract promoting "Destination Moon" will use the dateline "Tukwila" or "City of Tukwila." Seattle will not be used. The press releases will also feature a section about the City of Tukwila, prepared by City staff and approved by the Museum.
- Cross promotion of other tourism related activities within the City, including but not limited to Seattle Seawolves games, Westfield Southcenter, Seattle Chocolates, and Family Fun Center.

Exhibit "B"

Compensation and Method of Payment and Reporting

Compensation and Method of Payment

Contractor shall submit to the City a request for reimbursement for services and sponsorships rendered under this Agreement. The total compensation to the Contractor under this agreement shall not exceed \$100,000.00.

Invoices and request for reimbursement shall be mailed to:

City of Tukwila
ATTN: Brandon Miles
6200 Southcenter Blvd.
Tukwila, WA 98188

The following are the dates and amounts to be invoiced to the City.

Invoice #	Date (no later than):	Amount:	For:
1	October 1, 2019	\$50,000	Destination Moon, Payment #1
2	January 15, 2020	\$50,000	Destination Moon, Payment #2 Final payment will not be made until Contractor provides all final reporting requirements.

Should the Contractor choose to cancel or modify any of the events sponsored by the City under this agreement, the City may choose to reduce the awarded funds. The amount reduced shall be at the sole discretion of the City.

Reporting Requirements

With each invoice, the Contractor shall provide the following to the City:

1. Estimate number of attendees for each event.
2. Website views on the Contractor's website of the event page
3. Likes, follows, and shares on social media for the event.
4. Examples of marketing material prepared to promote the event.
5. List of any earned media for the event.
6. Any other document the Contractor wants to provide to demonstrate success of the event and marketing activities.

In addition the items outlined above, the following information shall be included with the January 15, 2020 invoice. This information is required to be collected by Washington State law.

As a direct result of your proposed tourism-related service, provide an estimate of:	
a. Overall attendance at your proposed event/activity/facility?	
b. Number of people who traveled fewer than 50 miles for your event/activity?	
c. Number of people who traveled more than 50 miles?	
d. Of the people who traveled more than 50 miles, the number of people who traveled from another country or state?	
e. Of the people who traveled more than 50 miles, the number of people who stayed overnight in <i>Tukwila</i> ?	
f. Of the people who stayed overnight, the number of people who stayed in PAID accommodations (hotel/motel/bed-breakfast) in <i>Tukwila</i> ? (example: 25 paid rooms on Friday and 50 paid rooms on Saturday = 75 paid lodging room nights.)	
g. Number of paid lodging room nights resulting from your proposed event/activity/facility (example: 25 paid rooms on Friday and 50 paid rooms on Saturday = 75 paid lodging room nights)?	

Provide information on how the above actuals were determined.

Reports and Deliverables shall be submitted to:
 City of Tukwila
 ATTN: Brandon Miles
 6200 Southcenter Blvd.
 Tukwila, WA 98188



INFORMATIONAL MEMORANDUM

TO: **Community Development and Neighborhoods Committee**
FROM: **Jack Pace, DCD Director**
BY: **Nora Gierloff, Deputy DCD Director**
CC: **Mayor Ekberg**
DATE: **February 12, 2019**
SUBJECT: **Airmark Apartments Development Agreement Revision Request**

ISSUE

The owners of the Airmark Apartments/Hotel Interurban have requested an amendment to their development agreement to allow additional building signage.

BACKGROUND

The City has received a request for a third amendment to the development agreement (DA) between the owners of Airmark Apartments/Hotel Interurban and the City of Tukwila for the building at 223 and 229 Andover Park East, see Attachment A. The existing DA allows the following sign code departures:

- 1) Canopy edge signs that are 3.5 feet high rather than 12 inches, and
- 2) Two wall signs that are 500 square feet each rather than 150 square feet.

This request is for changes to the development standards section of the DA to allow installation of two additional 1,000 square foot wall signs to increase the visibility of the Airmark Apartments, see Attachment B. Currently the Airmark's only signage is on a canopy sign over the entry door while Hotel Interurban is advertised on wall and canopy signs, see Attachment C.

DISCUSSION

The City would like to support its businesses so that they can be as successful as possible. At the same time, because most businesses would like additional signage, the City needs to set limits on signage. Otherwise, signs would proliferate to the detriment of other businesses and the aesthetic preferred by the residents.

The additional wall signs requested are twice the size of the signs approved in the prior agreement and more than six times larger than the sign code permits. The proposal would not remove or reduce either of the existing wall signs. In addition, the proposal is to place the "Airmark" portion of the signs above the top of the building parapet. This is prohibited by TMC 19.20.050 A 5.:

Wall signs may not extend above the top of the parapet or eave of the roof of the wall on which they are located.

Staff has met with the owners several times and offered the following approaches:

1. Administratively changing the design of the wall signs to include mention of the apartments within the 500 sf maximum size.
2. Administratively approving changes to the landscape plan to allow for installation of a monument sign, as allowed under the sign code.
3. Recommending Council approval of an amendment to the DA to increase the size of the existing wall signs by 250 square feet (the “Hotel” portion of the sign is 200 sf) to add language like “and Flats” or “+ Residences”.
4. Recommending Council approval of an amendment to the DA to move one of the wall signs to another building face.
5. Economic Development staff is working with Airmark on marketing and promotion separate from signage changes.

The existing DA has granted the project considerable flexibility on development standards such as height, parking and open space in addition to signage. The most recent request does not clearly identify an additional public benefit that would justify this additional change. In particular, allowing signs of this size and rooftop signs would be a significant policy departure for the City and likely lead to requests from other businesses for similar signage.

If the Council is interested in allowing sign changes of this type and scale, staff recommends the changes be evaluated holistically as part of comprehensive review of the sign code. That would be a significant work item and would either affect priorities in the current work plan or be added to future work plans.

RECOMMENDATION

Committee may consider the request to allow installation of two additional 1,000 square foot wall signs, or one or more of the approaches listed above. If the Committee determines that this request should move forward or an alternative approach is warranted, then this item would move to the full Council, and staff would return to CDN with a draft ordinance, followed by a public hearing.

ATTACHMENTS

- A. Development Agreement with 2 Prior Amendments
- B. DA Amendment Request for Additional Signage
- C. Existing Signage Design and Location



City of Tukwila

Washington

Ordinance No. 2438

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, RELATING TO DEVELOPMENT AGREEMENTS AUTHORIZED PURSUANT TO CHAPTER 18.86 OF THE TUKWILA MUNICIPAL CODE; APPROVING AND AUTHORIZING THE FIRST AMENDMENT TO THE 223 ANDOVER PARK EAST DEVELOPMENT AGREEMENT WITH SOUTH CENTER WA, LLC, A WASHINGTON LIMITED LIABILITY COMPANY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, RCW 36.70B.170, et seq. and Tukwila Municipal Code (TMC) Chapter 18.86 authorize development agreements between the City and persons having ownership or control of real property in order to establish development standards to govern and vest the development use and mitigation of real properties; and

WHEREAS, the City of Tukwila and South Center WA, LLC entered into a Development Agreement for the 223 Andover Park East Development effective the 19th day of March, 2013 and approved by Ordinance No. 2399; and

WHEREAS, the City of Tukwila and South Center WA, LLC wish to enter into a First Amendment to Development Agreement for the 223 Andover Park East Development, a copy of which is attached hereto as Exhibit A; and

WHEREAS, as required pursuant to TMC Section 18.86.050, a public hearing was conducted on the 28th day of April 2014 to take public testimony regarding this First Amendment to the Development Agreement as proposed;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. The First Amendment to the 223 Andover Park East Development Agreement by and between the City of Tukwila and South Center WA, LLC, a copy of which is attached hereto as Exhibit A, is hereby approved and the Mayor is authorized and directed to execute said First Amendment to Development Agreement on behalf of the City of Tukwila.

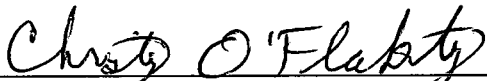
Section 2. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

Section 3. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

Section 4. Effective Date. This ordinance or a summary thereof shall be published in the official newspaper of the City, and shall take effect and be in full force five days after passage and publication as provided by law.

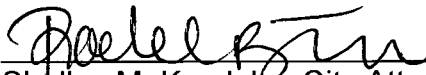
PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Regular Meeting thereof this 5TH day of May, 2014.

ATTEST/AUTHENTICATED:


Christy O'Flaherty, MMC, City Clerk


Jim Haggerton, Mayor

APPROVED AS TO FORM BY:


for Shelley M. Kerslake, City Attorney

Filed with the City Clerk: 4-30-14
Passed by the City Council: 5-5-14
Published: 5-8-14
Effective Date: 5-13-14
Ordinance Number: 2438

Exhibit A: First Amendment to Development Agreement by and between the City of Tukwila and South Center WA, LLC for the 223 Andover Park East Development

**SECOND AMENDMENT TO
DEVELOPMENT AGREEMENT BY AND
BETWEEN THE CITY OF TUKWILA
AND SOUTH CENTER WA, LLC FOR THE
223 ANDOVER PARK EAST DEVELOPMENT**

FILE COPY

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (the "Second Amendment") is made and entered into this 14th day of December 2015, by and between the CITY OF TUKWILA ("City"), a non-charter, optional code Washington municipal corporation, and SOUTH CENTER WA, LLC, a Washington limited liability company ("Developer").

I. RECITALS

WHEREAS, the City of Tukwila and South Center WA, LLC entered into a Development Agreement for the 223 Andover Park East Development effective the 19th day of March, 2013 (and approved by Ordinance No. 2399); and

WHEREAS, the City of Tukwila and South Center WA, LLC entered into the First Amendment to the Development Agreement for the 223 Andover Park East Development effective the 19th day of May 2014 (and approved by Ordinance No. 2438); and

WHEREAS, Developer has continued to proceed with the project per the terms of the development agreement and has submitted a building permit for the proposed development; and

WHEREAS, Developer has requested a minor amendment to the building height provisions listed under the Development Agreement in order to proceed with the proposed development; and

WHEREAS, the Development Agreement stipulated a maximum height of 180 feet for 50 percent of the site, which was subsequently amended to 190 feet by the First Amendment to the Development Agreement; and

WHEREAS, due to the benefits as described in the Development Agreement, the City desires the proposed development to proceed; and

WHEREAS, as required pursuant to TMC Section 18.86.050, the City conducted a public hearing on the 9th day of November 2015 to take testimony regarding this Second Amendment to the Development Agreement; and

1st of 2 originals

WHEREAS, the City Council, pursuant to City Ordinance No. 2490, approved this Second Amendment to the Development Agreement as proposed and authorized execution of this Second Amendment to the Development Agreement; and

WHEREAS, the Parties desire to enter into this Second Amendment to the Development Agreement upon the terms and conditions as set forth herein,

NOW, THEREFORE, in consideration of the mutual promises set forth herein and the long-term benefit to both the City and the Developer, the Parties hereby agree as follows:

II. AGREEMENT

1. Additional Building Height: Section 4.3 of the Development Agreement is hereby amended so the maximum building height for 50 percent of the site shall be 200 feet. The maximum height of the parapet wall of the elevator penthouse shall be 205 feet. The remainder of the site is limited to the height permitted by the zoning code in effect at the time of a complete building permit submittal. Rooftop appurtenances are exempt from this height requirement per TMC Section 18.50.080.

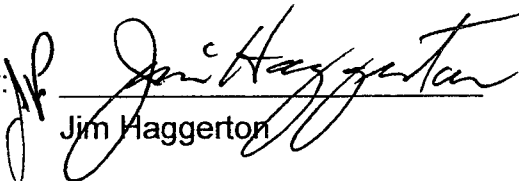
The building(s) may have no more than nineteen (19) floors. The nineteenth floor may be used for common area open space such as a clubhouse, rooftop deck, other common areas, a green roof and mechanical equipment but may not be used for residential units or hotel guest rooms. This increase in building height is consistent with the goals of the Comprehensive Plan to encourage residential development within the Urban Center and is consistent with the City's vision of increased urban density.

2. This Second Amendment shall be recorded against the Property as a covenant running with the land.

3. Except as amended herein, the terms and provisions of the Development Agreement remain in full force and effect.

In Witness Whereof, the parties have caused this Second Amendment to be executed, effective on the day and year set forth on the first page hereof.

CITY OF TUKWILA, a Washington municipal corporation

By: 
Jim Haggerton

Its: Mayor

Date: 12/16/15

Attest/Authenticated:

Approved as to Form:

Melissa Hart, Deputy City Clerk
for Christy O'Flaherty, MMC, City Clerk

Rachel Birt
City Attorney

SOUTH CENTER WA, LLC, a Washington limited liability company

By: 
Omar Lee

Its: Manager

Date: 11-27-15

**FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT BY AND
BETWEEN THE CITY OF TUKWILA
AND SOUTH CENTER WA, LLC FOR THE
223 ANDOVER PARK EAST DEVELOPMENT**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (the "First Amendment") is made and entered into this 19th day of May 2014, by and between the CITY OF TUKWILA ("City"), a non-charter, optional code Washington municipal corporation, and SOUTH CENTER WA, LLC, a Washington limited liability company ("Developer").

I. RECITALS

WHEREAS, the City and Developer entered into that certain Development Agreement relating to the 223 Andover Park East Development, dated March 19, 2013 (the "Development Agreement"); and

WHEREAS, Developer has continued to refine the design of the proposed development; and

WHEREAS, Developer has requested an amendment to the Development Agreement in order to proceed with the proposed development; and

WHEREAS, due to the benefits as described in the Development Agreement the City desires the proposed development to proceed; and

WHEREAS, as required pursuant to TMC 18.86.050 the City conducted a public hearing on the 28th day of April 2014 to take testimony regarding this First Amendment to the Development Agreement; and

WHEREAS, the City Council, pursuant to City Ordinance No. 2438 approved this First Amendment to the Development Agreement as proposed and authorized execution of this First Amendment to the Development Agreement; and

WHEREAS, the Parties desire to enter into this First Amendment to the Development Agreement upon the terms and conditions as set forth herein,

NOW, THEREFORE, in consideration of the mutual promises set forth herein and the long-term benefit to both the City and the Developer, the Parties hereby agree as follows:

1st of 2 originals

II. AGREEMENT

1. Building Height: Section 4.3 of the Development Agreement is hereby amended so the maximum height for 50 percent of the site shall be 190 feet. The building(s) may have no more than nineteen (19) floors. The nineteenth floor may be used for common area open space such as a clubhouse, rooftop deck, other common areas, a green roof and mechanical equipment but may not be used for residential units or hotel guest rooms. The remaining requirements of Section 4.3 remain in full force and effect.

2. Open Space: The building(s) shall have common open space of at least 45 square feet per residential unit and 25 square feet per hotel room. Common open space may include areas such as apartment lobby, hotel lobby, restaurant/bar, meeting rooms, business centers, bike storage, pet walk area, exercise room, hot tub and/or sauna, swimming pool, movie or video watching room, clubhouse including kitchen, dining and bar areas, and outdoor seating and barbeque areas. Space for the exclusive use of residents will count toward the residential open space requirement. Space for the exclusive use of hotel guests will count toward the hotel open space requirement. Space accessible to both residents and hotel guests may be counted for either requirement, at the election of the Developer.

3. Parking: The required minimum amount of on-site parking shall be 0.7 stalls per hotel guest room, one stall per studio unit, one stall per one bedroom unit, one-and-a-half stalls per two bedroom unit, and two stalls per three bedroom unit. Parking stalls that are stacked, in which some cars could be blocked by other cars, may be counted toward the required minimum number of parking stalls provided that the location of the stalls has been approved by the City's Fire Marshal and a shuttle and valet parking plan has been approved by the City administration. The Fire Marshal may approve a drive aisle width between stacked cars less than required by TMC 18.56.090.

4. Signage: The proposed development may have signage according to the City's sign code (TMC 19.20) with the following modifications:

- a) Canopy-edge signs may be up to 3.5 feet in height and may have up to two rows of letters.
- b) Projecting signs and corner projecting signs per TMC 19.20.050 are not allowed.
- c) Special incentive signs for parking garages are not allowed.
- d) Permanent building mounted wall signs: The building may have up to two flush-mounted wall signs. One sign may be placed on the northernmost wall and one on the westernmost wall regardless of

whether those walls have exterior public entrances. The maximum allowable message area for the wall signs may be an area up to six percent of the exposed building face to a maximum of 500 square feet. The flush-mounted wall signs may not be cabinet or box signs and must be channel-style letters and may be internally lit and/or halo-lit.

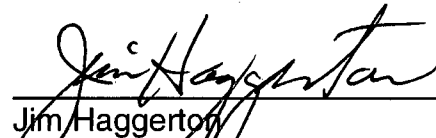
5. This First Amendment shall be recorded against the Property as a covenant running with the land.

6. Except as amended herein, the terms and provisions of the Development Agreement remain in full force and effect.

In Witness Whereof, the parties have caused this First Amendment to be executed, effective on the day and year set forth on the first page hereof.

CITY OF TUKWILA, a Washington municipal corporation

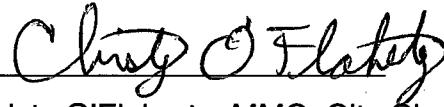
DCS

By: 
Jim Haggerton


Its: Mayor

Date: 5-19-14

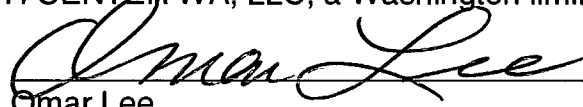
Attest/Authenticated:


Christy O'Flaherty, MMC, City Clerk

Approved as to Form:


City Attorney

SOUTH CENTER WA, LLC, a Washington limited liability company

By: 
Omar Lee

Its: Manager

Date: 5-16-2014



City of Tukwila

Washington

Ordinance No. 2399

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, RELATING TO DEVELOPMENT AGREEMENTS AUTHORIZED PURSUANT TO CHAPTER 18.86 OF THE TUKWILA MUNICIPAL CODE; APPROVING AND AUTHORIZING THE PROPOSED 223 ANDOVER PARK EAST DEVELOPMENT AGREEMENT WITH SOUTH CENTER WA, LLC, A WASHINGTON LIMITED LIABILITY COMPANY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, RCW 36.70B.170, et seq. and Tukwila Municipal Code (TMC) Chapter 18.86 authorize development agreements between the City and persons having ownership or control of real property in order to establish development standards to govern and vest the development, use and mitigation of real properties; and

WHEREAS, the City of Tukwila and South Center WA, LLC wish to enter into a Development Agreement for the 223 Andover Park East development, a copy of which is attached hereto as Exhibit A; and

WHEREAS, as required pursuant to TMC Section 18.86.050, a public hearing was conducted on the 11th day of March 2013 to take public testimony regarding this Development Agreement, as proposed; and

WHEREAS, the City Council, pursuant to City Ordinance No. 2399, approved this Development Agreement as proposed and authorized execution of this Development Agreement;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. The 223 Andover Park East Development Agreement by and between the City of Tukwila and South Center WA, LLC, a copy of which is attached hereto as Exhibit A, is hereby approved, and the Mayor is authorized and directed to execute said Development Agreement on behalf of the City of Tukwila.

Section 2. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

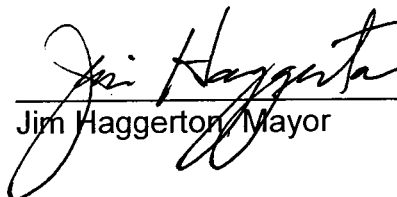
Section 3. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

Section 4. Effective Date. This ordinance or a summary thereof shall be published in the official newspaper of the City, and shall take effect and be in full force five days after passage and publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Regular Meeting thereof this 18TH day of MARCH, 2013.

ATTEST/AUTHENTICATED:


Christy O'Flaherty, MMC, City Clerk


Jim Haggerton, Mayor

APPROVED AS TO FORM BY:


Shelley M. Kerslake, City Attorney

Filed with the City Clerk: 3-13-13
Passed by the City Council: 3-18-13
Published: 3-21-13
Effective Date: 3-26-13
Ordinance Number: 2399

Exhibit A – Development Agreement

**DEVELOPMENT AGREEMENT
FOR THE
223 ANDOVER PARK EAST DEVELOPMENT**

13-065
Council Approval 3/18/13
Ordinance No. 2399

THIS DEVELOPMENT AGREEMENT ("**Development Agreement**") is entered into as of the 19th day of March, 2013 by and between the City of Tukwila, a municipal corporation operating under the laws of the State of Washington as a non-charter code city (the "**City**"), and South Center WA, LLC, a Washington limited liability company ("**Developer**"), pursuant to the authority of RCW 36.70B.170, et seq. and Chapter 18.86 of the Tukwila Municipal Code, and in consideration of the mutual benefits to be derived. The City and Developer are sometimes collectively referred to in this Development Agreement as the "Parties," and individually as a "Party." The Parties have entered into this Development Agreement with reference to the following facts:

I. RECITALS

WHEREAS, RCW 36.70B.170, et seq. and TMC Ch. 18.86 authorize development agreements between the City and persons having ownership or control of real property in order to establish development standards to govern and vest the development, use and mitigation of real properties; and

WHEREAS, the site of this development is located in the core of the Tukwila Urban Center, between Westfield Southcenter Mall and the Sounder Commuter Rail Station; and

WHEREAS, the proposed development is for the construction of one or two buildings up to 180 feet in height that would comprise approximately 170 hotel guest rooms and 350 residential units; and

WHEREAS, this site lies within the core of Tukwila's Urban Center (TUC). The Tukwila Urban Center Element of the Comprehensive Plan outlines a vision for the TUC to be a "great place for working, shopping, doing business, living, or playing." One of the noted future features is "a core area of high quality, walkable retail, entertainment, housing, public spaces, and employment..." This site is located in the TUC core and would add housing that is walkable to transit, retail, and entertainment; thus, it supports the Comprehensive Plan; and

WHEREAS, Tukwila's Urban Center is one of the region's 17 designated urban centers. The Countywide Planning Policies defines and envisions urban centers as areas of concentrated employment and housing with direct service by high-capacity transit. This proposed development would place concentrated employment and housing within the core of the Tukwila Urban Center and helps the City meet the intended purpose of the urban center; and

WHEREAS, this development will be a catalyst to create a pedestrian friendly, walkable neighborhood in the core of Tukwila's Urban Center. People who would choose to stay or live in this development would do so for the convenient access to the freeways but also for the

convenience of walking to restaurants, entertainment, shopping, buses, and the commuter rail station; and

WHEREAS, the development will be of high quality and will improve the image of Tukwila's Southcenter District and identity for the entire City; thereby having the potential to attract further high quality development; and

WHEREAS, the development will stimulate additional residential development in the area by demonstrating the financial feasibility of this type of development and demonstrating demand for high quality housing stock; and

WHEREAS, residential units will assist the City in meeting its housing targets as required by the Growth Management Act and as determined through King County's Countywide Planning Policies; and

WHEREAS, the City has a goal to encourage ownership of housing as a method to foster stability in our population and schools. This project would be developed with the ability to readily convert to condominiums; and

WHEREAS, as required pursuant to TMC 18.86.050, a public hearing was conducted on the 11th day of March, 2013 to take public testimony regarding this Development Agreement, as proposed; and

WHEREAS, the City Council, pursuant to City Ordinance No. 2399 approved this Development Agreement as proposed and authorized execution of this Development Agreement; and

WHEREAS, pursuant to TMC 18.86.080, the decision of the City Council to approve or reject Developer's request for a development agreement is a discretionary, legislative act; and

WHEREAS, the Parties desire to enter into this Development Agreement upon the terms and conditions as set forth herein,

NOW, THEREFORE, in consideration of the mutual agreements contained herein, as well as other valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the City and Developer hereby agree as follows:

II. AGREEMENT

Section 1. Incorporation of Recitals. The Parties agree that the foregoing recitals are true and correct to the best of their knowledge and are incorporated by this reference as though fully set forth herein.

Section 2. Project Description. This development involves the construction of one or two buildings of up to eighteen stories each. The Property is located within the Tukwila

Urban Center and is identified on Exhibit A (legal description) and B (site map). The current anticipated use of the property consists of approximately 170 hotel guest rooms and 350 residential units, as well as related parking facilities.

Section 3. Statement of Authority and Intent. This Development Agreement is entered into pursuant to the authorization of RCW 36.70B.170 and TMC 18.86 and is intended and designed to vest this development to certain terms and conditions. Other than those terms and conditions specifically identified in this Agreement, the City's regulatory codes in effect at the time of a complete building permit application are accepted by the City shall apply.

Section 4. Development Standards; Conditions.

4.1 Effective Period of this Agreement. This Development Agreement shall be valid until December 31, 2015. If Developer has not submitted, and the City has not accepted, a complete building permit application and building permits have not been secured for the development by that date, this Development Agreement shall be void and development may occur on the subject site pursuant to the then-adopted development regulations.

4.2 Application of Development Standards. RCW 36.70B.180(3)(d) and TMC 18.86.030 authorize the establishment of design standards by a development agreement. More specifically, TMC 18.86.030 provides that, a development agreement may allow development standards different from those otherwise imposed under the Tukwila Municipal Code in order to provide flexibility to achieve public benefits, respond to changing community needs, or encourage modifications that provide the functional equivalent or adequately achieve the purposes of otherwise applicable City standards. Pursuant thereto and during the Effective Period, the provisions of this Section 4 set forth the development standards that differ from or supplement those standards set forth in the City's development regulations. Accordingly, the following development standards shall apply to and govern and vest the development and use of the Project in lieu of any conflicting or different standards or requirements elsewhere in the Governing Regulations.

4.3 Additional Building Height. The maximum building height for 50 percent of the site shall be 180 feet. The remainder of the site would be limited in height by the zoning code in effect that the time of a complete building permit application. This increase in building height is consistent with the goals of the Comprehensive Plan to encourage residential development within the Urban Center and is consistent with the City's vision of increased urban density.

4.4 Residential Units. The development must include at least 250 but no more than 450 residential units.

4.5 Condominium Declaration. In order to receive a Certificate of Occupancy the Developer must provide the City a copy of a Washington condominium declaration for all residential units built, along with the survey map and plans, which show surveying data for the overall parcel, as well as details of buildings and the location of units. These documents do not

have to be recorded but must otherwise be in conformance with RCW 64.34 et seq. In addition, each residential unit must have an individual electric meter.

Section 5. Major and Minor Amendments - Development Agreement. All proposed amendments to the Development Agreement shall be considered in accordance with this Section 5.

5.1 Process. The Mayor may approve Minor Amendments to the Development Agreement proposed by the City or Developer and mutually agreed to by the Parties. Such approval shall be in writing and the resulting amendment shall be incorporated into this Development Agreement as an amendment. The City Council may approve Major Amendments to the Development Agreement in accordance with the same process for approval of the Development Agreement. A Major Amendment to the Development Agreement approved by the City Council, and mutually agreed to by the Parties, shall be incorporated into this Development Agreement as an amendment pursuant to Section 21 hereof.

5.2 Minor Amendment Defined. A proposed amendment to the Development Agreement shall be considered a minor amendment if the proposed amendment does not modify the Governing Regulations or Section 4 (Development Standards; Conditions) hereof, does not materially modify the size or scope of the development, and does not modify the Vesting Period or term of this Development Agreement.

5.3 Major Amendment Defined. A proposed amendment to the Development Agreement shall be considered a Major Amendment if the proposed amendment does not constitute a Minor Amendment.

5.4 Determination. An application for a Minor Amendment shall be made to the Mayor. The application shall describe the proposed Minor Amendment in sufficient detail such that the Mayor can determine whether or not the proposal qualifies as a Minor Amendment. If the application does not provide sufficient information, the Mayor may request additional information from the Developer or reject the application. Upon receipt of sufficient information to determine if the proposal set forth in the application constitutes a Minor Amendment, the Mayor shall determine if the proposal constitutes a Minor Amendment. In the event that the Mayor determines that the proposed amendment is a Minor Amendment, the Minor Amendment may be administratively approved by the Mayor. In the event that the Mayor determines that the proposal constitutes a Major Amendment, the Developer shall submit the proposal in accordance with the same process for approval of a Development Agreement, withdraw its proposed amendment, or modify and re-submit its proposed amendment. The determination of the Mayor shall be a final decision.

Section 6. Further Discretionary Actions. Developer acknowledges that the Development Agreement contemplates the exercise of further discretionary powers by the City. These powers include, but are not limited to, review of permit applications under SEPA. Nothing in this Development Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the

City and any of its officers or officials in complying with or applying Governing Regulations and the development standards and conditions set forth in Section 4 hereof.

Section 7. Existing Land Use Fees and Impact Fees. Generally applicable land use fees and impact fees adopted by the City by resolution or ordinance as of the effective date of this Development Agreement may be increased by the City from time to time, and the new fees applied to subsequent permits and approvals for the Property.

Section 8. Specific Performance. The Parties specifically agree that damages are not an adequate remedy for breach of this Development Agreement, and that the Parties are entitled to compel specific performance of all material terms of this Development Agreement by any Party in default hereof.

Section 9. Termination. This Development Agreement shall expire and/or terminate on the earlier of the termination/expiration provisions set forth as follows:

9.1 This Development Agreement shall terminate upon the expiration of the Effective Period identified in Section 4 hereof.

9.2 Upon termination of this Development Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney that the Development Agreement has been terminated.

Section 10. Assignment and Assumption. The Developer shall not have the right to sell, assign or transfer this Development Agreement with all its rights, title and interests therein to any person, firm or corporation at any time during the term of this Development Agreement provided that the Developer may sell, assign, or transfer this Development Agreement with all its rights, title, and interests therein to any firm or corporation in which the Developer has a majority interest. Developer shall provide the City with written notice of any intent to sell, assign, or transfer all or a portion of the Subject Property, at least 30 days in advance of such action.

Section 11. Covenants Running With the Land; Recording. The conditions and covenants set forth in this Development Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the Parties. The Developer, and every purchaser, assignee or transferee of an interest in the Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Development Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Development Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned or transferred to it.

Section 12. Amendment to Agreement; Effect of Agreement on Future Actions. This Development Agreement may be amended by mutual consent of all of the Parties, provided

that any such amendment shall follow the process established for Major and Minor Amendments as set forth in this Development Agreement.

Section 13. Releases. Developer, and any subsequent owner, may be released from further obligations relating to the sold, assigned, or transferred portion of the Property, provided that the buyer, assignee or transferee expressly assumes the obligations under this Development Agreement as provided herein.

Section 14. No Third-Party Beneficiary. This Development Agreement is made and entered into for the sole protection and benefit of the Parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Development Agreement.

Section 15. Interpretation. The Parties intend this Development Agreement to be interpreted to the full extent authorized by law as an exercise of the City's authority to enter into development agreements pursuant to RCW 36.70B.170, et seq., and this Development Agreement shall be construed to exclude from the scope of this Development Agreement and to reserve to the City, only that police power authority which is prohibited by law from being subject to a mutual agreement with consideration. This Development Agreement has been reviewed and revised by legal counsel for both Parties, and no presumption or rule construing ambiguity against the drafter of the document shall apply to the interpretation or enforcement of this Development Agreement.

Section 16. Notice. All communications, notices, and demands of any kind that a Party under this Development Agreement requires or desires to give to any other Party shall be in writing and either (i) delivered personally, (ii) sent by facsimile transmission with an additional copy mailed first class, or (iii) deposited in the U.S. mail, certified mail postage prepaid, return receipt requested, and addressed as follows:

If to the City:

City of Tukwila
6200 Southcenter Boulevard
Tukwila, WA 98188
Attn: Mayor's Office

With a copy to:

City Attorney
City of Tukwila
Kenyon Disend, PLLC
11 Front Street South
Issaquah, Washington 98027-3820
General: 425-392-7090
Fax: 425-392-7071

If to Developer:

South Center WA, LLC
18230 East Valley Highway, Suite 195
Kent, WA 98032
425-251-1600

Notice by hand delivery or facsimile shall be effective upon receipt. If deposited in the mail, notice shall be deemed delivered forty-eight (48) hours after deposited. Any Party at any time by notice to the other Party may designate a different address or person to which such notice or communication shall be given.

Section 17. Excusable Delay (Force Majeure). In addition to specific provisions of this Development Agreement, and notwithstanding anything to the contrary in this Development Agreement, neither Party shall be in default in the performance or the failure of performance of its obligations under this Development Agreement, or in the delay of its performance, where such failure or delay is due to war, insurrection, strikes, lock-outs or other labor disturbances, one or more acts of a public enemy, war, riot, sabotage, blockade, embargo, floods, earthquakes, fires, quarantine restrictions, freight embargoes, lack of transportation, court order, delays or failures of performance by any governmental authority or utility company (so long as the Party seeking the extension has adequately complied with the applicable processing requirements of such governmental authority or utility company), delays resulting from changes in any applicable laws, rules, regulations, ordinances or codes, or a change in the interpretation thereof by any governing body with jurisdiction, delays resulting from the weather or soils conditions which necessitate delay, delays resulting from litigation (including suits filed by third parties concerning or arising out of this Development Agreement) or any other cause (lack of funds of Developer, Developer's inability to finance the construction of the development, and Developer's inability to lease the Improvements, are not causes beyond the reasonable control or without the fault of Developer) beyond the reasonable control or without the fault of the Party claiming an extension of time to perform or an inability of performance. The extension of time for any cause shall be from the time of the event that gave rise to such period of delay until the date that the cause for the extension no longer exists or is no longer applicable, in each case as evidenced by a notice from the Party claiming the extension. An extension of time for the duration of such event will be deemed granted if notice by the Party claiming such extension is sent to the other as to any of the above causes other than Permit Delays, within 10 days from the commencement of the cause and such extension of time is not rejected in writing by the other Party within 10 days of receipt of the notice (such extension of time is referred to herein as "Force Majeure"). Times for performance under this Development Agreement may also be extended in writing by the City and Developer in accordance with Section 11 herein.

Section 18. Indemnification. Except as otherwise specifically provided elsewhere in this Development Agreement and any Exhibits hereto, each Party shall protect, defend, indemnify and hold harmless the other Party and their officers, agents, and employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, which are caused by or result from any negligent act or

omission of the Party's own officers, agents, and employees in performing services pursuant to this Development Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against a Party, the Party whose negligent action or omissions gave rise to the claim shall defend the other Party at the indemnifying Party's sole cost and expense; and if final judgment be rendered against the other Party and its officers, agents, and employees or jointly the Parties and their respective officers, agents, and employees, the Parties whose actions or omissions gave rise to the claim shall satisfy the same; provided that, in the event of concurrent negligence, each Party shall indemnify and hold the other Parties harmless only to the extent of that Party's negligence. The indemnification to the City hereunder shall be for the benefit of the City as an entity, and not for members of the general public.

Section 19. Applicable Law and Attorneys' Fees. This Development Agreement shall be construed and enforced in accordance with the laws of the State of Washington. If litigation is initiated to enforce the terms of this Development Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing Party. Venue for any action shall lie in King County Superior Court or the U.S. District Court for Western Washington.

Section 20. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a Party, or successor or assign of Developer, to challenge this Development Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit to Developer and/or successor(s) or assign(s). In such event, Developer and/or such successor(s) or assign(s) shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit or individual claims in the lawsuit, including, but not limited to, attorneys' fees and expenses of litigation, and damages awarded to the prevailing party or parties in such litigation. The Developer and/or such successor(s) or assign(s) shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle.

Section 21. Severability. If any phrase, provision or section of this Development Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Development Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the ordinance adopting this Development Agreement, and either Party in good faith determines that such provision or provisions are material to its entering into this Development Agreement, that Party may elect to terminate this Development Agreement as to all of its obligations remaining unperformed.

Section 22. Authority. Each Party respectively represents and warrants that it has the power and authority, and is duly authorized, to enter into this Development Agreement on the terms and conditions herein stated, and to deliver and perform its obligations under this Development Agreement.

Section 23. Exhibits and Appendices Incorporated. Each Exhibit attached hereto or referenced is incorporated herein by such reference as if fully set forth herein.

Section 24. Headings. The headings in this Development Agreement are inserted for reference only and shall not be construed to expand, limit or otherwise modify the terms and conditions of this Development Agreement.

Section 25. Time of the Essence. Time is of the essence of this Development Agreement and of every provision hereof. Unless otherwise set forth in this Development Agreement, the reference to “days” shall mean calendar days. If any time for action occurs on a weekend or legal holiday in the State of Washington, then the time period shall be extended automatically to the next business day.

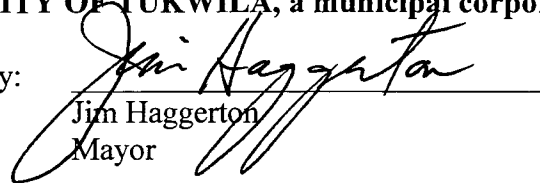
Section 26. Entire Agreement. This Development Agreement, and the DDA referenced herein, represents the entire agreement of the parties with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein and this Development Agreement supersedes all previous agreements, oral or written.

AS OF THE DATE FIRST WRITTEN ABOVE, the Parties evidence their agreement to the Terms of this Development Agreement by signing below:

CITY:

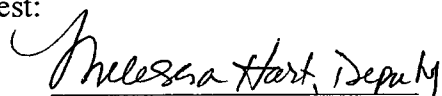
CITY OF TUKWILA, a municipal corporation

By:


Jim Haggerton
Mayor

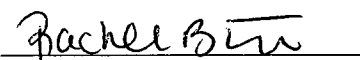
Attest:

By:


for: Christy O’Flaherty, City Clerk

Approved As To Form:

By:


for Shelley Kerslake
City Attorney

DEVELOPER:

South Center WA, LLC

By:


Omar Lee
Manager

January 28, 2019

Dear Councilmen:

First of all, we want to thank you for believed in us and supported us to create the first mixed use hi-rise project in the City of Tukwila. This project has been well received by the community. The comments we get on a regular basis from our residents, hotel guests and the surrounding public made us very proud to be the developer of this project. We appreciate all of you, the Councilmen, the City staffs for working with us since 2012. We need your continue support with the success of this project.

When we first design this project, we admit we had put way too much attention to the hotel section. Being a seasonal developer for residential projects, we did make a mistake by not emphasize the signage for residential portion. Totally neglected the unique situation we have at this location which has no residential ever existed. For a normal residential project, we do not need to put more than just a building awning type of sign. However, with this project, we finally realized that visible signs are absolutely needed. Because we need to educate the surrounding public, that we have quality living residential units available. For your information, a residential rental project average lease derives from walk-in traffic is 25-35%. With our project, we have 0% since January 2017. People simply do not know the residential portion within the project exists, they believe the whole building is a hotel.

We are requesting an amendment to our Development Agreement. We want to install 2 additional building signs each with 1000 square feet for the residential area. We have attached the proposed sign elevations.

We understand the City has sign code. However, we believe the code was established without consideration of hi-rise buildings. With hi-rise, the size of the sign is critical. It is meaningless if people on the street level cannot read. We appreciate your consideration for our request. Again, this is a critical decision which leads the fate of this project. Thank you very much for your time.

Best Regards,

Christine Lee

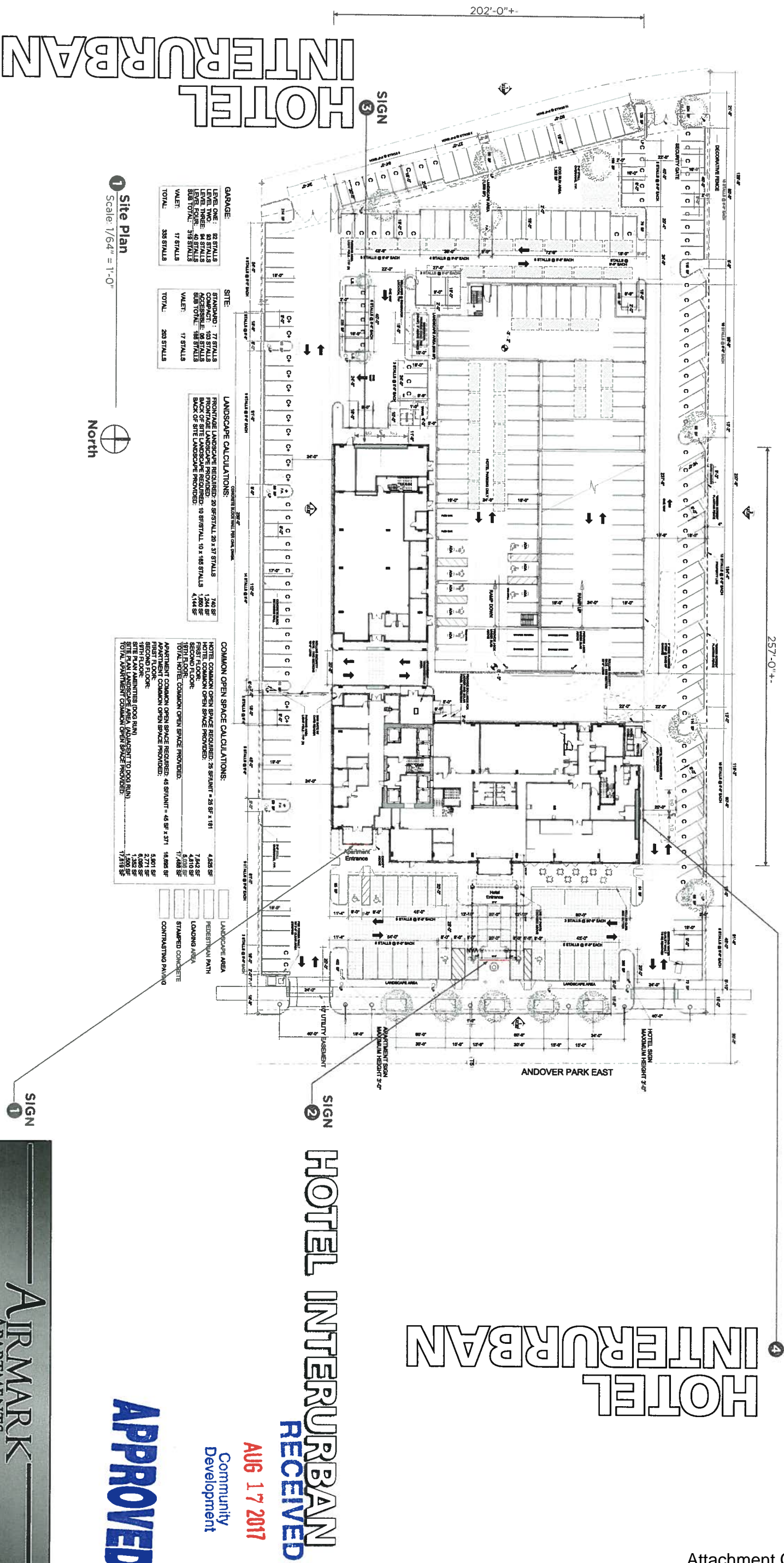
Attachment B



Proposed sign on South Elevation



Proposed sign on West Elevation



210052

FILE NAME
18282_V11_Hotel Interurban

CLIENT INFORMATION
Client: Landmark Hotel
Address:
224 Andover Park East
Tukwila, WA

INTERNAL INFORMATION:
Sales: Cindy Victor
AM: Kevin Butler
Design: Mark Mahan

January 06, 2017
DSF #: 18282
RFQ #: 22645
Revision date: 08-10-17

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Seattle, Washington 98119

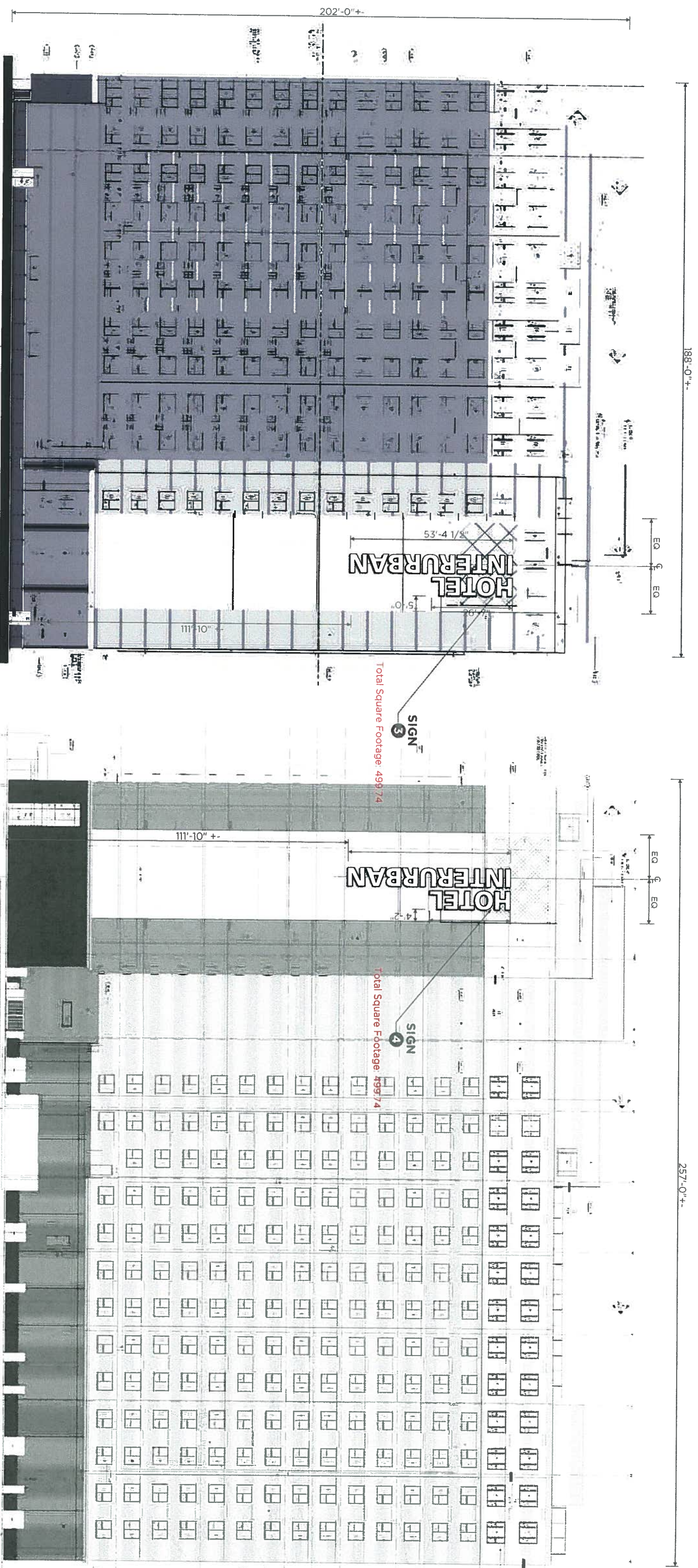
Phone: 206.284.2001
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The signage indicated in this design is fabricated to meet UL requirements & will be labeled according to all UL requirements. The design is intended to be used in accordance with the requirements of the International Building Code and / or other applicable local codes. This includes proper greening and bonding of the sign.

812

PAGE: 1 of 9



1 West Elevation
Scale: 1/32" = 1'-0"

257970 Φ = Facade
0% = 1308.74 ≠

500 max
allowed

2 North Elevation
Scale: 1/32" = 1'-0"

51914 Φ = Facade
3114.90 = 0% ≠

500 max
allowed

APPROVED

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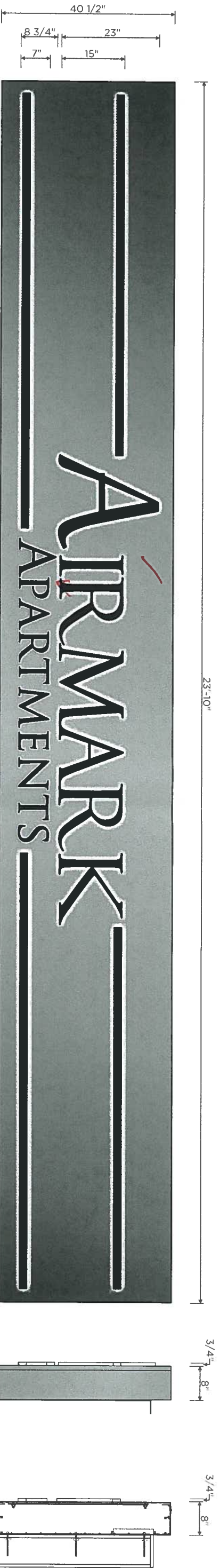
FILE NAME
18282_V11_Hotel Interurban

CLIENT INFORMATION
Client: Landmark Hotel
Address:
224 Andover Park East
Tukwila, WA

INTERNAL INFORMATION:
Sales: Cindy Victor
AM: Kevin Butler
Design: Mark Mahan

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AUG 17 2017
Community Development

40



1 Front View
Scale: 1/2" = 1'-0"

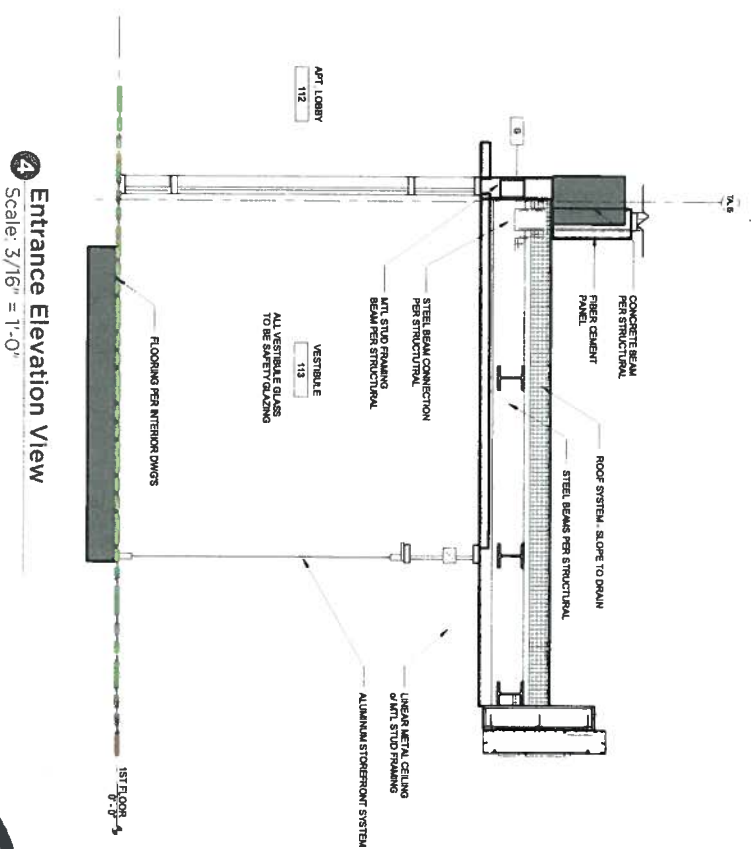
2 Side View
Scale: 1/2" = 1'-0"

3 Section View
Scale: 1/2" = 1'-0"

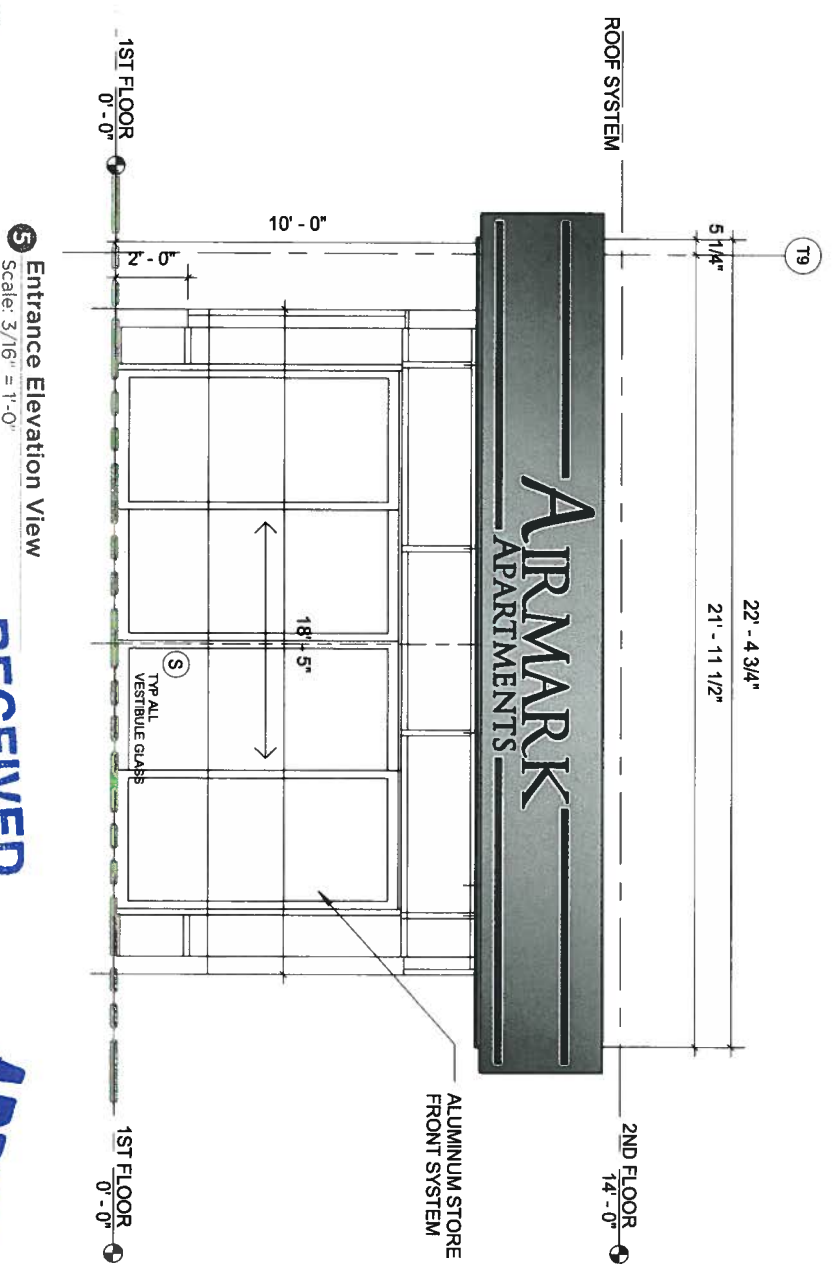
Sign 1
Fabricate and install: (1) exterior single faced illuminated Pushed thru acrylic lettering sign.

- A Cabinet to be an extruded aluminum construction. Painted Light Grey to match PMS# _____ (color TBD) (satin finish).
- B "AIRMARK APARTMENTS" lettering and Scorelines to be routed out of aluminum face with 1" Acrylic- Clear letters step routed pushed thru aluminum face, letter edges to be sanded frosted edges. Faces of letters to have first surface applied opaque 3M Scotchcal vinyl- Matte Black #3650-22. Back with a sheet of translucent Polycarbonate- White.
- C Backlit illumination of lettering to be LED's white 5100K. Power supplies to be mounted within cabinet. Power to sign by others.
- D Mount cabinet flush to face of canopy with (10) 3/8" toggle bolts or (10) 3/8" lag screws into structure.

5 Square Footage Calculation
Scale: 3/8" = 1'-0"



4 Entrance Elevation View
Scale: 3/16" = 1'-0"



5 Entrance Elevation View
Scale: 3/16" = 1'-0"

2 lines of text
Height: 3.375 Ft.

Approved DJ
8/17/17

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Tukwila, WA

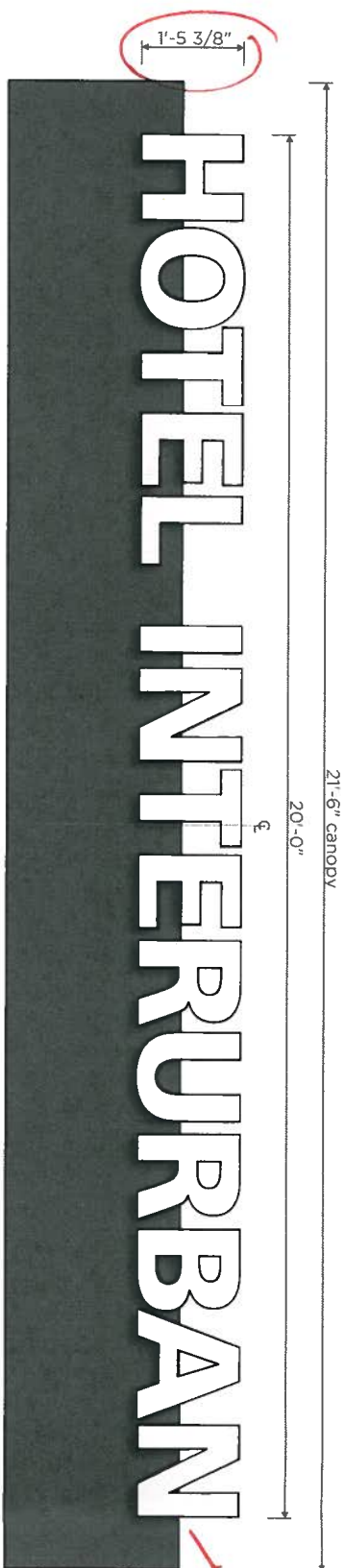
INTERNAL INFORMATION:
Sales: Cindy Victor
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Design: Mark Mahan

Community Development
The signage indicated in this design is fabricated to meet UL requirements & will be applied according to all UL requirements with the requirements of Article 600 of the National Electrical Code and / or other applicable local codes. This includes proper grounding and bonding of the sign.

807

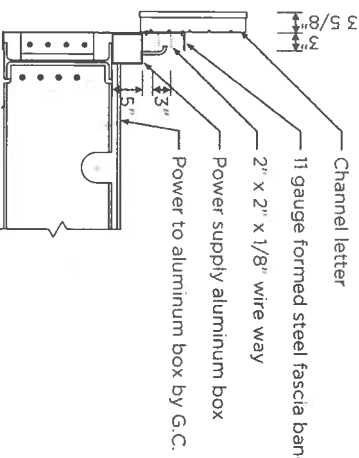


3 Plan View
Scale: 3/8" = 1'-0"



1 Front View
Scale: 3/8" = 1'-0"

Approved -

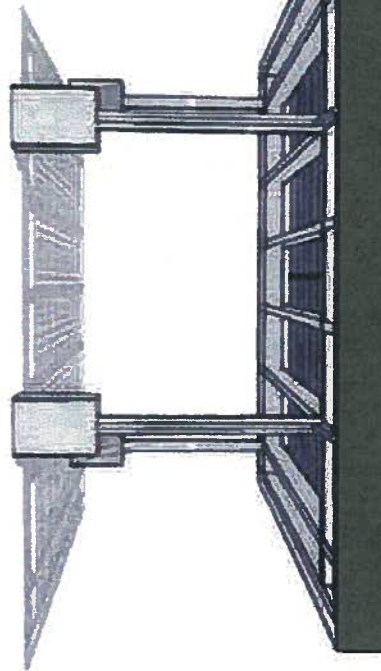


2 Section View
Scale: 3/8" = 1'-0"

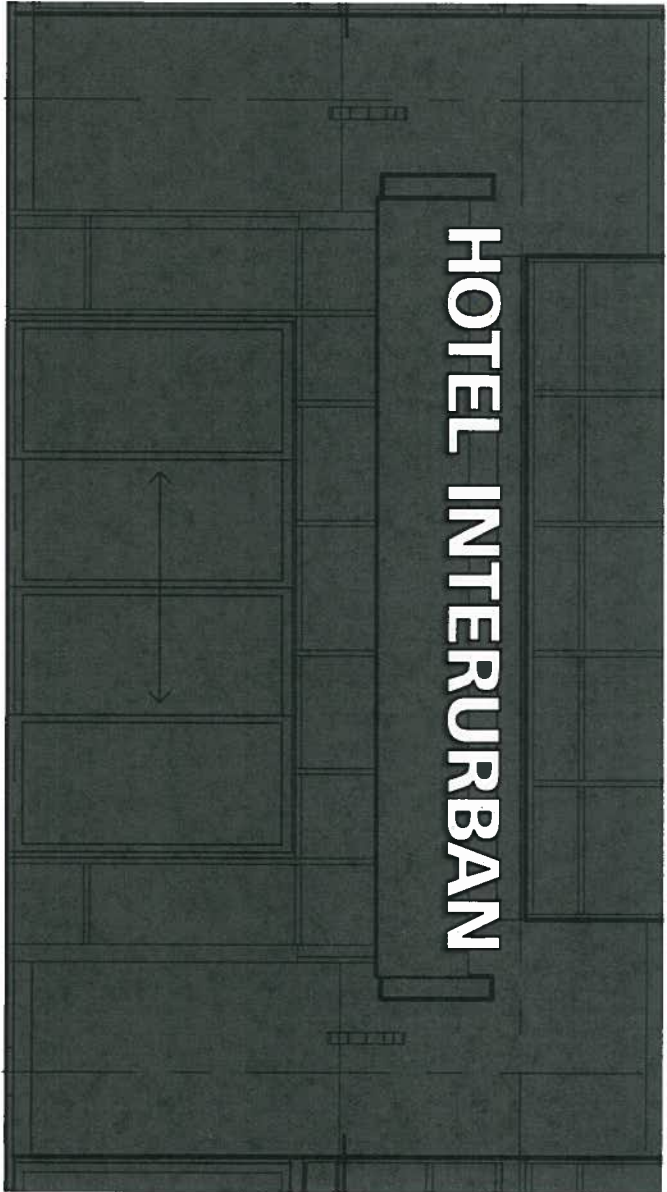
Sign 2
Fabricate and install: (1) exterior single faced illuminated pan channel lettering sign.

A "HOTEL INTERURBAN" lettering to be pan channel aluminum construction, painted Charcoal to match PMS# Black 7c (satin finish). 1" trim cap to be Black. Letter faces to be translucent acrylic- White #7328. Backlit illumination of lettering to be LED's white S100K. Power supplies to be remotely mounted within aluminum boxes, behind sign fascia band. Power to sign by others. Mount individual letters to face of canopy with 1/4" x 1" self tapping sheet metal screws into panel.

HOTEL INTERURBAN Total Square Footage: 29.38



4 Front View- Porte Cochere
Scale: 3/16" = 1'-0"



5 Elevation View- Porte Cochere Elevation
Scale: 3/16" = 1'-0"

SI1-0552

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This includes proper grounding and bonding of the sign.



INFORMATIONAL MEMORANDUM

TO: Community Development and Neighborhoods Committee
FROM: Jack Pace, DCD Director
BY: Nora Gierloff, Deputy DCD Director
CC: Mayor Ekberg
DATE: February 12, 2019
SUBJECT: Shoreline Master Program Update

ISSUE

Tukwila is undertaking a required periodic review of its Shoreline Master Program and Zoning Code Shoreline Overlay for consistency with State law and Best Available Science (BAS).

BACKGROUND

The Green/Duwamish River in Tukwila is categorized as a Shoreline of the State. In response to the State Shoreline Management Act (SMA) and Federal requirements, Tukwila has adopted three documents related to the river – the Shoreline Master Program (SMP), Shoreline Element in the City’s Comprehensive Plan, and zoning regulations in TMC Chapter 18.44 Shoreline Overlay.

Most construction, grading or clearing within 200 feet landward of the ordinary high water mark (OHWM) requires a Shoreline Substantial Development Permit which is reviewed by the Washington State Department of Ecology after issuance by the City. The City’s shoreline development regulations balance economic interests, flood control, and residential development with enhancement and stewardship of the ecological functions of the river.

The City of Tukwila completed a comprehensive update to its Shoreline Master Program in 2009, with additional revisions made in 2011. Washington state law requires jurisdictions to periodically review and update their SMPs every eight years for compliance with changes to the SMA and Department of Ecology guidelines and legislative rules.

Staff briefed the Committee on 6/12/18 about state funding for this update, the scope of work and the public participation plan. Since then we have done a city-wide mailing, put information about this ongoing work in the September 2018 eHazelNut, included a flyer in the last water bill, sent updates to an email interest group, held an open house on 10/9/18, held a Planning Commission work session on 10/25/18 and worked with our consultant and DOE reviewer on a public review draft. The update is due on June 30, 2019.

DISCUSSION

This periodic update will focus on:

- Reviewing relevant legislative updates since 2009 and incorporating any applicable amendments per the Gap Analysis Report (available on the Shoreline Management page of the City website <http://www.tukwilawa.gov/departments/community-development/shoreline-management/>).
- Ensuring consistency with recently adopted regulations for critical areas and flood hazard areas.
- Streamlining and eliminating duplication in the documents.
- Addressing a limited number of policy questions.

This periodic update will not:

- Re-evaluate the ecological baseline which was established as part of the 2009 comprehensive update.
- Extensively assess no net loss criteria other than to ensure that proposed amendments do not result in degradation of the baseline condition.
- Change shoreline jurisdiction or environment designations.

Streamlining/Eliminating Duplication

The current SMP includes policies and regulations that were subsequently adopted into the Comprehensive Plan and Zoning Code. This duplication has given rise to inconsistencies and requires duplicate amendments whenever changes are made. The proposal is to create a multi-part SMP that spans these documents and includes the Shoreline Element and Chapter 18.44 by reference without repeating policy or regulation language.

The current Chapter 18.44 Shoreline Overlay duplicates the environmental regulations found in Chapter 18.45 Sensitive Area Ordinance for sensitive areas within the shoreline jurisdiction. After discussion with our DOE reviewer the proposal is to eliminate this duplication and add additional language about applicability and limitations. This does mean that adoption of the environmental regulation update will need to occur simultaneously with the adoption of the shoreline update.

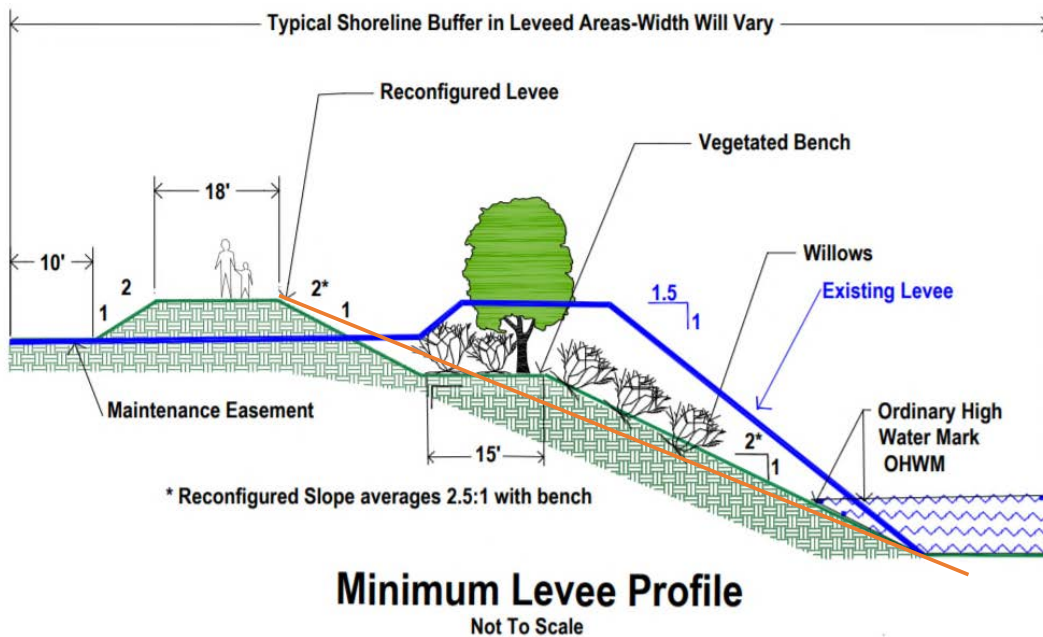
Another proposal is to combine the shoreline use matrix and narrative list of uses into a single table for clarity. Similarly the narrative discussion of shoreline buffers has been put into a table.

Policy Questions

Additional Flexibility for Levee Profile

The current SMP contains a minimum levee profile with a mid-slope bench that is required throughout the City. In practice this has not always been the chosen solution for a given

location and has required a shoreline variance even for designs with better environmental performance. The proposal is to retain the minimum levee profile as an example but allow flexibility to address site conditions and environmental opportunities without the variance process as long as criteria such as an overall 2.5:1 slope (red line below) and native plantings are met.



Additional Flexibility for Floodwalls

This update is happening alongside a discussion about flood protection measures in the Lower Green River Corridor Flood Hazard Management Plan. There are multiple alternatives under consideration including the question of whether future levees should be built to protect against 500 year rather than 100 year flood events. This could require levees to be between 3.5 and 5.5 feet higher, which requires between 20 and 30 additional feet of width with a front and back slope of at least 2.5:1 or adding 3.5 to 5.5 feet of height to a flood wall configuration without the need for an additional 20 to 30 feet of width.

The current Flood Control District access road standard is 15', not the 10' built into our current buffer calculation so the total width of the levee footprint could increase by up to 35 feet. Allowing an alternative flood wall configuration to substitute for the back slope, especially where site constraints exist, would reduce the width needed and lessen the impact on adjacent property owners. Levees are so expensive to build and the consequences of a levee failure are so significant that the need to allow site specific design solutions may be desirable to reach life safety and economic goals.

Increased Incentives

A proposal is to provide increased building height incentives for property owners who provide shoreline buffer restoration or shoreline public access above that required by code. Currently the 15% height increase allowed on properties that restore shoreline buffers or build shoreline public access amenities only results in a 6.75 feet building height increase, not enough for an

additional story, so developers have not used the provision. Changing to a 13.5 foot increase may be a more appealing incentive to encourage buffer restoration or public access.

RECOMMENDATION

Information only. The next step is for the Planning Commission to hold a public hearing on the Shoreline update and then send a recommended draft to the City Council for review and adoption.

ATTACHMENTS

A. Shoreline Update Public Participation Plan

TUKWILA Shoreline Master Program Periodic Review:

Public Participation Plan

Introduction

The City of Tukwila is undertaking a periodic review of its Shoreline Master Program (SMP), as required by the Washington State Shoreline Management Act (SMA), RCW 90.58.080(4). The SMA requires each SMP be reviewed and revised, if needed, on an eight-year schedule established by the Legislature. The review ensures the SMP stays current with changes in laws and rules, remains consistent with other Tukwila plans and regulations, and is responsive to changed circumstances, new information and improved data.

The purpose of this Public Participation Plan is to describe how Tukwila will encourage early and continuous public input throughout the SMP review process, including the steps that Tukwila will take to provide opportunities for public engagement and public comment, as well as Tukwila contact information and web addresses.

1.0 Public Participation Goals

- Provide interested parties with timely information, an understanding of the process, and multiple opportunities to review and comment on proposed amendments to the SMP.
- Actively solicit information from citizens, property owners and stakeholders about their concerns, questions and priorities for the Periodic Review process.
- Encourage interested parties to informally review and comment on proposed changes to the SMP throughout the process and provide those comments to decision makers.
- Provide forums for formal public input at project milestones prior to decision-making by local officials.
- Consult and consider recommendations from neighboring jurisdictions, federal and state agencies, and Native American tribes.

2.0 Public Participation Opportunities

Tukwila is committed to providing multiple opportunities for public participation throughout the process and will use a variety of communication tools to inform the public and encourage their participation, including the following:

2.1 Website

Tukwila's website will include a Periodic Review webpage where interested parties can access status updates, draft documents, official notices, minutes and other project information. The webpage will be the primary repository of all information related to the Periodic Review process, including draft documents, official notices, a Frequently Asked Questions section, and other project information. The page will include who to contact for more information and an email link for questions and comments.

2.2 Notice mailing list

A postcard will be mailed to all property owners and tenants within the 200 foot shoreline jurisdiction notifying them of the upcoming SMP review and inviting them to join an email list of interested parties.

The list will be maintained by the Department of Community Development (DCD) and will be used to notify interested parties regarding Periodic Review progress and participation opportunities, including the open house.

2.3 Open House

Tukwila will initiate the Periodic Review with a community open house. Public comments received during the Open House will be posted on the Periodic Review webpage.

2.4 Comment

All documents under consideration will be available on the Periodic Review webpage and available for review at DCD. Interested parties will be encouraged to provide comments by letter or email. All comments will be compiled and provided to the City Council and Planning Commission.

2.5 Planning Commission

The Planning Commission will hold a public hearing and interested parties are encouraged to attend and provide comments. Official notices will be published as established by Tukwila code.

2.6 News media

The local news media will be kept up-to-date on the Periodic Review process and receive copies of all official notices.

3.0 List of stakeholders

Tukwila will reach out to the following stakeholders:

- Washington Department of Ecology
- Washington Department of Fish and Wildlife
- U.S. Army Corps of Engineers
- Boeing Company
- La Pianta
- Muckleshoot Tribe
- BECU
- City of Kent
- City of Seattle
- City of SeaTac
- City of Renton
- City of Burien
- King County
- Mid-Sound Fisheries Enhancement Group
- All property owners and tenants within the 200 foot shoreline jurisdiction

4.0 Public Comment Periods and Hearings

The Planning Commission will conduct a public comment period and at least one public hearing to solicit input on the Periodic Review. The Tukwila City Council will hold one public hearing before final adoption.

Tukwila will coordinate with the Department of Ecology on public notification of comment periods and hearings to take advantage of Ecology's optional SMP amendment process that allows for a combined state-local comment period (WAC 173-26-104).

Public notice of all hearings will state who is holding the comment period and/or hearing, the date and time, and the location of any public hearing. Notices will be published per official policy and comply with all other legal requirements such as the Americans with Disabilities Act. A notice will be sent to the email list (2.2, above) and the Department of Ecology.

5.0 Public Participation Timeline

The following is a general timeline including anticipated public participation opportunities. Tukwila will coordinate with the Department of Ecology throughout the process. A detailed timeline will be posted on the Periodic Review webpage.

June	Work Plan and Public Participation Plan Presented to Council
July	All City Mailing in Stormwater Bills
September	Postcard Notice Mailing to property owners Public Comment Period on Scope of Update
October	Open House
January	Planning Commission Hearing Public Comment Period on Draft Revisions
March	City Council Committee Review of Draft Ordinances City Council Public Hearing
May	Final Ordinances Presented to Council

