MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN THE CITY OF DUVALL
AND THE RIVERVIEW SCHOOL DISTRICT NO. 407
REGARDING VESTING TO CERTAIN DEVELOPMENT REGULATIONS

THIS MEMORANDUM OF UNDERSTANDING ("Agreement") is made and entered into this _____ day of _________________, 2019, by and between the City of Duvall, Washington a municipal corporation (the "City") and the Riverview School District No. 407, a political subdivision of the State of Washington (the "District"), collectively, the "Parties."

RECITALS

A. The District is a public school district with service area boundaries that include the City. The District has identified that additional property is required to service the District's future school purposes and needs. The District has located three contiguous parcels, totaling 62.56 acres, and located currently immediately adjacent to the City and within the Urban Growth Area. The three parcels are identified by King County Parcel Identification Numbers 1826079016, 1826079015, and 1726079040 (collectively, the “Acquisition Properties”).

B. The City Council approved on December 4, 2018, Resolution #18-17 amending the Future Land Use Map of the City’s Comprehensive Plan to change the future land use designation of the Acquisition Properties from North Urban Growth Area Reserve to Public Facilities (the “2018 Comprehensive Plan Map Amendment”).

C. The City issued an Addendum to the 2015 Comprehensive Plan Environmental Impact Statement on November 14, 2018 (the “EIS Addendum”) to support the 2018 Comprehensive Plan Map Amendment. The EIS Addendum contains conditions to be included within an annexation or development agreement to limit potential impacts of development of the Acquisition Properties.

D. The EIS Addendum references compliance of future development of the Acquisition Properties with all applicable standards in effect at time the development proposal is submitted.

E. The District’s purchase of the Acquisition Properties is contingent upon, among other things, the City’s annexation of the Acquisitions Properties to enable the District to seek permitting by the City of future school facilities on the Acquisition Properties.

F. The District has performed preliminary due diligence reports on the Acquisition Properties as further detailed herein (the “Sensitive Area and Tree Information”) and submitted such reports to the City as a part of the Comprehensive Plan amendment process.
G. The District will have exclusive ownership and control of the Acquisitions Properties following closing of the purchase (the “Closing”).

H. The District anticipates that, while it may utilize the Acquisitions Properties for some school purposes following Closing, it will not construct all of the anticipated School Facilities, as defined herein, on the Acquisitions Properties until several years after Closing. However, the District anticipates that it will need in the future to fully utilize the developable portions of the Acquisitions Properties for the School Facilities.

I. The District desires through this Agreement and in a future annexation or development agreement, some assurance that it will be able to develop the Acquisitions Properties for the intended School Facilities assuming current Existing Sensitive Areas and Tree Protection Regulations (as defined herein).

J. The District recognizes that the City would need to take future action, at the City’s discretion, to revise the EIS Addendum to provide a baseline for assurances related to development of the Acquisition Properties using current Existing Sensitive Areas and Tree Protection Regulations.

K. The City believes that the development of the School Facilities will provide significant benefit to the City and its citizens through the provisions of critical public infrastructure, educational programming, and community use opportunities.

L. The City desires to provide the District with a framework for securing certain assurances relating to future development of the Acquisitions Properties if developed by the District for the School Facilities within an agreed time period.

M. The District and the City anticipate that, as a part of any annexation activity, the Parties would enter into a development agreement under the authority of RCW 36.70B.170 as a proper exercise of the City’s police power. In advance of such agreement, the District and the City desire to enter into this Agreement to document the Parties’ intent related to development of the Acquisition Properties pursuant to and consistent with the Existing Sensitive Areas and Tree Protection Regulations and the Sensitive Area and Tree Information.

NOW, THEREFORE, in consideration of the promises and of the agreements herein set forth, the Parties agree as follows:

Section 1. Definitions. As used in this Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section. Terms, phrases and words defined in the Recitals are incorporated herein by reference.

A. “Adopting Resolution” means the Resolution which approves this Agreement.

B. “City Code” means the City municipal code in effect as of the date hereof.
C. “Council” means the duly elected legislative body governing the City of Duvall.

D. “Development Agreement” means any development agreement executed by the Parties pursuant to the authority of RCW 36.70B.170.

E. “Director” means the City’s Community Development Director.

F. “Effective Date” means the effective date of the Adopting Resolution.

G. “Environmental Commitments” means those specific conditions included on pages 10 and 11 in the EIS Addendum to limit impacts to Water/Earth Resources, Plants and Animals, and Transportation.

G. “Existing Sensitive Areas and Tree Protection Regulations” means the ordinances adopted by the City Council of Duvall in effect on the Effective Date of this Memorandum of Understanding and as contained in Chapter 14.42, Sensitive Areas of the City Code and Chapter 14.40, Tree Protection of the City Code, both chapters as attached in full hereto.

H. “School Facilities” means any use or development of the Acquisition Properties for permanent or temporary buildings, parking, access roads, playfields, open space, stormwater facilities, any other ancillary needs associated with the use of the Acquisition Properties for educational and school purposes, as illustrated by way of example on the Highest and Best Use School Facilities Site Plan attached hereto.

I. “Sensitive Area and Tree Information” means the following documents for the Acquisition Properties on file with the Director as of the date hereof: (i) Critical Area Maps, dated October 2018, prepared by Blue Line Group; (ii) Consistency Evaluations for Habitat Corridor Protection Standards pursuant to DMC 14.42.350 and Fish and Wildlife Conservation Areas pursuant to DMC 14.42.360, dated October 14, 2018, prepared by Blue Heron Services; (iii) Arborists Reports, dated October 11, 2018, prepared by ABC Herron Tree LLC; and (iv) Wetland Information, dated October 11, 2018, prepared by Blue Heron Services, all as included in the record for the 2018 Comprehensive Plan Map Amendment.

Section 2. Term of Agreement. This Agreement shall commence upon the Effective Date of the Adopting Resolution approving this Agreement, and shall continue in force until the earlier of (1) the Parties’ execution of the Development Agreement; or (2) for a period of ten (10) years from the date of this Agreement unless extended or terminated as provided herein. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect.

Section 3. Certain Vested Rights of District. The terms of any annexation or development agreement shall, if supported by a preceding revision to the EIS Addendum, provide the District with assurances that the Existing Sensitive Areas and Tree Protection Regulations shall apply to any development of the Acquisition Properties for School Facilities and that the City will look to the Sensitive Area and Tree Information, as updated for purposes of compliance with the Environmental Commitments, for purposes of evaluating compliance with the same.
Section 4. **Permitted Uses and Development Standards.** Other than the specific agreements as set forth herein, the permitting and construction of the School Facilities shall be subject to and in compliance with the City Code provisions and any other applicable regulations in effect at the time of any development application.

Section 5. **Environmental Commitments.** To limit potential environmental impacts from development of the School Facilities, the City will determine the timing, sequence, and implementation of the Environmental Commitments.

Section 6. **Impacts to Sensitive Areas.** Any annexation or development agreement will include the District’s agreement to not impact sensitive areas beyond those impacts shown on the highest and best use depicted on Exhibit A hereto and minimal buffer impacts as allowed by applicable development regulations to address trails construction and public infrastructure needs for utilities to the Acquisition Properties and site frontage on NE 150th Street.

Section 7. **Future Amended Sensitive Area and Tree Protection Regulations.** Nothing herein shall be deemed to limit the District’s discretion to comply with any future amended sensitive area and tree protection regulations that the City may adopt as replacements to the Existing Sensitive Area and Tree Protection Regulations.

Section 8. **Property Transfer; No Third Party Rights.** This Agreement and the District’s rights as set forth herein shall be specific to the Acquisition Properties with the District as owner of such properties. The District shall have no right to sell, assign or transfer this Agreement with all their rights, title and interests therein to any person, firm or corporation at any time during the term of this Agreement. Without limiting the foregoing and by way of example only, any third party owner of all or any portion of the Acquisition Properties shall have no rights under this Agreement.

Section 9. **Termination.** This Agreement shall expire and/or terminate as provided below:

A. This Agreement shall expire and be of no further force and effect if the District fails to purchase the Acquisition Properties by the Closing date, including any agreed extension of such Closing date; provided that, the District’s decision to purchase some but not all of the Acquisition Properties shall not result in any termination of this Agreement but shall instead redefine the Acquisition Properties to include only the property(ies) purchased by the District as of the Closing date.

B. This Agreement shall expire and be of no further force and effect if the District does not construct the School Facilities as contemplated by this Agreement but instead submits applications for development of the Acquisition Properties that is substantially inconsistent with use of the Acquisition Properties for school purposes.

C. This Agreement shall terminate upon the expiration of the term identified in Section 2.
Section 7. **Effect upon Termination on District Obligations.** Termination of this Agreement as to Acquisition Properties or any portion thereof shall not affect any of the District’s obligations to comply with the City Comprehensive Plan, City Code and the terms and conditions or any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the Acquisition Properties, or obligations to pay assessments, liens, fees or taxes.

Section 8. **Applicable Law and Attorneys’ Fees.** This 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 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 9. **Severability.** If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this 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 Agreement, and either party in good faith determines that such provision or provisions are material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

Section 10. **Attached Exhibits:** The Parties acknowledge the following exhibits attached to this Agreement:

- Exhibit A: School Facilities Highest and Best Use Site Plan
- Exhibit B: Chapter 14.40 DMC
- Exhibit C: Chapter 14.42 DMC
- Exhibit D: 2015 Comprehensive Plan Environmental Impact Statement Addendum

**SIGNATURES FOLLOW**
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the dates set forth below.

RIVERVIEW SCHOOL DISTRICT
NO. 407

By ____________________________
Its Superintendent

CITY OF DUVALL

By ____________________________
Its Mayor

ATTEST:

By ____________________________
City Clerk

APPROVED AS TO FORM:

By ____________________________
City Attorney
EXHIBIT A
HIGHEST AND BEST USE SCHOOL FACILITIES SITE PLAN