RESOLUTION NO. 773

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE FINDING A SPECIAL FACILITY OR MARKET CONDITION EXISTS WITH RESPECT TO CERTAIN STREET AND SIDEWALK WORK IMMEDIATELY ADJACENT TO THE NEW UNIVERSITY PLACE WHOLE FOODS, AND APPROVING A CONTRACT WITH ABBOTT CONSTRUCTION FOR THAT WORK

WHEREAS, State law authorizes local elected officials to make a legislative determination to waive competitive bidding through a finding that a special facility or market condition exists for certain work, based on local knowledge and local circumstances; and

WHEREAS, the "special facilities or market conditions" exemption has been utilized by local jurisdictions across the State for more than fifteen (15) years and has never been the subject of a reported Washington State Court case or Attorney General Opinion; and

WHEREAS, the circumstances that may constitute "special facilities or market conditions" are not defined by State law, but rather are left to the legislative judgment of each local Council; and

WHEREAS, the construction of roads, curb, gutter and sidewalk immediately adjacent to the Whole Foods Market development in University Place Town Center involves an unusually high need for relational coordination in design and engineering because of retaining walls, complex slopes, a heated road surface, and other features of the transition and interface between the public and private work; and

WHEREAS, the construction of roads, curb, gutter and sidewalk immediately adjacent to the Whole Foods Market development in University Place Town Center is time sensitive to ensure the opening date for the Market is met. Contracting for this limited work with the same contractor that is building Whole Foods will help assure that critical timelines are met; and

WHEREAS, construction of the transitions and interfaces, and roads, curb, gutter and sidewalk in those immediately adjacent areas by a single contractor is the best way to ensure that the work is completed correctly, successfully, and with the least risk of adverse consequences for the City; and

WHEREAS, the foregoing facts and circumstances clearly support a Council determination to utilize the "special facilities or market conditions" exemption for the construction of roads, curb, gutter and sidewalk immediately adjacent to the Whole Foods Market development in University Place Town Center, to contract with the same contractor that is constructing Whole Foods; and

WHEREAS, the potential use of the special facilities or market conditions exemptions was reviewed with the grant authorities at the State, for the grant funded portions of the work, and subject to City Council approval, they have concurred that work done under the exemption remains grant-eligible:

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF UNIVERSITY PLACE, WASHINGTON, AS FOLLOWS:

- 1. <u>Incorporation</u>. The recitals are hereby incorporated herein as the legislative findings of this Council.
- 2. <u>Determination of a Special Facility or Market Condition</u>. Based on the facts and circumstances described herein, the City Council finds that a special facility or market condition as authorized in State law exists with respect to the work described in the proposed agreement with Abbott Construction attached hereto.

- 3. <u>Approval of Contract with Abbott Construction</u>. The contract with Abbott Construction attached hereto is hereby approved.
- 4. <u>Effective Date</u>. This Resolution shall be effective immediately upon adoption by the City Council.

ADOPTED BY THE CITY COUNCIL ON NOVEMBER 17, 2014.

Denise McCluskey, Mayor

ATTEST:

Emelita Genetia, City Clerk

APPROVED AS TO FORM:

Steve Victor, City Attorney

CONTRACT

THIS AGREEMENT, made and entered into in triplicate, this	day	of Novem	ber,
2014, by and between the City of University Place, hereinafter called	the	"Owner"	and
J.R. Abbott Construction Inc., hereinafter called the "Contractor".			

WITNESSETH:

That in consideration of the terms and conditions contained herein and attached and made a part of this agreement, the parties hereto covenant and agree as follows:

- 1. The Contractor shall do all work, furnish all tools, materials and equipment and complete the construction of the City of University Place University Place Main Street Redevelopment, Market Court West, the "Project" herein. The work shall be commenced and completed in accordance with and as described in the Contract Documents, which are by this reference incorporated herein and made a part hereof, and shall perform any alterations in or additions to the Project provided under this contract and every part thereof, for the sum of Six Hundred Ninety-Eight Thousand Nine Hundred Seventy-Four Dollars and Seventy-Two Cents (\$ 698,974.72)
- 2. Work shall start within <u>ten calendar (10)</u> days after receipt of the Notice to Proceed and be substantially completed by April 6, 2015.
- 3. Liquidated damages for the Contractor's failure to complete the work within the time specified herein shall be imposed pursuant to Section 1-08.9 of the Standard Specifications for Road, Bridge, and Municipal Construction and in accordance to the "Instructions to Bidders" of the Project Specifications.
- 4. The Contractor shall provide and bear the expense of all equipment, work and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in this contract and every part thereof, except as otherwise provided in the Contract Documents and specifications to be furnished by the City of University Place.
- 5. The term "Contract Documents" means and includes the following:
 - A. Information for Bidders
 - B. Bid
 - C. Bid Bond
 - D. Contract

- E. Specifications, Proposal and Contract for University Place Main Street Redelopment, Market Court West
- F. Amendments to the Standard Specifications
- G. Payment Bond
- H. Performance Bond
- I. Maintenance Bond
- J. Notice of Award
- K. Notice to Proceed
- L. Change Order
- M. Drawings
- N. Addenda: N/A
- O. Any documents referenced or incorporated into the Contract Documents, including, but not limited to, the 2014 Standard Specifications for Road, Bridge and Municipal Construction, and current amendments thereto.
- 6. The Owner agrees to pay to the Contractor in the manner and at such times as set forth in the Special Provisions such amounts as required by the Contract Documents.
- 7. The Contractor for himself, and for his/her heirs, executors, administrators, successors, and assigns, does hereby agree to the full performance of all of the covenants herein upon the part of the Contractor.
- 8. The Contractor agrees to submit a bond for contract retainage not to exceed five percent of the moneys earned by the contractor in a form acceptable to the City and from a bonding company meeting standards established by the City. The City shall accept a bond meeting these requirements unless the City can demonstrate good cause for refusing to accept it. This bond is to be retained as a trust fund for the protection and payment of the claims of any person arising under the contract and the state with respect to taxes imposed which may be due from such contractor.
- 9. It is further agreed that no liability shall attach to the City of University Place by reason of entering into this contract, except as expressly provided herein.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed the day and year first above written.

CITY OF UNIVERSITY PLACE	CONTRACTOR
By Stephen P. Sugg City Manager	
ATTEST:	APPROVED AS TO FORM:
Emy Genetia	Steve Victor
City Clerk	City Attorney