

MEMORANDUM OF AGREEMENT
Between
The City of Seattle And City Investors VII, LLC
For 300 & 333 8th Ave North
Full Block Reconstruction Project
Reference SDOT Street Improvement Plan # 226851

This Memorandum of Agreement (“Agreement”) is made between The City of Seattle (“City”), Washington a municipal corporation acting through its Seattle Department of Transportation (“SDOT”) and City Investors VII, LLC (“City Investors”) a private for-profit corporation (collectively the “Parties.”)

1. **PURPOSE** The purpose of this Agreement is to execute an agreement between the Parties in order to achieve a full block reconstruction of 8th Avenue North between Thomas and Harrison Streets, in accordance with the South Lake Union Street Concept Plans (“Concept Plans”) adopted by SDOT Director’s Rule 05-2013 and to support SDOT’s efforts to implement these plans through capital projects.
2. **BACKGROUND** City Investors applied for Street Improvement Permit (“SIP”) 226851 to install street improvements on the frontage of their development at 300 8th Avenue North as required by the Land Use Code, Title 23, and have plans to submit a SIP for development of 333 8th Avenue North on the opposite side of the block.

The Concept Plans solidified a community vision formalized in the SLU Urban Design Framework that encourages enhanced streetscape features to invigorate the pedestrian environment, increases the multimodal functionality of the right-of-way, and results in an environmentally sensitive street design by preserving trees and planting significant landscape. Since adopting the Concept Plans, SDOT prioritized and advanced the design of 8th Avenue North with an interest to secure implementation funding.

In collaboration with SDOT and consistent with the vision in the Concept Plans, City Investors proposed to install additional street improvements beyond their code requirements on 8th Avenue North (the “8th Avenue Project”) that will help implement the Concept Plans in an expeditious and cost-effective way.

3. **SCOPE OF WORK** In accordance with SIP 226851 and Exhibit 1 that is attached to and incorporated into this Agreement, the 8th Avenue Project public improvements in the entire right of way shall include: removing curbs to create a curb-less shared-use street; installing landscaping and preserving trees and installing new tree plantings; and installing seating, pedestrian-scaled lighting, tactile warning pavers, and vehicular curb ramp at Harrison and Thomas Street intersections. The area of roadway as shown in SIP 226851 and Exhibit 1 includes the pavement cross-section that is limited to the street paving surface and base layers.

4. **TERMS OF AGREEMENT** This Agreement shall begin when executed by the Parties but no sooner than the effective date of the authorizing ordinance, and shall end upon the work being completed as described below, unless amended by written agreement by the Parties.
5. **FEE AND PAYMENT** The 8th Avenue Project will consist of two construction projects at 300 and 333 8th Avenue North. As authorized by Seattle Municipal Code 15.04.100.C and the ordinance authorizing this Agreement, the SDOT shall not assess Street Use permit use fees that would typically be assessed for the use of the 8th Avenue North right-of-way to accommodate construction activities related to the private development for 300 8th Avenue North and 333 8th Avenue North between Thomas and Harrison Streets.

In consideration of this fee exception, City Investors shall provide the equivalent to the fees through a voluntary contribution to build the full block reconstruction of 8th Avenue North consistent with the adopted Concept Plans, and the additional street improvement elements listed on SIP 226851 and Exhibit 1.

The additional construction costs shall be no less than the use fee exemptions for 8th Avenue North as detailed in Exhibit 2. Construction costs and use fee exemptions that exceed the estimates in Exhibit 2 shall not be incurred by the City but instead shall be covered by City Investors. If the additional construction costs are less than the use fee exemptions for 8th Avenue North as detailed in Exhibit 2, City Investors shall pay the difference in construction costs and use fees to the City. Permit issuance fees and review and inspection charges shall still be assessed by SDOT for each project.

The City shall grant City Investors this exception to paying use fees for Street Use permits on 8th Avenue North for the 16-month-construction duration for each project as identified in Exhibit 2 Fee Calculations. SDOT agrees to not assess use fees for both projects, no matter when they are constructed, provided the construction does not exceed the timelines in the Scope of Work. If the construction timeline exceeds this duration, City Investors shall be (i) responsible for informing SDOT of the schedule change, (ii) the new estimated completion date, and (iii) any additional construction costs and use fees associated with the additional construction timeline.

6. **BONDING AND INSURANCE** City Investors shall obtain the required surety bonding and liability insurance for constructing the improvements identified in the SIPs and in this Agreement consistent with the requirements in SDOT's Street Improvement Permitting process and SDOT Client Assistance Memos 2102 and 2200. The value of the bond and insurance is based on the street improvement construction cost for all elements described in SIP 226851 and Exhibit 1, and the expense the City may incur as a result of unfinished work or the potential damage to utilities.
7. **SCHEDULE AND PERFORMANCE** City Investors shall perform all work necessary to construct the Scope of Work identified in SIP 226851 and Exhibit 1. The scope of the work area shall not be exceeded for any reason unless there is written agreement by the Parties in

advance of additional work being performed. The Scope of Work shall be complete, that is installed, inspected, and approved no later than April 2018. The Parties shall promptly and regularly notify each other of any occurrences affecting the schedule and shall attempt to agree on an amended schedule, if necessary, to be effective upon the execution of a written amendment to this Agreement

- 8. NO THIRD PARTY BENEFICIARIES** This Agreement is entered into solely for the mutual benefit of the Parties. This Agreement is not entered into with the intent that it shall benefit the Party's agents, assigns, consultants, or contractors; and no other person or entity shall be a party beneficiary of this Agreement.
- 9. INDEMNIFICATION** City Investors releases and shall defend, indemnify, and hold harmless; the City and its employees and agents from all losses, liabilities, claims including claims arising under federal, state, or local environmental laws, costs including attorneys' fees, actions, or damages of any sort whatsoever; arising out of the City Investors' performance of the work and services contemplated by this Agreement to the extent attributable to the negligent actor or omissions, willful misconduct, or breach of this Agreement by City Investors, its servants, agents, and employees. In furtherance of these obligations and only with respect to the City, its employees and agents, City Investors waives any immunity it may have or limitation on the amount or type of damages imposed under any industrial insurance worker's compensation, disability, employee benefit, or similar laws. City Investors acknowledges that this waiver of immunity was mutually negotiated and agrees that the indemnification provided for in this Agreement shall survive any termination or expiration of this Agreement.
- 10. ASSIGNMENT** This Agreement shall not be assigned in whole or in part by any party without the prior written approval of the other Parties.
- 11. COMPLIANCE WITH LAW** The Parties shall comply with all federal, state, and local laws and ordinances. City Investors shall use its best efforts to cause its contractors to follow the requirements of a City of Seattle Public Works contract that includes providing prevailing wage to its employees and its assigns for the construction and administration of this project as shown in SIP 226851 and Exhibit 1.
- 12. AMENDMENT** This Agreement shall not be amended or modified except in writing and signed by the Parties.
- 13. SEVERABILITY** If any provision of this Agreement or any provision of any law, rule, or document incorporated by reference into this Agreement shall be held invalid, the invalidity shall not affect the other provisions of this Agreement that legally can be given effect without the invalid provision. To this end, the provisions of this Agreement are severable.

14. ENTIRE AGREEMENT This Agreement and any written attachments or Amendments constitute the complete Agreement of the Parties and any oral representations or understandings not incorporated by writing into this Agreement are excluded.

15. NOTICES AND DELIVERABLE MATERIALS All requests or other communications required under this Agreement shall be in writing and delivered by at least one of the following methods: in person; or transmitted by electronic mail (email) addressed as provided for below:

Vulcan, Inc.
Ada Healey
City Investors VII, LLC
505 Fifth Ave South, Suite 900
Seattle, WA 98104
(206) 342-2149
adah@vulcan.com

SDOT Street Use & Urban Forestry
Greg Izzo, Interim Director
SDOT Street Use & Urban Forestry
Division
700 Fifth Avenue, Suite 2300
Seattle, WA 98104
(206) 684-4996
gregory.izzo@seattle.gov

16. SIGNATURES

In consideration of the Agreement's terms, the Parties execute this Agreement by the below representative's signatures.

CITY INVESTORS VII, LLC

By _____
Ada Healey Date
Vice-President, Real Estate

CITY OF SEATTLE

By _____
Scott Kubly Date
DIRECTOR, Seattle Department of Transportation

ATTACHED EXHIBIT 1: 8th Avenue North Concept Plan
ATTACHED EXHIBIT 2: Fee Calculations

EXHIBIT 1: 8th Avenue North Concept Plan



Vulcan Block 52W Estimated Street Use Fees		
Street	Sq. Ft. Use Area	Total Permit Fees For 16 month period
Harrison	720	\$ 17,064
Thomas	720	\$ 432
Alley	2160	\$ 1,296
8th Ave. N	6480	\$ 176,904
Total \$ 241,056		

Vulcan Block 57E Estimated Street Use Fees		
Street	Sq. Ft. Use Area	Total Permit Fees For 16 month period
Harrison	720	\$ 17,064
Thomas	720	\$ 432
Alley	2160	\$ 1,296
8th Ave. N.	6480	\$ 176,904
Total \$ 241,056		