

**Subject: Resolution #652 – Authorization To Execute Agreement with Stack Hill Homeowner’s Association**

**Dept. Origin:** Utilities Department  
**Prepared by:** Jennifer Robertson  
 City Attorney’s Office  
**For Agenda of:** May 2, 2017  
**Exhibits:** Resolution #652 and attached Agreement

**Proposed Council Action:**

Consider adopting Resolution #652.

	Initial & Date
<b>Concurred by Mayor:</b>	_____
<b>Approved/form by City Atty:</b>	<u><b>JSR/04-20-17</b></u>
<b>Approved by _____ Director:</b>	_____
<b>Approved by Department Head:</b>	_____

**INFORMATION / BACKGROUND**

Stack Hill Homeowner’s Association (“Stack Hill HOA”) have requested that the City solid waste service be extended to serve its private road (N. Villard Court, hereinafter “Roadway”) so as to alleviate the need for the residents on the Roadway to haul their containers up to the public street. Given that this Roadway is a private road and the City’s solid waste trucks are heavy, the City expressed concern about damaging the Roadway. Stack Hill HOA offered to indemnify the City for any damage that occurs on this Roadway in exchange for services on the Roadway. The indemnification agreement has been through legal review and is acceptable to Stack Hill HOA.

**FISCAL CONSIDERATION**

The Agreement has no financial requirement by or to the City but it protects the City from liability if the Roadway is damaged by the solid waste trucks or operations. Nothing in the Agreement requires the City to continue to serve this Roadway or limits the City’s discretion in determining the operations or route of its solid waste service.

**RECOMMENDATION / MOTION**

Adopt Resolution #652 authorizing execution of the Indemnification Agreement with Stack Hill HOA.

**MOTION:** I move to approve Resolution #652 authorizing the Mayor to execute the Indemnification Agreement with Stack Hill HOA.

**RESOLUTION NO. 652**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RUSTON, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN INDEMNIFICATION AGREEMENT WITH STACK HILL HOMEOWNERS ASSOCIATION FOR PROVIDING SOLID WASTE SERVICES ON A PRIVATE ROADWAY.**

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WHEREAS, Stack Hill Homeowner’s Association (“Stack Hill HOA”) have requested that the City solid waste service be extended to serve its private road (N. Villard Court, hereinafter “Roadway”) so as to alleviate the need for the residents on the Roadway to haul their containers up to the public street; and

WHEREAS, this Roadway is a private road and the City’s solid waste trucks are heavy and could potentially damage the roadway; and

WHEREAS, in order to obtain solid waste services on this private road, the Stack Hill HOA offered to indemnify the City for any damage that occurs on this Roadway; and

WHEREAS, the Agreement has no financial requirement by or to the City but it protects the City from liability if the Roadway is damaged by the solid waste trucks or operations; and

WHEREAS, nothing in the Agreement requires the City to continue to serve this Roadway or limits the City’s discretion in determining the operations or route of its solid waste service; and

WHEREAS, the City Council finds it in the public interest to authorize the Mayor to execute the proposed Agreement which is attached to this Resolution as Exhibit “1”;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RUSTON, WASHINGTON, DOES HEREBY RESOLVE AS FOLLOWS:**

Section 1. Authorization of Agreement. The Mayor is hereby authorized to execute the Indemnification Agreement with Stack Hill Homeowners Association in substantially the form attached hereto as Exhibit "1".

RESOLVED this 2nd day of May, 2017.

APPROVED:

\_\_\_\_\_  
Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Judy Grams, City Clerk

FILED WITH THE CITY CLERK: \_\_\_\_\_

PASSED BY THE CITY COUNCIL: \_\_\_\_\_

RESOLUTION NO.: \_\_\_\_\_ 652 \_\_\_\_\_

**Attachment “1”**

**Indemnification Agreement between**

**Stack Hill HOA and the City of Ruston**

## INDEMNIFICATION AGREEMENT

This Indemnification Agreement (the "Agreement") is entered into as of the 20th day of April, 2017, by Stack Hill Home Owners Association, a Washington nonprofit corporation ("HOA"), and the City of Ruston, a Washington municipal corporation ("City").

### RECITALS

A. HOA is a nonprofit corporation organized under the Washington Nonprofit Corporation Act (RCW 24.03, the "Nonprofit Corporation Act"), so as to effectuate the management of Stack Hill, a subdivision of lots within Pierce County, Ruston, WA, the plat for which was filed and recorded with the Pierce County Auditor/Recorder as document number 200810305004 ("Stack Hill").

B. A private roadway located within Stack Hill, runs north and south and connects N. Commercial Street to N. Villard Street, this private roadway is named N. Villard Street (the "Roadway").

C. City is a municipality that operates a garbage collection service for the benefits of its residents.

D. City will not currently permit its garbage trucks to enter upon, drive over, or use the Roadway for the purpose of collecting garbage, recycling and/or yard waste ("Refuse").

E. Certain of the residents of Stack Hill whose homes are located adjacent to the Roadway are currently required to transport their Refuse containers to either N. Commercial Street or N. Villard Street for pick up (the "Affected Residents").

F. HOA, on behalf of the residents of Stack Hill, desires that City cause its garbage trucks to enter upon, drive over, and use the Roadway to collect Refuse from the Affected Residents.

G. City is willing to cause its garbage trucks to enter upon, drive over, and use the Roadway to collect Refuse from the Affected Residents (the "Designated Purpose"), subject to HOA agreeing to indemnify the City from and against claims related to City's use of the Roadway for the Designated Purpose, in accordance with the terms described below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the HOA and City agree as follows:

### AGREEMENT

1. HOA's Acceptance of Risk and Indemnification of City. HOA understands and accepts the responsibility for the risks associated with City's use of the Roadway for the Designated Purpose. The HOA shall defend, indemnify and hold the City, its officers, 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 any use of the Roadway for the Designated Purpose. If the City's solid waste operations damage the Roadway, HOA agrees that it shall be solely responsible for the repair and shall undertake the repair in a prompt manner. In the event the Roadway is damaged and is not promptly repaired, the City shall be entitled to stop picking up Refuse from customers via the Roadway.

2. No requirement to continue service on Roadway. The HOA acknowledges and agrees that the City, at its sole option, may cease picking up Refuse from the Roadway area. Furthermore, nothing in this Agreement requires the City to pick up Refuse at any specific location nor restricts the City for altering pick up locations or routes for its own convenience.

3. Captions. The captions and paragraph headings contained in this Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this Agreement, nor the intent of any provision hereof.

4. No Third Party Beneficiaries. The parties agree that this Agreement is solely for the benefit of City and that no rights are granted to any third party by this Agreement

5. Authority. All parties executing this Agreement in a representative capacity covenant that all necessary approvals have been granted by any government body required to provide them with the authority to enter into this Agreement.

6. Assignment. Neither party's obligation under this Agreement may be assigned or transferred to any other person, firm, or corporation without the prior written consent of the other party.

7. Entire Agreement. This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

8. Amendment. This Agreement may only be modified or amended by an amendment that is made in writing and is signed by both parties hereto.

9. Severability. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a Court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable then such provision shall be deemed to be written construed and enforced as so limited.

10. Applicable Law and Attorneys' Fees. This Agreement shall be governed by the laws of the State of Washington. If either of the parties hereto brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, or appeal thereon, shall be entitled to its reasonable attorneys' fees and court costs to be paid by the losing party as fixed by the court in the same or separate suit, and whether or not such action is pursued to decision or judgment. The attorneys' fee award shall not be computed in accordance with any court fee

schedule, but shall be such as to fully reimburse all attorneys' fees and court costs reasonably incurred.

11. Counterparts. This Agreement may be signed by facsimile and in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be an original.

IN WITNESS WHEREOF, this Agreement is executed as of the date first shown above.

**CITY OF RUSTON:**

CITY OF RUSTON,  
a Washington municipal corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Approved as to Form:  
City Attorney's Office

By:  \_\_\_\_\_  
Its: Jennifer Robertson, Ruston City Attorney

**HOA:**

STACK HILL HOME OWNERS  
ASSOCIATION, a Washington nonprofit  
corporation

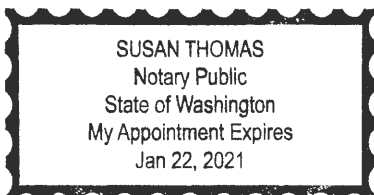
By:  \_\_\_\_\_  
Its: WES:DET

NOTARY BLOCK FOR STACK HILL HOA

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

On this 20th day of April, 2017, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Joren Cohen the President of the Stack Hill Home Owners Association, who acknowledged the signing of said instrument to be the free and voluntary act of the Stack Hill Home Owners Association and that he/she had the authority to execute this Agreement on behalf of the Stack Hill Home Owners Association for the uses and purposes therein mentioned.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.



Susan Thomas  
Notary Public in and for the State of Washington  
Printed Name: SUSAN THOMAS  
My appointment expires: January 22, 2021