

**DEVELOPMENT AGREEMENT AND  
TERMINATION OF CONCOMITANT AGREEMENT  
BY AND BETWEEN THE CITY OF PUYALLUP  
AND BENAROYA CAPITAL COMPANY, L.L.C.**

THIS DEVELOPMENT AGREEMENT AND TERMINATION OF CONCOMITANT AGREEMENT (the "Agreement") is entered into effective on the \_\_ day of \_\_\_\_\_, 2023 by and between the City of Puyallup, Washington (the "City"), Benaroya Capital Company, L.L.C., a Washington limited liability company (the "Developer"), and Kaiser Foundation Health Plan of Washington, Inc., a Washington non-profit organization ("Kaiser"), successor-in-interest to Group Health Cooperative, in connection with the real property legally described on Exhibit A attached hereto (the "Property"), for the purposes and on the terms and conditions set forth herein. The current site plan for the Property is attached hereto as Exhibit B.

WHEREAS, Developer and Kaiser own and controls the Property, which has been developed since 1981 with various commercial and industrial uses pursuant to that certain Concomitant Agreement dated May 29, 1981 and recorded at recording number 8106260306, records of Pierce County, Washington (the "Concomitant Agreement"); and

WHEREAS, the development contemplated in 1981 by the Concomitant Agreement has been completed or abandoned, and the parties agree that the Concomitant Agreement has limited relevance to the current and future development of the Property; and

WHEREAS, pursuant to the Growth Management Act, Chapter 36.70A RCW and its Comprehensive Plan, the City has zoned the Property as MP, which zoning properly regulates the use and development of the Property; and

WHEREAS, Developer has applied for a binding site plan approval to provide for the further segregation of the Property (the "BSP Application"), and in connection with the BSP Application the parties desire to terminate the Concomitant Agreement but retain, via this Agreement, certain provisions of the Concomitant Agreement that continue to have relevance to the development of the Property: [and](#)

[WHEREAS, during the property's history, it has been occupied by various high technology manufacturing companies, most notably "The Fairchild Camera and Instrument Corporation", "National Semiconductor" and "MASCA – Matsushita Semiconductor Corp. of America"; and](#)

WHEREAS, as part of the manufacturing operations of these various entities, a water treatment plant and a wastewater treatment plant, were constructed on site; and

WHEREAS, a 5 ½ mile wastewater transmission line, also referred to as a tightline and/or forcemain, was constructed within the City of Puyallup's ROW; and

WHEREAS, the manufacturing process required three separate points of discharge to leave the property - one point was the gravity sewer that conveyed conventional sewage i.e., bathrooms, sinks, and laundry, the second point was the stormwater infiltration pond that collected the filter backwash water, and the third point was the 5 ½ mile tightline; and

WHEREAS, the tightline is a 10-inch, mortar-lined, class 50 ductile iron pipe that was modeled to convey treated industrial wastewater water at a maximum rate of 1.6 million gallons per day (mgd), from the site to the City's water pollution control plant (WPCP) located at 1602 18<sup>th</sup> St NW; and

WHEREAS, according to reports, the tightline operated at a rate of roughly 1.15 mgd; and

WHEREAS, the characteristics of the industrial wastewater prior to treatment were of two types of acid chemicals one wastewater stream contained fluorides and phosphates that included hydrofluoric acid, ammonium fluoride, fluoride rinse water and phosphoric acid and the other wastewater stream was comprised of other acid rinse wastes and rinses; and

WHEREAS, the process to treat the fluoride and phosphates created an elevated pH condition in the effluent, which was then mixed with the other process that contained a low pH to neutralize the pH prior to discharging to the tightline and ultimately to a holding tank at the City's WPCP and

WHEREAS, after monitoring of the conditions at the holding tank, the treated wastewater was then mixed with the City's treated wastewater, prior to discharging to the Puyallup River.

NOW THEREFORE, for good and sufficient consideration and the mutual promises and covenants contained in this Agreement, the City and Developer agree as follows:

- 1) **Ownership and Warranty of Developer's Authority.** The Property is currently owned by Developer and Kaiser. Developer and Kaiser hereby warrant to the City that the Developer is authorized to commence negotiation of this Development Agreement and to so bind the Property.
- 2) **Termination of Concomitant Agreement.** The Concomitant Agreement is hereby terminated in its entirety. Neither Party shall have any remaining obligations or rights under the Concomitant Agreement.
- 2)3) Term. The term of this agreement shall be for 10 years from the effective date of the adopting resolution.

34) **Property Conditions.** Development of the Property (or portions thereof) shall be subject to the following conditions:

a) **Landscape Buffer.** A thirty-five (35) foot buffer area will be maintained on the west, south, north and east sides of the Property and as much of the natural vegetation as is reasonably possible will be retained in the buffer area. The buffer area may be used for vehicular driveways, pedestrian paths, pedestrian amenities, security fencing, lighting and utility installation.

b) **Noise Generating Uses.** Equipment anticipated to generate noise that exceeds legal requirements shall be located at least 400 feet from the boundary lines of the Property, unless such equipment is used for emergency purposes or its use is otherwise exempt from compliance with the City's noise ordinance. Periodic testing of emergency generators located within this 400-foot zone shall only occur between the hours of 9 a.m. and 5 p.m.

c) **Stormwater Easements.** Lots on the Property created by approval of ~~the Binding Site Plan~~ Application # [PLBSP20230028](#) shall grant each other reciprocal easements for stormwater conveyance and detention, as necessary under the approved overall stormwater drainage plan for the Property.

d) **Sewer Tightline Abandonment:** The Developer retains ownership of a currently unused private sewage tightline, which extends from the subject property and extends to the City of Puyallup sewage treatment plant. This sewer tightline shall be decommissioned within 180 days of execution of this agreement. The Developer shall submit at their cost, prepared sewer tightline decommissioning plans by a mutually acceptable Professional Engineer (P.E.) of appropriate trade and expertise. The decommissioning process shall include all items necessary to safely decommission the pipe to the City's satisfaction. At minimum the plan shall include all of the items listed in Appendix A. Any damage to the City gravity sewer system by decommissioning operations shall be replaced by the Developer at no expense to the City.

e)

e) **Truck Deliveries.** Truck deliveries to the Property will be limited to the hours between 7:00 a.m. and 7:00 p.m., seven days per week, except in cases of urgent necessity, emergency services or based on the delivery of public or health-care related services.

f) **Pedestrian Access Point.** The Concomitant Agreement identified a potential "pedestrian access point" on the Property in 1981. The parties confirm there is no pedestrian access point on the Property and none is needed.

g) **Access Road on North Property line.** The concomitant agreement identified the need for an access road on the norther property line of the project. This road was intended to mitigate for impacts to roads of the project identified in the EIS and required by the Ordinance. After completion of phase II of the Project, the Developer will be responsible for one-half the cost of construction of an access road along the northerly property line of the Property, or, at the option of the City, such other access road as may be designated by the City with Fairchild's cost not to exceed the cost that would be required to construct

Commented [RNB1]: See pg. 17-18 of concomitant agreement.

Commented [JB2]: Correct reference?

one-half of the access road along the northerly property line of the Property. Based on a current surveyor's estimate, the latter alternative would be equivalent to the cost of constructing a road of approximately 825 feet in length to such standards as are consistent with the City's classification for that access road. Completion of phase II of the Project is defined as the point in time when employment on the Property is greater than fifteen hundred (1500) employees.

h) Toxic Cleanup. The property contains two known toxic cleanup sites that are currently undergoing cleanup through the Department of Ecology's Voluntary Cleanup Program (Clean up ID # 6308 and # 16737). Clean up has started on the diesel cleanup site (ID ## 6308). However, cleanup has not commenced at site # 16737). Due to the nature of the contaminate found at this site ( \_\_\_\_\_ ), the Developer shall take action to establish a schedule of cleanup with the Department of Ecology within 1 year of this agreement. Furthermore, additional toxic cleanup monitoring wells shall be installed at the northwest corner of the property in the vicinity of the northwest property lines. These wells will collect data to establish, to the City's satisfaction, that the contamination has not leached off of this subject site and onto the City's adjacent property.

i) As a result of vapor intrusion concerns related to chlorinated solvents within at least a 100-foot radius of the identified contaminated area, Developer shall complete a Tier 2 vapor intrusion investigation consistent with Ecology publication 09-09-047, Guidance for Evaluating Vapor Intrusion in Washington State, revised March 2022. The analysis must provide sufficient analytical data for Ecology to concur that chlorinated solvent concentrations in indoor air do not and would not present an unacceptable risk to building occupants.

e)j) All issues or matters not addressed by this agreement shall be determined and interpreted consistent with Puyallup City Code and other applicable law.

5) Zoning. The Property is zoned MP. [Uses permitted in the MP zone on the date of this Agreement shall be permitted on the Property], including without limitation office uses and datacenter uses.

4)6) Site Plan. A conceptual site and stormwater plan depicting existing and proposed lot lines, sensitive areas and buffers, perimeter buffers, location and size of nonresidential **development** is incorporated here by reference and shall govern the development of this site, except that additional buildings and developments may be added if they meet all requirements of the applicable zone and development standards in place at the time of their application. Conceptual site plan shall be that approved and recorded under Binding Site Plan # \_\_\_\_\_

7) Phase. A single phase is proposed for this project, namely **execution** of the binding site plan subdivision.

5)8) Identity of the City. The City is a non-charter code City organized pursuant to Title 35A RCW, being the Optional Municipal Code. The City operates within the Council - Manager

**Commented [RNB3]:** All Development Agreements must have a 'sunset date' or 'term of the agreement'. See comments below regarding the term limit of the agreement.

**Commented [RNB4]:** In a previous paragraph this document mentions "Phase II". This seems to conflict. Please reconcile the language in the two locations.

Plan of Government.

~~6)9)~~ **Warranty of City's Authority.** The City is delegated authority by RCW 36.70B.170 through 36.70B.200 to enter into Development Agreements as a proper exercise of the municipal police power and contract authority. This Agreement is entered into pursuant to the said authority. It is hereby warranted that the undersigned City Manager has full authority to so enter into this Agreement pursuant to duly adopted Resolution No. \_\_\_\_ of the City Council.

~~7)10)~~ **Public Notice.** The City has provided advanced notice of a public hearing on this matter.

~~8)11)~~ **Development Regulations.** All development regulations and associated charges in existence as of the date complete applications are filed in conformance with this Agreement shall apply to and govern and vest the development of the Property during the term of this Agreement except as modified by specific terms of this Agreement.

**Commented [RNB5]:** Please specify the charges mentioned in this section.

**Commented [RNB6]:** With this language the vesting term will be controlled by the term of the agreement (which has been added above). It could be shorter than the term of the agreement but probably shouldn't be longer.

~~9)12)~~ **Party Consultation.** In event of any dispute as to interpretation or application of the terms or conditions of this Agreement, the Developer and/or Kaiser and the City Manager shall meet within ten (10) business days after request from any party for the purpose of attempting, in good faith, to resolve the dispute. The meeting may, by mutual agreement, be continued to a date certain in order to include other parties or persons, or to obtain additional information.

**Commented [RNB7]:** A term limit must be included with this agreement. The City believes that 10 years is the maximum amount of time the term should be set for. A term paragraph has been added above as a placeholder.

~~10)13)~~ **Appeals.** In the event that a dispute is not resolved through party consultation pursuant to the previous paragraph, the matter may be appealed to the City's Appellate Hearing Examiner.

~~11)14)~~ **Judicial Appeal.** Any aggrieved party may appeal the decision of the Appellate Hearing Examiner to the Pierce County Superior Court, as may be allowed by law and court rules. The standard of review shall be error of law or fact, and not arbitrary or capricious.

~~12)15)~~ **Recording.** This Agreement shall, when approved by the City Council and executed by the parties hereto, be filed as a matter of public record in the office of the Pierce County Auditor. It is the intent to have this Agreement, so long as it is in force, to be considered, interpreted, and regarded as a covenant running with the land.

~~13)16)~~ **Applicable Law.** This Agreement shall be governed by and be interpreted in accordance with the laws of the State of Washington.

~~14)17)~~ **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each party hereto. The parties acknowledge that Developer and Kaiser shall respectively have the right to assign or transfer all or any portion of the interests, rights and obligations under this Agreement to other parties acquiring an interest or estate in any portion of the Property owned by that party. Consent by the City shall not be required for any transfer or rights pursuant to this Agreement.

~~15)~~18) **Severability.** If any provision of this Agreement is determined to be unenforceable or invalid by a court of law, then this Agreement shall thereafter be modified to implement the intent of the parties to the maximum extent allowable under law.

~~16)~~19) **Modification and Statutory Reservation in the Interest of Public Health and Safety.**

This Agreement shall not be modified or amended except in writing signed by the City, Developer and Kaiser or their respective successors in interest; provided the City expressly reserves authority under RCW 36.70B.170(4) to impose new or different regulations to the limited extent required by a serious threat to public health and safety.

~~17)~~20) **Merger.** This Agreement represent 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.

~~18)~~21) **Duty of Good Faith.** Each part hereto shall cooperate with the other in good faith to achieve the objectives of this Agreement. The parties shall not unreasonably withhold requests for information, approvals or consents provided for, or implicit, in this Agreement. The parties agree to take further actions and execute further documents, either jointly or within their respective powers and authority, to implement the intent of this Agreement and any subsequent Development Agreement.

~~19)~~22) **Disclosure upon Transfer.** Developer and Kaiser agree that in the event of a proposed sale, gift, transfer, segregation, assignment or device of a portion of the Property by either party, that party shall disclose the existence of this Agreement to the interested party.

~~20)~~23) **No Presumption against Drafter.** This Agreement has been reviewed and revised by legal counsel for all parties and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this Agreement.

~~21)~~24) **Notices.** All communications, notices and demands of any kind which a party under this Agreement is required or desires to give to any other party shall be in writing and be either (1) delivered personally, (2) sent by facsimile transmission with an additional copy mailed first class, or (3) deposited in the U.S. mail, certified mail postage prepaid, return receipt requested, and addressed as follows:

**If to the City:**

City of Puyallup Development Services

Attn: \_\_\_\_\_

1100 - 39<sup>th</sup> Ave SE

Puyallup, WA 98374

**If to the Developer:**

Benaroya Capital Company, L.L.C.

Attn: Larry Benaroya  
9675 SE 36<sup>th</sup> Street, Suite 115  
Mercer Island, WA 98040

**If to Kaiser:**

Kaiser Foundation Health Plan of Washington, Inc.  
One Kaiser Plaza, 22<sup>nd</sup> Floor  
Oakland, CA 94612  
Attn: Real Estate Department

Notice by hand delivery or facsimile shall be effective upon receipt. If deposited in the mail, notice shall be deemed received 48 hours after deposit. Any party at any time by notice to the other party may designate a different address or person to which such notice shall be given.

22)25 **Ratification and Confirmation.** Any acts consistent with the authority and prior to the effective date of this Agreement are hereby ratified and confirmed.

IN WITNESS WHEREOF, the undersigned have set their hands the day and date set out next to their signatures.

**CITY OF PUYALLUP**

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**BENAROYA CAPITAL COMPANY, L.L.C.**

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**KAISER FOUNDATION HEALTH PLAN OF WASHINGTON, INC.**

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## Appendix A

### Decommissioning Plan – Minimum Requirements

1. Meet WSDOT standard specifications for type of work to be performed and best practices
2. Test Soil along forcemain to verify absence of contaminated soil. Sample along the forcemain at:
  - a. Points of damage along forcemain (survey via CCTV)
  - b. Drain valves
  - c. Air reliefs
3. Provide as-builts for the line.
4. Provide a GIS map layer of the entire line including access points.
5. Cap lines and properly abandoned per WADOT specs (i.e. filled with CDF).
  - a. Pipe shall be cleaned so as to be free from all adhering material prior to capping and/or filling of force main.
  - b. Pipe will be sufficiently clean when CDF can properly adhere to it.