

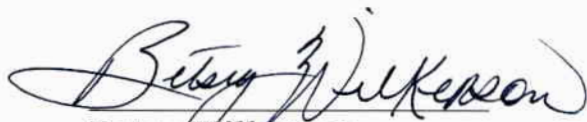
**SPECIAL MEETING NOTICE/AGENDA OF THE  
FINANCE & ADMINISTRATION COMMITTEE**

**MEETING OF MONDAY, JUNE 3, 2024  
10:00 A.M. – CITY COUNCIL CHAMBERS**

A special meeting of the Finance & Administration Committee will be held at **10:00 A.M. on Monday, June 3, 2024**, in the City Council Chambers – City Hall, 808 West Spokane Falls Boulevard, Spokane, Washington.

The meeting will be open to the public. No public testimony will be taken.

**AMERICANS WITH DISABILITIES ACT (ADA) INFORMATION:** The City of Spokane is committed to providing equal access to its facilities, programs and services for persons with disabilities. The Spokane City Council Chamber in the lower level of Spokane City Hall, 808 W. Spokane Falls Blvd., is wheelchair accessible and is equipped with an infrared assistive listening system for persons with hearing loss. Headsets may be checked out (upon presentation of picture I.D.) at the City Cable 5 Production Booth located on the First Floor of the Municipal Building, directly above the Chase Gallery or through the meeting organizer. Individuals requesting reasonable accommodations or further information may call, write, or email Risk Management at 509.625.6221, 808 W. Spokane Falls Blvd, Spokane, WA, 99201; or [mlovmaster@spokanecity.org](mailto:mlovmaster@spokanecity.org). Persons who are deaf or hard of hearing may contact Risk Management through the Washington Relay Service at 7-1-1. Please contact us forty-eight (48) hours before the meeting date.



**Betsy Wilkerson**  
Council President



**Laurie Farnsworth**  
Acting Spokane City Clerk

# THE CITY OF SPOKANE CITY COUNCIL FINANCE & ADMINISTRATION COMMITTEE



## AGENDA FOR 10:00 A.M. MONDAY, JUNE 3, 2024

The Spokane City Council's Finance and Administration Committee meeting will be held at **10:00 AM June 3, 2024**, in Council Chambers, located on the lower level of City hall at 808 W. Spokane Falls Blvd. The meeting can also be accessed live at <https://my.spokanecity.org/citycable5/live/> and <https://www.facebook.com/spokanecitycouncil> or by calling 1-408-418-9388 and entering the access code #2482 433 6563; meeting password 0320.

The meeting will be conducted in a standing committee format. Because a quorum of the City Council may be present, the standing committee meeting will be conducted as a committee of the whole council. The Finance & Administration Committee meeting is regularly held every 4<sup>th</sup> Monday of each month at 1:15 p.m. unless otherwise posted.

The meeting will be open to the public both virtually and in person, with the possibility of moving or reconvening into executive session only with members of the City Council and appropriate staff. No legislative action will be taken. No public testimony will be taken, and discussion will be limited to appropriate officials and staff.

## **AGENDA**

### **I. Call To Order**

### **II. Approval of Minutes from June 3, 2024**

### **III. Discussion Items**

1. 0320 – RESOLUTION ADOPTING 2024-2025 FEDERAL LEGISLATIVE AGENDA - ERIK POULSEN (10 minutes)
2. 0320 – RESOLUTION TO APPOINT COUNCIL BUDGET DIRECTOR - GIACOBBE BYRD (5 minutes)
3. ORDINANCE UPDATES ON CAMPING ENFORCEMENT - CM CATHCART (10 minutes)
4. 0410 - MID-YEAR BUDGET VARIANCE SBO - MATT BOSTON (5 minutes)
5. 1680- SPECIAL BUDGET ORDINANCE- HIFUMI EN - ARIELLE ANDERSON (5 minutes)
6. 0650 - SPECIAL BUDGET ORDINANCE – FTA PILOT PROGRAM FOR TOD - COLIN QUINN-HURST (5 minutes)

### **IV. Consent Items**

1. 0320-RESOLUTION APPOINTING MEMBERS TO EQUITY SUBCOMMITTEE (CITY COUNCIL)
2. CODE OF ETHICS REVISION (CITY ATTORNEY)
3. RENUMBERING OF WHISTLEBLOWER PROTECTIONS (CITY ATTORNEY)
4. 0500 WESTLAW LEGAL RESEARCH CONTRACT (CITY ATTORNEY)
5. 0500 OUTSIDE COUNSEL CONTRACT AMENDMENT (CITY ATTORNEY)
6. 5100 - ON-GOING PUBLIC AUCTION SERVICES (CITY WIDE) (CONTRACTS & PURCHASING)
7. 5600 - BENEVATE AMENDMENT (ACCOUNTING & GRANTS)
8. 5100 - CONTRACT RENEWAL WITH MEGA CR WASH LLC (FLEET SERVICES)
9. 5800 - SETTLEMENT RESOLUTION (RISK MANAGEMENT)
10. 5100 - FLEET SERVICES TIERED HD VEHICLE REPAIR - CUMMINS SALES & SERVICE (FLEET SERVICES)

11. 5100 - FLEET SERVICES TIERED HD VEHICLE REPAIR - DOBBS PETERBILT (FLEET SERVICES)
12. 5100 - FLEET SERVICES TIERED HD VEHICLE REPAIR - GORDON TRUCK CTRS (FLEET SERVICES)
13. 5100 - FLEET SERVICES TIERED HD VEHICLE REPAIR - KENWORTH SALES (FLEET SERVICES)
14. 5100 - FLEET SERVICES TIERED HD VEHICLE REPAIR - SOLID WASTE SYSTEMS (FLEET SERVICES)
15. 5100 - FLEET SERVICES TIERED HD VEHICLE REPAIR - RWC (FLEET SERVICES)

**V. Executive Session**

Executive Session may be held or reconvened during any Finance & Administration Committee meeting.

**VI. Adjournment**

**VII. Next Meeting**

**Next Finance & Administration Committee**

The next meeting will be held at the regular date and time of **1:15 PM. June 24, 2024.**

**AMERICANS WITH DISABILITIES ACT (ADA) INFORMATION:** The City of Spokane is committed to providing equal access to its facilities, programs and services for persons with disabilities. The Spokane City Council Chamber in the lower level of Spokane City Hall, 808 W. Spokane Falls Blvd., is wheelchair accessible and is equipped with an infrared assistive listening system for persons with hearing loss. Headsets may be checked out (upon presentation of picture I.D.) at the City Cable 5 Production Booth located on the First Floor of the Municipal Building, directly above the Chase Gallery or through the meeting organizer. Individuals requesting reasonable accommodations or further information may call, write, or email Risk Management at 509.625.6221, 808 W. Spokane Falls Blvd, Spokane, WA, 99201; or [m\\_lowmaster@spokanecity.org](mailto:m_lowmaster@spokanecity.org). Persons who are deaf or hard of hearing may contact Risk Management through the Washington Relay Service at 7-1-1. Please contact us forty-eight (48) hours before the meeting date.



**Agenda Sheet for City Council:**

**Committee:** Finance & Administration **Date:** 06/03/2024

**Committee Agenda type:** Discussion

**Date Rec'd**

5/20/2024

**Clerk's File #**

**Renews #**

**Cross Ref #**

**Council Meeting Date:** 06/24/2024

**Submitting Dept**

CITY COUNCIL

**Project #**

**Contact Name/Phone**

ERIK POULSEN 625-6721

**Bid #**

**Contact E-Mail**

EPOULSEN@SPOKANECITY.ORG

**Requisition #**

**Agenda Item Type**

Resolutions

**Council Sponsor(s)**

ZZAPPONE JBINGLE PDILLON

**Agenda Item Name**

0320 – RESOLUTION ADOPTING 2024-2025 FEDERAL LEGISLATIVE AGENDA

**Agenda Wording**

Resolution Adopting 2024-2025 Federal Legislative Agenda

**Summary (Background)**

Pursuant to SMC 02.03.030, the City Council establishes the legislative priorities for the City of Spokane after consultation with the Mayor and other interested parties. The proposed resolution is to adopt the federal legislative priorities for the years 2024 - 2025, as set forth in Attachment A of the resolution. This list has been developed with key members of the administration, contract lobbyists and other interested parties.

Lease? NO

Grant related? NO

Public Works? NO

**Fiscal Impact**

Approved in Current Year Budget? N/A

Total Cost

\$

Current Year Cost

\$

Subsequent Year(s) Cost

\$

**Narrative**

Not Applicable

**Amount**

**Budget Account**

Select

\$

#

Select

\$

#

Select

\$

#

Select

\$

#

\$

#

\$

#



## Committee Briefing Paper

### Finance & Administration Committee

<b>Committee Date</b>	06/03/24
<b>Submitting Department</b>	City Council
<b>Contact Name</b>	Erik Poulsen
<b>Contact Email &amp; Phone</b>	<a href="mailto:epoulsen@spokanecity.org">epoulsen@spokanecity.org</a> ; 625-6721
<b>Council Sponsor(s)</b>	Zappone, Bingle, Dillon
<b>Select Agenda Item Type</b>	<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Discussion    Time Requested:
<b>Agenda Item Name</b>	0320 – Resolution Adopting 2024-2025 Federal Legislative Agenda
<b>Proposed Council Action</b>	<input checked="" type="checkbox"/> Approval to proceed to Legislative Agenda <input type="checkbox"/> Information Only
<b>Summary (Background)</b>  *use the Fiscal Impact box below for relevant financial information	<p>Pursuant to SMC 02.03.030, the City Council establishes the legislative priorities for the City of Spokane after consultation with the Mayor and other interested parties. Attached is the proposed resolution to adopt the federal legislative priorities for the years 2024 – 2025, as set forth in Attachment A to the resolution. This list has been developed with key members of the administration, contract lobbyists and other interested parties.</p> <p><input type="checkbox"/> Ordinance    <input checked="" type="checkbox"/> Resolution</p> <p>Committee review: F &amp; A June 3, 2024            Advance Agenda: June 10, 2024            Action: June 24, 2024</p>
<b>Fiscal Impact</b> <b>Approved in current year budget?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A Total Cost: <a href="#">Click or tap here to enter text.</a> Current year cost: Subsequent year(s) cost:	
<b>Narrative:</b> Please provide financial due diligence review, as applicable, such as number and type of positions, grant match requirements, summary type details (personnel, maintenance and supplies, capital, revenue), impact on rates, fees, or future shared revenue	
<b>Funding Source</b> <input type="checkbox"/> One-time <input type="checkbox"/> Recurring <input checked="" type="checkbox"/> N/A Specify funding source: Select Funding Source* Is this funding source sustainable for future years, months, etc? <a href="#">Click or tap here to enter text.</a>	
<b>Expense Occurrence</b> <input type="checkbox"/> One-time <input type="checkbox"/> Recurring <input checked="" type="checkbox"/> N/A  Other budget impacts: (revenue generating, match requirements, etc.)	
<b>Operations Impacts</b> (If N/A, please give a brief description as to why) <ul style="list-style-type: none"> <li>• What impacts would the proposal have on historically excluded communities?</li> </ul>	

**The legislative priorities of the City typically reflect a variety of policy and budget priorities of the City, and thus do not lend themselves to categorization by equity impact. However, the federal legislative priorities include a number of initiatives that are likely to benefit underserved and marginalized communities, including housing, childcare and tax credits.**

- How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?

**Not applicable**

- How will data be collected regarding the effectiveness of this program, policy, or product to ensure it is the right solution?

**Success of legislative effort is measured by how many of the priority measures and budget requests of the City are enacted by Congress.**

- Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

**The City Council adopts legislative priorities pursuant to SMC 02.02.030 after consultation with the Mayor and interested parties. This list has been developed by the legislative team with assistance from key members of the administration, contract lobbyists and other interested parties.**

### **Council Subcommittee Review**

- Please provide a summary of council subcommittee review. If not reviewed by a council subcommittee, please explain why not.

**This list is developed by the council's Legislative Committee.**



**RESOLUTION NO. 2024-\_\_\_\_\_**

A Resolution adopting the City of Spokane's federal legislative agenda for the years 2024-2025.

**WHEREAS**, Spokane Municipal Code section 02.03.030 provides that "[a]ny legislative agenda to be advocated for by the City of Spokane at the state or federal level shall be adopted, and may be amended by resolution of the City Council, after consultation with the Mayor, as the official legislative agenda of the City of Spokane"; and

**WHEREAS**, the City Council periodically identifies a list of on-going congressional goals and priorities; and

**WHEREAS**, the City Council has consulted with its federal contract lobbyists, administration staff and interested stakeholders to form the attached initial list of congressional priorities for the years 2024-2025; and

**WHEREAS**, the attached federal legislative agenda shall guide the City of Spokane's efforts at the federal level for the years 2024-2025;

**NOW, THEREFORE, BE IT RESOLVED** that the Spokane City Council hereby adopts its City of Spokane 2024-2025 Federal Legislative Agenda, as specified in Attachment A to this Resolution.

**ADOPTED** by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney

Attachment A

Adopted by City Council via Resolution 2024-\_\_\_\_\_ on June \_\_\_\_, 2024

## CITY OF SPOKANE 2024-2025 FEDERAL PRIORITIES

The City of Spokane will advocate for federal policies, direct funding and financing tools to:

- Invest in transportation, water infrastructure, and sustainability initiatives;
- Create more housing opportunities and provide essential human services to address homelessness, respond to the fentanyl crisis, and improve public safety; and
- Grow the region's economy and support its workforce.

### TRANSPORTATION, WATER INFRASTRUCTURE, & SUSTAINABILITY

- **Latah Bridge:** The City will work with our Congressional delegation and regional transportation stakeholders to secure federal grant funding for the \$65 million Latah Bridge rehabilitation project.
- **US 195:** The City will partner with regional stakeholders and our Congressional delegation to identify and implement solutions that increase safety and freight mobility in this key corridor.
- **Monroe Street Bridge:** The City will seek additional funding for safety improvements on this historic bridge, building on the success of last year's Congressionally Directed Spending (CDS) grant to address suicide prevention.
- **Infrastructure in Northeast and East Central Communities:** The City is prioritizing projects in communities that have experienced historic underinvestment and will continue working to maximize opportunities associated with completion of the North Spokane Corridor.
- **PFAS:** The City will advocate for funding to help mitigate contamination of PFAS "forever chemicals" and protect public health. The City will also advocate to exempt utilities from CERCLA (commonly known as Superfund) liability.
- **Low Income Water Assistance Program (LIHWAP):** The City supports current legislation making LIHWAP permanent to assist those struggling with utility costs and ensure financial sustainability for City utilities.
- **Water Project Grants:** The City will push for federal policies that allow larger cities to access water infrastructure grants that currently are available only to smaller jurisdictions.
- **Land and Water Conservation Fund:** The City will advocate for additional capacity in this program that invests in open space and recreation priorities such as Riverfront Park and High Bridge Park.
- **Waste to Energy (WTE):** The City will explore additional opportunities to promote recycling, waste reduction, and technologies that advance the WTE facility as a more sustainable alternative to landfilling.
- **Li-Ion Batteries:** Spokane Fire Department and the City support current legislation creating federal safety standards for rechargeable lithium-ion batteries to help prevent fires in e-bikes, e-scooters, and other micromobility devices.

### HOUSING, HOMELESSNESS & HUMAN SERVICES

- **Street Medicine and Alternative Response Units:** The City is working with community partners to provide more capacity for effective crisis interventions, particularly for

individuals experiencing homelessness and fentanyl addiction. The City is pursuing a Congressionally Directed Spending (CDS) grant and other funding to accelerate expansion of the Spokane Mobile Alternative Response Teams (SMART) initiative.

- **Medicaid Institutions of Mental Disease (IMD):** The City supports lifting the IMD exclusion, which limits Medicaid coverage for mental health treatment in facilities with 16 or more beds. This exclusion contributes to overuse of emergency rooms treatment for mental health and substance use disorders.
- **Low-Income Housing Tax Credits/Private Activity Bonds:** The City supports the Affordable Housing Credit Improvement Act, which would expand low-income housing tax credits and lower the private activity bond financing threshold. These federal tools are the primary drivers for encouraging private investment of affordable housing in the Spokane region.

## ECONOMY & WORKFORCE

- **Childcare:** The City will support federal initiatives to strengthen early learning and help ensure families can access high-quality, safe, affordable childcare. The City will advocate for Northeast Public Development Authority's CDS request to fund a childcare center for workers with nontraditional hours, including swing shifts and weekends.
- **Child Tax Credit:** The temporary expansion of the Child Tax Credit as part of the 2021 American Rescue Plan Act was a critical tool for addressing child poverty. The City supports Congressional efforts to expand this tax credit for low- and middle-income families.
- **Tech Hub:** The U.S. Economic Development Administration (EDA) officially designated Spokane's American Aerospace Materials Manufacturing Center as a Tech Hub. The City will support the AAMMC's applications for federal funding and advocate for EDA programmatic funding to support the Tech Hubs initiative.
- **Broadband & Digital Equity:** The City will advocate to expand funding for the federal Affordable Connectivity Program and improve broadband access.
- **New Markets Tax Credit:** The City will support extension of the federal New Markets Tax Credits Program, which helps to promote economic growth and community development in underserved areas by incentivizing private investment.
- **Fairchild Air Force Base:** The City is committed to preserving Fairchild Air Force Base and working with base leadership and regional stakeholders on key issues of mutual interest, including housing supply and workforce initiatives that benefit military spouses and the community.
- **Protecting Retail Businesses:** The City supports stronger partnerships between local governments and federal law enforcement to combat organized retail crime. On their own, local jurisdictions do not have the capacity or tools to address criminal enterprises that are operating across larger regional areas.



**Agenda Sheet for City Council:**

**Committee:** Finance & Administration **Date:** 06/03/2024

**Committee Agenda type:** Discussion

**Date Rec'd**

5/23/2024

**Clerk's File #**

**Renews #**

**Cross Ref #**

**Council Meeting Date:** 06/24/2024

**Submitting Dept**

CITY COUNCIL

**Project #**

**Contact Name/Phone**

GIACOBBE 625-6715

**Bid #**

**Contact E-Mail**

GBYRD@SPOKANECITY.ORG

**Requisition #**

**Agenda Item Type**

Resolutions

**Council Sponsor(s)**

MCATHCART BWILKERSON ZZAPPONE

**Agenda Item Name**

0320 – RESOLUTION TO APPOINT COUNCIL BUDGET DIRECTOR

**Agenda Wording**

Resolution appointing City Council Budget Director per SMC 02.005.030 and 02.005.070.

**Summary (Background)**

Per SMC 02.005.030, the appointment of the Council Budget Director is subject to Council approval. Council is currently interviewing potential candidates, and the Council President expects to have an individual to recommend and hired by July 8. The attached resolution is to approve the appointment and set forth the applicable hire date. This version is blank but will be substituted with a completed version (including offer letter) before the council vote.

Lease? NO Grant related? NO Public Works? NO

**Fiscal Impact**

Approved in Current Year Budget? YES

Total Cost \$ \$83,958.48 - \$118,097.28 (Base)

Current Year Cost \$ \$41,979 – \$59,048 (Base)

Subsequent Year(s) Cost \$ TBD

**Narrative**

The Council Budget Director is a key central staff position that provides essential legislative and policy support to the council, especially on fiscal matters.

**Amount**

**Budget Account**

Select	\$	#
Select	\$	#
Select	\$	#
Select	\$	#
	\$	#
	\$	#



## Committee Briefing Paper

### Finance & Administration Committee

<b>Committee Date</b>	June 3, 2024
<b>Submitting Department</b>	City Council
<b>Contact Name</b>	Giacobbe Byrd
<b>Contact Email &amp; Phone</b>	<a href="mailto:gbyrd@spokanecity.org">gbyrd@spokanecity.org</a> / 625-6715
<b>Council Sponsor(s)</b>	CP Wilkerson, CM Cathcart, CM Zappone
<b>Select Agenda Item Type</b>	<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Discussion    Time Requested: 5 minutes
<b>Agenda Item Name</b>	0320 – Resolution to Appoint Council Budget Director
<b>Proposed Council Action</b>	<input type="checkbox"/> Approval to proceed to Legislative Agenda <input type="checkbox"/> Information Only
<b>Hen the</b>	Per SMC 02.005.030, the appointment of the Council Budget Director is subject to Council approval. Council is currently interviewing potential candidates, and the Council President expects to have an individual to recommend and hired by July 8. The attached resolution is to approve the appointment and set forth the applicable hire date. This version is blank but will be substituted with a completed version (including offer letter) before the council vote.
<p><b>Fiscal Impact</b></p> <p><b>Approved in current year budget?</b>    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No    <input type="checkbox"/> N/A</p> <p>Total Cost: <a href="#">Click or tap here to enter text.</a></p> <p>    Current year cost: \$41,979 – \$59,048</p> <p>    Subsequent year(s) cost: \$83,958.48 - \$118,097.28</p> <p><b>Narrative:</b> The Council Budget Director is a key central staff position that provides essential legislative and policy support to the council, especially on fiscal matters.</p> <p><b>Funding Source</b>    <input type="checkbox"/> One-time    <input checked="" type="checkbox"/> Recurring    <input type="checkbox"/> N/A</p> <p>Specify funding source: Select Funding Source*</p> <p>Is this funding source sustainable for future years, months, etc? Yes</p> <p><b>Expense Occurrence</b>    <input type="checkbox"/> One-time    <input checked="" type="checkbox"/> Recurring    <input type="checkbox"/> N/A</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	
<p><b>Operations Impacts</b> (If N/A, please give a brief description as to why)</p> <ul style="list-style-type: none"> <li>• What impacts would the proposal have on historically excluded communities?</li> </ul> <p style="padding-left: 40px;"><b>N/A – This is not a proposal but a resolution appointing a regular budgeted staff position for the council.</b></p> <ul style="list-style-type: none"> <li>• How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?</li> </ul> <p style="padding-left: 40px;"><b>N/A – See above.</b></p>	

- How will data be collected regarding the effectiveness of this program, policy, or product to ensure it is the right solution?

**N/A – See above**

- Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

**Aligns with SMC 02.005.030, which specifies the employment of a budget director for the City Council.**

#### **Council Subcommittee Review**

- Please provide a summary of council subcommittee review. If not reviewed by a council subcommittee, please explain why not.

**No applicable subcommittee.**



**RESOLUTION NO. 2024-\_\_\_\_\_**

A Resolution approving the appointment of the Budget Director for the Spokane City Council.

WHEREAS, Article III Section 9 (D) of the Spokane City Charter provides that the City Council shall have the authority to employ such staff as it may deem necessary; and

WHEREAS, as part of Ordinance C36376, the City Council adopted SMC 02.005.070 on April 25, 2023, creating and setting forth the general duties for the City Council Budget Director position; and

WHEREAS, the City Council President is requesting the City Council's approval of an external hire for this position.

NOW, THEREFORE, BE IT RESOLVED that the Spokane City Council approves the appointment of \_\_\_\_\_ to the position of Budget Director for the City Council and authorizes the Council President to issue an offer of employment letter setting forth terms and conditions of employment, to include a salary in Range 50, or \$83,958.48 - \$118,097.28 annually, of the Exempt-Confidential pay plan, as well as associated benefits, as laid out in the attached offer letter.

Adopted by the City Council this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney

## ORDINANCE NO. C \_\_\_\_\_

AN ORDINANCE prohibiting illegal encampments near facilities offering comprehensive support services and amending Title 12, Chapter 12.02, of the Spokane Municipal Code.

WHEREAS, the Spokane Municipal Code prohibits illegal camping within the city limits, including riverbanks, natural areas, public parks and on other public property ; and

WHEREAS, the citizens of Spokane in 2023 voted to amend the Spokane Municipal Code and expand the prohibition on illegal camping to those areas within one thousand feet of schools, day cares, and parks; and

WHEREAS, homeless and unhoused individuals will often camp at or near addiction treatment facilities, behavioral health facilities, or other support facilities, posing a threat to individuals seeking and receiving services at those facilities; and

WHEREAS, it is the desire of the City Council to expand the prohibition against unlawful camping to include areas that provide essential recovery services for the Spokane community,

**NOW, THEREFORE**, the City of Spokane does ordain:

Section 1. Section 12.02.1002 of the Spokane Municipal Code is amended to read as follows:

The following definitions are applicable in this chapter unless the context otherwise requires:

- A. "Camp" means to pitch, erect or occupy camp facilities, or to use camp paraphernalia or both, for the purpose of, or in such a way as will facilitate, outdoor sheltering for living accommodation purposes or for remaining outdoors overnight, or using a camper, recreational vehicle, trailer, or other vehicle for living accommodation purposes or for the purpose of remaining overnight.
- B. "Camp facilities" include, but are not limited to, tents, huts, temporary shelters, campers, recreational vehicles, or trailers.
- C. "Camp paraphernalia" includes but is not limited to tarpaulins, cots, beds, sleeping bags, hammocks or cooking facilities and similar equipment.
- D. "Park or park facility" means any real property, building, structure, equipment, sign, shelter, swimming pool, vegetation, playground, or other physical property owned or controlled by the City for park purposes. Park or park facility includes all associated areas, including but not limited to parking lots for parks and pools. All park property, whether developed or undeveloped, including adjacent buffer lands,

conservation lands and natural areas, shall be considered to be a “park facility” for purposes of this chapter.

- E. “Public property” shall mean any City-owned property, including but not limited to, parks or park facilities, riverbanks, waterways, conservation areas, natural areas, rights of way, easements, buildings, bridges, or other land or physical structures owned or managed by the City.
- F. “Public Tree” is a tree on City-owned property or on the public right-of-way abutting City-owned property. A public tree may also be a street tree. “City-owned property” does not refer to the right-of-way.
- G. “Right-of-way” means any street, avenue, boulevard, highway, sidewalk, alley, passageway, or other thoroughfare, whether abutting public or private property, used for vehicular or pedestrian travel.
- H. “Street tree” means any tree or shrub located within the public right-of-way.
- I. “Comprehensive Support Services” means services encompassing addiction recovery services, resource distribution centers, congregate shelters, transitional or non-permanent housing. Such services include, but are not limited to, behavioral health services providers as defined in RCW 71.05.020.

**Section 2.** Section 12.02.1010 of the Spokane Municipal Code is amended as follows:

A. Prohibition

- 1. No person may camp in or upon any public property including, but not limited to, on conservation lands and natural areas abutting the Spokane River, Latah Creek and their tributaries, unless specifically authorized by declaration of the Mayor in emergency circumstances.
- 2. At all times, regardless of the availability of shelter, it is unlawful to camp where such activity poses:
  - a. a substantial danger to any person,
  - b. an immediate threat and/or an unreasonable risk of harm to public health or safety, or
  - c. a disruption to vital government services.

In such circumstances, the encampment shall be subject to expedited removal pursuant to SMC 12.02.1011.

3. At all times, regardless of the availability of shelter space or beds, it is unlawful to camp or store personal property, including camp facilities and camp paraphernalia, or to have unauthorized encampments, at any time in the following locations:
  - a. Underneath or within 50 feet of any railroad viaduct
  - b. Within ~~((three blocks))~~ one thousand (1000) feet of any ~~((congregate shelter))~~ facility providing comprehensive support services, provided that signs are posted prohibiting camping that are clearly visible to pedestrians.
  - c. In public within one thousand (1,000) feet of the perimeter of the grounds of a park (SMC Section 12.06A.030(B&D)), a day care center or child care facility (RCW 35.63.170(3-4)), or a public or private school (RCW 28A.150.010 and RCW 28A.195.010).

**Section 3. Rule-Making.** The Department of Community and Economic Development is authorized to promulgate a public rule consistent with, and necessary to implement and enforce, the provisions of Sections 12.02.1000 through 12.02.1012 of the Spokane Municipal Code. Any public rule promulgated under this chapter shall be submitted to the city council for approval by resolution no later than the date of its adoption or within 60 days of the effective date of this ordinance, whichever is later.

**Section 4. Severability.** If any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

**Section 5. Clerical Errors.** Upon approval by the city attorney, the city clerk is authorized to make necessary corrections to this ordinance, including scrivener’s errors or clerical mistakes; references to other local, state, or federal laws, rules, or regulations; or numbering or referencing of ordinances or their sections and subsections.

PASSED by the City Council on June \_\_\_\_\_, 2024.

\_\_\_\_\_  
Council President

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney

---

Mayor

---

Date

---

Effective Date

**Agenda Sheet for City Council:****Committee:** Finance & Administration **Date:** 06/03/2024**Committee Agenda type:** Discussion**Date Rec'd**

5/23/2024

**Clerk's File #****Cross Ref #****Project #****Council Meeting Date:** 06/24/2024**Submitting Dept**

FINANCE, TREASURY &amp; ADMIN

**Bid #****Contact Name/Phone**

MATT BOSTON 6256820

**Requisition #****Contact E-Mail**

MBOSTON@SPOKANECITY.ORG

**Agenda Item Type**

Special Budget Ordinance

**Council Sponsor(s)**

MCATHCART BWILKERSON ZZAPPONE

**Agenda Item Name**

0410 - MID-YEAR SBO

**Agenda Wording**

Mid-Year SBO review required per SMC.

**Summary (Background)**

Per SMC 07.14.030 (C)(3), Administration is to provide a recommendation to the Council via a SBO to adjust material budget variances.

Lease? NO

Grant related? NO

Public Works? NO

**Fiscal Impact**

Approved in Current Year Budget? NO

Total Cost

\$ TBD

Current Year Cost

\$

Subsequent Year(s) Cost

\$

**Narrative****Amount****Budget Account**

Select

\$

#

Select

\$

#

Select

\$

#

Select

\$

#

\$

#

\$

#



## Committee Agenda Sheet

### Finance & Administration Committee

<b>Committee Date</b>	June 3, 2024
<b>Submitting Department</b>	Finance
<b>Contact Name</b>	Matt Boston
<b>Contact Email &amp; Phone</b>	<a href="mailto:mboston@spokanecity.org">mboston@spokanecity.org</a> / 509-625-6820
<b>Council Sponsor(s)</b>	Cathcart, Wilkerson, Zappone
<b>Select Agenda Item Type</b>	<input checked="" type="checkbox"/> Discussion    Time Requested: 5
<b>Agenda Item Name</b>	Special Budget Ordinance
<b>Grant Item</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Proposed Council Action</b>	<input checked="" type="checkbox"/> Approval to proceed to Legislative Agenda
<b>Summary</b>  <b>What is the specific purpose or need for the budget increase?</b>  <b>What changes or developments have triggered this request?</b>	<p>Per SMC 07.14.030 (C)(3), Administration is to provide a recommendation to the Council via a SBO to adjust material budget variances.</p>
<b>Fiscal Impact</b> <b>Approved in current year budget?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Total Cost: <a href="#">Click or tap here to enter text.</a> Current year cost: Subsequent year(s) cost:  <b>Funding Source</b> <input type="checkbox"/> One-time <input type="checkbox"/> Recurring <input type="checkbox"/> N/A Specify funding source: Select Funding Source* Is this funding source sustainable for future years, months, etc? <a href="#">Click or tap here to enter text.</a>  <b>Expense Occurrence</b> <input type="checkbox"/> One-time <input type="checkbox"/> Recurring <input type="checkbox"/> N/A  Other budget impacts: (revenue generating, match requirements, etc.)	
<b>Operations Impacts</b> (If N/A, please give a brief description as to why) <ul style="list-style-type: none"> <li>• What are the net impacts this item will have on the specifically affected line items?</li> <li>• What will the operational changes be for this specific item?</li> <li>• How will this change affect operations regarding the increase? Regarding the decrease?</li> <li>• What are the potential risks or consequences of not approving the budget increase?</li> </ul>	



- Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?



**Agenda Sheet for City Council:**

**Committee:** Finance & Administration **Date:** 06/03/2024

**Committee Agenda type:** Discussion

**Date Rec'd**

5/23/2024

**Clerk's File #**

**Cross Ref #**

**Project #**

**Council Meeting Date:** 06/24/2024

**Submitting Dept**

COMMUNITY, HOUSING & HUMAN

**Bid #**

**Contact Name/Phone**

ARIELLE 509.564.5278

**Requisition #**

**Contact E-Mail**

ARIELLEANDERSON@SPOKANECITY.

**Agenda Item Type**

Special Budget Ordinance

**Council Sponsor(s)**

MCATHCART BWILKERSON ZZAPPONE

**Agenda Item Name**

1680- SPECIAL BUDGET ORDINANCE- HIFUMI EN

**Agenda Wording**

Affordable Housing Committee recommended SpokaneHousing Authority's Hifumi en Apartments at 926 E 8th for \$2,581,320 in funding.

**Summary (Background)**

The CHHS Board recommended the Hifumi en project for funding on March 1, 2023. The City Council approved the Hifumi en project for funding on March 27, 2023 (OPR 2023-0351) as part of the Affordable Housing RFP. Budget was intentionally left out of Fund 1595, as all projects being contracted need to be run through City Council to approve the use of former HB 1590 funds.

Lease? NO Grant related? NO Public Works? NO

**Fiscal Impact**

Approved in Current Year Budget? NO

Total Cost \$ 2,581,320

Current Year Cost \$ 2,581,320

Subsequent Year(s) Cost \$

**Narrative**

Program revenue. The funding source is former HB 1590 tax funds. This contract has been approved by City Council for OPR 2023-0351.

**Amount**

**Budget Account**

Expense \$ 2,581,320

# 1595-53122-51010-54201-99999

Select \$

#

Select \$

#

Select \$

#

\$

#

\$

#



**Continuation of Wording, Summary, Approvals, and Distribution**

**Agenda Wording**

**Summary (Background)**

**Approvals**

<b><u>Dept Head</u></b>	KINDER, DAWN
<b><u>Division Director</u></b>	KINDER, DAWN
<b><u>Accounting Manager</u></b>	MURRAY, MICHELLE
<b><u>Legal</u></b>	PICCOLO, MIKE
<b><u>For the Mayor</u></b>	PICCOLO, MIKE

**Additional Approvals**

<b><u>MANAGEMENT &amp;</u></b>	STRATTON, JESSICA

**Distribution List**

arielleanderson@spokanecity.org	dkinder@spokanecity.org
hpage@spokanecity.org	dnorman@spokanecity.org
kclifton@spokanecity.org	sbrown@spokanecity.org
jstratton@spokanecity.org	aduffey@spokanecity.org
jmiller@spokanecity.org	

## Council Briefing Paper

### Finance & Administration Committee

<b>Committee Date</b>	June 3, 2024
<b>Submitting Department</b>	CHHS
<b>Contact Name</b>	Arielle Anderson, Heather Page
<b>Contact Email &amp; Phone</b>	arielleanderson@spokanecity.org; hpage@spokanecity.org
<b>Council Sponsor(s)</b>	Cathcart, Wilkerson, Zappone
<b>Select Agenda Item Type</b>	<input checked="" type="checkbox"/> Discussion    Time Requested: 5min
<b>Agenda Item Name</b>	Special Budget Ordinance – Hifumi en Apartment Project
<b>Grant Item</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Proposed Council Action</b>	<input checked="" type="checkbox"/> Approval to proceed to Legislative Agenda
<p><b>Summary</b></p> <p><b>What is the specific purpose or need for the budget adjustment?</b></p> <p><b>What changes or developments have triggered this request?</b></p>	<p>The Affordable Housing Committee recommended Spokane Housing Authority’s Hifumi en Apartments, located at 926 E 8<sup>th</sup> Avenue, Spokane, for \$2,581,320 in funding on Tuesday February 14, 2023. The CHHS Board recommended the Hifumi en project for funding on March 1, 2023. The City Council approved the Hifumi en project for funding on March 27, 2023. (OPR 2023-0351) as part of the Affordable Housing RFP. An SBO is needed to fund the project.</p> <p>Due to timing, this was not contracted or encumbered in 2023, therefore no budget was moved forward or created in 2024. In fact, budget authority was intentionally removed from fund 1595-Housing Sales Tax, as all projects needing contracting would be run through City Council for SBO funding.</p> <p>Hifumi en provides 88-units of new construction housing for elderly and disabled households earning 60% AMI or less. The project consists of demolishing the current 41-unit apartment complex built in 1972 and replacing it with an 88-unit new construction apartment complex at the same location. The City’s funding allocation secures 40-years of affordability for the 14-units funded with the \$2,581,320. The \$2,581,320 will be used for new construction costs as requested in the application. The City’s interest in the project, and affordability requirements are secured through a promissory note, deed of trust, and covenant running with the land.</p> <p>The remaining units are held to the affordability requirements of the other funders in the project. Other funders and funding amounts in the projects are as follows: LITHC funding \$19,255,656; Housing Trust Funding \$4,850,000; Spokane County \$1,500,000; seller-financing-land \$1,547,251; deferred developer fees \$993,680; cashflow during construction \$253,678. This is Spokane County’s one Metro Pool 9% LIHTC project for 2022. The total development cost for the project is \$30,981,585.</p>
<p><b>Fiscal Impact</b></p> <p><b>Approved in current year budget?</b>    <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No    <input type="checkbox"/> N/A</p> <p>Total Cost: <u>\$2,581,320</u></p> <p>Current year cost: \$2,581,320</p>	

Subsequent year(s) cost:

**Funding Source**       One-time       Recurring       N/A

Specify funding source: Program revenue

The funding source is former HB 1590 tax funds. Specifically Code: 1595-53122-51010-54201-99999

**Is this funding source sustainable for future years, months, etc?** Yes, based upon tax revenue generated.

**Expense Occurrence**       One-time       Recurring       N/A

**Other budget impacts: (revenue generating, match requirements, etc.)**

This contract has been approved by City Council for OPR 2023-0351. The contract was originally part of the Second 2023 Affordable Housing RFP. The Contract was not in place or executed by the end of 2023, and thus needs to have budget added in 2024, as no budget without Council approval for contracts was set up in fund 1595.

**Operations Impacts** (If N/A, please give a brief description as to why)

- **What are the net impacts this adjustment will have on the specifically affected line items?**

It will use up cash on hand to fund this project, with additional revenue due each month.

- **What operational changes will occur because of this adjustment?**

None.

- **What are the potential risks or consequences of not approving the budget adjustment?**

It is possible this project does not continue.

- **Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?**

This project was part of the Affordable Housing RFP that took place in 2023 and aligns with the other projects and funding sources that were part of that RFP, which included Community Development Block Grants. It is a proper use of this funding and aligns with Washington State RCW's and City SMCs for use of this funding.

**What current racial and other inequities might this special budget ordinance address?**

When this project is completed, more affordable housing would be available for use.

ORDINANCE NO \_\_\_\_\_

An ordinance amending Ordinance No. C36467, passed by the City Council November 27, 2023, and entitled, "An ordinance adopting the Annual Budget of the City of Spokane for 2024, making appropriations to the various funds of the City of Spokane government for the fiscal year ending December 31, 2024, and providing it shall take effect immediately upon passage," and declaring an emergency.

WHEREAS, subsequent to the adoption of the 2024 budget Ordinance No. C36467, as above entitled, and which passed the City Council November 27, 2023, it is necessary to make changes in the appropriations of the Housing Sales Tax Fund, which changes could not have been anticipated or known at the time of making such budget ordinance; and

WHEREAS, this ordinance has been on file in the City Clerk's Office for five days; - Now, Therefore,

The City of Spokane does ordain:

Section 1. That in the budget of the Housing Sales Tax Fund, and the budget annexed thereto with reference to the Fund, the following changes be made:

- 1) Increase appropriation by \$2,581,320.
- A) Of the increased appropriation, \$2,581,320 is provided solely for contractual services.

Section 2. It is, therefore, by the City Council declared that an urgency and emergency exists for making the changes set forth herein, such urgency and emergency arising from the Hifumi en apartment project, and because of such need, an urgency and emergency exists for the passage of this ordinance, and also, because the same makes an appropriation, it shall take effect and be in force immediately upon its passage.

Passed by the City Council on \_\_\_\_\_

\_\_\_\_\_  
Council President

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Effective Date



**Agenda Sheet for City Council:**

**Committee:** Finance & Administration **Date:** 06/03/2024

**Committee Agenda type:** Discussion

**Date Rec'd**

5/23/2024

**Clerk's File #**

**Cross Ref #**

**Project #**

**Council Meeting Date:** 06/24/2024

**Submitting Dept**

PLANNING & ECONOMIC

**Bid #**

**Contact Name/Phone**

COLIN QUINN- X6804

**Requisition #**

**Contact E-Mail**

CQUINNHURST@SPOKANECITY.ORG

**Agenda Item Type**

Special Budget Ordinance

**Council Sponsor(s)**

MCATHCART BWILKERSON ZZAPPONE

**Agenda Item Name**

0650 - SPECIAL BUDGET ORDINANCE – FTA PILOT PROGRAM FOR TOD

**Agenda Wording**

The purpose of this SBO is to receive grant funds from Spokane Transit Authority (STA) awarded to the City of Spokane through the Federal Transit Administration's (FTA) Pilot Program for Transit-Oriented Development Planning - Section 20005(b)

**Summary (Background)**

The purpose of the grant is to conduct a study in collaboration with Spokane Transit Authority (STA) and Spokane County (County) on the viability of Transit Oriented Development (TOD) along the Division St corridor following the implementation of STA's Bus Rapid Transit (BRT) project. The temporary grant award number is 1722-2023-1. This Special Budget Ordinance follows the Interlocal Agreement signed by the City of Spokane on 11/20/2023 in partnership with the STA and Spokane County.

Lease? NO

Grant related? YES

Public Works? NO

**Fiscal Impact**

Approved in Current Year Budget? NO

Total Cost \$ 405000

Current Year Cost \$ 205000

Subsequent Year(s) Cost \$ 200000

**Narrative**

This grant is for \$405,000 over two years, with \$5,000 per year in local cash match.

**Amount**

**Budget Account**

Revenue \$ 405000

# 1360-XXXXX-99999-3XXXX-99999

Expense \$ 405000

# 1360-XXXXX-58620-54201-99999

Select \$

#

Select \$

#

\$

#

\$

#



**Continuation of Wording, Summary, Approvals, and Distribution**

**Agenda Wording**

**Summary (Background)**

**Approvals**

<b><u>Dept Head</u></b>	GARDNER, SPENCER
<b><u>Division Director</u></b>	GARDNER, SPENCER
<b><u>Accounting Manager</u></b>	ORLOB, KIMBERLY
<b><u>Legal</u></b>	SCHOEDEL, ELIZABETH
<b><u>For the Mayor</u></b>	PICCOLO, MIKE

**Additional Approvals**

<b><u>MANAGEMENT &amp;</u></b>	STRATTON, JESSICA
<b><u>ACCOUNTING -</u></b>	MURRAY, MICHELLE

**Distribution List**

	smacdonald@spokanecity.org
sgardner@spokanecity.org	cquinnhurst@spokanecity.org
amccall@spokanecity.org	korlob@spokanecity.org
rbenzie@spokanecity.org	



## Council Briefing Paper

### Finance & Administration Committee

<b>Committee Date</b>	June 3, 2024
<b>Submitting Department</b>	Planning Services
<b>Contact Name</b>	Colin Quinn-Hurst
<b>Contact Email &amp; Phone</b>	<a href="mailto:cquinnhurst@spokanecity.org">cquinnhurst@spokanecity.org</a> ; 541-306-0837
<b>Council Sponsor(s)</b>	Cathcart, Wilkerson, Zappone
<b>Select Agenda Item Type</b>	<input checked="" type="checkbox"/> Discussion    Time Requested: 5 minutes
<b>Agenda Item Name</b>	Special Budget Ordinance – FTA Pilot Program for Transit-Oriented Development
<b>Grant Item</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Proposed Council Action</b>	<input checked="" type="checkbox"/> Approval to proceed to Legislative Agenda
<p><b>Summary</b></p> <p><b>What is the specific purpose or need for the budget adjustment?</b></p> <p><b>What changes or developments have triggered this request?</b></p>	<p>The purpose of this SBO is to receive grant funds from Spokane Transit Authority (STA) for the competitive grant funding awarded to the City of Spokane through the Federal Transit Administration’s (FTA) Pilot Program for Transit-Oriented Development Planning – Section 20005(b) in the amount of \$405,000 with a cash match from the City of Spokane for \$10,000. The purpose of the grant is to conduct a study in collaboration with Spokane Transit Authority (STA) and Spokane County (County) on the viability of Transit Oriented Development (TOD) along the Division St corridor following the implementation of STA’s Bus Rapid Transit (BRT) project. The temporary grant award number is 1722-2023-1.</p> <p>This Special Budget Ordinance follows the Interlocal Agreement signed by the City of Spokane on 11/20/2023 in partnership with the Spokane Transit Authority and Spokane County.</p>
<p><b>Fiscal Impact</b></p> <p><b>Approved in current year budget?</b>    <input type="checkbox"/> Yes   <input checked="" type="checkbox"/> No   <input type="checkbox"/> N/A</p> <p>Total Cost: <u>\$405,000</u></p> <p style="padding-left: 20px;">Current year cost: \$205,000</p> <p style="padding-left: 20px;">Subsequent year(s) cost: \$200,000</p> <p><b>Funding Source</b>    <input checked="" type="checkbox"/> One-time    <input type="checkbox"/> Recurring    <input type="checkbox"/> N/A</p> <p>Specify funding source: Grant</p> <p>Is this funding source sustainable for future years, months, etc? No</p> <p><b>Expense Occurrence</b>    <input checked="" type="checkbox"/> One-time    <input type="checkbox"/> Recurring    <input type="checkbox"/> N/A</p> <p>Other budget impacts: (revenue generating, match requirements, etc.) This grant is for \$405,000 over two years, with \$5,000 per year in local cash match.</p>	
<b>Operations Impacts</b> (If N/A, please give a brief description as to why)	

- What are the net impacts this adjustment will have on the specifically affected line items?

This will add \$405,000 in grant funding to the Planning Department budget for conducting a planning study through a contract with a consultant team.

- What operational changes will occur because of this adjustment?

The project will produce recommendations for potential adjustments to land use classifications, zoning maps, and infrastructure investments.

- What are the potential risks or consequences of not approving the budget adjustment?

If this is not approved, we will lose this grant funding and will be unable to enact a contract with the selected consultant team.

- Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

#### Chapter 3, Land Use:

- LU 2: Public Realm Enhancement
- LU 3: Efficient Land Use
- LU 4: Transportation
  - LU 4.6: Transit-Supported Development

#### Chapter 4, Transportation:

- TR 2: Transportation Supporting Land Use
- TR 5: Active Transportation
- TR 6: Commercial Center Access
- TR 7: Neighborhood Access
- TR 9: Promote Economic Opportunity

#### Chapter 7, Economic Development:

- ED 2: Land Available for Economic Activities
- ED 3: Strong, Diverse, and Sustainable Economy

This project also aligns with previous studies and plans conducted by the Spokane Transit Authority and the City of Spokane to assess the potential for high-performance transit as well as suitability for transit-supportive land use and infrastructure investments. These studies include Connect Spokane: A Comprehensive Plan for Public Transportation, the Central City Line Strategic Overlay Plan (2016), Economic and Land Use Impacts of the Central City Line (2014), the DivisionConnects Phase 2: Land Use and Active Transportation assessments (2022), as well as supportive neighborhood-level planning efforts including the [Logan Neighborhood Subarea Plan](#).

#### **What current racial and other inequities might this special budget ordinance address?**

The Division Street corridor is home to some of the most historically excluded communities in Spokane according to the City's Housing Action Plan (HAP). The Division St TOD project will make considerations for historically excluded communities by developing policy recommendations for equitable TOD, or ETOD, practices.

ORDINANCE NO \_\_\_\_\_

An ordinance amending Ordinance No. C36467, passed by the City Council November 27, 2023, and entitled, "An ordinance adopting the Annual Budget of the City of Spokane for 2024, making appropriations to the various funds of the City of Spokane government for the fiscal year ending December 31, 2024, and providing it shall take effect immediately upon passage," and declaring an emergency.

WHEREAS, subsequent to the adoption of the 2024 budget Ordinance No. C36467, as above entitled, and which passed the City Council November 27, 2023, it is necessary to make changes in the appropriations of the Miscellaneous Grants Fund, which changes could not have been anticipated or known at the time of making such budget ordinance; and

WHEREAS, this ordinance has been on file in the City Clerk's Office for five days; - Now, Therefore,

The City of Spokane does ordain:

Section 1. That in the budget of the Miscellaneous Grants Fund, and the budget annexed thereto with reference to the Fund, the following changes be made:

- 1) Increase revenue by \$405,000.
  - A) Of the increased revenue, \$405,000 is provided solely for grant revenue from the STA's Federal Transit Administration's Pilot Program for Transit-Oriented Development Planning grant in the Planning Services department.
- 2) Increase appropriation by \$405,000.
  - A) Of the increased appropriation, \$405,000 is provided solely for contractual services.

Section 2. It is, therefore, by the City Council declared that an urgency and emergency exists for making the changes set forth herein, such urgency and emergency arising from the STA's grant award for TOD, and because of such need, an urgency and emergency exists for the passage of this ordinance, and also, because the same makes an appropriation, it shall take effect and be in force immediately upon its passage.

Passed by the City Council on \_\_\_\_\_

\_\_\_\_\_  
Council President

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Effective Date



**Agenda Sheet for City Council:**

**Committee:** Finance & Administration **Date:** 06/03/2024

**Committee Agenda type:** Consent

**Date Rec'd**

5/22/2024

**Clerk's File #**

**Cross Ref #**

**Project #**

**Council Meeting Date:** 06/24/2024

**Submitting Dept**

CITY COUNCIL

**Bid #**

**Contact Name/Phone**

ALEX GIBILISCO 625-6957

**Requisition #**

**Contact E-Mail**

AGIBILISCO@SPOKANECITY.ORG

**Agenda Item Type**

Resolutions

**Council Sponsor(s)**

BWILKERSON LNAVARRETE MCATHCART

**Agenda Item Name**

0320-RESOLUTION APPOINTING MEMBERS TO EQUITY SUBCOMMITTEE

**Agenda Wording**

Resolution Appointing Members to Equity Subcommittee

**Summary (Background)**

The Equity Subcommittee has received four applications for new members to the subcommittee. Current members of the subcommittee invited them to meetings and interviewed them. The current subcommittee members voted to advance the names of four candidates. The recommended candidates are two from district 2, and two from district 1. The resolution also asks the subcommittee to clarify length of terms in their bylaws.

Lease? NO

Grant related? NO

Public Works? NO

**Fiscal Impact**

Approved in Current Year Budget? N/A

Total Cost \$

Current Year Cost \$

Subsequent Year(s) Cost \$

**Narrative**

**Amount**

**Budget Account**

Select \$ #

Select \$ #

Select \$ #

Select \$ #

\$ #

\$ #



## Committee Briefing Paper

### Urban Experience Committee

<b>Committee Date</b>	06/03/2024
<b>Submitting Department</b>	City Council Office
<b>Contact Name</b>	Alex Gibilisco
<b>Contact Email &amp; Phone</b>	<a href="mailto:agibilisco@spokanecity.org">agibilisco@spokanecity.org</a> ; 509-904-5465
<b>Council Sponsor(s)</b>	CM Cathcart, CP Wilkerson, CM Zappone, CM Navarrete
<b>Select Agenda Item Type</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion    Time Requested:
<b>Agenda Item Name</b>	0320- Appointing members to the Equity Subcommittee
<b>Proposed Council Action</b>	<input checked="" type="checkbox"/> Approval to proceed to Legislative Agenda <input type="checkbox"/> Information Only
<b>Summary (Background)</b>  *use the Fiscal Impact box below for relevant financial information	<p>The Equity Subcommittee has received four applications since the beginning of 2024. Current members of the equity subcommittee invited them to meetings with an Equity Subcommittee and interviewed them.</p> <p>At the April 12, 2024 meeting the current Equity Subcommittee members voted to advance the names of four candidates.</p> <p>The candidates are two from district 2, and two from district 1.</p> <p>The resolution also asks the subcommittee to clarify length of terms in their bylaws.</p>
<b>Fiscal Impact</b> <b>Approved in current year budget?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A Total Cost: <a href="#">Click or tap here to enter text.</a> Current year cost: Unknown Subsequent year(s) cost: Unknown  <b>Narrative:</b> <span style="color: yellow;">!</span> Please provide financial due diligence review, as applicable, such as number and type of positions, grant match requirements, summary type details (personnel, maintenance and supplies, capital, revenue), impact on rates, fees, or future shared revenue  <b>Funding Source</b> <input type="checkbox"/> One-time <input type="checkbox"/> Recurring <input checked="" type="checkbox"/> N/A Specify funding source: Select Funding Source* Is this funding source sustainable for future years, months, etc? <a href="#">Click or tap here to enter text.</a>  <b>Expense Occurrence</b> <input type="checkbox"/> One-time <input type="checkbox"/> Recurring <input checked="" type="checkbox"/> N/A  Other budget impacts: (revenue generating, match requirements, etc.)	
<b>Operations Impacts (If N/A, please give a brief description as to why)</b> <ul style="list-style-type: none"> <li>• What impacts would the proposal have on historically excluded communities?</li> </ul>	

**Advancing equity requires systematically embedding fairness in decision-making processes so City department heads, policymakers, and community organizations can recognize and remove inequities in policies and programs that serve as barriers to equality of opportunity. An engaged group of community members can provide insight to identify, remove, and dismantle racial, social, and economic inequities in City services, programs, and policy.**

- How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?

**The application to the Equity Subcommittee collects this information provided on a voluntary basis.**

- How will data be collected regarding the effectiveness of this program, policy, or product to ensure it is the right solution?

**See above**

- Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

**Increased Civic participation and social health is encouraged in the Chapter 10 of the Comprehensive Plan.**

### **Council Subcommittee Review**

- Please provide a summary of council subcommittee review. If not reviewed by a council subcommittee, please explain why not.

**The Equity Subcommittee Reviewed the applications of the applicants, interviewed them, and made the recommendation.**

**RESOLUTION NO. 2024-\_\_\_\_\_**

A resolution appointing new members to the Equity Subcommittee of the City Council's Finance and Administration Committee and setting the length of member terms.

**WHEREAS**, Resolution 2021-0098 establishes an ad hoc Equity Subcommittee of the City Council's Finance and Administration Committee; and

**WHEREAS**, among the purposes of the Equity Subcommittee are to identify, remove, and dismantle racial and social economic inequities in City services, programs, and decision-making processes through collaboration with the City Council and administration leadership; and

**WHEREAS**, an additional goal of the Equity Subcommittee is to ensure that an individual's success and quality of life, so far as affected by City programs, policies and services, is not improperly impacted by race, religion, creed, color, sex national origin, marital status, familial status, domestic violence victim status, age, sexual orientation, gender identity, veteran discharge history or military status, refugee status, nor affected by the presence of any sensory, mental or physical disability as defined by the Americans with Disabilities Act and/or the Washington State Law Against Discrimination; and

**WHEREAS**, the Equity Subcommittee recently solicited applications for new members, and the current membership of the Equity Subcommittee reviewed the applications and interviewed four applicants; and

**WHEREAS**, on April 12, 2024 the Equity Subcommittee voted to recommend four applicants for consideration by City Council; and

**WHEREAS**, the City council has the authority to create ad hoc committees or subcommittees for a designated term or for a specific task by City Council resolution, and to appoint members of each subcommittee, all as provided under City Council Rule of Procedure 6.4 and Resolution 2021-0098;

**WHEREAS** Resolution 2021-0098 did not specify the length of terms for subcommittee members or a process for setting term lengths;

**NOW, THEREFORE, BE IT RESOLVED** that the individuals listed below are hereby appointed to membership on the Equity Subcommittee of the City Council's Finance and Administration Committee:

- Ana Trusty
- Lindsey Shaw
- Tyler Tamoush
- Wendy Schatz

and,



**BE IT FURTHER RESOLVED**, that appointed members of the Equity Subcommittee shall adopt and publish bylaws setting forth (a) procedures for the conduct of its meetings, (b) the length and number of consecutive terms for its members and officers, and (c) procedures for election of officers.

Passed by the City Council this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney



**Agenda Sheet for City Council:**

**Committee:** Finance & Administration **Date:** 06/03/2024

**Committee Agenda type:** Discussion

**Date Rec'd**

5/21/2024

**Clerk's File #**

**Renews #**

**Cross Ref #**

**Council Meeting Date:** 06/24/2024

**Submitting Dept**

CITY ATTORNEY

**Project #**

**Contact Name/Phone**

MIKE PICCOLO 6225

**Bid #**

**Contact E-Mail**

MPICCOLO@SPOKANECITY.ORG

**Requisition #**

**Agenda Item Type**

First Reading Ordinance

**Council Sponsor(s)**

BWILKERSON

**Agenda Item Name**

CODE OF ETHICS REVISION

**Agenda Wording**

An ordinance relating to the City's Code of Ethics; adopting a new Chapter 01.04B of the Spokane Municipal Code and repealing Chapter 01.04A of the Spokane Municipal Code.

**Summary (Background)**

This ordinance revises the complaint process in Chapter 01.04A (Code of Ethics) as follows: Organizes the Ethics Code into five parts and reorganizes several sections. Clarifies the "Jurisdiction of the Ethics Commission." Expands procedures for processing Ethics Complaints. Puts the Appeal Process under the City's Hearing Examiner.

Lease? NO

Grant related? NO

Public Works? NO

**Fiscal Impact**

Approved in Current Year Budget? N/A

Total Cost \$

Current Year Cost \$

Subsequent Year(s) Cost \$

**Narrative**

**Amount**

**Budget Account**

Neutral \$

#

Select \$

#

Select \$

#

Select \$

#

\$

#

\$

#



## Committee Agenda Sheet

### Finance & Administration Committee

<b>Committee Date</b>	May 23, 2024
<b>Submitting Department</b>	City Attorney' Office
<b>Contact Name</b>	Mike Piccolo
<b>Contact Email &amp; Phone</b>	mpiccolo@spokanecity.org; (509) 625-6225
<b>Council Sponsor(s)</b>	
<b>Select Agenda Item Type</b>	<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Discussion    Time Requested: 15 minutes
<b>Agenda Item Name</b>	Code of Ethics Revision; Renumbering of Whistleblower Protections
<b>Proposed Council Action</b>	<input checked="" type="checkbox"/> Approval to proceed to Legislative Agenda <input type="checkbox"/> Information Only
<b>Summary (Background)</b>  *use the Fiscal Impact box below for relevant financial information	<p><b>This ordinance revises the complaint process in Chapter 01.04A (Code of Ethics) as follows:</b></p> <ul style="list-style-type: none"> <li>• <b>Organizes the Ethics Code into five parts and reorganizes several sections.</b></li> <li>• <b>Clarifies the "Jurisdiction of the Ethics Commission."</b></li> <li>• <b>Expands procedures for processing Ethics Complaints:</b> <ul style="list-style-type: none"> <li>○ <b>Adds a preliminary review by the City Attorney to filter out complaints that do not meet the threshold for an ethics violation.</b></li> <li>○ <b>Adds formal investigation by an independent investigator before a complaint proceeds to the Commission for a hearing.</b></li> </ul> </li> <li>• <b>Puts the Appeal Process under the City's Hearing Examiner.</b></li> <li>• <b>Moves Whistleblower Protections to a new Chapter 01.04B SMC.</b></li> </ul>
<p><b>Fiscal Impact</b></p> <p>Approved in current year budget?    <input type="checkbox"/> Yes    <input type="checkbox"/> No    <input type="checkbox"/> N/A</p> <p>Total Cost: <a href="#">Click or tap here to enter text.</a></p> <p>Current year cost:</p> <p style="text-align: center;"><b>Currently there is no cost to the City related to the complaint process except as incurred by individuals who hire counsel to represent them.</b></p> <p>Subsequent year(s) cost:</p> <p style="text-align: center;"><b>It is anticipated that the City may incur costs to hire an independent investigator to interview a complainant who alleges a violation for which the Commission has jurisdiction.</b></p> <p><b>Narrative:</b> Please provide financial due diligence review, as applicable, such as number and type of positions, grant match requirements, summary type details (personnel, maintenance and supplies, capital, revenue), impact on rates, fees, or future shared revenue</p> <p><b>Funding Source</b>    <input type="checkbox"/> One-time    <input type="checkbox"/> Recurring    <input type="checkbox"/> N/A</p> <p>Specify funding source: Select Funding Source*</p> <p>Is this funding source sustainable for future years, months, etc? <a href="#">Click or tap here to enter text.</a></p> <p><b>Expense Occurrence</b>    <input type="checkbox"/> One-time    <input type="checkbox"/> Recurring    <input type="checkbox"/> N/A</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	

**Operations Impacts** (If N/A, please give a brief description as to why)

- What impacts would the proposal have on historically excluded communities?

**By ensuring that an independent investigator is assigned to compile evidence and conduct interviews, the proposed revision would potentially give historically excluded communities more of an opportunity to have their complaints heard in a process that can be cumbersome and for which cooperation can be difficult to obtain.**

- How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?

**The City may compile data from complainants who file Ethics complaints with the City Clerk's Office concerning their racial, ethnic, gender identity, national origin, or other identity data. Surveys may also be appropriate in collecting data concerning the effect of this change.**

- How will data be collected regarding the effectiveness of this program, policy, or product to ensure it is the right solution?

**Survey data will allow complainants and the subjects of complaints to provide feedback concerning their ability to advance (or defend against) complaints in a more efficient manner.**

- Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

**Council Subcommittee Review**

- Please provide a summary of council subcommittee review. If not reviewed by a council subcommittee, please explain why not.

ORDINANCE NO. C - \_\_\_\_\_

An ordinance relating to the City's Code of Ethics; adopting a new Chapter 01.04B of the Spokane Municipal Code and repealing Chapter 01.04A of the Spokane Municipal Code.

WHEREAS, the City's Code of Ethics serves as the framework for establishing the rules of ethical conduct while setting forth a process to ensure that elected officials, City officers and employees are compliant with these rules, and that complaints about unethical conduct are appropriately addressed; and

WHEREAS, the City Council first adopted a Code of Ethics and created an Ethics Committee when it formally enacted a new chapter 1.04 to title 1 of the Spokane Municipal Code in 2006 under ORD C33785, creating a process for complaints against elected or appointed officials to be sent to the Ethics Committee for investigation and resolution; and

WHEREAS, revisions to the Code of Ethics were made under ORD C33911 in 2006 and ORD C35148 in 2014; and

WHEREAS, the City Council finds that additional changes are necessary to ensure that all complaints alleging violations of the City's Code of Ethics are investigated thoroughly and professionally, and that all relevant evidence is compiled prior to the matter being brought before the Ethics Commission for a hearing;

NOW, THEREFORE,

The City of Spokane does ordain:

**Section 1.** That there is adopted a new Chapter 01.04B of the Spokane Municipal Code to read as follows:

**Chapter 01.04B Code of Ethics**

**PART 1 - GENERAL PROVISIONS**

- Section 01.04B.010 Purpose
- Section 01.04B.020 Definitions
- Section 01.04B.030 Applicability
- Section 01.04B.040 Limitation Period
- Section 01.04B.050 Ethics Violations – Prohibited Conduct

**PART 2 – ETHICS COMMISSION**

- Section 01.04B.060 Jurisdiction of the Ethics Commission
- Section 01.04B.070 Duties and Powers
- Section 01.04B.080 Composition of the Ethics Commission
- Section 01.04B.090 Restrictions on Ethics Commission Members
- Section 01.04B.100 Proper Conduct and Avoiding Impropriety

- Section 01.04B.110 Training
- Section 01.04B.120 Vacancy and Removal
- Section 01.04B.130 Advisory Opinion

### PART 3 – ETHICS COMPLAINTS

- Section 01.04B.140 Initiating an Ethics Complaint
- Section 01.04B.150 Preliminary Review of Complaint
- Section 01.04B.160 Investigation of Complaint
- Section 01.04B.170 Post-Investigation Procedures

### PART 4 – HEARING AND ADJUDICATION

- Section 01.04B.180 Commencement of Proceedings
- Section 01.04B.190 Hearing Procedures
- Section 01.04B.200 Dismissal of a Complaint
- Section 01.04B.210 Penalties
- Section 01.04B.220 Recall of Elected Official for Violation of Code of Ethics

### PART 5 – APPEAL

- Section 01.04B.230 Notice of Appeal
- Section 01.04B.240 Record of Proceedings and Exhibits Transmitted to Hearing Examiner
- Section 01.04B.250 Procedures for Review on Appeal
- Section 01.04B.260 Ruling by Hearing Examiner

### PART 1 - GENERAL PROVISIONS

#### Section 01.04B.010 Purpose

- A. It is the policy of the City of Spokane to demand the highest standard of ethical conduct from all of its employees and City officers, whether elected, appointed or hired. All are required to demonstrate honesty, integrity, responsibility and fairness in carrying out their public duties and may never use public resources or their position for personal gain. The Ethics Commission functions to ensure that this policy, as codified in this Chapter, is enforced and that the standards set forth herein are reinforced through training and other initiatives.
- B. It is the intent of the City Council that this chapter be reasonably construed to accomplish its purpose of protecting the public against decisions or conduct that are affected by undue influence, conflicts of interest or any other violation of this Code of Ethics. This Code of Ethics is supplemental to state law, including, but not limited to, chapter 42.20 RCW – Misconduct of Public Officers, chapter 42.23 RCW – Code of Ethics for Municipal Officers – Contract Interests, and chapter 42.36 RCW – Appearance of Fairness Doctrine.

## Section 01.04B.020 Definitions

The following words and phrases as used in this chapter, unless the context clearly indicates otherwise, shall have the following meanings:

- A. "Agency" means any City board, commission, bureau, committee, department, institution, division or tribunal in City government.
- B. "Assist" means to act, or offer or agree to act, in such a way as to help, aid, advise, furnish information to or otherwise provide assistance to another person, believing that the action is of help, aid, advice or assistance of the person with intent so to assist such person.
- C. "Beneficial interest" has the meaning ascribed to it under the Washington case law. However, an ownership interest in a mutual fund or similar investment pooling fund in which the owner has no management powers does not constitute a beneficial interest in the entities in which the fund or pool invests.
- D. "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, consultant, holding company, joint stock company, receivership, trust or any legal entity organized for profit.
- E. "City" means the City of Spokane, Washington.
- F. "City action" means any action on the part of an agency, including, but not limited to:
  - 1. a decision, determination, finding, ruling or order; and
  - 2. a grant, payment, award, license, contract, transaction, sanction or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling or order.
- G. "City officer" means every individual elected, appointed, hired or otherwise selected to an office or position with the City, or any subdivision, agency, committee or board thereof, whether such individual is paid or unpaid.
- H. "Compensation" means anything of economic value, however designated, that is paid, loaned, granted or transferred, or to be paid, loaned, granted or transferred for, or in consideration of, personal services to any person.
- I. "Confidential information" means:
  - 1. Specific information, rather than generalized knowledge, that is not available to the general public on request; or
  - 2. Information made confidential by law including but not limited to taxpayer information, RCW 82.32.330; information regarding organized crime, RCW 43.43.856; criminal history information, Chapter 10.97 RCW; medical records, Chapter 70.02 RCW; and juvenile records, Chapter RCW 13.50 RCW; or



3. Information that is initially disclosed or discussed in executive session, and which is not available to the general public on request; however
  4. Confidential information does not include information authorized by the mayor or a majority vote of the council to be disclosed.
- J. "Contract" or "grant" means an agreement between two or more persons that creates an obligation to do or not to do a particular thing. "Contract" or "grant" includes, but is not limited to, an employment contract, a lease, a license, a purchase agreement or a sales agreement.
- K. "De Minimis" means a violation of lesser significance, or a violation more technical than substantial.
- L. "Dishonesty" means behavior that intends to deceive or cheat people; untruthfulness; untrustworthiness. It is not possible to be negligently "dishonest."
- M. "Ethics Commission" means the commission established under Part 2 of this Chapter or the former commission established under Chapter 1.04A of the Spokane Municipal Code.
- N. "Employee" means any person holding a regularly compensated position of employment with the City but does not include elected officers and persons who serve without compensation on City boards and commissions.
- O. "Exempt employee" shall mean those City employees not represented by a recognized labor union and identified by both the City administration and the applicable labor unions as exempt confidential employees.
- P. "False and frivolous complaint" means a complaint with no basis in fact or law.
- Q. "Family member" means:
1. a spouse or domestic partner; or
  2. any dependent parent, parent-in-law, child or son-in-law or daughter-in-law; or
  3. any parent, parent-in-law, child, son-in-law, daughter-in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of the City officer or employee.
- R. "Gift" means anything of economic value or tangible worth for which no consideration is given. "Gift" does not include:
1. items from family members or friends where it is clear that the gift was not made as part of any design to gain or maintain influence in the agency of which the recipient is an officer or employee;
  2. items related to the outside business of the recipient that are customary and not related to the recipient's performance of official duties;

3. items exchanged among officials and employees or a social event hosted or sponsored by a City officer or City employee for coworkers;
  4. payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance or trade mission made in an official capacity. As used in this subsection, "reasonable expenses" are limited to travel, lodging and subsistence expenses incurred the day before through the day after the event;
  5. items a City officer or City employee is authorized by law to accept;
  6. payment of enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade or charitable association or institution. As used in this subsection, "reasonable expenses" are limited to travel, lodging and subsistence expenses incurred the day before through the day after the event;
  7. items returned by the recipient to the donor within thirty days of receipt or donated to a charitable organization within thirty days of receipt;
  8. campaign contributions reported under chapter 42.17 RCW;
  9. discounts available to an individual as a member of an employee group, occupation or similar broad-based group;
  10. awards, prizes, scholarships or other items provided in recognition of academic or scientific achievement;
  11. attendance of a City officer or employee at a hosted meal when it is provided in conjunction with a meeting directly related to the conduct of City business or where official attendance by the officer or employee as a City representative is appropriate;
  12. an award publicly presented in recognition of public service; or
  13. any item of nominal value which cannot reasonably be presumed to influence the vote, action or judgment of the City officer or employee, or be considered as part of a reward for action or inaction. An item of nominal value shall include incidental items associated with the professional conduct or courtesies of a City officer or employee's duty including the acceptance during the conduct of official business of such items as refreshments, note pads, pens, pins and books.
- S. "Head of agency" means the chief executive officer of an agency. For a city department established pursuant to the SMC, the agency head means the department head. In the case of an agency headed by a commission, board, committee or other body consisting of more than one natural person, agency head means the person or board authorized under the SMC or the City Charter to appoint agency employees and regulate their conduct.

- T. "Honorarium" means money or thing of value offered to a City officer or City employee for a speech, appearance, article or similar item or activity in connection with the City officer's or City employee's official role.
- U. "Household member" means any person having a close relationship with and residing in the same household of the City officer or employee, and having agreed to be jointly responsible for basic living expenses.
- V. "Jurisdiction," for purposes of SMC 1.04B.060, means that the Commission has authority to hear and decide an ethics complaint pursuant to this chapter.
- W. "Mitigating circumstances" means factors for the Commission's determination that might explain a violation, in whole or in part, or make the violation more understandable and/or less subject to condemnation.
- X. "Moral turpitude" is conduct that violates commonly accepted standards of good morals, honesty, and justice; the application of this standard depends upon the collective conscience and judgment of the members of the Commission.
- Y. "Person" means any individual, partnership, association, firm, institution or corporation, business or other entity, however constituted, organized or designated.
- Z. "Personal interest" means direct or indirect pecuniary or material benefit accruing to a City officer or employee as a result of legislation or a contract or transaction which is or may be the subject of an official act or action by or with the City, except for such contracts or transactions which confer similar benefits to all other persons and/or property similarly situated. For the purpose of this chapter, a City officer or employee is deemed to have a personal interest in the affairs of:
  - 1. any person who is a City officer or employee's family member or household member, as defined in this chapter;
  - 2. any business entity in which the City officer or employee is an officer, director or employee;
  - 3. any business entity in which the stock of, or legal or beneficial ownership of, in excess of five percent of the total stock or total legal and beneficial ownership, is controlled or owned directly or indirectly by the City officer or employee;
  - 4. any person or business entity with whom a contractual relationship exists with the City officer or employee; provided, that a contractual obligation of less than five hundred dollars, or a commercially reasonable loan made in the ordinary course of business or a contract for a commercial retail sale shall not be deemed to create an interest in violation of this chapter.
- AA. "Regulatory agency" means any City board, commission, department or officer, except those in the legislative or judicial branches, authorized by law to conduct adjudicative proceedings, issue permits or licenses, or to control or affect interests of identified persons.

BB. "Represented employee" shall mean a City employee represented by a recognized labor union.

CC. "Responsibility" in connection with a transaction involving the City, means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or through subordinates, effectively to approve, disapprove or otherwise direct City action in respect of such transaction. The term includes any authority under City procurement policies or procedures to authorize the award of contracts or the acquisition of products or services on behalf of the City.

DD. "Staff Director" means the employee appointed by the City Attorney to, in addition to other responsibilities, assist the Ethics Commission in its duties.

EE. "Stipulation" means agreement.

#### Section 01.04B.030 Applicability

The Code of Ethics shall be applicable to all elected or appointed officers, all exempt confidential employees and all represented employees whose labor unions have entered into a collective bargaining agreement providing that compliance with the Code of Ethics is a condition of employment. The Code of Ethics shall not be applicable to represented employees whose labor unions have not entered into a collective bargaining agreement providing that compliance with the Code of Ethics is a condition of employment.

#### Section 01.04B.040 Limitation Period for Filing Complaints

Any complaints brought under this chapter must be commenced within three years from the date of the violation. However, if it is shown that the violation was not discovered because of concealment by the person who allegedly committed the violation, then the action must be commenced within three years from the date the violation was discovered or reasonably should have been discovered by any person with direct or indirect supervisory responsibilities over the person who allegedly committed the violation.

#### Section 01.04B.050 Ethics Violations – Prohibited Conduct

The following shall constitute a violation of this Code of Ethics:

##### A. General Prohibition Against Conflicts of Interest.

In order to avoid becoming involved or implicated in a conflict of interest or impropriety, or an appearance of conflict of interest or impropriety, no current City officer or employee shall have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that might be seen as conflicting with the City officer or employee's proper discharge of his or her official duties, the conduct of official City business or as adverse to the interests of the City. Performance of a legally required duty by a City officer or employee shall not be considered a violation of the Code of Ethics.

1. Any employee who becomes aware that he or she might have a potential conflict of interest that arises in the course of his or her official duties shall notify in writing his or her supervisor or appointing authority of the potential conflict. Elected officials shall report potential conflicts of interest to the City Attorney.
2. Upon receipt of such a notification, the supervisor or appointing authority shall take action to resolve the potential conflict of interest within a reasonable time, which may include, but is not limited to, designating an alternative employee to perform the duty that is involved in the potential conflict. The supervisor or appointing authority shall document the disposition of the potential conflict in writing in files maintained by the appointing authority. The supervisor or appointing authority may request an advisory opinion from the Ethics Commission before addressing and resolving of the potential conflict.
3. Upon receipt of such a notification from an elected official, the City Attorney shall recommend action to resolve the potential conflict of interest, which may include a request for an advisory opinion from the Ethics Commission.

B. Personal Interests in Contracts Prohibited.

No City officer or employee shall participate in his or her capacity as a City officer or employee in the making of a contract in which he or she has a personal interest, direct or indirect, or performs in regard to such a contract some function requiring the exercise of discretion on behalf of the City. Provided, this prohibition shall not apply where the City officer or employee has only a remote interest in the contract, and where the fact and extent of such interest is disclosed and noted in the official minutes or similar records of the City prior to formation of the contract, and thereafter the governing body authorizes, approves or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the City officer(s) having the remote interest as defined below.

C. Remote Interest.

For purposes of this section, a "remote interest" means:

1. that of a non-salaried non-compensated officer of a nonprofit corporation;
2. that of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary;
3. that of a landlord or tenant of a contracting party;
4. that of a holder of less than one percent of the shares of a corporation, limited liability company or other entity which is a contracting party.

D. Personal Influence in Contract Selection Prohibited.

No City officer or employee shall influence the City's selection of, or its conduct of business with, a corporation, person or firm having or proposing to do business with the City if the City officer or employee has a personal interest in or with the corporation, person or firm,

unless such interest is a remote interest and where the fact and extent of such interest is disclosed and noted in the official minutes or similar records of the City prior to formation of the contract, as defined in the preceding section. Provided, however, that no City officer or employee may receive anything of value from the City as a result of any contract to which the City shall be a party except for the City officer or employee's salary or lawful compensation.

E. Representation of Private Person at City Proceeding Prohibited.

No City officer or employee shall appear on behalf of a private person, other than himself/herself or a family member or household member, as defined in this chapter, or except as a witness under subpoena, before any regulatory governmental agency or court of law in an action or proceeding to which the City or a City officer in an official capacity is a party, or accept a retainer or compensation that is contingent upon a specific action by the City. Representation of a private person pursuant to a legally required duty by a City officer or employee is permitted and shall not be considered a violation of the Code of Ethics.

F. Certain Private Employment Prohibited.

No City officer or employee shall engage in or accept private employment, or render services for, any private interest when such employment or service is incompatible with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties.

G. Personal Interest in Legislation Prohibited.

No City officer or employee may benefit either directly or indirectly from any legislation or contract to which the City shall be a party except for the lawful compensation or salary of the City officer or employee unless such interest is a remote interest where the facts and extent of such interest is disclosed. City council members' participation in the enactment of legislation shall be governed by chapter 42.23 RCW – The Code of Ethics for Municipal Officers and chapter 42.36 RCW – The Appearance of Fairness Doctrine. City council members shall not be prohibited from participating in the adoption of legislation when the council member has only a remote interest in the legislation, which has been disclosed, and the legislation is applicable to the general public and not unique to the council member.

H. Continuing Financial Interest.

Where a City officer, employee, or family member of a City officer or employee, has a substantial ongoing financial relationship with a corporation, firm, or person seeking a contract, or proposing to do business with the City, such City officer or employee shall not:

1. Influence or participate in the City's contract selection of or conduct business with such corporation, firm, or person; nor
2. Influence or participate in the City's contract selection of, or conduct business with, a corporation, firm, or party competing against a party that a City officer or employee has such a substantial ongoing financial relationship.

3. For purpose of this section, a substantial ongoing financial relationship is defined as: expanding beyond just a formal contractual relationship. Rather it encompasses any financial interest, direct or indirect, where a City officer, employee, or family member of a City officer or employee is involved in a client-service relationship in which:
  - a. the City officer, employee, or family member of a City officer or employee, receives a substantial portion of his or her revenue or like compensation through such relationship, whether received through his or her corporation, firm, or as an individual; or
  - b. such client-service relationship is likely to continue to provide considerable potential business or has provided substantial business in the past. This does not include prior financial relationships that are so far removed in time or rare in frequency as to be insignificant.
4. Corporations, firms or persons doing business with the City shall be advised of this provision, and shall certify, as part of any contract with the City, that they are aware of the restrictions in this policy.

I. Disclosure of Confidential Information

1. Disclosure of Confidential Information

No City officer or employee shall, except as required or reasonably believed to be required for the performance of his/her duties, disclose confidential information gained by reason of his/her official position or use such information for his/her own personal interest. "Confidential information" is all information, whether transmitted orally or in writing, that the employee has been informed, is aware, or has reason to believe is intended to be used only for city purposes, is not intended for public disclosure, or is otherwise of such a nature that it is not, at the time, a matter of public record or public knowledge.

2. Confidential information includes, but is not limited to, personal information regarding City officials and employees; private financial and other personal information provided by city taxpayers, license holders, contractors, and customers; intelligence and investigative information, including the identity of persons filing complaints; formulas, designs, drawings, and research data obtained or produced by the city and preliminary, non-final assessments, opinions, and recommendations concerning city policies and actions. Any public official who is uncertain as to whether certain information is confidential should consult the City Attorney. An employee who is uncertain as to whether certain information is confidential should consult their immediate supervisor or department head.

J. Acceptance of Compensation, Gifts, Favors, Rewards or Gratuity.

City employees shall not, directly or indirectly, solicit any gift or give or receive any gift, whether it be money, services, loan, travel, entertainment, hospitality, promise, or any other form, under the following circumstances:

1. It could be reasonably inferred or expected that the gift was intended to influence them in the performance of their official duties; or
2. The gift was intended to serve as a reward for any official action on their part. Public officials and city employees may accept de minimis gifts such as, but not limited to, calendars, coffee mugs, flowers, candy, cookies/snacks and other similar items that are given as a customary business practice and have no material significance to the recipient, with such gifts from any one source not to exceed one hundred dollars in value in any twelve-month period. City employees should report any gift to their immediate supervisor. This section shall not apply to gifts made to the city. All such gifts shall be given to the mayor for official disposition. This prohibition shall not apply to those items which are excluded from the definition of gift in SMC 1.04A.020.

K. Fair and Equitable Treatment.

1. No City officer or employee shall knowingly use his or her office or position to secure personal benefit, gain or profit, or use position to secure special privileges or exceptions for himself/herself or for the benefit, gain or profits of any other persons.
2. No City officer or employee shall employ or use the employment of any person under the City officer's or employee's official control or direction for the personal benefit, gain or profit of the City officer or employee or another beyond that which is available to every other person.
3. No City officer or employee shall use City-owned vehicles, equipment, materials, money or property for personal or private convenience or profit. Use is restricted to such services as are available to the public generally, for the authorized conduct of official business (not personal use), and for such purposes and under such conditions as can be reasonably expected to be approved by City policies.
4. Except as authorized by law and in the course of his or her official duties, no City officer or employee shall use the power or authority of his or her office or position with the City in a manner intended to induce or coerce any other person to provide such City employee or any other person with any compensation, gift, or other thing of value directly or indirectly.
5. City Officers and employees are encouraged to participate in the political process on their own time and outside of the workplace by working on campaigns for the election of any person to any office or for the promotion of or opposition to any ballot proposition, but shall not use or authorize the use of City facilities or resources for such purposes except as authorized by the provisions of RCW 42.17A.555.

L. False and Frivolous complaints prohibited.

No person subject to the Code of Ethics shall knowingly file a false complaint or report of a violation of this Code of Ethics. A person who files a complaint with a good faith belief that a violation of the Code of Ethics has occurred shall be protected by the City's Whistleblower Protection policy as set forth in SMC 1.04A.180.



M. Aiding others prohibited.

No City officer or employee may knowingly aid or assist any City officer or employee in the violation of any provision of this Code of Ethics.

N. Commission of Acts of Moral Turpitude or Dishonesty Prohibited.

No City officer or employee shall commit any act of moral turpitude or dishonesty relating to his or her duties or position as a City officer or employee or arising from business with the City. Conviction of a felony or a misdemeanor involving moral turpitude or dishonesty, the nature of which demonstrates lack of fitness for the position held, shall be considered conclusive evidence of a violation of this Code of Ethics. Demonstrated acts of moral turpitude or dishonesty are not limited to felony or misdemeanor criminal convictions.

O. Prohibited Conduct After Leaving City Service.

1. Disclosure of Privileged, Confidential or Proprietary Information Prohibited.

No former City officer or employee shall disclose or use any privileged, confidential or proprietary information gained because of his or her City employment.

2. Participation in City Matters Prohibited.

No former City officer or employee shall, within a period of one year after leaving City office or employment:

- a. participate in matters involving the City if, while in the course of employment with the City, the former City officer or employee was officially involved in the matter, or personally and substantially participated in the matter, or acted on the matter;
- b. represent any person as an advocate in any matter in which the former City officer or employee was involved while a City officer or employee; or
- c. participate as or with a bidder, vendor or consultant in any competitive selection process for a City contract in which he or she assisted the City in determining the project, or work to be done, or the process to be used.

3. Duty to Inform.

Whenever a City officer or employee wishes to contract with a former City officer or employee for expert or consultant services within one year of the latter's leaving City service, advance notice shall be given to and approval received from the Ethics Commission. Said approval shall be in written form and copied to the mayor at the same time that it is given to the individual making the request.

4. Exceptions.

- a. The prohibitions of subsections (2)(a) and (2)(b) of this section shall not apply to a former City officer or employee acting on behalf of a governmental agency if the Ethics Commission has determined that the service to the agency is not adverse to the interest of the City.

- b. Nothing in this chapter shall prohibit an official elected to serve a governmental entity other than the City of Spokane from carrying out their official duties for that government entity.
- 5. Corporations, firms or persons doing business with the City shall be advised of this provision, and shall certify, as part of any contract with the City, that they are aware of the restrictions in this policy. If a firm or person doing business with the City assists an employee in violating the provisions of the Code, the firm or business may be disbarred, excluded from contracting with the City for 5 years.

P. Failure to Produce Public Records

No City officer or employee shall willfully and without just cause delay or fail to produce any city records in his or her possession or control in response to a public records request filed with the city pursuant to Chapter 42.56 RCW.

- 1. A “city record” is a “public record” as defined by RCW 42.56.010(3).
- 2. “Just cause” to delay or fail to produce means:
  - a. A reasonable belief that production of the record is exempt from public disclosure pursuant to Chapter 42.56 RCW or other statute which exempts or prohibits disclosure of specific information or records; and/or
  - b. The city record is subject to legal review to determine whether it is subject to an exemption from disclosure pursuant to Chapter 42.56 RCW; and/or
  - c. The requester has been notified in writing that additional time is required to produce the city record and/or determine whether it is subject to an exemption from disclosure pursuant to Chapter 42.56 RCW.

## PART 2 – ETHICS COMMISSION

### Section 01.04B.060 Jurisdiction of the Ethics Commission

The Ethics Commission has jurisdiction over all complaints alleging prohibited conduct in violation of the City’s Code of Ethics. The Commission is authorized to conduct public hearings and issue written decisions adjudicating all complaints under this chapter.

### Section 01.04B.070 Duties and Powers

- A. It is the duty of the Ethics Commission to serve as a tribunal for the adjudication of complaints whenever someone has alleged a violation of this chapter. For this purpose, the Commission has a duty to consider all evidence in determining whether such a violation occurred and in setting an appropriate penalty.

- B. The Ethics Commission is authorized to compel the attendance of witnesses, administer oaths, take the testimony of a person under oath, and in connection therewith, to require the production for examination of any books or papers relating to any matter before the Commission. For witnesses who refuse to attend and give testimony at a hearing, the Ethics Commission may petition the superior court for a subpoena requiring the person to appear and to produce evidence if so ordered, or to give testimony concerning the matter before the Commission. Failure to obey such order of the court may be punished by the court as contempt.
- C. The Ethics Commission is authorized to establish operating policies, procedures, forms, and rules consistent with this chapter, subject to the approval of the City Council. The Ethics Commission shall review its policies and procedure annually and shall make modifications as necessary. The Commission shall maintain a manual of such policies and procedures which shall be posted and maintained as part of the City's website.
- D. The Ethics Commission may, when circumstances make it necessary to do so, retain outside legal counsel and other experts, as needed, after solicitation of recommendations from the City Attorney (unless the need to retain outside counsel is caused by a conflict involving the City Attorney's Office).
- E. The Ethics Commission may make recommendations to the City Council for amendments to this chapter and for such other legislation affecting the subject matter of this chapter as the Ethics Commission may deem necessary or desirable.
- F. The Ethics Commission shall develop educational programs which inform agencies, public officials and city officers and employees about City, state and federal ethics laws, and the importance of ethics to the public's confidence in municipal government.

#### Section 01.04B.080 Composition of the Ethics Commission

- A. The Ethics Commission shall be comprised of seven members who shall be appointed by the mayor and confirmed by the city council. The initial six members shall be appointed for a one-, two- and three-year term and may be reappointed for one additional three-year term. The seventh member who shall be appointed by members of the Ethics Commission shall serve an initial three-year term and may be reappointed for a second three-year term.
- B. Four members of the Commission shall constitute a quorum for conducting a meeting and transaction of business. A simple majority of the quorum is necessary to take action, other than action by the Commission in determining and issuing its written findings and conclusions regarding a complaint, inquiry or request for an advisory opinion, which shall require four affirmative votes of the Commission members present for the meeting.
- C. The Ethics Commission appointees shall include representatives from the following segments of the community:
  - 1. A person with a professional or academic background in the legal profession including attorneys, law professors, administrative law judges, or members of the judiciary.
  - 2. A person from local business with experience in human resources/personnel.

3. A person who possesses familiarity with government and the political process.
  4. A person with experience in ethics.
- D. All reasonable efforts shall be used to locate individuals who satisfy the requirements in subsection (A). In the event that any one of the requirements in subsection (A) cannot reasonably be satisfied, a substitute may be appointed. The substitute shall have a background in a profession which includes a code of ethics as an element of the profession.
  - E. The City Attorney shall appoint a Staff Director to the Ethics Commission. The Staff Director shall provide assistance to the Commission as necessary for the Commission to fulfill its obligations and duties.
  - F. Commission members shall serve without compensation.

#### Section 01.04B.090 Restrictions on Ethics Commission Members

##### A. Restrictions on Holding Office.

No member or employee of the Ethics Commission may hold any other City or County office, or be an officer of a political party.

##### B. Restrictions on Employment.

No member or employee of the Ethics Commission may be a registered lobbyist or campaign consultant, or be employed by or receive gifts or other compensation from a registered lobbyist or campaign consultant. No member of the Ethics Commission may hold employment with the City or County and no employee of the Commission may hold any other employment with the City or County.

##### C. Restrictions on Political Activities.

No member or employee of the Ethics Commission may participate in any campaign supporting or opposing a candidate for City elective office, a City ballot measure or a City officer running for any elective office. For the purposes of this section, participation in a campaign includes but is not limited to making contributions to or soliciting contributions from any person within the Ethics Commission's jurisdiction, publicly endorsing or urging endorsement of a candidate or ballot measure or participating in decisions by organizations to participate in a campaign.

##### D. Restrictions after Employment.

Members of the Ethics Commission are subject to the post - employment restrictions set forth in the City of Spokane Code of Ethics.

#### Section 01.04B.100 Proper Conduct and Avoiding Impropriety

Members of the Ethics Commission are to exercise the utmost care in their communications concerning matters pending before the Commission.

- A. Once the Ethics Commission has received a recommendation from an investigator that a hearing be held, members of the Ethics Commission may only discuss a complaint at a lawfully conducted meeting.
- B. Members of the Commission may not take testimony or entertain comments from any person regarding a complaint except as presented in an investigative report or in the course of a duly noticed public hearing.
- C. Members of the Ethics Commission shall avoid discussing or commenting on a complaint during the pendency of an investigation.
- D. Any Commission member who has a conflict of interest with respect to a specific complaint before the Ethics Commission, pursuant to SMC 1.04B.050, shall recuse himself or herself from hearing that complaint but shall remain a member of the Commission for future complaints.
- E. To avoid the appearance of impropriety and undue influence, no member of the Commission may communicate directly or indirectly with the investigator, any party, or any other person about any issue of fact or law regarding a complaint that has been filed, during investigation and during the pendency of proceedings before the Ethics Commission, except in the course of seeking or obtaining legal advice from the City Attorney or, in the event of a conflict, from independent legal counsel.
- F. If any person attempts to communicate with a Commission member regarding a pending complaint, the Commission member shall immediately report the communication to the Commission Chair and shall relate the substance of the communication to the full Commission on the record at the next regular meeting of the Commission.
- G. Commission deliberations on complaints are exempt from the Open Public Meetings Act, so deliberations may be conducted outside the presence of the public.

#### Section 01.04B.110 Training

- A. The Ethics Commission, with the assistance of the Staff Director, shall prepare, distribute and periodically update an employee handbook on the Code of Ethics, after obtaining the city attorney's review. In addition to the updates the Commission shall disseminate any change in policy that results from a finding of the Commission if it applies to other city employees.
- B. Every appointing authority shall give a copy or electronic version of the handbook and any updates to each employee annually and shall provide annual training to employees regarding the Code of Ethics. Each City employee or official shall read and agree in writing to the City of Spokane Code of Ethics.
- C. Information shall be provided to employees terminating city service regarding the restrictions on former city employees.

#### Section 01.04B.120 Vacancy and Removal

- A. In the event a vacancy occurs, the mayor shall appoint a qualified person to complete the remainder of the term.
  - 1. A member of the Commission may be removed only for misconduct pursuant to this chapter.
  - 2. Any member of the Ethics Commission guilty of official misconduct or convicted of a crime involving moral turpitude or dishonesty shall be removed by the city council upon recommendation by the mayor.

#### Section 01.04B.130 Advisory Opinion

- A. Upon request of any employee, the mayor or a member of the city council, or any City Officer, the Ethics Commission may also render written advisory opinions concerning the applicability of the Code to hypothetical circumstances and/or situations solely related to the persons making the request.
- B. Upon request of the mayor, or two members of the city council, the Ethics Commission may also render written advisory opinions concerning the applicability of the code to hypothetical circumstances and/or situations related to a matter of city-wide interest or policy.

### PART 3 – ETHICS COMPLAINTS

#### Section 01.04B.140 Initiating an Ethics Complaint

- A. Any person may file a complaint alleging that a current City officer or employee has engaged in prohibited conduct in violation of the City's Code of Ethics.
- B. A complaint must be in writing, on a form approved by the Ethics Commission, and it must describe the allegations with sufficient detail to enable both the Commission and the person who is the subject of the complaint to reasonably understand the nature of the complaint. The complaint must be signed, dated, and filed with the City Clerk's Office, and it must include a statement indicating that, to the best of the person's knowledge, information, and belief formed after reasonable reflection, the information in the complaint is true.
- C. Once a complaint has been filed, copies of the complaint shall be forwarded to the City Attorney's Office for initial review.

#### Section 01.04B.150 Preliminary Review of Ethics Complaint

- A. Preliminary Review of Complaint

Upon receipt of a complaint, the City Attorney's Office shall conduct a preliminary review to determine whether the allegations, if proven, establish a violation of the City's Code of Ethics.

1. If, upon preliminary review of the complaint, the City Attorney finds that the respondent is not subject to the Code of Ethics or that the complaint fails to allege facts which, if proven, establish an ethics violation, the City Attorney shall provide to the Ethics Commission a written notification of this finding with a recommendation that the Commission Chair summarily dismiss the complaint. The complainant shall also be provided notification of this finding and recommendation. A decision by the Chair to summarily dismiss a complaint based upon the recommendation of the City Attorney pursuant to this subsection may be appealed by the complainant to the Ethics Commission by filing an appeal within ten days of the date of the Chair's decision with the City Clerk's Office. In the event of an appeal, the Chair shall not participate in the Commission's deliberation or decision. The appeal will be determined by the remaining members of the Commission. A determination by the Commission to affirm the decision of the Chair shall be final with no further appeal rights.
2. If, in the opinion of the City Attorney, the complaint fails to establish a prima facie ethics violation based upon the facts alleged in the complaint, the City Attorney shall provide written notification to Ethics Commission of his or her opinion and recommendation that complaint be dismissed, and shall provide the Commission with a proposed order of dismissal. The complainant shall also be provided notification of this opinion. A decision of the Ethics Commission to dismiss a complaint based upon the recommendation of the City Attorney pursuant to this subsection may be appealed by the complainant to the Hearing Examiner by filing an appeal with the Hearing Examiner's Office within ten days of the date of the Ethics Commission's decision. The only matter before the Hearing Examiner on appeal is whether the complainant has established a prima facie ethics violation based upon the facts alleged in the complaint.
3. If, upon preliminary review of the complaint, the City Attorney determines that the complaint alleges facts that, if proven, establish an ethics violation, the complaint shall be forwarded to an independent investigator to commence an investigation for purposes of determining whether there is reasonable cause to believe that a violation of the Code of Ethics has occurred.

#### Section 01.04B.160 Investigation of Complaint

- A. If an investigation is commenced, the City Attorney shall provide written notification to the complainant and to subject of the complaint, of his or her decision to refer the matter to an independent investigator for formal investigation to determine if a violation has occurred. A copy of the complaint shall be served on the subject of the complaint.
- B. Once an independent investigator has been identified, a copy of the complaint shall be forwarded to the investigator, who shall contact and conduct interviews of the complainant,

the subject of the complaint, and of any individuals with knowledge of the facts pertaining to the allegations in the complaint. The investigator shall also seek to obtain and evaluate any additional evidence, such as documentary evidence, in an effort to determine whether there is reasonable cause to believe the subject of the complaint has committed a violation of the City's Code of Ethics.

- C. Once the investigator has conducted interviews and has reviewed all other relevant evidence, he or she shall prepare an investigative report detailing his or her findings.

#### Section 01.04B.170 Post-Investigation Procedures

- A. If the investigator finds that the evidence fails to establish that the subject of the complaint has committed prohibited conduct, the independent investigator shall prepare an investigative report with a recommendation of that the complaint be dismissed.

- 1. Whenever an investigator makes a recommendation of dismissal, the investigative report and copies of all documents relating to the investigation shall be forwarded to the Ethics Commission for a final decision on dismissal. Copies of the investigative report and all documents related to the investigation shall be served upon the complainant and the subject of the complaint.
- 2. Upon receipt of an investigator's investigative report and a recommendation of dismissal, the Ethics Commission may enter an order of dismissal, copies of which shall be served on the complainant and on the subject of the complaint.

- B. If, after investigation, the independent investigator determines that there is reasonable cause to believe the subject of the complaint has committed prohibited conduct in violation of the Code of Ethics, he or she shall prepare an investigative report detailing the evidence and stating the basis for his or her determination. The investigative report and copies of all documents relating to the investigation shall be forwarded to the Ethics Commission with a recommendation that a hearing be held. Copies of the investigative report and all documents related to the investigation shall be served upon the complainant and the subject of the complaint.

#### C. Response by Subject of Complaint

- 1. If the subject of the complaint accepts the findings of the investigative report, he or she may stipulate to the violation. In such instance, the matter will proceed to a hearing before the Ethics Commission for adoption of the stipulation and imposition of a penalty.
- 2. If the subject of the complaint contests the findings detailed within the investigative report or fails to respond to the findings of the investigative report, the matter shall proceed to a contested hearing before the Ethics Commission.



## PART 4 – HEARING AND ADJUDICATION

### Section 01.04B.180 Commencement of Proceedings

- A. Upon receipt of an investigative report recommending that hearing be held, the Ethics Commission shall conduct a formal hearing at which it may consider the findings contained within the investigative report submitted by the independent investigator. The Commission may also consider testimony taken from witnesses and any other evidence presented at the hearing.
- B. If the Commission determines that witness testimony is necessary to establish the factual record, the Commission may issue a prehearing order requiring witness testimony. If it appears that subpoenas are required to compel the attendance of witnesses, the Commission may direct that judicial subpoenas be obtained.

### Section 01.04B.190 Hearing Procedures

#### A. Proceedings Recorded and Open to the Public

- 1. All hearings of the Ethics Commission shall be conducted as contested hearings under rules adopted by the Ethics Commission. All hearings shall be open to the public.
- 2. All hearings before the Ethics Commission shall be recorded.
- 3. The record of the hearings, as well as all documents submitted in regards to the complaint and the Ethics Commission's investigation, shall be subject to public disclosure under chapter 42.56 RCW.

#### B. Preliminary Matters

- 1. The subject of a complaint may elect to be represented by legal counsel or to have a union representative represent them at the hearing.
- 2. Prior to the commencement of the hearing, the Commission may consider preliminary matters raised by the parties, including motions brought by either party, such as a motion to dismiss.
- 3. The Ethics Commission is not bound by the rules of evidence for Washington courts but may use these rules when determining the relevance of, and weight to be given to, any evidence presented. The final decision of the Ethics Commission shall rely upon evidence they deem to be reliable and trustworthy and which establishes a violation by a preponderance of the evidence.
- 4. Upon the agreement of the parties, the Commission may consolidate for hearing multiple complaints when the facts underlying the complaints arise out of the same transactions or occurrences.

#### C. Presentation of Evidence

1. At the commencement of the hearing, the Ethics Commission shall introduce the case and take judicial notice of the investigative report and any related documents or exhibits that are referenced in the investigator's report. This report and all related documents shall become part of the record and shall be considered in the Commission's final decision.
2. The Commission shall allow the complainant and the subject of the complaint to present witnesses at the hearing to supplement the evidence detailed within, and documents attached to, the investigative report submitted by the independent investigator.
3. The Commission shall allow each party to submit additional evidence, such as affidavits and documentary evidence. The Commission shall consider issues of authenticity and reliability in deciding whether to consider, and what weight to assign to, such evidence.
4. At the conclusion of all testimony and the presentation of documentary evidence, the Commission shall give each party the opportunity to summarize the evidence in a brief closing statement.

#### F. Deliberation and Decision

1. At the conclusion of closing statements, the Commission shall adjourn the proceedings and begin deliberations to determine whether or not a violation of the Code of Ethics has occurred.
2. Once the Commission adjourns back into open session and has made its final determination, the Commission shall issue written findings of fact and conclusions of law, along with the disposition. All such findings and conclusions and the disposition shall be reviewed by the city attorney (or independent legal counsel in the event that a conflict of interest prevents the city attorney from conducting the review) prior to their issuance.

#### Section 01.04B.200 Dismissal of a Complaint

- A. Summary dismissal of a complaint by the Chair of the Ethics Commission after review by the City Attorney, pursuant to SMC 01.04B.150, shall occur in the following circumstances:
  1. The respondent is not subject to the Code of Ethics
  2. The allegations, if true, would not constitute prohibited conduct in violation of the Code of Ethics.
- B. Dismissal of a complaint by the full Ethics Commission after hearing may be based upon any of the following grounds:
  1. The alleged violation is a minor or de minimis violation;
  2. The complaint or inquiry is, on its face, frivolous, groundless or brought for purposes of harassment;
  3. The matter has become moot because the person who is the subject of the complaint is no longer a City officer or employee;

4. The appointing authority has already taken action as a result of finding a violation and the Commission finds that the action has sufficiently addressed the matter;
  5. The respondent previously requested and followed the documented advice regarding compliance with the Ethics Code provided by the legal counsel for the Ethics Commission; or
  6. The respondent was previously the subject of a prior ethics complaint based upon the same set of facts and alleging the same violation(s) of the Code of Ethics and regarding which the Ethics Commission issued a decision.
- C. The Ethics Commission shall issue a written decision setting forth the legal and/or factual basis for the dismissal, which shall be provided to the complainant and the subject of the complaint. The complainant may appeal the Commission's decision to dismiss a complaint to the City's Hearing Examiner within ten days of the date of the Commission's decision.

#### Section 01.04B.210 Penalties

- A. Upon a determination by the Ethics Commission that a violation has occurred, or upon a stipulation to a violation, the party found to be in violation may be subject to one or more of the following penalties, which may be imposed by the Ethics Commission:
1. A cease and desist order as to violations of this Code of Ethics.
  2. A recommendation to the city council that an appointed committee or commission member be removed from the board or commission.
  3. An order to pay to the City damages sustained by the City that are caused by the conduct constituting the violation.
  4. In the case of a violator who receives wages from the City, a civil penalty of up to five thousand dollars per violation or three times the economic value of anything received or sought in violation of this chapter or rules adopted under it, whichever is greater, may be imposed. Alternatively, the violator who is a member of a board or commission may be suspended for a number of days to be decided by the Ethics Commission, in lieu of fine but not in lieu of damages.
  5. In the case of an elected official, a written reprimand may be issued by the Ethics Commission if the Commission determines that while the elected official did violate the Ethics Code, there was no intent to commit the violation. The written reprimand shall set for the nature of the violation, the elected official's response and the reasons why a reprimand is appropriate. The written reprimand shall be filed with the City Clerk and placed in the City Council minutes. A written reprimand may not be issued, however, if the elected official stipulates to the decision of the Hearing Examiner, as provided in SMC 01.04B.080(C)(3).
  6. An employee of the City who commits a violation of this chapter may be subjected to disciplinary action, up to and including termination from employment; provided that

such disciplinary action is consistent with civil service guidelines and any applicable collective bargaining agreement.

7. Costs, including reasonable investigative costs, shall be included as part of the limit under subsection (A)(4) of this section. Costs may not exceed the penalty imposed. The payment owed on the penalty shall be reduced by the amount of the costs paid.
8. As appropriate, the Ethics Commission may refer the disposition of a complaint to the City or County prosecuting attorney's office for appropriate action.
9. Damages under this section may be enforced in the same manner as a judgment in a civil court.

#### Section 01.04B.220 Recall of Elected Official for Violation of Code of Ethics

- A. Pursuant to City Charter Section 8.5, the City Council may consider a resolution to place an elected official's name on a recall ballot based upon the Ethics Commission's recommendation to the City Council that the elected official be subject to a recall election. The Ethics Commission must determine that:
  1. an elected official of the City has knowingly committed a violation of the Code of Ethics,
  2. the violation constitutes moral turpitude rendering the elected official unfit to remain in office, and
  3. there are no mitigating circumstances.
- B. In considering whether to place an elected official's name on a recall ballot, the City Council shall have a resolution submitted to the City Clerk's office setting forth the Ethics Commission's determination and recommendation regarding the violation of the Code of Ethics and calling for a public hearing on the matter. The City Council shall schedule a hearing at least thirty days from the date the resolution is submitted to the City Clerk's office. A copy of the resolution and hearing date shall be personally served upon the elected official. At the time the City Council is scheduled to consider the resolution, the chair of the Ethics Commission or the Ethics Commission's designee shall appear before the city council to present the Ethics Commission's determination and recommendation. The Ethics Commission shall deliver to the City Council all records maintained by the Commission created pursuant to its review and determination of the matter. The elected official who is the subject of the Ethics Commission's shall be given an opportunity to respond to the Ethics Commission's determination and recommendation and to present argument against passage of the resolution by the City Council to place the elected officials name on a recall ballot. Both the Ethics Commission's representative and the elected official shall be permitted to respond to questions from the City Council.
- C. The City Council, by a majority plus one vote of the City Council, may pass the resolution to place the elected official's name on a recall election ballot for action by the voters of the City on the next available general or special election established by state law. The City Clerk's office shall forward the required resolution to the Spokane County auditor's office pursuant to state law requesting the ballot proposition be placed on the next available general or special election. The City Attorney's office shall be responsible for preparing a

ballot synopsis for the recall election and any necessary resolutions or other legal documents.

- D. If approved by a majority of the electors voting in the election, the elected official shall be removed from office effective the date the recall election results are certified by the Spokane County auditor.

## PART 5 – APPEAL

### Section 01.04B.230 Notice of Appeal

- A. Any person who has been found to have violated this chapter and has been assessed a monetary penalty, subjected to disciplinary action, or removed from office for a violation of this chapter may file an appeal to the City’s Hearing Examiner by delivering a written notice of appeal to the City Clerk’s Office within twenty days of receiving a decision of the Ethics Commission finding a violation and imposing a penalty.
- B. Any person who has filed a complaint with the Ethics Commission and has subsequently received a written decision by the Ethics Commission dismissing the complaint pursuant to SMC 01.04B.200.B may file an appeal to the City’s Hearing Examiner by delivering a written notice of appeal to the City Clerk’s Office within twenty days of receiving a decision of the Ethics Commission regarding a written decision dismissing the complaint.
- C. The notice of appeal shall be in writing and shall include the mailing address and, if different, the street address where papers may be served on the appellant. The notice of appeal shall contain, in separate numbered paragraphs, statements of the specific findings of fact, conclusions of law, or aspects of the fine and/or cost bill on which the appellant seeks review, the basis for the appeal, and a brief statement of the relief requested. The person filing the appeal shall attach a copy of the decision being appealed.
- D. Within ten days of the filing of the notice of appeal, the City Clerk shall forward to the Ethics Commission a copy of the written notice of appeal. A copy shall also be sent to the adverse party.

### Section 01.04B.240 Record of Proceedings and Exhibits Transmitted to Hearing Examiner

- A. The City Clerk shall provide the Hearing Examiner with a complete copy of the record, including copy of the complaint, the investigative report and related records of the independent investigator, recorded proceedings and all documents offered into evidence at the Ethics Commission hearing within twenty days of receiving a copy of the written notice of appeal.

### Section 01.04B.250 Procedures for Review on Appeal

- A. The Hearing Examiner shall conduct a review of the entire record as if the case was being heard for the first time.

- B. In deciding whether there has been a violation of the Code of Ethics, the Hearing Examiner may only consider evidence that is already in the record, including the investigative report and related documents as well as the recorded proceedings of the hearing before the Ethics Commission.
- C. Any decision to reverse the Ethics Commission's decision finding of a violation must be based on the conclusion that the Commission's decision was arbitrary, capricious, or not supported by the evidence.
- D. In appeals of monetary penalties, the Hearing Examiner may allow additional testimony and may therefore convene a hearing for this limited purpose. The Hearing Examiner may modify the amount of any monetary penalty imposed by the Commission.
- E. The Commission's decision shall be deemed to have been upheld unless the Hearing Examiner reverses or modifies the Commission's decision within seventy-five days after the notice of appeal is filed.
- F. A person who receives an adverse ruling from the Hearing Examiner after appealing the decision of the Ethics Commission may seek judicial review of the ruling.

**Section 2.** That Chapter 01.04A of the Spokane Municipal Code is hereby repealed.

**Section 3.** Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

**Section 4.** Clerical Errors. Upon approval by the city attorney, the city clerk is authorized to make necessary corrections to this ordinance, including scrivener's errors or clerical mistakes; references to other local, state, or federal laws, rules, or regulations; or numbering or referencing of ordinances or their sections and subsections.

PASSED by the City Council on \_\_\_\_\_

\_\_\_\_\_  
Council President

Attest:

Approved as to form:

---

City Clerk

---

City Attorney

---

Mayor

---

Date

---

Effective Date



**Agenda Sheet for City Council:**

**Committee:** Finance & Administration **Date:** 06/03/2024

**Committee Agenda type:** Discussion

**Date Rec'd**

5/21/2024

**Clerk's File #**

**Renews #**

**Cross Ref #**

**Council Meeting Date:** 06/24/2024

**Submitting Dept**

CITY ATTORNEY

**Project #**

**Contact Name/Phone**

MIKE PICCOLO 6237

**Bid #**

**Contact E-Mail**

MPICCOLO@SPOKANECITY.ORG

**Requisition #**

**Agenda Item Type**

First Reading Ordinance

**Council Sponsor(s)**

BWILKERSON

**Agenda Item Name**

RENUMBERING OF WHISTLEBLOWER PROTECTIONS

**Agenda Wording**

An ordinance relating to Whistleblower Protection; adopting a new Chapter 01.04C of the Spokane Municipal Code.

**Summary (Background)**

Moves Whistleblower Protections to a new Chapter 01.04B SMC.

Lease? NO

Grant related? NO

Public Works? NO

**Fiscal Impact**

Approved in Current Year Budget? N/A

Total Cost \$

Current Year Cost \$

Subsequent Year(s) Cost \$

**Narrative**

**Amount**

**Budget Account**

Neutral \$

#

Select \$

#

Select \$

#

Select \$

#

\$

#

\$

#





## Committee Agenda Sheet

### Finance & Administration Committee

<b>Committee Date</b>	May 23, 2024
<b>Submitting Department</b>	City Attorney' Office
<b>Contact Name</b>	Mike Piccolo
<b>Contact Email &amp; Phone</b>	mpiccolo@spokanecity.org; (509) 625-6225
<b>Council Sponsor(s)</b>	
<b>Select Agenda Item Type</b>	<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Discussion    Time Requested: 15 minutes
<b>Agenda Item Name</b>	Code of Ethics Revision; Renumbering of Whistleblower Protections
<b>Proposed Council Action</b>	<input checked="" type="checkbox"/> Approval to proceed to Legislative Agenda <input type="checkbox"/> Information Only
<b>Summary (Background)</b>	<p>This ordinance revises the complaint process in Chapter 01.04A (Code of Ethics) as follows:</p> <ul style="list-style-type: none"> <li>• Organizes the Ethics Code into five parts and reorganizes several sections.</li> <li>• Clarifies the "Jurisdiction of the Ethics Commission."</li> <li>• Expands procedures for processing Ethics Complaints: <ul style="list-style-type: none"> <li>○ Adds a preliminary review by the City Attorney to filter out complaints that do not meet the threshold for an ethics violation.</li> <li>○ Adds formal investigation by an independent investigator before a complaint proceeds to the Commission for a hearing.</li> </ul> </li> <li>• Puts the Appeal Process under the City's Hearing Examiner.</li> <li>• Moves Whistleblower Protections to a new Chapter 01.04B SMC.</li> </ul>
<b>Summary (Background)</b>	<p>*use the Fiscal Impact box below for relevant financial information</p>
<p><b>Fiscal Impact</b></p> <p>Approved in current year budget?    <input type="checkbox"/> Yes    <input type="checkbox"/> No    <input type="checkbox"/> N/A</p> <p>Total Cost: <a href="#">Click or tap here to enter text.</a></p> <p>Current year cost:</p> <p style="text-align: center;"><b>Currently there is no cost to the City related to the complaint process except as incurred by individuals who hire counsel to represent them.</b></p> <p>Subsequent year(s) cost:</p> <p style="text-align: center;"><b>It is anticipated that the City may incur costs to hire an independent investigator to interview a complainant who alleges a violation for which the Commission has jurisdiction.</b></p> <p><b>Narrative:</b> Please provide financial due diligence review, as applicable, such as number and type of positions, grant match requirements, summary type details (personnel, maintenance and supplies, capital, revenue), impact on rates, fees, or future shared revenue</p> <p><b>Funding Source</b>    <input type="checkbox"/> One-time    <input type="checkbox"/> Recurring    <input type="checkbox"/> N/A</p> <p>Specify funding source: Select Funding Source*</p> <p>Is this funding source sustainable for future years, months, etc? <a href="#">Click or tap here to enter text.</a></p> <p><b>Expense Occurrence</b>    <input type="checkbox"/> One-time    <input type="checkbox"/> Recurring    <input type="checkbox"/> N/A</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	

**Operations Impacts** (If N/A, please give a brief description as to why)

- What impacts would the proposal have on historically excluded communities?

**By ensuring that an independent investigator is assigned to compile evidence and conduct interviews, the proposed revision would potentially give historically excluded communities more of an opportunity to have their complaints heard in a process that can be cumbersome and for which cooperation can be difficult to obtain.**

- How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?

**The City may compile data from complainants who file Ethics complaints with the City Clerk's Office concerning their racial, ethnic, gender identity, national origin, or other identity data. Surveys may also be appropriate in collecting data concerning the effect of this change.**

- How will data be collected regarding the effectiveness of this program, policy, or product to ensure it is the right solution?

**Survey data will allow complainants and the subjects of complaints to provide feedback concerning their ability to advance (or defend against) complaints in a more efficient manner.**

- Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

**Council Subcommittee Review**

- Please provide a summary of council subcommittee review. If not reviewed by a council subcommittee, please explain why not.

ORDINANCE NO. C - \_\_\_\_\_

An ordinance relating to Whistleblower Protection; adopting a new Chapter 01.04C of the Spokane Municipal Code.

The City of Spokane does ordain:

Section 1. That there is adopted a new Chapter 01.04C of the Spokane Municipal Code to read as follows:

Chapter 01.04C Whistleblower Protection

Section 01.04C.010 General

This subsection implements Washington State's Local Government Whistleblower Protection Act, Chapter 42.41 RCW.

Section 01.04C.020 Departments and Divisions Affected

This subsection shall apply to all City divisions and departments.

Section 01.04C.030 Definitions

- A. "Emergency" means a circumstance that if not immediately changed may cause damage to persons or property.
- B. "Improper governmental action" means any action by a local government officer or employee:
  - 1. that is undertaken in the performance of the officer's or employee's official duties, whether or not within the scope of the employee's employment, and
  - 2. that is in violation of any federal, state or local law or rule, is an abuse of authority, is of substantial and specific danger to the public health or safety, or is a gross waste of public funds. The phrase does not include any personnel or labor actions.
- C. "Retaliatory action" means:
  - 1. any adverse change in an employee's employment status or the terms and conditions of employment including denial of adequate staff to perform duties, frequent staff changes, frequent and undesirable office changes, refusal to assign meaningful work, unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations, demotion, transfer, reassignment, reduction in pay, denial of promotion, suspension, dismissal, or any other disciplinary action; or

2. hostile actions by another employee towards the employee that were encouraged by a supervisor or senior manager or official.

#### Section 01.04C.040 Policy

It is the policy of the City of Spokane to encourage employees to report information concerning any allegedly improper action by the City's officers or employees. It is further the policy of the City to prevent retaliation against any employee who in good faith reports such allegedly improper action. Employees who feel they have been retaliated against may appeal to the hearing examiner.

#### Section 01.04C.050 Procedure

##### A. Reporting Allegedly Improper Action

1. Every City employee has the right to report to the appropriate person or persons information concerning an alleged improper governmental action.
2. Any City employee who desires to report allegedly improper governmental action shall first report in writing such action to one of the following persons:
  - 1) the hearing examiner, or;
  - 2) human resources director, or;
  - 3) county prosecuting attorney.

It is the responsibility of the receiving official to forward the information on to the Whistleblower Panel comprised of a representative from the human resources department, the office of the city attorney, the city council office selected by the city council, the finance, treasury and administration department and the employee's bargaining unit representative. A member of the Whistleblower Panel who is also the subject of a complaint shall recuse themselves from the investigation.

3. The Whistleblower Panel shall investigate the received complaint (to include the hiring of outside investigators, if needed) and make a final report to the complainant and the Human Resources Director. The Panel shall endeavor to have a final report within ninety (90) working days of convening. A copy of the report shall be provided to the Human Resources Director and the complainant upon completion. If the Panel fails to complete its report within ninety days, the Panel shall provide an explanation to the complainant for the delay and an estimated completion date.
4. Except in the case of an emergency, an employee shall NOT provide information of an improper governmental action to a person or an entity who is not a public official or person listed in subsection 6.1.2 above. An employee who fails to make a good faith attempt to follow this procedure shall not receive the protections of this subsection or the State Whistleblower Protection Act.
5. The City *shall* keep confidential the identity of the person reporting to the extent possible under law, unless the employee authorizes in writing the disclosure of his or her identity.

## B. Retaliatory Action Forbidden

1. No City official or employee may take retaliatory action against a City employee because the employee provided information in good faith in accordance with the provisions of this subsection that an improper governmental action occurred.
2. If an employee believes she or he has been retaliated against in violation of this subsection, the employee must provide a written notice of the charge or retaliatory action to the Hearing Examiner of the City. The notice must specify the alleged retaliatory action, and the relief requested.
3. The charge must be delivered to the Hearing Examiner no later than sixty (60) calendar days after the occurrence of the alleged retaliatory action or the date the employee reasonably should have been aware that retaliation has taken place. The City will then have thirty (30) calendar days to respond to the charge and the request for relief.
4. Upon receipt of either the response by the City or after the lapse of the thirty (30) calendar days, the employee may request a hearing to determine whether a retaliatory action has occurred and to obtain appropriate relief. The request for a hearing must be made within fifteen (15) calendar days of receipt of the response by the City or the lapse of the City's thirty (30) calendar day response time. Requests must be in writing and made to the City Hearing Examiner.
5. If the claimant has met all the time requirements, the hearing examiner will hold a hearing. The burden of proof is on the employee to prove his or her claim by a preponderance of the evidence. The hearing examiner will issue a final decision consisting of findings of fact, conclusions of law, and judgment no later than forty-five (45) calendar days following the request for hearing. The hearing examiner may grant extensions of time upon the request of either party upon a showing of good cause or on his or her own motion.
6. The hearing examiner may grant the following relief, as appropriate: reinstatement, with or without back pay, and injunctive relief as may be necessary to return the employee to the position he or she held before the retaliatory action and to prevent any recurrence of retaliatory action. The hearing examiner may award costs and reasonable attorneys' fees to the prevailing party. The hearing examiner may also impose a civil penalty of up to five thousand dollars (\$5,000) payable by each person found to have retaliated against the employee and may recommend to the City that the person found to have retaliated be suspended or discharged.
7. Either party may appeal to Superior Court from an adverse determination by the hearing examiner. The hearing examiner's decision is subject to judicial review under the arbitrary and capricious standard.

### Section 01.04C.060 Responsibilities

The human resources department shall administer this subsection.

Section 01.04C.070 Severability

If any section, subsection, paragraph, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this chapter.

PASSED by the City Council on \_\_\_\_\_

\_\_\_\_\_  
Council President

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Effective Date

## Committee Agenda Sheet

### Finance & Administration Committee

<b>Committee Date</b>	June 3, 2024
<b>Submitting Department</b>	Legal
<b>Contact Name</b>	Mike Piccolo
<b>Contact Email &amp; Phone</b>	<a href="mailto:mpiccolo@spokanecity.org">mpiccolo@spokanecity.org</a> ; 625-6237
<b>Council Sponsor(s)</b>	<u>CM Cathcart, CP Wilkerson, CM Zappone</u>
<b>Select Agenda Item Type</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion    Time Requested:
<b>Agenda Item Name</b>	Westlaw Legal Research Contract
<b>Proposed Council Action</b>	<input checked="" type="checkbox"/> Approval to proceed to Legislative Agenda <input type="checkbox"/> Information Only
<b>Summary (Background)</b>	A contract with Thomson Reuters for Westlaw Legal Research Licenses for City Legal, City Prosecutor, the Hearing Examiner, City Council and the Office of Police Ombudsman. This is a five year term with a 1% increase per year. Total contract amount \$324,424.08, excluding tax.
<p><b>Fiscal Impact</b></p> <p><b>Approved in current year budget?</b>    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No    <input type="checkbox"/> N/A</p> <p>Total Cost: <u>\$324,424.08</u></p> <p>    Current year cost:</p> <p>    Subsequent year(s) cost:</p> <p><b>Narrative:</b> <u>N/a</u></p> <p><b>Funding Source</b>            <input type="checkbox"/> One-time    <input checked="" type="checkbox"/> Recurring    <input type="checkbox"/> N/A</p> <p>Specify funding source: Select Funding Source*</p> <p>Is this funding source sustainable for future years, months, etc? This comes from Legal's Publication budget.</p> <p><b>Expense Occurrence</b>    <input type="checkbox"/> One-time    <input checked="" type="checkbox"/> Recurring    <input type="checkbox"/> N/A</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	
<b>Operations Impacts (If N/A, please give a brief description as to why)</b>	
What impacts would the proposal have on historically excluded communities? <u>N/A</u>	
How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities? <u>N/A</u>	
How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution? <u>N/A</u>	



Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?  
N/A



# Order Form

**Order ID: Q-08414254**

Contact your representative [dan.nagan@thomsonreuters.com](mailto:dan.nagan@thomsonreuters.com) with any questions. Thank you.

**Sold To Account Address**

Account #: 1000717818  
 SPOKANE  
 CITY ATTORNEY  
 808 W SPOKANE FALLS BLVD FL 5  
 SPOKANE WA 99201-3333 US  
 "Customer"

**Shipping Address**

Account #: 1000717818  
 SPOKANE  
 CITY ATTORNEY  
 808 W SPOKANE FALLS BLVD FL 5  
 SPOKANE WA 99201-3333 US

**Billing Address**

Account #: 1000717818  
 SPOKANE  
 CITY ATTORNEY  
 808 W SPOKANE FALLS BLVD FL 5  
 SPOKANE, WA 99201-3333  
 US

This Order Form is a legal document between Customer and

- A. West Publishing Corporation to the extent that products or services will be provided by West Publishing Corporation, and/or
- B. Thomson Reuters Enterprise Centre GmbH to the extent that products or services will be provided by Thomson Reuters Enterprise Centre GmbH.

A detailed list of products and services that are provided by Thomson Reuters Enterprise Centre GmbH and current applicable IRS Certification forms are available at: <https://www.tr.com/trorderinginfo>

West Publishing Corporation may also act as an agent on behalf of Thomson Reuters Enterprise Centre GmbH solely with respect to billing and collecting payment from Customer. Thomson Reuters Enterprise Centre GmbH and West Publishing Corporation will be referred to as "Thomson Reuters", "we" or "our," in each case with respect to the products and services it is providing, and Customer will be referred to as "you", or "your" or "Client".

For Federal Customers the following shall apply: Thomson Reuters General Terms and Conditions (available here: <http://tr.com/federal-general-terms-and-conditions>) apply to the purchase and use of all products, except print, and together with any applicable Product Specific Terms (set forth below) are incorporated into this Order Form by this reference. In the event that there is a conflict of terms among the General Terms and Conditions, the Product Specific Terms and this Order Form, the order of precedence shall be Order Form, the Product Specific Terms, and last the General Terms and Conditions.

For non-federal customers the following shall apply: Thomson Reuters General Terms and Conditions (<http://tr.com/us-general-terms-and-conditions>) apply to the purchase and use of all products, except print, and together with any applicable Product Specific Terms (set forth below) are incorporated into this Order Form by this reference. In the event that there is a conflict of terms among the General Terms and Conditions, the Product Specific Terms and this Order Form, the order of precedence shall be Order Form, the Product Specific Terms, and last the General Terms and Conditions.

**ProFlex Products**  
 See Attachment for details

Material #	Product	Monthly Charges	Minimum Terms (Months)
40757482	West Proflex	\$5,300.00	60

**Bridge Products**

Material #	Product	Quantity	Unit	Bridge Monthly Charges	Bridge Term (Months)
40757482	West Proflex	1	Each	\$4,417.78	1

**Bridge Terms**

Bridge Monthly Charges begin on the date we process your order and will be prorated for the number of days remaining in the calendar month, if any. The Bridge Monthly charges will continue for the number of complete calendar months listed in the Bridge Term column above and will be in addition to the Monthly Charges and Minimum Term outlined above. At the end of the Bridge Term, your Monthly Charges and the Minimum term will begin on the first full calendar month following the Bridge Term as described in the Product grid above. All other terms and conditions of the Order Form remain unchanged. For purposes of clarification, your total Term will be the Bridge Term plus the Minimum Term.

**Minimum Terms**

Your subscription is effective upon the date we process your order ("Effective Date") and Monthly Charges will be prorated for the number of days remaining in that month, if any. Your subscription will continue for the number of months listed in the Minimum Term column above plus any Bridge Term that may be outlined above counting from the first day of the month following the Effective Date. Your Monthly Charges during the first twelve (12) months of the Minimum Term are as set forth above. If your Minimum Term is longer than 12 months, then your Monthly Charges for each year of the Minimum Term are displayed in the Attachment to the Order Form.

**Post Minimum Terms**

Your subscription will automatically renew at the end of the Minimum Term. Each Automatic Renewal Term will be 12 months in length ("Automatic Renewal Term"), and we will notify you of any change in the Monthly Charges at least 60 days before each Automatic Renewal Term starts. You are also responsible for all Excluded Charges.

Federal government subscribers that chose a multi-year Minimum Term, those additional years will be implemented at your option pursuant to federal law. Either of us may cancel the Automatic Renewal Term by sending notice in writing at least 30 days before an Automatic Renewal Term begins. Send your notice of cancellation to Customer Service, 610 Opperman Drive., P.O. Box 64833, Eagan, MN 55123-1803.

**Banded Product Subscriptions.** You certify your total number of attorneys (full-time and part-time partners, shareholders, associates, contract or staff attorneys, of counsel, and the like), corporate users, personnel or full-time-equivalent students is indicated in this Order Form. Our pricing for banded products is made in reliance upon your certification. If we learn that the actual number is greater or increases at any time, we reserve the right to increase your charges to the market rate for all of your attorneys.

#### Miscellaneous

**Applicable Law.** If you are a state or local governmental entity, your state's law will apply, and any claim may be brought in the state or federal courts located in your state. If you are a non-governmental entity, this Order Form shall be interpreted under Minnesota state law and any claim by one of us shall exclusively be brought in the state or federal courts in Minnesota. If you are a United States Federal Government subscriber, United States federal law will apply, and any claim may be brought in any federal court.

**Material Change.** If, at any time during the Minimum Term or the Renewal Term, there is a material change in your organizational structure including, but not limited to merger, acquisitions, combination, significant increase in the number of attorneys at a location covered by the agreement, divestitures, downsizing or dissolution, the parties agree to immediate good faith renegotiation of the terms and conditions of this ordering document, during which we may modify your rates proportionally. If you acquire the assets of, or attorneys from, another entity that is a current subscriber, you assume all obligations under the agreements that apply to those assets and attorneys, and you will pay the invoiced charges on both those agreements as they become due, until a superseding agreement is negotiated in good faith.

**Charges, Payments & Taxes.** You agree to pay all charges in full within 30 days of the date of invoice. You are responsible for any applicable sales, use, value added tax (VAT), etc. unless you are tax exempt. If you are a non-government customer and fail to pay your invoiced charges, you are responsible for collection costs including attorneys' fees.

**Excluded Charges And Schedule A Rates.** If you access products or services that are not included in your subscription you will be charged our then-current rate ("Excluded Charges"). Excluded Charges will be invoiced and due with your next payment. For your reference, the current Excluded Charges schedules are located in the below link. Excluded Charges may change from time-to-time upon 30 days written or online notice. We may, at our option, make certain products and services Excluded Charges if we are contractually bound or otherwise required to do so by a third party provider or if products or services are enhanced or if new products or services are released after the effective date of this ordering document. Modification of Excluded Charges or Schedule A rates is not a basis for termination under paragraph 9 the General Terms and Conditions.

<https://legal.thomsonreuters.com/content/dam/ewp-m/documents/legal/en/pdf/other/plan-2-pro-govt-agencies.pdf>  
<http://static.legalsolutions.thomsonreuters.com/static/agreement/plan-2-pro-govt-agencies.pdf>

**eBilling Contact.** All invoices for this account will be emailed to your e-Billing Contact(s) unless you have notified us that you would like to be exempt from e-Billing.

**Credit Verification.** If you are applying for credit as an individual, we may request a consumer credit report to determine your creditworthiness. If we obtain a consumer credit report, you may request the name, address and telephone number of the agency that supplied the credit report. If you are applying for credit on behalf of a business, we may request a current business financial statement from you to consider your request.

**Cancellation Notification Address.** Send your notice of cancellation to Customer Service, 610 Opperman Drive, P.O. Box 64833, Eagan MN 55123-1803

**Returns and Refunds.** You may return a print product to us within 45 days of the original shipment date if you are not completely satisfied. Please see <http://static.legalsolutions.thomsonreuters.com/static/returns-refunds.pdf> or contact Customer Service at 1-800-328-4880 for additional details regarding our policies on returns and refunds.

**Document Intelligence Product Specific Terms:** The following product specific terms shall apply to the Document Intelligence products on this order form, and are incorporated by reference: <http://www.thomsonreuters.com/document-intelligence-PST>.

**Product Specific Terms and Service Levels:** The following product specific terms and service levels shall apply to the HighQ products on this order form, and are incorporated by reference:

- HighQ Product Specific Terms <http://tr.com/HighQ-PST>
- HighQ Service Levels: Thomson Reuters shall provide service availability, maintenance and support for the term of the Agreement. Details are available at: <http://tr.com/HighQ-SLA>. Note that Sections 3.3 of the SLA does not apply to any HighQ Light packages

**Product Specific Terms.** The following products have specific terms which are incorporated by reference and made part of this Order Form if they apply to your order. They can be found at <https://static.legalsolutions.thomsonreuters.com/static/ThomsonReuters-General-Terms-Conditions-PST.pdf>. If the product is not part of your order, the product specific terms do not apply. If there is a conflict between product specific terms and the Order Form, the product specific terms control.

- Campus Research
- Hosted Practice Solutions
- ProView eBooks
- Time and Billing
- West km Software
- West LegalEdcenter
- Westlaw
- Westlaw Doc & Form Builder
- Westlaw Paralegal
- Westlaw Patron Access
- Westlaw Public Records

**Drafting Tools Product Specific Terms:** The following product specific terms shall apply to the Drafting Tools products (Drafting Assistant, Clause Finder, Clause Finder: Internal Agreements) on this order form, and are incorporated by reference: <http://tr.com/drafting-tools-product-specific-terms>.

The Federal Product Specific Terms can be found here: <http://tr.com/federal-product-specific-terms>

**Amended Terms and Conditions**

**Government Non-Availability of Funds for Online, Practice Solutions or Software Products**

You may cancel a product or service with at least 30 days written notice if you do not receive sufficient appropriation of funds. Your notice must include an official document, (e.g., executive order, an officially printed budget or other official government communication) certifying the non-availability of funds. You will be invoiced for all charges incurred up to the effective date of the cancellation.

**Acknowledgement: Order ID: Q-08414254**

\_\_\_\_\_  
**Signature of Authorized Representative for order**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Date**

This Order Form will expire and will not be accepted after 6/25/2024.



# Attachment

# Order ID: Q-08414254

Contact your representative dan.nagan@thomsonreuters.com with any questions. Thank you.

### Payment, Shipping, and Contact Information

**Payment Method:**

Payment Method: Bill to Account  
 Account Number: 1000717818  
 This order is made pursuant to:

**Order Confirmation Contact (#28)**

Contact Name: Hansen, Sheila  
 Email: sdhansen@spokanecity.org

**Shipping Information:**

Shipping Method: Ground Shipping - U.S. Only

**eBilling Contact**

Contact Name Sheila Hansen  
 Email sdhansen@spokanecity.org

### ProFlex Multiple Location Details

Account Number	Account Name	Account Address	Action
1000717818	SPOKANE	808 W SPOKANE FALLS BLVD FL 5 SPOKANE WA 99201-3333 US	New

### ProFlex Product Details

Quantity	Unit	Service Material #	Description
1	Each	40757482	West Proflex
25	Attorneys	43102993	Westlaw Precision Preferred with AI-Assisted Research National Primary Law, Enterprise access, Government
25	Attorneys	42077755	Westlaw All Analytical, Enterprise access, Government

### Account Contacts

Account Contact First Name	Account Contact Last Name	Account Contact Email Address	Account Contact Customer Type Description
Sheila	Hansen	sdhansen@spokanecity.org	EML PSWD CONTACT

### Lapsed Products

Sub Material	Active Subscription to be Lapsed
40757481	West Proflex

### Charges During Minimum Term

Material #	Product Name	Year 1 Charges per Billing Freq	% incr Yr 1-2*	Year 2 Charges per Billing Freq	% incr Yr 2-3*	Year 3 Charges per Billing Freq	% incr Yr 3-4*	Year 4 Charges per Billing Freq	% incr Yr 4-5*	Year 5 Charges per Billing Freq	Billing Freq
40757482	West Proflex	\$5,300.00	1.00%	\$5353.00	1.00%	\$5406.53	1.00%	\$5460.60	1.00%	\$5515.21	Monthly

### Charges During Minimum Term

Pricing is displayed only for the years included in the Minimum Term. Years without pricing in above grid are not included in the Minimum Term. Refer to your Order Form for the Post Minimum Term pricing. Refer to Order Form for Billing Frequency Type.



**Agenda Sheet for City Council:**

**Committee:** Finance & Administration **Date:** 06/03/2024

**Committee Agenda type:** Consent

**Date Rec'd**

5/22/2024

**Clerk's File #**

**Renews #**

**Cross Ref #**

**Council Meeting Date:** 06/24/2024

**Submitting Dept**

CITY ATTORNEY

**Project #**

**Contact Name/Phone**

MICHAEL 6283

**Bid #**

**Contact E-Mail**

MPICCOLO@SPOKANECITY.ORG

**Requisition #**

PAID THRU

**Agenda Item Type**

Contract Item

**Council Sponsor(s)**

MCATHCART BWILKERSON ZZAPPONE

**Agenda Item Name**

0500 OUTSIDE COUNSEL CONTRACT AMENDMENT

**Agenda Wording**

Amendment of Outside Counsel Contract with KEATING, BUCKLIN & McCORMACK, INC., P.S. regarding the Estate of Bradley v. City of Spokane lawsuit. This amendment will increase the contract by \$100,000 for a total contract amount of \$250,000.00.

**Summary (Background)**

This is a lawsuit against the City for the alleged wrongful death of Robert Bradley on September 4, 2022.

Lease? NO Grant related? NO Public Works? NO

**Fiscal Impact**

Approved in Current Year Budget? N/A

Total Cost \$

Current Year Cost \$

Subsequent Year(s) Cost \$

**Narrative**

**Amount**

**Budget Account**

Expense \$ 100,000

# From Claims

Select \$

#

Select \$

#

Select \$

#

\$

#

\$

#



**Continuation of Wording, Summary, Approvals, and Distribution**

**Agenda Wording**

**Summary (Background)**

**Approvals**

**Dept Head**

PICCOLO, MIKE

**Division Director**

**Accounting Manager**

BUSTOS, KIM

**Legal**

HARRINGTON,

**For the Mayor**

PICCOLO, MIKE

**Additional Approvals**

**Distribution List**

sestes@kbmlawyers.com

James.Scott@davies-group.com

lsmithson@spokanecity.org

ahaile@spokanecity.org

sdhansen@spokanecity.org

ddaniels@spokanecity.org

dturin@spokanecity.org

## Committee Agenda Sheet

### Finance

<b>Submitting Department</b>	Legal
<b>Contact Name &amp; Phone</b>	Lynden P. Smithson, 6283
<b>Contact Email</b>	lsmithson@spokanecity.org
<b>Council Sponsor(s)</b>	Council Member Cathcart, Zappone
<b>Select Agenda Item Type</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion    Time Requested: 5 minutes
<b>Agenda Item Name</b>	Special Counsel Contract Amendment
<b>Summary (Background)</b>	<p>The City has an existing contract with Stewart A. Estes and the law firm of KEATING, BUCKLIN &amp; McCORMACK, INC., P.S., as outside counsel services and advice in the legal matter of <u>Estate of Robert Bradley, et al. v. City of Spokane, et al.</u> This is a lawsuit against the City for the alleged wrongful death of Robert Bradley on September 4, 2022.</p> <p>This amendment will increase the contract by \$100,000 for a total contract amount of \$250,000.00.</p>
<b>Proposed Council Action &amp; Date:</b>	June 17, 2024
<b>Fiscal Impact:</b>	<p>Total Cost:</p> <p>Approved in current year budget?    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No    <input type="checkbox"/> N/A</p> <p>Funding Source    <input checked="" type="checkbox"/> One-time    <input type="checkbox"/> Recurring</p> <p>Specify funding source:</p> <p>Expense Occurrence    <input checked="" type="checkbox"/> One-time    <input type="checkbox"/> Recurring</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>
<b>Operations Impacts</b>	<p>What impacts would the proposal have on historically excluded communities? N/A</p> <p>How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities? N/A</p> <p>How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution? N/A</p> <p>Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others? N/A</p>





City of Spokane  
**CONTRACT AMENDMENT**  
**OUTSIDE COUNSEL**

THIS CONTRACT AMENDMENT is between the **CITY OF SPOKANE**, a Washington State municipal corporation, as ("City"), **KEATING, BUCKLIN & MCCORMACK, INC., P.S.**, whose address is 801 Second Avenue, Suite 1210, Seattle, Washington 98104-1576, as ("Firm"), individually hereafter referenced as a "party", and together referenced as the "parties".

WHEREAS, the parties entered into a Contract wherein the Firm agreed to act as Outside Counsel providing legal services and advice to the City regarding the matter of THE ESTATE OF ROBERT BRADLEY, ET. AL. V. CITY OF SPOKANE, and

WHEREAS, additional funds are required, thus the original Contract needs to be formally Amended by this written document; and

NOW, THEREFORE, in consideration of these terms, the parties mutually agree as follows:

**1. CONTRACT DOCUMENTS.**

The Contract dated February 15, 2023, any previous amendments and/or extensions/renewals thereto are incorporated by reference into this document as though written in full and shall remain in full force and effect except as provided herein.

**2. EFFECTIVE DATE.**

This Contract Amendment shall become effective on April 1, 2024.

**4. COMPENSATION.**

The City shall pay an additional amount not to exceed **ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00)**, for everything furnished and done under this Contract Amendment. The total amount under the original contract, all previous amendments and this Amendment is **TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00)**.

IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants

contained, or attached and incorporated and made a part, the parties have executed this Contract Amendment by having legally-binding representatives affix their signatures below.

**KEATING, BUCKIN & MCCORMACK,  
INC., P.S.**

**CITY OF SPOKANE**

By \_\_\_\_\_  
Signature                      Date

By \_\_\_\_\_  
Signature                      Date

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney



**Agenda Sheet for City Council:**

**Committee:** Finance & Administration **Date:** 06/03/2024

**Committee Agenda type:** Consent

**Date Rec'd** 5/23/2024

**Clerk's File #**

**Cross Ref #**

**Project #**

**Council Meeting Date:** 06/24/2024

<b>Submitting Dept</b>	CONTRACTS & PURCHASING	<b>Bid #</b>	RFP #6086-24
<b>Contact Name/Phone</b>	JASON 232-8841	<b>Requisition #</b>	
<b>Contact E-Mail</b>	JNECHANICKY@SPOKANECITY.ORG		
<b>Agenda Item Type</b>	Contract Item		
<b>Council Sponsor(s)</b>	BWILKERSON JBINGLE KKLITZKE		
<b>Agenda Item Name</b>	5100 - ON-GOING PUBLIC AUCTION SERVICES (CITY WIDE)		

**Agenda Wording**

Purchasing department would like to enter into a contract with J.Stout LLC for on-going public auction services. The previous vendor has closed and is no longer in business.

**Summary (Background)**

Request for Proposals was issued for On-Going Public Auction Services for all City Departments including joint participation with the Spokane Transit Authority, Spokane International Airport and Spokane Public Schools. An evaluation committee consisting of representatives from Fleet Services, Police Department, Purchasing, Spokane Transit Authority and Spokane Public Schools evaluated the four (4) proposals received and is unanimously recommending J Stout Auctions (Spokane, WA) for a contract.

Lease? NO Grant related? NO Public Works? NO

**Fiscal Impact**

Approved in Current Year Budget?	N/A
Total Cost	\$ 300,000.00
Current Year Cost	\$
Subsequent Year(s) Cost	\$

**Narrative**

This is a Revenue Contract at approximately \$300k per year.

<b>Amount</b>	<b>Budget Account</b>
Revenue \$ 300,000	# Varies by department
Select \$	#
Select \$	#
Select \$	#
\$	#
\$	#



# Continuation of Wording, Summary, Approvals, and Distribution

## Agenda Wording

## Summary (Background)

### **Approvals**

<b><u>Dept Head</u></b>	NECHANICKY, JASON
<b><u>Division Director</u></b>	BOSTON, MATTHEW
<b><u>Accounting Manager</u></b>	ORLOB, KIMBERLY
<b><u>Legal</u></b>	HARRINGTON,
<b><u>For the Mayor</u></b>	PICCOLO, MIKE

### **Additional Approvals**

<b><u>PURCHASING</u></b>	PRINCE, THEA

### **Distribution List**

Pam Greensky pam@jstoutauction.com	tprince@spokanecity.org
laga@spokanecity.org	thayden@spokanecity.org
bpaschal@spokanecity.org	brandon@jstoutauction.com
atrussell@spokanecity.org	tsantana@spokanetransit.com
kberry@spokanecity.org	LisaPal@spokaneschools.org

## Committee Agenda Sheet

### Finance & Administration Committee

<b>Committee Date</b>	June 3, 2024
<b>Submitting Department</b>	Purchasing
<b>Contact Name</b>	Jason Nechanicky
<b>Contact Email &amp; Phone</b>	<a href="mailto:jnechanicky@spokanecity.org">jnechanicky@spokanecity.org</a> 232-8841
<b>Council Sponsor(s)</b>	Wilkerson, Bingle, Klitzke
<b>Select Agenda Item Type</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion    Time Requested:
<b>Agenda Item Name</b>	City Wide On-Going Auction Services
<b>Proposed Council Action</b>	<input type="checkbox"/> Approval to proceed to Legislative Agenda <input type="checkbox"/> Information Only
<b>Summary (Background)</b>	A Request for Proposals was issued for On-Going Public Auction Services for all City Departments including joint participation with the Spokane Transit Authority, Spokane International Airport and Spokane Public Schools. An evaluation committee consisting of representatives from Fleet Services, Police Department, Purchasing, Spokane Transit Authority and Spokane Public Schools evaluated the four (4) proposals received and is unanimously recommending J Stout Auctions (Spokane, WA) for a contract.
<p>*use the Fiscal Impact box below for relevant financial information</p>	<p><b>Fiscal Impact</b></p> <p><b>Approved in current year budget?</b>    <input type="checkbox"/> Yes    <input type="checkbox"/> No    <input checked="" type="checkbox"/> N/A</p> <p>Total Cost: <a href="#">Click or tap here to enter text.</a></p> <p>    Current year cost:</p> <p>    Subsequent year(s) cost:</p> <p><b>Narrative:</b> <u>This is a Revenue Contract at approximately \$300k per year.</u></p> <p><b>Funding Source</b>    <input type="checkbox"/> One-time    <input type="checkbox"/> Recurring    <input checked="" type="checkbox"/> N/A</p> <p>Specify funding source: Select Funding Source*</p> <p>Is this funding source sustainable for future years, months, etc? <a href="#">Click or tap here to enter text.</a></p> <p><b>Expense Occurrence</b>    <input type="checkbox"/> One-time    <input type="checkbox"/> Recurring    <input checked="" type="checkbox"/> N/A</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>
<p><b>Operations Impacts (If N/A, please give a brief description as to why)</b></p> <ul style="list-style-type: none"> <li>• What impacts would the proposal have on historically excluded communities? N/A</li> <li>• How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities? N/A</li> <li>• How will data be collected regarding the effectiveness of this program, policy, or product to ensure it is the right solution?</li> <li>• N/A</li> <li>• Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?</li> </ul>	

- Auction services are utilized as one of the tools for handling surplus goods. Third party auction providers assist with a lower overall administrative cost for managing surplus.

**Council Subcommittee Review**

- Please provide a summary of council subcommittee review. If not reviewed by a council subcommittee, please explain why not.
- n/a



**City of Spokane**  
**PERSONAL SERVICE AGREEMENT**  
Title: **ON-GOING PUBLIC AUCTION SERVICES**

This Agreement is made and entered into by and between the **CITY OF SPOKANE** as (“City”), a Washington municipal corporation, and **J. STOUT ENTERPRISES LLC – J. STOUT AUCTIONS**, whose address is 8018 West Sunset Highway, Spokane, Washington 99224 as (“Company”), individually hereafter referenced as a “party”, and together as the “parties”.

The parties agree as follows:

**1. PERFORMANCE.**

The Company shall provide On-Going Auction Services, in accordance with RFP 6086-24, and the Contract Users Information Sheet, which is attached as Exhibit B. In the event of a conflict between these documents and this City Contract, the terms of this contract will control.

**2. TERM OF AGREEMENT.**

The term of this Agreement begins on July 1, 2024, and shall run through June 30, 2029, unless amended by written agreement or terminated earlier under the provisions of this Agreement.

**3. COMPENSATION / PAYMENT.**

Company will pay City in accordance with the Fee Structure in Exhibit B.

The Company shall remit net proceeds and provide a written report to the submitting agency within ten (10) days after the sale. For the City of Spokane, all net proceeds should be submitted to the City of Spokane Purchasing Department, 915 N Nelson St., Spokane WA 99202 within ten (10) days after the sale. The report shall include the following information:

- Sale price of each item listed by lot/item number and the City department consigning the item.
- Transportation or optional service fees deducted from the proceeds of the item.

**4. TAXES, FEES AND LICENSES.**

- A. Company shall pay and maintain in current status, all necessary licenses, fees, assessments, permit charges, etc. necessary to conduct the work included under this Agreement. It is the Company’s sole responsibility to monitor and determine changes or the enactment of any subsequent requirements for said fees, assessments, or changes and to immediately comply.
- B. The cost of any permits, licenses, fees, etc. arising as a result of the projects included in this Agreement shall be included in the project budgets.

## **5. CITY OF SPOKANE BUSINESS LICENSE.**

Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid annual business registration. The Company shall be responsible for contacting the State of Washington Business License Services at [www.dor.wa.gov](http://www.dor.wa.gov) or 360-705-6741 to obtain a business registration. If the Company does not believe it is required to obtain a business registration, it may contact the City's Taxes and Licenses Division at (509) 625-6070 to request an exemption status determination.

## **6. SOCIAL EQUITY REQUIREMENTS / NON-DISCRIMINATION.**

No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Agreement because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation including gender expression or gender identity, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. The Company agrees to comply with, and to require that all subcontractors comply with, federal, state and local nondiscrimination laws, including but not limited to: the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Age Discrimination in Employment Act, and the American's With Disabilities Act, to the extent those laws are applicable.

## **7. INDEMNIFICATION.**

The Company shall defend, indemnify, and hold the City and its officers and employees harmless from all claims, demands, or suits at law or equity asserted by third parties for bodily injury (including death) and/or property damage which arise from the Company's negligence or willful misconduct under this Agreement, including attorneys' fees and litigation costs; provided that nothing herein shall require a Company to indemnify the City against and hold harmless the City from claims, demands or suits based solely upon the negligence of the City, its agents, officers, and employees. If a claim or suit is caused by or results from the concurrent negligence of the Company's agents or employees and the City, its agents, officers and employees, this indemnity provision shall be valid and enforceable to the extent of the negligence of the Company, its agents or employees. The Company specifically assumes liability and agrees to defend, indemnify, and hold the City harmless for actions brought by the Company's own employees against the City and, solely for the purpose of this indemnification and defense, the Company specifically waives any immunity under the Washington State industrial insurance law, or Title 51 RCW. The Company recognizes that this waiver was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. The indemnity and agreement to defend and hold the City harmless provided for in this section shall survive any termination or expiration of this agreement.

## **8. INSURANCE.**

During the period of the Agreement, the Company shall maintain in force at its own expense, each insurance noted below with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48:

A. **Worker's Compensation Insurance** in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers and Employer's Liability Insurance in the amount of \$1,000,000;

B. **General Liability Insurance** on an occurrence basis, with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this agreement. It shall provide



that the City, its officers and employees are additional insureds but only with respect to the Company's services to be provided under this Agreement;

i. Acceptable **supplementary Umbrella insurance** coverage combined with Company's General Liability insurance policy must be a minimum of \$1,000,000, in order to meet the insurance coverage limits required in this Agreement; and

C. **Automobile Liability Insurance** with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without forty-five (45) days written notice from the Company or its insurer(s) to the City. As evidence of the insurance coverage(s) required by this Agreement, the Company shall furnish acceptable Certificates of Insurance (COI) to the City at the time it returns this signed Agreement. The certificate shall specify the City of Spokane as "Additional Insured" specifically for Company's services under this Agreement, as well as all of the parties who are additional insureds, and include applicable policy endorsements, the forty-five (45) day cancellation clause, and the deduction or retention level. The Company shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

#### **10. DEBARMENT AND SUSPENSION.**

The Company has provided its certification that it is in compliance with and shall not contract with individuals or organizations which are debarred, suspended, or otherwise excluded from or ineligible from participation in Federal Assistance Programs under Executive Order 12549 and "Debarment and Suspension", codified at 29 CFR part 98.

#### **11. AUDIT.**

The Company and its sub-contractor shall maintain for a minimum of three (3) years following final payment all records related to its performance of the Agreement. The Company and its sub-contractors shall provide access to authorized City representatives, at reasonable times and in a reasonable manner to inspect and copy any such record. In the event of conflict between this provision and related auditing provisions required under federal law applicable to the Agreement, the federal law shall prevail.

#### **12. ASSIGNMENT AND SUBCONTRACTING.**

The Company shall not assign or subcontract its obligations under this Agreement without the City's written consent, which may be granted or withheld in the City's sole discretion. Any subcontract made by the Company shall incorporate by reference this Agreement, except as otherwise provided. The Company shall ensure that all subcontractors comply with the obligations and requirements of the subcontract. The City's consent to any assignment or subcontract does not release the Company from liability or any obligation within this Agreement, whether before or after City consent, assignment or subcontract.

#### **13. TERMINATION.**

Either party may terminate this Agreement, with or without cause, by sixty (60) days written notice to the other party. In the event of such termination, the City shall pay the Company for all work previously authorized and performed prior to the termination date.

#### **14. STANDARD OF PERFORMANCE.**

The standard of performance applicable to Company's services will be the degree of skill and diligence normally employed by professional Companies performing the same or similar services at the time the services under this Agreement are performed.

#### **15. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS.**

Original documents, drawings, designs, reports, or any other records developed or created under this Agreement shall belong to and become the property of the City. All records submitted by the City to the Company shall be safeguarded by the Company. The Company shall make such data, documents and files available to the City upon the City's request. If the City's use of the Company's records or data is not related to this project, it shall be without liability or legal exposure to the Company.

Under Washington State Law (reference RCW Chapter 42.56, the *Public Records Act* [PRA]) all materials received or created by the City of Spokane are **public records** and are available to the public for viewing via the City Clerk's Records (online) or a valid Public Records Request (PRR).

#### **16. ANTI KICK-BACK.**

No officer or employee of the City of Spokane, having the power or duty to perform an official act or action related to this Agreement shall have or acquire any interest in the Agreement, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in this Agreement.

#### **17. MISCELLANEOUS PROVISIONS.**

- A. **Amendments/Modifications:** This Agreement may be modified by the City in writing when necessary, and no modification or Amendment of this Agreement shall be effective unless signed by an authorized representative of each of the parties hereto.
- B. The Company, at no expense to the City, shall comply with all laws of the United States and Washington, the Charter and ordinances of the City of Spokane; and rules, regulations, orders and directives of their administrative agencies and officers. Without limiting the generality of this paragraph, the Company shall comply with the requirements of this Section.
- C. This Agreement shall be construed and interpreted under the laws of Washington. The venue of any action brought shall be in a court of competent jurisdiction, located in Spokane County, Washington.
- D. **Captions:** The titles of sections or subsections are for convenience only and do not define or limit the contents.
- E. **Severability:** If any term or provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.
- F. **Waiver:** No covenant, term or condition or the breach shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed a waiver of any preceding or succeeding breach of the same or any other covenant, term of condition. Neither the acceptance by the City of any performance by the Company after the time the same shall have become due nor payment to the Company for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City in writing.
- G. **Entire Agreement:** This document along with any exhibits and all attachments, and subsequently issued addenda, comprises the entire agreement between the City and the

Company. If conflict occurs between Agreement documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this Agreement to afford the City the maximum benefits.

H. **No personal liability:** No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made or in any connection with this Agreement.

IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants contained, or attached and incorporated and made a part, the parties have executed this Agreement by having legally-binding representatives affix their signatures below.

**J. STOUT ENTERPRISES LLC  
J. STOUT AUCTIONS**

**CITY OF SPOKANE**

By \_\_\_\_\_  
Signature Date

By \_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney

**Attachments that are part of this Agreement:**

- Exhibit A – Certificate Regarding debarment
- Exhibit B – Contract Users Information Sheet

24-098

**EXHIBIT A**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY AND VOLUNTARY EXCLUSION**

1. The undersigned (i.e., signatory for the Subrecipient / Contractor / Consultant) certifies, to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  - b. Have not within a three-year period preceding this contract been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
  - c. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and,
  - d. Have not within a three-year period preceding this contract had one or more public transactions (federal, state, or local) terminated for cause or default.
  
2. The undersigned agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
  
3. The undersigned further agrees by signing this contract that it will include the following clause, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:
 

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

  1. The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
  2. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.
  
4. I understand that a false statement of this certification may be grounds for termination of the contract.

<hr/> Name of Subrecipient / Contractor / Consultant (Type or Print)	<hr/> Program Title (Type or Print)
<hr/> Name of Certifying Official (Type or Print)	<hr/> Signature
<hr/> Title of Certifying Official (Type or Print)	<hr/> Date (Type or Print)

**EXHIBIT B**



STATE OF WASHINGTON

# BUSINESS LICENSE

Limited Liability Company

J. STOUT ENTERPRISES, LLC  
J. STOUT AUCTIONS  
8018 W SUNSET HWY  
SPOKANE WA 99224-9048

UNEMPLOYMENT INSURANCE - ACTIVE  
TAX REGISTRATION - ACTIVE  
MISCELLANEOUS VEHICLE DEALER #11847 - ACTIVE

Issue Date: Nov 03, 2023  
Unified Business ID #: 603242730  
Business ID #: 001  
Location: 0002  
Expires: Oct 31, 2024

INDUSTRIAL INSURANCE - ACTIVE  
MOTOR VEHICLE DEALER #11411 - ACTIVE

CITY/COUNTY ENDORSEMENTS:  
SPOKANE GENERAL BUSINESS - ACTIVE

LICENSING RESTRICTIONS:  
Not licensed to hire minors without a Minor Work Permit.

REGISTERED TRADE NAMES:  
J. STOUT AUCTIONS

This document lists the registrations, endorsements, and licenses authorized for the business named above. By accepting this document, the licensee certifies the information on the application was complete, true, and accurate to the best of his or her knowledge, and that business will be conducted in compliance with all applicable Washington state, county, and city regulations.

Director, Department of Revenue

UBI: 603242730 001 0002

J. STOUT ENTERPRISES, LLC  
J. STOUT AUCTIONS  
8018 W SUNSET HWY  
SPOKANE WA 99224-9048

FOLD HERE

UNEMPLOYMENT INSURANCE - ACTIVE  
INDUSTRIAL INSURANCE - ACTIVE  
TAX REGISTRATION - ACTIVE  
MOTOR VEHICLE DEALER #11411 - ACTIVE  
MISCELLANEOUS VEHICLE DEALER #11847 - ACTIVE  
SPOKANE GENERAL BUSINESS - ACTIVE

FOLD HERE

STATE OF WASHINGTON

Expires: Oct 31, 2024

Director, Department of Revenue

## IMPORTANT!

### PLEASE READ THE FOLLOWING INFORMATION CAREFULLY BEFORE POSTING THIS LICENSE

#### General Information

Post this Business License in a visible location at your place of business.

If you were issued a Business License previously, **destroy the old one and post this one in its place.**

Login to My DOR at [dor.wa.gov](http://dor.wa.gov) if you need to make changes to your business name, location, mailing address, telephone number, or business ownership.

Telephone: 360-705-6741

#### Endorsements

All endorsements should be renewed by the expiration date that appears on the front of this license to avoid any late fees.

If there is no expiration date, the endorsements remain active as long as you continue required reporting. Tax Registration, Unemployment Insurance, and Industrial Insurance endorsements require you to submit periodic reports. Each agency will send you the necessary reporting forms and instructions.

For assistance or to request this document in an alternate format, visit <http://business.wa.gov/BLS> or call (360) 705-6741. Teletype (TTY) users may use the Washington Relay Service by calling 711.

BLS-700-107 (07/27/20)



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/22/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> <b>Alliant Insurance Services, Inc.</b> <b>701 B St 6th Fl</b> <b>San Diego, CA 92101</b>	<b>CONTACT NAME:</b> <b>PHONE (A/C, No, Ext): (619) 238-1828</b>	<b>FAX (A/C, No):</b>
	<b>E-MAIL ADDRESS:</b>	
	<b>INSURER(S) AFFORDING COVERAGE</b>	<b>NAIC #</b>
<b>INSURED</b>  <b>J Stout Enterprises LLC</b> <b>520 S 28th St</b> <b>Washougal, WA 98671</b>	<b>INSURER A : Scottsdale Insurance Company</b>	<b>41297</b>
	<b>INSURER B : Artisan &amp; Truckers Casualty Company</b>	<b>10194</b>
	<b>INSURER C : StarStone Specialty Insurance Company</b>	<b>44776</b>
	<b>INSURER D : Atlantic Casualty Insurance Company</b>	<b>42846</b>
	<b>INSURER E :</b>	
	<b>INSURER F :</b>	

### COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

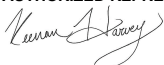
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
<b>A</b>	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	<b>X</b>		<b>CPS7798025</b>	<b>5/17/2024</b>	<b>5/17/2025</b>	EACH OCCURRENCE \$ <b>1,000,000</b> DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <b>100,000</b> MED EXP (Any one person) \$ <b>5,000</b> PERSONAL & ADV INJURY \$ <b>1,000,000</b> GENERAL AGGREGATE \$ <b>2,000,000</b> PRODUCTS - COMP/OP AGG \$ <b>2,000,000</b> <b>WA STOP GAP</b> \$ <b>1,000,000</b>
<b>B</b>	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			<b>07552641</b>	<b>4/27/2024</b>	<b>4/27/2025</b>	COMBINED SINGLE LIMIT (Ea accident) \$ <b>1,000,000</b> BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
<b>C</b>	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			<b>82811X241ALI</b>	<b>5/17/2024</b>	<b>5/17/2025</b>	EACH OCCURRENCE \$ <b>2,000,000</b> AGGREGATE \$ <b>2,000,000</b> \$ PER STATUTE OTH-ER
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		<b>N / A</b>				E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
<b>D</b>	<b>Garage &amp; Dealers Lia</b>			<b>12500003601</b>	<b>5/17/2024</b>	<b>5/17/2025</b>	<b>All Owned Autos</b> \$ <b>1,000,000</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
RE: City RFP#6086-24/ STA RFP #2024-10903

### CERTIFICATE HOLDER

### CANCELLATION

<b>City of Spokane- Purchasing</b> <b>the City, its officers and employees</b> <b>915 N Nelson Street</b> <b>Spokane, WA 99202</b>	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  <b>AUTHORIZED REPRESENTATIVE</b> 
---	---



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – AUTOMATIC STATUS WHEN  
REQUIRED IN A WRITTEN CONSTRUCTION  
AGREEMENT WITH YOU**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**A. Section II – Who Is An Insured** is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:

- a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

- 1. Required by the contract or agreement you have entered into with the additional insured; or
- 2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.



**Agenda Sheet for City Council:**

**Committee:** Finance & Administration **Date:** 06/03/2024

**Committee Agenda type:** Consent

**Date Rec'd** 5/23/2024

**Clerk's File #**

**Renews #**

**Cross Ref #** OPR 2020-0935

**Council Meeting Date:** 06/24/2024

<b>Submitting Dept</b>	ACCOUNTING & GRANTS	<b>Project #</b>	
------------------------	---------------------	------------------	--

<b>Contact Name/Phone</b>	MICHELLE 625-6320	<b>Bid #</b>	
---------------------------	-------------------	--------------	--

<b>Contact E-Mail</b>	MMURRAY@SPOKANECITY.ORG	<b>Requisition #</b>	
-----------------------	-------------------------	----------------------	--

<b>Agenda Item Type</b>	Contract Item		
-------------------------	---------------	--	--

<b>Council Sponsor(s)</b>	MCATHCART BWILKERSON ZZAPPONE		
---------------------------	-------------------------------	--	--

<b>Agenda Item Name</b>	5600 - BENEVATE AMENDMENT		
-------------------------	---------------------------	--	--

**Agenda Wording**

Contract amendment with Benevate, INC. d/b/a Neighborly Software for software and support. From 12/18/2020 through 11/30/2024. Cost is \$14,000.00 and applicable sales tax.

**Summary (Background)**

The City has OPR 2020-0935 for the services of Neighborly Software. This amendment is to purchase 4 additional modules with a one-time program implementation fee at a cost of \$3,500 each. This includes the system configuration, program and application design, and user training.

Lease? NO Grant related? NO Public Works? NO

**Fiscal Impact**

Approved in Current Year Budget? YES

Total Cost	\$ 14,000.00
------------	--------------

Current Year Cost	\$ 14,000.00
-------------------	--------------

Subsequent Year(s) Cost	\$ 0
-------------------------	------

**Narrative**

The ARPA team has the need to purchase 4 additional modules in Neighborly in order to carry out the necessary notice of funding opportunities for the remaining ARPA projects.

<b>Amount</b>	<b>Budget Account</b>
---------------	-----------------------

Select \$	#
Select \$	#
Select \$	#
Select \$	#
\$	#
\$	#



## Committee Agenda Sheet

### Finance & Administration Committee

<b>Committee Date</b>	June 3, 2024
<b>Submitting Department</b>	Accounting & Grants
<b>Contact Name</b>	Michelle Murray
<b>Contact Email &amp; Phone</b>	mmurray@spokanecity.org
<b>Council Sponsor(s)</b>	<u>CM Cathcart</u>
<b>Select Agenda Item Type</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion    Time Requested:
<b>Agenda Item Name</b>	Benevate Amendment
<b>Proposed Council Action</b>	<input checked="" type="checkbox"/> Approval to proceed to Legislative Agenda <input type="checkbox"/> Information Only
<b>Summary (Background)</b>  *use the Fiscal Impact box below for relevant financial information	<p>The City has OPR 2020-0935 for the services of Neighborly Software. This amendment is to purchase 4 additional modules with a one-time program implementation fee at a cost of \$3,500 each. This includes the system configuration, program and application design, and user training.</p> <p>This contract amendment brings to the total compensation for this contract over the minor contract limits thus bringing it through the legislative process.</p>
<p><b>Fiscal Impact</b></p> <p><b>Approved in current year budget?</b>    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No    <input type="checkbox"/> N/A</p> <p>Total Cost: <u>\$14,000</u></p> <p style="padding-left: 20px;">Current year cost: \$14,000</p> <p style="padding-left: 20px;">Subsequent year(s) cost: \$0</p> <p><b>Narrative:</b> <u>The ARPA team has the need to purchase 4 additional modules in Neighborly in order to carry out the necessary notice of funding opportunities for the remaining ARPA projects.</u></p> <p><b>Funding Source</b>    <input checked="" type="checkbox"/> One-time    <input type="checkbox"/> Recurring    <input type="checkbox"/> N/A</p> <p>Specify funding source: Grant</p> <p>Is this funding source sustainable for future years, months, etc? No</p> <p><b>Expense Occurrence</b>    <input checked="" type="checkbox"/> One-time    <input type="checkbox"/> Recurring    <input type="checkbox"/> N/A</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	
<b>Operations Impacts (If N/A, please give a brief description as to why)</b>	
What impacts would the proposal have on historically excluded communities? This does not impact historically excluded communities.	
How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities? Data will not be collected per this arrangement however the additional individual projects may or may not have a data collection involved.	
How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution? Data will not be collected per this arrangement however the additional individual projects may or may not have a data collection involved.	

Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?  
This proposal aligns with the needs to carry out the projects outline in ARPA allocation



**CITY OF SPOKANE**  
**CONTRACT AMENDMENT**  
**Title: HOSTED SOFTWARE SUPPORT  
AND MAINTENANCE AGREEMENT**

This Contract Amendment is made and entered into by and between the **CITY OF SPOKANE** as ("City"), a Washington municipal corporation, and **BENEVATE, INC. d/b/a NEIGHBORLY SOFTWARE**, whose address is 3423 Piedmont Road NE, Suite 420, Atlanta, Georgia 30305 as ("Company"), individually hereafter referenced as a "party", and together as the "parties".

*WHEREAS, the parties entered into a Contract wherein the Company agreed to provide the City with hosted software for the enrollment, qualification, administration and reporting services related to loan activities more fully described in the original December 18, 2020 contract; and*

*WHEREAS, an expansion of the Work to include four additional service modules for system configuration, program design and user training has been requested, for a one-time implementation fee is being requested thus, the original Contract needs to be formally Amended by this written document; and*

*WHEREAS, the City is authorized to expend ARPA funds for this contract in accordance with Ordinance No. C36246, passed on August 1, 2022, (Section I) and;*

*WHEREAS, the Contractor agrees to comply with the attached General Terms and Conditions.*

*NOW, THEREFORE, in consideration of these terms, the parties mutually agree as follows:*

**1. CONTRACT DOCUMENTS.**

The Contract, dated December 18, 2020, any previous amendments, addendums and / or extensions / renewals thereto, are incorporated by reference into this document as though written in full and shall remain in full force and effect except as provided herein.

**2. EFFECTIVE DATE.**

This Contract Amendment shall become effective on December 1, 2023 and shall run through November 30, 2024.

**3. ADDITIONAL WORK.**

The original Contract is amended to add a one-time fee for program implementation of four (4) additional modules. Includes system configuration, program design, and user training.

**4. COMPENSATION.**

The City shall pay an additional amount not to exceed **FOURTEEN THOUSAND AND NO/100 DOLLARS (\$14,000.00)**, and applicable sales tax, for everything furnished and done under this Contract Amendment. This is the maximum amount to be paid under this Contract Amendment and shall not be exceeded without the prior written authorization of the City, memorialized with the same formality as the original Contract and this document.

IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants contained, or attached and incorporated and made a part, the parties have executed this Contract Amendment by having legally-binding representatives affix their signatures below.

**BENEVATE, INC. d/b/a  
NEIGHBORLY SOFTWARE**

**CITY OF SPOKANE**

By \_\_\_\_\_  
Signature Date

By \_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney

**Attachments that are part of this Agreement:**

- Attachment A – Company’s Quote dated April 29, 2024
- Attachment B – ARP/CSLFRF CFDA 21.027 FUNDING
- Attachment C – General Terms and Conditions



**ATTACHMENT A**

**ATTACHMENT B**

**ATTACHMENT C**

**ATTACHMENT – ARP/CSLFRF CFDA 21.027 FUNDING**

American Rescue Plan (ARP)

Coronavirus State and Local Fiscal Recovery Funds (CSLFRF)

Funding Authority: U.S. Department of Treasury

CFDA# 21.027 – Coronavirus State and Local Fiscal Recovery Funds

The Contractor specifically agrees to comply with all applicable state and federal laws, rules, regulations, requirements, program guidance, including but not limited to the following:

All applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies including, but not limited to:

Nondiscrimination laws and/or policies, and safety and health regulations.

Americans with Disabilities Act (ADA), Age Discrimination Act of 1975,

Title VI of the Civil Rights Act of 1964, Civil Rights Act of 1968,

Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92).

Robert T. Stafford Disaster Relief and Emergency Assistance Act (PL 93-288, as amended),

Ethics in Public Services (RCW 42.52),

Covenant Against Contingent Fees (48 CFR Section 52.203-5),

Public Records Act (RCW 42.56),

Prevailing Wages on Public Works (RCW 39.12),

State Environmental Policy Act (RCW 43.21C),

Shoreline Management Act of 1971 (RCW 90.58),

State Building Code (RCW 19.27),

Energy Policy and Conservation Act (PL 94-163, as amended),

Energy Related Building Standards (RCW 19.27A),

Comply with all procurement requirements of 2 CFR Part 200.317 - 200.327. All sole source contracts expected to exceed \$50,000 must be submitted to Spokane City Purchasing for review and approval prior to the award and execution of a contract.

Any contract awarded to the successful Contractor must contain and/or comply with the following procurement provisions in accordance with 2 CFR Part 200.317 - 200.327:

Contractor must maintain a Conflict of Interest Policy consistent with 2 CFR 200.318(c) that is applicable to all activities funded with the award. All potential conflicts of interest related to this award must be reported to Spokane City and/or U.S. Treasury

- Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate;
- Compliance with Executive Order 11246, “Equal Employment Opportunity,” (30 FR 12319, 12935, 3 CFR Part 1964-1965 Comp., p. 339), as amended by Executive Order 11375, as supplemented in Department of Labor regulations (41 CFR Chapter 60);
- For Capital Expenditures that involve the employment of mechanics of laborers: Compliance with the Contract Work Hours and Safety Standards Act (40 USC 3702 and 3704) as supplemented by Department of Labor Regulations (29 CFR Part 5);
- For all contracts in excess of \$100,000 with respect to water, sewer, or broadband that involve the employment of mechanics of laborers: Compliance with the Contract Work Hours and Safety Standards Act (40 USC 3702 and 3704) as supplemented by Department of Labor Regulations (29 CFR Part 5);
- For construction or repair contracts: Compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145) as supplemented by Department of Labor regulations (29 CFR part 3);
- For construction contracts in excess of \$2,000 when required by Federal grant program legislation: Compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations (29 CFR part 5); Davis Bacon Act– Does **not** apply to projects funded **solely** with ARPA/CSLFRF CFDA 21.027 funds. However, if other federal funds are also used for the construction project in addition to FRF, and those federal funds require Davis-Bacon compliance, all prime construction contracts in excess of \$2,000 must follow Davis-Bacon Act;
- For construction contracts in excess of \$100,000 that involve the employment of mechanics and laborers: Compliance with the Contract Work Hours and Safety Standard Act (40 U.S.C. 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5);
- Compliance with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency
- For contracts in excess of \$150,000: Compliance with all applicable standards, orders or requirements issued under the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal

Water Pollution Control Act (33 U.S.C. 1251-1387) as amended;

- Compliance with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act;
- Notice of awarding agency requirements and regulations pertaining to reporting;
- Federal awarding agency requirements and regulations pertaining to copyrights and rights in data;
- Access by Spokane City, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records, sub-agreements, leases, subcontracts, arrangements, or other third-party agreements of any type, and supporting materials related to those records of the Contractor, which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions;
- Retention of all required records for **six years** after Spokane City makes final payment and all other pending matters are closed;
- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871);
- Notice of awarding agency requirements and regulations governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards (37 C.F.R. Part 401) and the standard patent rights clause (37 C.F.R. section 401.14);
- Compliance with Executive Order 13858 “Strengthening Buy-American Preferences for Infrastructure Projects” as appropriate and to the extent consistent with law; and
- Compliance with 2 C.F.R. § 200.216, prohibitions regarding certain telecommunications and video surveillance services or equipment are mandated by section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), Pub. L. No. 115–232 (2018).

Any contract awarded to the successful Contractor must contain and/or comply with the following provisions in accordance with 2 CFR Part 200.332(a) - 200.332(a)(1)-200.332(a)(6) Requirements for pass-through entities:

- Identify as a Subaward (2 CFR 200.332(a));

- Federal Award Identification (2 CFR 200.332(a)(1));
- Terms and conditions from ARP/CLFRF (2 CFR 200.332(a)(2));
- Additional City of Spokane imposed requirements based on risk assessment (2 CFR 200.332(a)(3));
- Indirect cost rate (2 CFR 200.332(a)(4));
- Records access & retention (2 CFR 200.332(a)(5));
- Closeout provisions (2 CFR 200.332(a)(6)).

Any contract awarded to the successful Contractor must contain and/or comply with the following provisions in accordance with 2 CFR Part 200.501(a)-200.501(h) Audit Requirements:

- Audit required. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provision of this part (2 CFR 200.501(a));
- Single Audit (2 CFR 200.501(b));
- Program-specific audit election (2 CFR 200.501(c));
- Exemption when Federal awards expended are less than \$750,000(2 CFR 200.501(d));
- Federally Funded Research and Development Centers (2 CFR 200.501(e));
- Subrecipients and contractors (2 CFR 200.501(f));
- Compliance responsibility for contractors (2 CFR 200.501(g));
- For-profit subrecipient (2 CFR 200.501(h)).

Contractor must comply with Executive Orders 12549 and 12689 and 2 C.F.R. Part 180, which restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities. Contractor must certify that it is not presently debarred, suspended or proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

Contractor must comply with the requirements of 31 U.S.C. § 3729-3733 which prohibits the submission of false or fraudulent claims for payment to the Federal Government. See also 31 U.S.C. § 3801-3812 which details the administrative remedies for false claims and statements made.

Contractor is required to be non-delinquent in their repayment of any Federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit

overpayments. See OMB Circular A-129.

Contractor's costs must be compliant with 2 CFR Part 200 Subpart E Cost Principles.

Contractor must comply with 31 U.S.C. § 1352, which provides that none of the funds provided under an award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, Member of Congress, an officer, or employee of Congress, or an employee of a Member of Congress in connection with any Federal action concerning an award, making of any federal grant, federal loan, continuation, renewal, amendment or modification of any federal contract, grant loan, or cooperative agreement, and that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this award, the Contractor will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

In the event of the Contractor's noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy, Spokane City may rescind, cancel, or terminate the contract in whole or in part in its sole discretion. The Contractor is responsible for all costs or liability arising from its failure to comply with applicable laws, regulations, executive orders, OMB Circulars, or policies.

**CERTIFICATION**

\_\_\_\_\_  
Signature, Administrator, or Applicant Agency

\_\_\_\_\_  
Date

\_\_\_\_\_  
print name and title





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

02/15/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b>  Millennial Specialty Insurance LLC dba Founder Shield 4211 West Boy Scout Blvd, Suite 800 Tampa, Florida, 33607	<b>CONTACT NAME:</b>	
	PHONE (A/C No. Ext): 646-854-1058	FAX (A/C No):
	E-MAIL ADDRESS: coi@foundershield.com	
<b>INSURED</b>  Benevate 3423 Piedmont Rd NE, Suite 420 atlanta, Georgia, 30305	<b>INSURER(S) AFFORDING COVERAGE</b>	
	INSURER A : Hartford Underwriters Ins Co (Hartford)	
	INSURER B : Hiscox Insurance Company Inc.	
	INSURER C : At-Bay Specialty Insurance Company	
	INSURER D :	
	INSURER E :	
	INSURER F :	
	NAIC #	
	30104	
	10200	

**COVERAGES**

CERTIFICATE NUMBER:


REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	10SBAAJMSR	01/18/2024	01/18/2025	EACH OCCURRENCE	\$1,000,000.00
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000.00
							MED EXP (Any one person)	\$10,000.00
							PERSONAL & ADV INJURY	\$1,000,000.00
							GENERAL AGGREGATE	\$2,000,000.00
							PRODUCTS - COMP/OP AGG	\$2,000,000.00
A	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	<input type="checkbox"/>	<input type="checkbox"/>	10SBAAJMSR	01/18/2024	01/18/2025	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000.00
							BODILY INJURY (Per person)	
							BODILY INJURY (Per accident)	
							PROPERTY DAMAGE (Per accident)	
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE	<input type="checkbox"/>	<input type="checkbox"/>				Each occurrence	
							Aggregate	
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIV OFFICER/MEMBER EXCLUDED? Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	<input type="checkbox"/>				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
							E.L. EACH ACCIDEN	
							E.L. DISEASE - EA EMPLOYEE	
							E.L. DISEASE - POLICY LIMIT	
B	Crime	<input type="checkbox"/>	<input type="checkbox"/>	UC24874470.23	07/15/2023	07/15/2024	\$ 1,000,000 per occ	\$1,000,000 in agg
C	Cyber Liability, Errors & Omissions	<input type="checkbox"/>	<input type="checkbox"/>	AB-6735816-01	01/18/2024	01/18/2025	\$ 5,000,000 per occ	\$5,000,000 in agg

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 The Certificate Holder is included as an Additional Insured on the above referenced policy where required by written contract.

**CERTIFICATE HOLDER****CANCELLATION**

CITY OF SPOKANE West 808 Spokane Falls Blvd. Spokane, WA, 99201	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

**ADDITIONAL REMARKS SCHEDULE**

<b>Intermediary</b>	<b>Insured</b>
<b>Policy Number</b>	
<b>Insurer</b>	<b>Effective Date</b>

**ADDITIONAL REMARKS**

**This Additional Remarks form is a schedule to ACORD form,**

<b>Form Number:</b>						<b>Form Title Benevate - City of Spokane</b>	
<b>INSR LTR</b>	<b>TYPE OF INSURANCE</b>	<b>ADDL INSD</b>	<b>SUBR WVD</b>	<b>POLICY NUMBER</b>	<b>POLICY EFF (MM/DD/YYYY)</b>	<b>POLICY EXP (MM/DD/YYYY)</b>	<b>LIMITS</b>
		<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>				



< Business Lookup

**License Information:**

[New search](#) [Back to results](#)

**Entity name:** BENEVATE, INC.

**Business name:** NEIGHBORLY SOFTWARE

**Entity type:** [Profit Corporation](#)

**UBI #:** 604-438-050

**Business ID:** 001

**Location ID:** 0001

**Location:** Active

**Location address:** 3423 PIEDMONT RD NE  
STE 216  
ATLANTA GA 30305-1751

**Mailing address:** 3423 PIEDMONT RD NE  
STE 216  
ATLANTA GA 30305-1751

**Excise tax and reseller permit status:** [Click here](#)

**Secretary of State status:** [Click here](#)

**Endorsements**

Endorsements held at this locati	License #	Count	Details	Status	Expiration date	First issuance d
<a href="#">Spokane General Business - Non-Resident</a>				Active	Apr-30-2025	Dec-16-2020

**Governing People** May include governing people not registered with Secretary of State

Governing people	Title
BEHM, CHRIS	
RUSNAK, JASON	

**Registered Trade Names**

Registered trade names	Status	First issued
NEIGHBORLY SOFTWARE	Active	Apr-11-2019

---

**Contact us**

How are we doing?

**Take our survey!**

Don't see what you expected?

**Check if your browser is supported**



## **General Terms & Conditions**

### **1. CONTRACTING WITH CURRENT OR FORMER CITY EMPLOYEES**

Specific restrictions apply to contracting with current or former City officers and employees pursuant to the Code of Ethics in chapter 1.04A of the Spokane Municipal Code. Proposers shall familiarize themselves with the requirements prior to submitting a Proposal that includes current or former City officers or employees.

### **2. PROPRIETARY INFORMATION / PUBLIC DISCLOSURE**

All materials submitted to the City in responses to this competitive procurement shall become the property of the City.

All materials received by the City are public records and are subject to being released pursuant to a valid public records request. Washington state law mandates that all documents used, received or produced by a governmental entity are presumptively public records, and there are few exemptions. Chapter 41.56 RCW.

When responding to this competitive procurement, please consider that what you submit will be a public record. If you believe that some part of your response constitutes legally protected proprietary information, you MUST submit those portions of your response as a separate part of your response, and you MUST label it as "PROPRIETARY INFORMATION." If a valid public records request is then received by the City for this information, you will be given notice and a 10-day opportunity to go to court to obtain an injunction to prevent the City from releasing this part of your response. If no injunction is obtained, the City is legally required to release the records.

The City will neither look for nor honor any claims of "proprietary information" that are not within the separate part of your response.

### **3. OWNERSHIP OF DOCUMENTS**

Any and all data, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other material created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Firm or the Firm's subcontractors or consultants for delivery to the City under this Agreement shall be the sole and absolute property of the City. Such property shall constitute "work made for hire" as defined by U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the City at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Firm uses to perform this Agreement, but is not created, prepared, constructed, assembled, made, performed or otherwise produced for, or paid for, by the City is owned by the Firm and is not "work made for hire" within the terms of this Agreement.

### **4. ACCEPTANCE PERIOD**

Proposals shall remain in effect for ninety (90) days for acceptance by the City from the due date for receipt of Proposals.

### **5. COSTS TO PROPOSE**

The City will not be liable for any costs incurred by the Proposer in preparation of a Proposal submitted in response to this RFP, in conduct of a presentation, or any other activities related to responding to this RFP.

## **6. INTERLOCAL PURCHASE AGREEMENTS**

The City of Spokane has entered into Interlocal Purchase Agreements with other public agencies pursuant to Chapter 39.34 RCW. In submitting a response, the Proposer agrees to provide its services to other public agencies at the same contracted price, terms and conditions it is providing to the City of Spokane, contingent upon the Firm's review and approval at the time of a requested contract. The Firm's right to refuse to enter into a contract with another public agency at the time of request shall be absolute.

## **7. DEBRIEFING OF UNSUCCESSFUL PROPOSERS**

Upon request, a debriefing conference will be scheduled with an unsuccessful Proposer. Discussion will be limited to a critique of the requesting Firm's Proposal. Debriefing conferences may be conducted in person or on the telephone.

## **8. MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION**

The City encourages participation in all of its contracts by Firms certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE). Proposers may contact OMWBE at (360)753-9693 to obtain information on certified Firms.

## **9. NONDISCRIMINATION**

No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Contract because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation including gender expression or gender identity, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. The Firm agrees to comply with, and to require that all subcontractors comply with, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, as applicable to the Firm.

## **10. BUSINESS REGISTRATION REQUIREMENT**

Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained and currently being the holder of a valid annual business registration or temporary business registration as provided in this chapter. The Firm shall be responsible for contacting the State of Washington Business License Services at <http://dor.wa.gov> or 1-360-705-6741 to obtain a business registration. If the Firm does not believe it is required to obtain a business registration, it may contact the City's Taxes and Licenses Division at 509-625-6070 to request an exemption status determination.

## **11. PAYMENT**

Payment will be made via direct deposit/ACH except as provided by state law. A completed ACH application is required before a City Order will be issued. If the City objects to all or any portion of the invoice, it shall notify the Company and reserves the right to only pay that portion of the invoice not in dispute. In that event, the parties shall immediately make every effort to settle the disputed amount.

## **12. ANTI-KICKBACK**

No officer or employee of the City of Spokane, having the power or duty to perform an official act or action related to this contract shall have or acquire any interest in the contract, or have solicited,

accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in the contract.

### **13. DISPUTES**

This contract shall be performed under the laws of Washington State. Any litigation to enforce this contract or any of its provisions shall be brought in Spokane County, Washington.

### **14. TERMINATION**

- A. For Cause: The City or Consultant may terminate the Agreement if the other party is in material breach of this Agreement, and such breach has not been corrected to the other party's reasonable satisfaction in a timely manner. Notice of termination under this Section shall be given by the party terminating this Agreement to the other, not fewer than thirty (30) business days prior to the effective date of termination.
- B. For Reasons Beyond Control of Parties: Either party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control, such as, but not limited to, an act of nature, war or warlike operation, civil commotion, riot, labor dispute including strike, walkout or lockout, except labor disputes involving the Consultant's own employees, sabotage, or superior governmental regulation or control. Notice of termination under this Section shall be given by the party terminating this Agreement to the other, not fewer than thirty (30) business days prior to the effective date of termination.
- C. For Convenience: Either party may terminate this Agreement without cause, upon thirty (30) days written notice to the other party.
- D. Actions upon Termination: if termination occurs not the fault of the Consultant, the Consultant shall be paid for the services properly performed prior to the actual termination date, with any reimbursable expenses then due, but such compensation shall not exceed the maximum compensation to be paid under the Agreement. The Consultant agrees this payment shall fully and adequately compensate the Consultant and all subconsultants for all profits, costs, expenses, losses, liabilities, damages, taxes, and charges of any kind (whether foreseen or unforeseen) attributable to the termination of this Agreement.
- E. Upon termination, the Consultant shall provide the City with the most current design documents, contract documents, writings, and other products the Consultant has produced to termination, along with copies of all project-related correspondence and similar items. The City shall have the same rights to use these materials as if termination had not occurred; provided however, that the City shall indemnify and hold the Consultant harmless from any claims, losses, or damages to the extent caused by modifications made by the City to the Consultant's work product.

### **15. LIABILITY**

The Firm shall indemnify, defend, and hold harmless the City, its officers, and employees from all claims, demands, or suits in law or equity arising from the Firm's negligence or breach or its obligations under the contract. The Firm's duty to indemnify shall not apply to liability caused by the sole negligence of the City, its officers, and employees. The Firm's duty to indemnify for liability arising from the concurrent negligence of the City, its officers and employees and the Firm, its officers and employees shall apply only to the extent of the negligence of the Firm, its officers and employees. The Firm's duty to indemnify shall survive

termination or expiration of the contract. The Firm waives, with respect to the City only, its immunity under RCW Title 51, Industrial Insurance.

## **16. INSURANCE COVERAGE**

During the term of the contract, the Firm shall maintain in force at its own expense, each insurance coverage noted below:

- A. Worker's Compensation Insurance in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers and Employer's Liability Insurance in the amount of \$1,000,000.
- B. General Liability Insurance on an occurrence basis, with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this contract. It shall provide that the City, its officers and employees are additional insureds, but only with respect to the Firm's services to be provided under this contract.
- C. Automobile Liability Insurance with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles.
- D. Professional Liability Insurance with a combined single limit of not less than \$1,000,000 each claim, incident, or occurrence. This is to cover damages caused by the error, omission, or negligent acts related to the professional services to be provided under this contract. The coverage must remain in effect for at least three (3) years after the contract is completed.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without forty-five (45) days written notice from the Firm or its insurer(s) to the City.

As evidence of the insurance coverages required by this contract, the Firm shall furnish acceptable insurance certificates to the City at the time it returns the signed contract. The certificate shall specify all of the parties who are additional insured, and include applicable policy endorsements, and the deductible or retention level, as well as policy limits. Insuring companies or entities are subject to City acceptance and must have a rating of A- or higher by Best. Copies of all applicable endorsements shall be provided. The Firm shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

## **SPECIFIC GRANT RELATED LANGUAGE**

### **17. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELEGIBILITY AND VOLUNTARY EXCLUSION**

A certification form will accompany the contract to be signed confirming that, to the best of its knowledge and belief, Firm, and its principals:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.
- B. Have not within a three-year period preceding this contract been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice.



- C. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification.
- D. Have not within a three-year period preceding this contract had one or more public transactions (federal, state, or local) terminated for cause or default.

**18. CERTIFICATION REGARDING LOBBYING**

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) – Firms who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying in non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

A Certification Form is attached and included in this Request for Proposal by reference as Attachment A “Certification Regarding Lobbying”. The Proposer is required to sign and submit this Form with Proposal. The Proposer certifies by signing and submitting this Proposal, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- C. The Proposer also agrees by submitting his or her Proposal, that he or she shall require that the language of this certification be included in all lower tier subcontracts. Which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.
- D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**19. DOMESTIC PREFERENCE**

200.322 (a) As appropriate and to the extent consistent with law, the non-Federal entity should to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

## **20. CLEAN AIR ACT**

Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended – Firms and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.) Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

## **21. CONFORMANCE WITH FEDERAL, STATE, AND LOCAL LAWS**

Federal, State and Local Laws: Services of a project as a result of the use of a Firm's services including the letting of subcontracts in connection with any project work related to this RFQ may be required to conform to the applicable requirements of Federal, State and local laws and ordinances. The City stipulates that Federal funds may be involved.

## **22. MAINTENANCE OF RECORDS**

Federal, State and Local Laws: Services of a project as a result of the use of a Firm's services including the letting of subcontracts in connection with any project work related to this RFQ may be required to conform to the applicable requirements of Federal, State and local laws and ordinances. The City stipulates that Federal funds may be involved.

## **23. CONFERENCE ROOMS**

Conference Rooms: All space used for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds under this contract must comply with the protection and controlling guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended).

## **24. AMERICANS WITH DISABILITIES ACT INFORMATION (ADA)**

Americans with Disabilities Act (42 U.S.C. 12101, et seq.). The Applicant shall comply with the provisions of the Americans with Disabilities Act, 42 U.S.C. 12101, et. seq. That Act provides a comprehensive national mandate to eliminate discrimination against individuals with disabilities. The Act may impose requirements on the Applicant in four principle ways: 1) with respect to employment; 2) with respect to the provision of public services; 3) with respect to transportation; 4) with respect to existing facilities and new construction.

The City in accordance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) commits to nondiscrimination in all of its programs and activities. The Firm agrees to comply with, and to require that all subcontractors comply with, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, as applicable to the Firm.

Law Against Discrimination, Chapter 49.60 RCW. The Applicant shall comply with the provisions of Chapter 49.60 RCW in all activities relating to this Grant Agreement.

This material can be made available in an alternate format by request through ProcureWare question tab or by calling (509) 625-6400.

## **25. TITLE VI STATEMENT**

The City of Spokane in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 USC 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all Proposers that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit Proposals in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.

Public Law 88 - 352, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (24 CFR Part 1). The Applicant must comply with the provisions of "Public Law 88 - 352," which refers to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.). The law provides that no person in the United States shall, on the grounds of race, color or national origin, be denied the benefits of, be excluded from participation in, or be subjected to discrimination under any program or activity receiving federal financial assistance.

# HCD - Add New Programs - Spokane, Washington (312)

## Spokane, WA-CORE

808 West Spokane Falls Boulevard  
Spokane, WA 99201  
United States

Reference: 20240429-153558703

Quote created: April 29, 2024

Quote expires: July 28, 2024

Quote created by: Shanika Forbes

shanika.forbes@neighborlysoftware.com

## Caleb Stanton

cstanton@spokanecity.org

## Michelle Murray

mmurray@spokanecity.org

509.625.6320

### Comments from Shanika Forbes

For the implementation of 4 new programs

## Products & Services

Item & Description	Quantity	Unit Price	Total
HCD - Program Implementation (Includes User Training) One-time fee for program implementation. Includes system configuration, program design, and user training.	4	\$3,500.00	\$14,000.00
	One-time subtotal		\$14,000.00
	<b>Total</b>		<b>\$14,000.00</b>

## Purchase terms

## Questions? Contact me



Shanika Forbes

[shanika.forbes@neighborlysoftware.com](mailto:shanika.forbes@neighborlysoftware.com)

Benevate Inc (dba Neighborly Software)

3423 Piedmont Rd

Suite 420

Atlanta, GA 30305

US



**Agenda Sheet for City Council:**

**Committee:** Finance & Administration **Date:** 06/03/2024

**Committee Agenda type:** Consent

**Date Rec'd** 5/17/2024

**Clerk's File #** OPR 2020-0344

**Cross Ref #**

**Project #**

**Council Meeting Date:** 06/24/2024

<b>Submitting Dept</b>	FLEET SERVICES	<b>Bid #</b>	RFQ #5221-20
------------------------	----------------	--------------	--------------

<b>Contact Name/Phone</b>	RICK GIDDINGS 625-7706	<b>Requisition #</b>	CR25981
---------------------------	------------------------	----------------------	---------

<b>Contact E-Mail</b>	RGIDDINGS@SPOKANECITY.ORG		
-----------------------	---------------------------	--	--

<b>Agenda Item Type</b>	Contract Item		
-------------------------	---------------	--	--

<b>Council Sponsor(s)</b>	MCATHCART BWILKERSON ZZAPPONE		
---------------------------	-------------------------------	--	--

<b>Agenda Item Name</b>	5100 - CONTRACT RENEWAL WITH MEGA CR WASH LLC		
-------------------------	---	--	--

**Agenda Wording**

Mega Wash was the lowest responsive bidder in 2020. Providing light duty car wash service to our police department at various times throughout their duty day. This is a renewal is Not To Exceed \$65k. This is the 4th and last renewal.

**Summary (Background)**

Mega Wash was the lowest responsive bidder in 2020. Providing light duty car wash service to our police department at various times throughout their duty day. This is a renewal is Not To Exceed \$65k.

Lease? NO Grant related? NO Public Works? NO

**Fiscal Impact**

Approved in Current Year Budget?

Total Cost	\$ 65,000.00
------------	--------------

Current Year Cost	\$ 65,000.00
-------------------	--------------

Subsequent Year(s) Cost	\$ 0
-------------------------	------

**Narrative**

In 2020 Purchasing put out an RFQ for Car Wash Services. Mega Wash was the lowest responsive bidder, and a contract was awarded.

**Amount**

**Budget Account**

Expense	\$ 65,000.00	# 5100-71700-48348-54201-99999
Select	\$	#
Select	\$	#
Select	\$	#
	\$	#
	\$	#



**Continuation of Wording, Summary, Approvals, and Distribution**

**Agenda Wording**

**Summary (Background)**

**Approvals**

<b><u>Dept Head</u></b>	GIDDINGS, RICHARD
<b><u>Division Director</u></b>	BOSTON, MATTHEW
<b><u>Accounting Manager</u></b>	ORLOB, KIMBERLY
<b><u>Legal</u></b>	HARRINGTON,
<b><u>For the Mayor</u></b>	PICCOLO, MIKE

**Additional Approvals**

<b><u>PURCHASING</u></b>	PRINCE, THEA

**Distribution List**

chrissvoboda@gmail.com	rgiddings@spokanecity.org
atrussell@spokanecity.org	tprince@spokanecity.org
tbrazington@spokanecity.org	fleetservicesaccounting@spokanecity.org



**City of Spokane**  
**CONTRACT RENEWAL**  
**4 of 4**  
**Title: MEGA WASH LLC. FOR CAR WASHING**  
**SERVICES FOR THE CITY OF SPOKANE**

This Contract Renewal is made and entered into by and between the **CITY OF SPOKANE** as (“City”), a Washington municipal corporation, and **MEGA WASH, LLC**, whose address is 1111 Maple Street, Spokane, Washington, 99201, as (“Company”), individually hereafter referenced as a “party”, and together as the “parties”.

*WHEREAS, the parties entered into a Contract wherein the Company agreed to provide Car Wash Services for the City of Spokane’s Fleet Department; and,*

*WHEREAS, the initial contract provided for 4 additional one-year renewals, with this being the last of those renewals.*

*NOW, THEREFORE, in consideration of these terms, the parties mutually agree as follows:*

**1. CONTRACT DOCUMENTS.**

The original Contract, dated March 24, 2020, any previous amendments, renewals and / or extensions / thereto, are incorporated by reference into this document as though written in full and shall remain in full force and effect except as provided herein.

**2. EFFECTIVE TERM.**

This Contract Renewal shall become effective on April 1, 2024 and shall run through March 31, 2025.

**3. COMPENSATION.**

The City shall pay an estimated maximum annual cost not to exceed **SIXTY-FIVE THOUSAND AND 00/100 (\$65,000.00)**, plus tax, for everything furnished and done under this Contract Renewal. This is the maximum amount to be paid under this Renewal, and shall not be exceeded without the prior written authorization of the City, memorialized with the same formality as the original Contract and this Renewal document.

**4. DEBARMENT AND SUSPENSION.**

The Company has provided its certification that it is in compliance with and shall not contract with individuals or organizations which are debarred, suspended, or otherwise excluded from or ineligible from participation in Federal Assistance Programs under Executive Order 12549 and “Debarment and Suspension”, codified at 29 CFR part 98.



IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants contained, or attached and incorporated and made a part, the parties have executed this Contract Renewal by having legally-binding representatives affix their signatures below.

**MEGA WASH, LLC**

**CITY OF SPOKANE**

By \_\_\_\_\_  
Signature                      Date

By \_\_\_\_\_  
Signature                      Date

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney

**Attachments that are part of this Agreement:**  
Certificate of Debarment

24-027

**ATTACHMENT  
CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY AND VOLUNTARY EXCLUSION**

1. The undersigned (i.e., signatory for the Subrecipient / Contractor / Consultant) certifies, to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  - b. Have not within a three-year period preceding this contract been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
  - c. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and,
  - d. Have not within a three-year period preceding this contract had one or more public transactions (federal, state, or local) terminated for cause or default.
  
2. The undersigned agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
  
3. The undersigned further agrees by signing this contract that it will include the following clause, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

1. The lower tier contractor certified, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
  
  2. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.
4. I understand that a false statement of this certification may be grounds for termination of the contract.

<hr/> Name of Subrecipient / Contractor / Consultant (Type or Print)	<hr/> Program Title (Type or Print)
<hr/> Name of Certifying Official (Type or Print)	<hr/> Signature
<hr/> Title of Certifying Official (Type or Print)	<hr/> Date (Type or Print)

## Committee Agenda Sheet

### Finance & Administration Committee

<b>Committee Date</b>	June 3, 2024
<b>Submitting Department</b>	Fleet Services
<b>Contact Name</b>	Rick Giddings
<b>Contact Email &amp; Phone</b>	<a href="mailto:rgiddings@spokanecity.org">rgiddings@spokanecity.org</a> 509-625-7706
<b>Council Sponsor(s)</b>	Cathcart, Wilkerson, Zappone
<b>Select Agenda Item Type</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion    Time Requested:
<b>Agenda Item Name</b>	5100 – Contract renewal with Mega Car Wash
<b>Proposed Council Action</b>	<input checked="" type="checkbox"/> Approval to proceed to Legislative Agenda <input type="checkbox"/> Information Only
<b>Summary (Background)</b>	Fleet Services would like to renew with Mega Car Wash for car washing services. The renewal contract term is 1 year with no further renewals. This renewal will be effective until March 31, 2025 and will not exceed \$65k.
	*use the Fiscal Impact box below for relevant financial information
<b>Fiscal Impact</b>	
<b>Approved in current year budget?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Total Cost: <u>\$65,000</u>	
Current year cost: \$65,000	
Subsequent year(s) cost: \$65,000	
<b>Narrative:</b> <u>RFP conducted and vendor selected by a selection committee based on overall cost and vendor capacity.</u>	
<b>Funding Source</b> <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring <input type="checkbox"/> N/A	
Specify funding source: Program revenue	
Is this funding source sustainable for future years, months, etc? Yes	
<b>Expense Occurrence</b> <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring <input type="checkbox"/> N/A	
Other budget impacts: (revenue generating, match requirements, etc.)	
<b>Operations Impacts (If N/A, please give a brief description as to why)</b>	
What impacts would the proposal have on historically excluded communities? None identified	
How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities? Data will not be collected.	
How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution? Ongoing cost data will be collected by Fleet Services for further analysis as needed.	
Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others? Aligns with Centralized Fleet policy.	



STATE OF WASHINGTON

# BUSINESS LICENSE

Limited Liability Company

MEGA WASH LLC  
MEGA WASH NORTH  
1111 N MAPLE ST  
SPOKANE WA 99201-1804

UNEMPLOYMENT INSURANCE - ACTIVE  
MINOR WORK PERMIT - ACTIVE

INDUSTRIAL INSURANCE - ACTIVE  
TAX REGISTRATION #604-266-879 - ACTIVE

Issue Date: Nov 22, 2023

Unified Business ID #: 602666707

Business ID #: 001

Location: 0002

Expires: Nov 30, 2024

**CITY/COUNTY ENDORSEMENTS:**

SPOKANE GENERAL BUSINESS - ACTIVE

**DUTIES OF MINORS:**

Ages 16-17: Cashier, Car Wash Attendant. \*MINOR MAY NOT WORK AT HEIGHTS GREATER THAN 10 FT OFF THE GROUND OR FLOOR LEVEL.\*

**LICENSING RESTRICTIONS:**

It is the business's responsibility to comply with minor work permit requirements. See WAC 296-125-030 and WAC 296-125-033 for Non-Agricultural and WAC 296-131-125 for Agricultural guidelines and restricted activities.

Occupations involving exposure to substances which are carcinogenic, corrosive, highly toxic, toxic sensitizers, or that cause reproductive health effects or irreversible end organ damage is prohibited for minors under 18. WAC 296-125-030(25)

**REGISTERED TRADE NAMES:**

MEGA WASH NORTH

This document lists the registrations, endorsements, and licenses authorized for the business named above. By accepting this document, the licensee certifies the information on the application was complete, true, and accurate to the best of his or her knowledge, and that business will be conducted in compliance with all applicable Washington state, county, and city regulations.

Director, Department of Revenue

STATE OF WASHINGTON

UBI: 602666707 001 0002

Expires: Nov 30, 2024

MEGA WASH LLC  
MEGA WASH NORTH  
1111 N MAPLE ST  
SPOKANE WA 99201-1804

UNEMPLOYMENT INSURANCE - ACTIVE  
INDUSTRIAL INSURANCE - ACTIVE  
MINOR WORK PERMIT - ACTIVE  
TAX REGISTRATION #604-266-879 - ACTIVE  
SPOKANE GENERAL BUSINESS - ACTIVE

Director, Department of Revenue



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

01/31/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Doty & Giles, Inc. 1213 North Pines Rd. Spokane Valley WA 99206		<b>CONTACT NAME:</b> Danielle Neumann <b>PHONE (A/C, No, Ext):</b> (509) 924-7755 <b>E-MAIL ADDRESS:</b> daniellen@doty.com		<b>FAX (A/C, No):</b> (509) 922-0610	
<b>INSURED</b> MEGA WASH LLC 13505 E BROADWAY SPOKANE WA 99216		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Mutual of Enumclaw			<b>NAIC #</b> 14761
		<b>INSURER B:</b>			
		<b>INSURER C:</b>			
		<b>INSURER D:</b>			
		<b>INSURER E:</b>			
		<b>INSURER F:</b>			

**COVERAGES****CERTIFICATE NUMBER:** 23-24**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y		CPP0021318	10/03/2023	10/03/2024	EACH OCCURRENCE \$ 1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000						
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> EXCESS LIAB DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate holder is included as an Additional Insured to the Commercial General Liability if required by written contract.

**CERTIFICATE HOLDER****CANCELLATION**

City of Spokane 808 W Spokane Falls Blvd  Spokane WA 99201	<b>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</b>  <b>AUTHORIZED REPRESENTATIVE</b> 
---	---

© 1988-2015 ACORD CORPORATION. All rights reserved.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS OR OTHER INTERESTS FROM WHOM LAND HAS BEEN LEASED**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Person(s) Or Organization(s)	Designation Of Premises (Part Leased To You)
SARFF INVESTMENTS LLC 13505 E BROADWAY SPOKANE VALLEY WA 99216	397 LUCKY TRAIL RD PRIEST LAKE ID 83856
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Schedule.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to lease that land;

2. Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) shown in the Schedule.

**C.** With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

**Agenda Sheet for City Council:****Committee:** Finance & Administration **Date:** 06/03/2024**Committee Agenda type:** Consent**Date Rec'd**

5/21/2024

**Clerk's File #****Renews #****Cross Ref #****Council Meeting Date:** 06/24/2024**Submitting Dept**

RISK MANAGEMENT

**Project #****Contact Name/Phone**

SCOTT JORDAN 625-6223

**Bid #****Contact E-Mail**

JSJORDAN@SPOKANECITY.ORG

**Requisition #**

PAID THRU

**Agenda Item Type**

Resolutions

**Council Sponsor(s)**

MCATHCART BWILKERSON ZZAPPONE

**Agenda Item Name**

5800 - SETTLEMENT RESOLUTION

**Agenda Wording**

Resolution settlement of claim for damages to homeowner residence

**Summary (Background)**

Resolution settlement of claim for damages to homeowner resident Wayne Stronk as a result of water damage to his home on W 17th. The damage was caused by a break in the city's 6" cast iron water main flooding his basement with 3" of water. Total damage \$60,000.

Lease? NO Grant related? NO Public Works? NO

**Fiscal Impact**

Approved in Current Year Budget? YES

Total Cost \$ 60,000.00

Current Year Cost \$ 0

Subsequent Year(s) Cost \$ 0

**Narrative****Amount****Budget Account**

Select \$ #

Select \$ #

Select \$ #

Select \$ #

\$ #

\$ #







**Agenda Sheet for City Council:**

**Committee:** Finance & Administration **Date:** 06/03/2024

**Committee Agenda type:** Consent

**Date Rec'd**

4/29/2024

**Clerk's File #**

**Renews #**

**Cross Ref #**

**Council Meeting Date:** 06/24/2024

**Submitting Dept**

FLEET SERVICES

**Project #**

**Contact Name/Phone**

RICK GIDDINGS 625-7706

**Bid #**

RFP #6037-24

**Contact E-Mail**

RGIDDINGS@SPOKANECITY.ORG

**Requisition #**

**Agenda Item Type**

Contract Item

**Council Sponsor(s)**

MCATHCART BWILKERSON ZZAPPONE

**Agenda Item Name**

5100 - FLEET SERVICES TIERED HD VEHICLE REPAIR - CUMMINS SALES &

**Agenda Wording**

Fleet Services would like to contract with Cummins Sales & Service as a secondary vendor for repairs and maintenance on medium and heavy-duty City owned vehicles not to exceed \$200k per year. Contract term is 5 years.

**Summary (Background)**

Fleet Services, in conjunction with SFD and Purchasing, conducted an RFP to select vendors for tiered contracts to perform general repair and maintenance of City owned heavy duty vehicles. Each department rated responsive vendors based on cost, capability, and fit to the specific requirements of each department.

Lease? NO Grant related? NO Public Works? NO

**Fiscal Impact**

Approved in Current Year Budget? YES

Total Cost \$ 1,000,000

Current Year Cost \$ 200,000

Subsequent Year(s) Cost \$ 200,000

**Narrative**

RFP conducted, and vendors selected by a selection committee based on overall cost and vendor capability.

**Amount**

**Budget Account**

Expense \$ 200,000

# 5100-71700-48348-54803-99999

Select \$

#

Select \$

#

Select \$

#

\$

#

\$

#



## Council Briefing Paper Finance & Administration Committee

<b>Committee Date</b>	May 03, 2024
<b>Submitting Department</b>	Fleet Services
<b>Contact Name</b>	Rick Giddings
<b>Contact Email &amp; Phone</b>	<a href="mailto:rgiddings@spokanecity.org">rgiddings@spokanecity.org</a>
<b>Council Sponsor(s)</b>	Cathcart, Wilkerson, Zappone
<b>Select Agenda Item Type</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion    Time Requested:
<b>Agenda Item Name</b>	Fleet – Tiered HD Vehicle Repair Contracts – Cummins Sales & Service
<b>Proposed Council Action</b>	<input checked="" type="checkbox"/> Approval to proceed to Legislative Agenda <input type="checkbox"/> Information Only
<b>Summary (Background)</b>  *use the Fiscal Impact box below for relevant financial information	Fleet Services, in conjunction with SFD and Purchasing, conducted an RFP to select vendors for tiered contracts to perform general repair and maintenance of City owned heavy duty vehicles. Each department rated responsive vendors based on cost, capability, and fit to the specific requirements of each department. Fleet Services selected Cummins Sales and Service as one of two secondary vendors.  Fleet Services would like to contract with Cummins Sales and Service for an amount not to exceed \$200,000 per year including applicable sales tax. Contract term is 5 years.
<b>Fiscal Impact</b>	
<b>Approved in current year budget?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Total Cost: <u>\$1,000,000</u> Current year cost: \$200,000 Subsequent year(s) cost: \$200,000	
<b>Narrative:</b> <u>RFP conducted, and vendors selected by a selection committee based on overall cost and vendor capability.</u>	
<b>Funding Source</b> <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring <input type="checkbox"/> N/A Specify funding source: Program revenue Is this funding source sustainable for future years, months, etc? Yes	
<b>Expense Occurrence</b> <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Recurring <input type="checkbox"/> N/A  Other budget impacts: (revenue generating, match requirements, etc.)	
<b>Operations Impacts</b> (If N/A, please give a brief description as to why)	
<ul style="list-style-type: none"> <li>• What impacts would the proposal have on historically excluded communities? None Identified</li>   <li>• How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities? Data will not be collected.</li> </ul>	

## COUNCIL RULES – ATTACHMENT B 1 (STANDARD BRIEFING PAPER)

- How will data be collected regarding the effectiveness of this program, policy, or product to ensure it is the right solution? Ongoing cost and quality data will be collected by fleet to ensure vendor's adherence to standards.
- Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others? Aligns with Centralized Fleet Policy.

### **Council Subcommittee Review**

- Please provide a summary of council subcommittee review. If not reviewed by a council subcommittee, please explain why not. No standing subcommittee for this topic.



**City of Spokane**

**PERSONAL SERVICE AGREEMENT**

Title: **GENERAL REPAIR AND MAINTENANCE OF MEDIUM/HEAVY DUTY TRUCKS AND EQUIPMENT**

This Agreement is made and entered into by and between the **CITY OF SPOKANE** as ("City"), a Washington municipal corporation, and **CUMMINS SALE & SERVICE**, whose address is 11134 West Westbow Blvd., Spokane, Washington 99224 as ("Company"), individually hereafter referenced as a "party", and together as the "parties".

The parties agree as follows:

**1. PERFORMANCE.**

The Company shall provide General Repair and Maintenance of Medium and Heavy Duty Trucks and Equipment, in accordance with RFP 6037-24, and Company's Response, which is attached as Exhibit B. In the event of a conflict between these documents and this City Contract, the terms of this contract will control.

**2. TERM OF AGREEMENT.**

The term of this Agreement begins on May 1, 2024, and shall run through April 30, 2029, unless amended by written agreement or terminated earlier under the provisions of this Agreement.

**3. COMPENSATION / PAYMENT.**

Total annual compensation for Company's services under this Agreement shall not exceed **TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00)**, and applicable tax, per year, for everything furnished and done under this Agreement. This is an optional use contract. Services by the Company are provided on an as-needed basis upon request in accordance with the terms of the Contract documents. Only the services requested, received and accepted will be paid for by the City.

The Company shall submit its applications for payment to City of Spokane, Fleet Services Department, 914 East North Foothills Drive, Spokane, Washington, 99207. **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt of the Company's application except as provided by state law. If the City objects to all or any portion of the invoice, it shall notify the Company and reserves the right to only pay that portion of the invoice not in dispute. In that event, the parties shall immediately make every effort to settle the disputed amount.

#### **4. TAXES, FEES AND LICENSES.**

- A. Company shall pay and maintain in current status, all necessary licenses, fees, assessments, permit charges, etc. necessary to conduct the work included under this Agreement. It is the Company's sole responsibility to monitor and determine changes or the enactment of any subsequent requirements for said fees, assessments, or changes and to immediately comply.
- B. The cost of any permits, licenses, fees, etc. arising as a result of the projects included in this Agreement shall be included in the project budgets.

#### **5. CITY OF SPOKANE BUSINESS LICENSE.**

Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid annual business registration. The Company shall be responsible for contacting the State of Washington Business License Services at [www.dor.wa.gov](http://www.dor.wa.gov) or 360-705-6741 to obtain a business registration. If the Company does not believe it is required to obtain a business registration, it may contact the City's Taxes and Licenses Division at (509) 625-6070 to request an exemption status determination.

#### **6. SOCIAL EQUITY REQUIREMENTS / NON-DISCRIMINATION.**

No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Agreement because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation including gender expression or gender identity, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. The Company agrees to comply with, and to require that all subcontractors comply with, federal, state and local nondiscrimination laws, including but not limited to: the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Age Discrimination in Employment Act, and the American's With Disabilities Act, to the extent those laws are applicable.

#### **7. INDEMNIFICATION.**

The Company shall defend, indemnify, and hold the City and its officers and employees harmless from all claims, demands, or suits at law or equity asserted by third parties for bodily injury (including death) and/or property damage which arise from the Company's negligence or willful misconduct under this Agreement, including attorneys' fees and litigation costs; provided that nothing herein shall require a Company to indemnify the City against and hold harmless the City from claims, demands or suits based solely upon the negligence of the City, its agents, officers, and employees. If a claim or suit is caused by or results from the concurrent negligence of the Company's agents or employees and the City, its agents, officers and employees, this indemnity provision shall be valid and enforceable to the extent of the negligence of the Company, its agents or employees. The Company specifically assumes liability and agrees to defend, indemnify, and hold the City harmless for actions brought by the Company's own employees against the City and, solely for the purpose of this indemnification and defense, the Company specifically waives any immunity under the Washington State industrial insurance law, or Title 51 RCW. The Company recognizes that this waiver was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. The indemnity and agreement to defend and hold the City harmless provided for in this section shall survive any termination or expiration of this agreement.

## 8. INSURANCE.

During the period of the Agreement, the Company shall maintain in force at its own expense, each insurance noted below with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48:

- A. **Worker's Compensation Insurance** in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers and Employer's Liability Insurance in the amount of \$1,000,000;
- B. **General Liability Insurance** on an occurrence basis, with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this agreement. It shall provide that the City, its officers and employees are additional insureds but only with respect to the Company's services to be provided under this Agreement;
  - i. Acceptable **supplementary Umbrella insurance** coverage combined with Company's General Liability insurance policy must be a minimum of \$1,000,000, in order to meet the insurance coverage limits required in this Agreement; and
- C. **Automobile Liability Insurance** with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without forty-five (45) days written notice from the Company or its insurer(s) to the City. As evidence of the insurance coverage(s) required by this Agreement, the Company shall furnish acceptable Certificates of Insurance (COI) to the City at the time it returns this signed Agreement. The certificate shall specify the City of Spokane as "Additional Insured" specifically for Company's services under this Agreement, as well as all of the parties who are additional insureds, and include applicable policy endorsements, the forty-five (45) day cancellation clause, and the deduction or retention level. The Company shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

## 10. DEBARMENT AND SUSPENSION.

The Company has provided its certification that it is in compliance with and shall not contract with individuals or organizations which are debarred, suspended, or otherwise excluded from or ineligible from participation in Federal Assistance Programs under Executive Order 12549 and "Debarment and Suspension", codified at 29 CFR part 98.

## 11. AUDIT.

The Company and its sub-contractor shall maintain for a minimum of three (3) years following final payment all records related to its performance of the Agreement. The Company and its sub-contractors shall provide access to authorized City representatives, at reasonable times and in a reasonable manner to inspect and copy any such record. In the event of conflict between this provision and related auditing provisions required under federal law applicable to the Agreement, the federal law shall prevail.

## 12. ASSIGNMENT AND SUBCONTRACTING.

The Company shall not assign or subcontract its obligations under this Agreement without the City's written consent, which may be granted or withheld in the City's sole discretion. Any subcontract made by the Company shall incorporate by reference this Agreement, except as otherwise provided. The Company shall ensure that all subcontractors comply with the

obligations and requirements of the subcontract. The City's consent to any assignment or subcontract does not release the Company from liability or any obligation within this Agreement, whether before or after City consent, assignment or subcontract.

### **13. TERMINATION.**

Either party may terminate this Agreement, with or without cause, by sixty (60) days written notice to the other party. In the event of such termination, the City shall pay the Company for all work previously authorized and performed prior to the termination date.

### **14. STANDARD OF PERFORMANCE.**

The standard of performance applicable to Company's services will be the degree of skill and diligence normally employed by professional Companies performing the same or similar services at the time the services under this Agreement are performed.

### **15. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS.**

Original documents, drawings, designs, reports, or any other records developed or created under this Agreement shall belong to and become the property of the City. All records submitted by the City to the Company shall be safeguarded by the Company. The Company shall make such data, documents and files available to the City upon the City's request. If the City's use of the Company's records or data is not related to this project, it shall be without liability or legal exposure to the Company.

Under Washington State Law (reference RCW Chapter 42.56, the *Public Records Act* [PRA]) all materials received or created by the City of Spokane are **public records** and are available to the public for viewing via the City Clerk's Records (online) or a valid Public Records Request (PRR).

### **16. ANTI KICK-BACK.**

No officer or employee of the City of Spokane, having the power or duty to perform an official act or action related to this Agreement shall have or acquire any interest in the Agreement, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in this Agreement.

### **17. MISCELLANEOUS PROVISIONS.**

- A. **Amendments/Modifications:** This Agreement may be modified by the City in writing when necessary, and no modification or Amendment of this Agreement shall be effective unless signed by an authorized representative of each of the parties hereto.
- B. The Company, at no expense to the City, shall comply with all laws of the United States and Washington, the Charter and ordinances of the City of Spokane; and rules, regulations, orders and directives of their administrative agencies and officers. Without limiting the generality of this paragraph, the Company shall comply with the requirements of this Section.
- C. This Agreement shall be construed and interpreted under the laws of Washington. The venue of any action brought shall be in a court of competent jurisdiction, located in Spokane County, Washington.
- D. **Captions:** The titles of sections or subsections are for convenience only and do not define or limit the contents.
- E. **Severability:** If any term or provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.



- F. **Waiver:** No covenant, term or condition or the breach shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed a waiver of any preceding or succeeding breach of the same or any other covenant, term of condition. Neither the acceptance by the City of any performance by the Company after the time the same shall have become due nor payment to the Company for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City in writing.
- G. **Entire Agreement:** This document along with any exhibits and all attachments, and subsequently issued addenda, comprises the entire agreement between the City and the Company. If conflict occurs between Agreement documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this Agreement to afford the City the maximum benefits.
- H. **No personal liability:** No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made or in any connection with this Agreement.

IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants contained, or attached and incorporated and made a part, the parties have executed this Agreement by having legally-binding representatives affix their signatures below.

**CUMMINS SALE & SERVICE**

**CITY OF SPOKANE**

By \_\_\_\_\_  
Signature                      Date

By \_\_\_\_\_  
Signature                      Date

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney

**Attachments that are part of this Agreement:**

- Exhibit A – Certificate Regarding debarment
- Exhibit B – Company’s Response to RFP

24-063

**EXHIBIT A**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY AND VOLUNTARY EXCLUSION**

1. The undersigned (i.e., signatory for the Subrecipient / Contractor / Consultant) certifies, to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  - b. Have not within a three-year period preceding this contract been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
  - c. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and,
  - d. Have not within a three-year period preceding this contract had one or more public transactions (federal, state, or local) terminated for cause or default.
  
2. The undersigned agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
  
3. The undersigned further agrees by signing this contract that it will include the following clause, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:
 

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

  1. The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
  2. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.
  
4. I understand that a false statement of this certification may be grounds for termination of the contract.

<hr/> Name of Subrecipient / Contractor / Consultant (Type or Print)	<hr/> Program Title (Type or Print)
<hr/> Name of Certifying Official (Type or Print)	<hr/> Signature
<hr/> Title of Certifying Official (Type or Print)	<hr/> Date (Type or Print)

**EXHIBIT B**



STATE OF WASHINGTON

# BUSINESS LICENSE

Profit Corporation

CUMMINS INC.  
11134 W WESTBOW BLVD  
SPOKANE WA 99224-9475

UNEMPLOYMENT INSURANCE - ACTIVE  
TAX REGISTRATION - ACTIVE

INDUSTRIAL INSURANCE - ACTIVE

Issue Date: Oct 13, 2023

Unified Business ID #: 600414931

Business ID #: 001

Location: 0003

Expires: Oct 31, 2024

### CITY/COUNTY ENDORSEMENTS:

- CENTRALIA GENERAL BUSINESS - NON-RESIDENT #7648 - ACTIVE
- SHELTON GENERAL BUSINESS - NON-RESIDENT #0083280 - ACTIVE
- BELLINGHAM GENERAL BUSINESS #055465 - ACTIVE
- ISSAQUAH GENERAL BUSINESS - NON-RESIDENT - ACTIVE
- LACEY GENERAL BUSINESS - NON-RESIDENT #25514 - ACTIVE
- OLYMPIA GENERAL BUSINESS - NON-RESIDENT #28862 - ACTIVE
- PORT ORCHARD GENERAL BUSINESS - NON-RESIDENT (EXPIRES 1/31/2024) - ACTIVE
- PORT TOWNSEND GENERAL BUSINESS - NON-RESIDENT - ACTIVE
- SPOKANE GENERAL BUSINESS - NON-RESIDENT - ACTIVE
- OCEAN SHORES GENERAL BUSINESS - NON-RESIDENT (EXPIRES 4/30/2024) - ACTIVE
- HOQUIAM GENERAL BUSINESS - NON-RESIDENT #601866 - ACTIVE
- ABERDEEN GENERAL BUSINESS - NON-RESIDENT #215572 - ACTIVE

### LICENSING RESTRICTIONS:

Aberdeen city license valid until canceled by either party.

This document lists the registrations, endorsements, and licenses authorized for the business named above. By accepting this document, the licensee certifies the information on the application was complete, true, and accurate to the best of his or her knowledge, and that business will be conducted in compliance with all applicable Washington state, county, and city regulations.

Director, Department of Revenue

UBI: 600414931 001 0003

CUMMINS INC.  
11134 W WESTBOW BLVD  
SPOKANE WA 99224-9475

STATE OF WASHINGTON

FOLD HERE

FOLD HERE

- UNEMPLOYMENT INSURANCE - ACTIVE
- INDUSTRIAL INSURANCE - ACTIVE
- TAX REGISTRATION - ACTIVE
- CENTRALIA GENERAL BUSINESS - NON-RESIDENT #7648 - ACTIVE
- SHELTON GENERAL BUSINESS - NON-RESIDENT #0083280 - ACTIVE
- BELLINGHAM GENERAL BUSINESS #055465 - ACTIVE
- ISSAQUAH GENERAL BUSINESS - NON-RESIDENT - ACTIVE
- LACEY GENERAL BUSINESS - NON-RESIDENT #25514 - ACTIVE
- OLYMPIA GENERAL BUSINESS -

Expires: Oct 31, 2024

Director, Department of Revenue



STATE OF WASHINGTON

# BUSINESS LICENSE

Profit Corporation

CUMMINS INC.  
11134 W WESTBOW BLVD  
SPOKANE WA 99224-9475

Not licensed to hire minors without a Minor Work Permit.

Issue Date: Oct 13, 2023

Unified Business ID #: 600414931

Business ID #: 001

Location: 0003

Expires: Oct 31, 2024

This document lists the registrations, endorsements, and licenses authorized for the business named above. By accepting this document, the licensee certifies the information on the application was complete, true, and accurate to the best of his or her knowledge, and that business will be conducted in compliance with all applicable Washington state, county, and city regulations.

Director, Department of Revenue

UBI: 600414931 001 0003

CUMMINS INC.  
11134 W WESTBOW BLVD  
SPOKANE WA 99224-9475

STATE OF WASHINGTON

FOLD HERE

FOLD HERE

UNEMPLOYMENT INSURANCE - ACTIVE  
INDUSTRIAL INSURANCE - ACTIVE  
TAX REGISTRATION - ACTIVE  
CENTRALIA GENERAL BUSINESS - NON-RESIDENT #7648 - ACTIVE  
SHELTON GENERAL BUSINESS - NON-RESIDENT #0083280 - ACTIVE  
BELLINGHAM GENERAL BUSINESS #055465 - ACTIVE  
ISSAQUAH GENERAL BUSINESS - NON-RESIDENT - ACTIVE  
LACEY GENERAL BUSINESS - NON-RESIDENT #25514 - ACTIVE  
OLYMPIA GENERAL BUSINESS -

Expires: Oct 31, 2024

Director, Department of Revenue

## IMPORTANT!

### PLEASE READ THE FOLLOWING INFORMATION CAREFULLY BEFORE POSTING THIS LICENSE

#### General Information

Post this Business License in a visible location at your place of business.

If you were issued a Business License previously, **destroy the old one and post this one in its place.**

Login to My DOR at [dor.wa.gov](http://dor.wa.gov) if you need to make changes to your business name, location, mailing address, telephone number, or business ownership.

Telephone: 360-705-6741

#### Endorsements

All endorsements should be renewed by the expiration date that appears on the front of this license to avoid any late fees.

If there is no expiration date, the endorsements remain active as long as you continue required reporting. Tax Registration, Unemployment Insurance, and Industrial Insurance endorsements require you to submit periodic reports. Each agency will send you the necessary reporting forms and instructions.

For assistance or to request this document in an alternate format, visit <http://business.wa.gov/BLS> or call (360) 705-6741. Teletype (TTY) users may use the Washington Relay Service by calling 711.

BLS-700-107 (07/27/20)



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Table with 2 columns: Name Of Additional Insured Person(s) Or Organization(s), Location And Description Of Completed Operations. Includes text: All persons or organizations as required by written contract or agreement, All locations on file with the Company.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard". However: 1.The insurance afforded to such additional insured only applies to the extent permitted by law; and 2.If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B.With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance: If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance: 1.Required by the contract or agreement; or 2.Available under the applicable limits of insurance; whichever is less. This endorsement shall not increase the applicable limits of insurance.



Preview

All other terms and conditions of this policy shall remain unchanged.

This endorsement forms a part of the policy to which attached, effective on the inception date of the policy unless otherwise stated herein.

(The information below is required only when this endorsement is issued subsequent to the preparation of the policy.)

Policy Number: CGP0000001-03

Endorsement Effective Date: 08/01/2023

Named Insured: Cummins Inc.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
All persons or organizations as required by written contract or agreement	All locations on file with the Company
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>	

Preview

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

## Swiss Re Corporate Solutions Elite Insurance Company

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable limits of insurance; whichever is less.

This endorsement shall not increase the applicable limits of insurance.

# Preview

All other terms and conditions of this policy shall remain unchanged.

This endorsement forms a part of the policy to which attached, effective on the inception date of the policy unless otherwise stated herein.

(The information below is required only when this endorsement is issued subsequent to the preparation of the policy.)

Policy Number: CGP0000001-03

Endorsement Effective Date: 08/01/2023

Named Insured: Cummins Inc.

## IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### ADDITIONAL INSURED AND PRIMARY AND NON-CONTRIBUTORY ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

#### SCHEDULE

Designated Person(s) or Organization(s):

All persons or organizations where required by written contract.

# Preview

- A. **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, paragraph 1. **Who Is An Insured** is amended to include the person(s) or organization(s) shown in the above Schedule as an additional "insured", but only with respect to "accidents" arising out of your work while being performed for such person(s) or organization(s).
- B. The following is added to the **Other Insurance Condition** in the Business Auto Coverage Form and the **Other Insurance – Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form and supersedes any provision to the contrary:

This policy's Covered Autos Liability Coverage is primary to and will not seek contribution from any other insurance available to the "insured" person(s) or organization(s) shown in the above Schedule provided that:

1. Such "insured" is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".

PCA 048 09 18

Page 1 of 1

Includes copyrighted material of Insurance Services Office, Inc., with its permission.



**Agenda Sheet for City Council:**

**Committee:** Finance & Administration **Date:** 06/03/2024

**Committee Agenda type:** Consent

**Date Rec'd**

4/26/2024

**Clerk's File #**

**Renews #**

**Cross Ref #**

**Council Meeting Date:** 06/24/2024

**Submitting Dept**

FLEET SERVICES

**Project #**

**Contact Name/Phone**

RICK GIDDINGS 625-7706

**Bid #**

RFP #6037-24

**Contact E-Mail**

RGIDDINGS@SPOKANECITY.ORG

**Requisition #**

**Agenda Item Type**

Contract Item

**Council Sponsor(s)**

MCATHCART BWILKERSON ZZAPPONE

**Agenda Item Name**

5100 - FLEET SERVICES TIERED HD VEHICLE REPAIR - DOBBS PETERBILT

**Agenda Wording**

Fleet Services would like to contract with Dobbs Peterbilt as a primary vendor for repairs and maintenance on medium and heavy-duty City owned vehicles not to exceed \$800k per year. Contract term is 5 years.

**Summary (Background)**

Fleet Services, in conjunction with SFD and Purchasing, conducted an RFP to select vendors for tiered contracts to perform general repair and maintenance of City owned heavy duty vehicles. Each department rated responsive vendors based on cost, capability, and fit to the specific requirements of each department.

Lease? NO Grant related? NO Public Works? NO

**Fiscal Impact**

Approved in Current Year Budget? YES

Total Cost \$ 4,000,000

Current Year Cost \$ 800,000

Subsequent Year(s) Cost \$ 800,000

**Narrative**

RFP conducted, and vendors selected by a selection committee based on overall cost and vendor capability.

**Amount**

**Budget Account**

Expense \$ 800,000

# 5100-71700-48348-54803-99999

Select \$

#

Select \$

#

Select \$

#

\$

#

\$

#



## Continuation of Wording, Summary, Approvals, and Distribution

### Agenda Wording

### Summary (Background)

#### **Approvals**

##### Dept Head

GIDDINGS, RICHARD

##### Division Director

BOSTON, MATTHEW

##### Accounting Manager

ORLOB, KIMBERLY

##### Legal

HARRINGTON,

##### For the Mayor

PICCOLO, MIKE

#### **Additional Approvals**

##### PURCHASING

PRINCE, THEA

#### **Distribution List**

rgiddings@spokanecity.org

atrussell@spokanecity.org

tprince@spokanecity.org

nathan.connell@dobbspeterbilt.com

fleetservicesaccounting@spokanecity.org

## Council Briefing Paper Finance & Administration Committee

<b>Committee Date</b>	May 03, 2024
<b>Submitting Department</b>	Fleet Services
<b>Contact Name</b>	Rick Giddings
<b>Contact Email &amp; Phone</b>	<a href="mailto:rgiddings@spokanecity.org">rgiddings@spokanecity.org</a>
<b>Council Sponsor(s)</b>	Cathcart, Wilkerson, Zappone
<b>Select Agenda Item Type</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion    Time Requested:
<b>Agenda Item Name</b>	Fleet – Tiered HD Vehicle Repair Contracts - Dobbs
<b>Proposed Council Action</b>	<input checked="" type="checkbox"/> Approval to proceed to Legislative Agenda <input type="checkbox"/> Information Only
<b>Summary (Background)</b>  *use the Fiscal Impact box below for relevant financial information	Fleet Services, in conjunction with SFD and Purchasing, conducted an RFP to select vendors for tiered contracts to perform general repair and maintenance of City owned heavy duty vehicles. Each department rated responsive vendors based on cost, capability, and fit to the specific requirements of each department. Fleet Services selected Western Peterbilt LLC, (DBA Dobbs Peterbilt) as primary vendor.  Fleet Services would like to contract with Dobbs Peterbilt for an amount not to exceed \$800,000 per year including applicable sales tax. Contract term is 5 years.
<p><b>Fiscal Impact</b></p> <p><b>Approved in current year budget?</b>    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No    <input type="checkbox"/> N/A</p> <p>Total Cost: <u>\$4,000,000</u></p> <p style="padding-left: 40px;">Current year cost: \$800,000</p> <p style="padding-left: 40px;">Subsequent year(s) cost: \$800,000</p> <p><b>Narrative:</b> <u>RFP conducted, and vendors selected by a selection committee based on overall cost and vendor capability.</u></p> <p><b>Funding Source</b>    <input type="checkbox"/> One-time    <input checked="" type="checkbox"/> Recurring    <input type="checkbox"/> N/A</p> <p>Specify funding source: Program revenue</p> <p>Is this funding source sustainable for future years, months, etc? Yes</p> <p><b>Expense Occurrence</b>    <input type="checkbox"/> One-time    <input checked="" type="checkbox"/> Recurring    <input type="checkbox"/> N/A</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	
<p><b>Operations Impacts</b> (If N/A, please give a brief description as to why)</p> <ul style="list-style-type: none"> <li>• What impacts would the proposal have on historically excluded communities? None Identified</li> <li>• How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities? Data will not be collected.</li> </ul>	

**COUNCIL RULES – ATTACHMENT B 1 (STANDARD BRIEFING PAPER)**

- How will data be collected regarding the effectiveness of this program, policy, or product to ensure it is the right solution? Ongoing cost and quality data will be collected by fleet to ensure vendor's adherence to standards.
- Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others? Aligns with Centralized Fleet Policy.

**Council Subcommittee Review**

- Please provide a summary of council subcommittee review. If not reviewed by a council subcommittee, please explain why not. No standing subcommittee for this topic.





STATE OF WASHINGTON

# BUSINESS LICENSE

Limited Liability Company

WESTERN PETERBILT, LLC  
2800 136TH AVENUE CT E  
SUMNER WA 98390-9206

UNEMPLOYMENT INSURANCE - ACTIVE  
MINOR WORK PERMIT - ACTIVE

INDUSTRIAL INSURANCE - ACTIVE  
TAX REGISTRATION - ACTIVE

Issue Date: Dec 01, 2023

Unified Business ID #: 600471845

Business ID #: 001

Location: 0001

Expires: Dec 31, 2024

CITY/COUNTY ENDORSEMENTS:

ISSAQUAH GENERAL BUSINESS - NON-RESIDENT - ACTIVE

SPOKANE GENERAL BUSINESS - NON-RESIDENT #T13002275BUS - ACTIVE

DUTIES OF MINORS:

Ages 16-17: filing, copying, printing, scanning

LICENSING RESTRICTIONS:

It is the business's responsibility to comply with minor work permit requirements. See WAC 296-125-030 and WAC 296-125-033 for Non-Agricultural and WAC 296-131-125 for Agricultural guidelines and restricted activities.

Minors may not operate or work in close proximity to heavy moving equipment. This includes, but is not limited to, earth-moving machines, cranes, compactors, forklifts and tractors. WAC 296-125-030(17)

This document lists the registrations, endorsements, and licenses authorized for the business named above. By accepting this document, the licensee certifies the information on the application was complete, true, and accurate to the best of his or her knowledge, and that business will be conducted in compliance with all applicable Washington state, county, and city regulations.

Director, Department of Revenue

UBI: 600471845 001 0001

WESTERN PETERBILT, LLC  
2800 136TH AVENUE CT E  
SUMNER WA 98390-9206

FOLD HERE

STATE OF WASHINGTON

FOLD HERE

UNEMPLOYMENT INSURANCE - ACTIVE  
INDUSTRIAL INSURANCE - ACTIVE  
MINOR WORK PERMIT - ACTIVE  
TAX REGISTRATION - ACTIVE  
ISSAQUAH GENERAL BUSINESS - NON-RESIDENT - ACTIVE  
SPOKANE GENERAL BUSINESS - NON-RESIDENT #T13002275BUS - ACTIVE

Expires: Dec 31, 2024

Director, Department of Revenue

## IMPORTANT!

### PLEASE READ THE FOLLOWING INFORMATION CAREFULLY BEFORE POSTING THIS LICENSE

#### General Information

Post this Business License in a visible location at your place of business.

If you were issued a Business License previously, **destroy the old one and post this one in its place.**

Login to My DOR at [dor.wa.gov](http://dor.wa.gov) if you need to make changes to your business name, location, mailing address, telephone number, or business ownership.

Telephone: 360-705-6741

#### Endorsements

All endorsements should be renewed by the expiration date that appears on the front of this license to avoid any late fees.

If there is no expiration date, the endorsements remain active as long as you continue required reporting. Tax Registration, Unemployment Insurance, and Industrial Insurance endorsements require you to submit periodic reports. Each agency will send you the necessary reporting forms and instructions.

For assistance or to request this document in an alternate format, visit <http://business.wa.gov/BLS> or call (360) 705-6741. Teletype (TTY) users may use the Washington Relay Service by calling 711.

BLS-700-107 (07/27/20)



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/28/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

EPIC Insurance Brokers & Consultants  
1140 Avenue of the Americas, 8<sup>th</sup> Floor  
New York, NY 10036

CONTACT NAME: Michael Feinstein  
PHONE (A/C No. Ext): 212 488-0200 FAX (A/C No): (212) 488-0220  
E-MAIL: [michael.feinstein@epicbrokers.com](mailto:michael.feinstein@epicbrokers.com)  
ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: NATIONAL UNION FIRE INSURANCE COMPANY	19445
INSURER B: STARSTONE SPECIALTY INSURANCE COMPANY	44776
INSURER C: NEW HAMPSHIRE INSURANCE COMPANY	23841
INSURER D:	
INSURER E:	
INSURER F:	

INSURED  
GWP Holdings, LLC; DPTC Holdings, LLC;  
Western Truck Parts and Equipment Company, LLC  
dba Dobbs Peterbilt; Dobbs Truck Group; Western Truck Center  
2800 136th Avenue Court E  
Sumner, WA 98390

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Garage Liability-Other than Auto GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y		CA 5721590	4/1/2024	4/1/2025	EACH OCCURRENCE	\$2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$100,000
							MED EXP (Any one person)	\$5,000
							PERSONAL & ADV INJURY	\$2,000,000
							GENERAL AGGREGATE	\$4,000,000
							PRODUCTS - COMP/OP AGG	\$4,000,000
								\$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> SCHEDULE D AUTOS <input type="checkbox"/> NON-OWNED AUTOS	Y		CA 5721590	4/1/2024	4/1/2025	COMBINED SINGLE LIMIT (Ea accident)	\$2,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB DED <input checked="" type="checkbox"/> RETENTION \$10,000 <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE			849351232ALI	4/1/2024	4/1/2025	EACH OCCURRENCE	\$5,000,000
							AGGREGATE	\$5,000,000
							EXCESS UMBRELLA	\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y / N <input type="checkbox"/> N / A			WC 80878143 (CA) WC 80878144 (AOS)	4/1/2024 4/1/2024	4/1/2025 4/1/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
							E.L. EACH ACCIDENT	\$2,000,000
							E.L. DISEASE - EA EMPLOYEE	\$2,000,000
							E.L. DISEASE - POLICY LIMIT	\$2,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

City of Spokane, its officers and employees are additional insured as respects General Liability and Auto Liability, as required by written contract, subject to the terms and conditions of the policy.

**CERTIFICATE HOLDER****CANCELLATION**

City of Spokane  
915 North Nelson  
Spokane WA 99202

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

3



**City of Spokane**  
**PERSONAL SERVICE AGREEMENT**  
Title: **GENERAL REPAIR AND MAINTENANCE OF  
MEDIUM/HEAVY DUTY TRUCKS AND EQUIPMENT**

This Agreement is made and entered into by and between the **CITY OF SPOKANE** as (“City”), a Washington municipal corporation, and **WESTERN PETERBILT, LLC dba DOBBS PETERBILT**, whose address is 23501 East Knox Avenue, Liberty Lake, Washington 99019 as (“Company”), individually hereafter referenced as a “party”, and together as the “parties”.

The parties agree as follows:

**1. PERFORMANCE.**

The Company shall provide General Repair and Maintenance of Medium and Heavy Duty Trucks and Equipment, in accordance with RFP 6037-24, and Company’s Response, which is attached as Exhibit B. In the event of a conflict between these documents and this City Contract, the terms of this contract will control.

**2. TERM OF AGREEMENT.**

The term of this Agreement begins on May 1, 2024, and shall run through April 30, 2029, unless amended by written agreement or terminated earlier under the provisions of this Agreement.

**3. COMPENSATION / PAYMENT.**

Total annual compensation for Company’s services under this Agreement shall not exceed **EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$800,000.00)**, and applicable tax, per year, for everything furnished and done under this Agreement. This is an optional use contract. Services by the Company are provided on an as-needed basis upon request in accordance with the terms of the Contract documents. Only the services requested, received and accepted will be paid for by the City.

The Company shall submit its applications for payment to City of Spokane, Fleet Services Department, 914 East North Foothills Drive, Spokane, Washington, 99207. **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt of the Company's application except as provided by state law. If the City objects to all or any portion of the invoice, it shall notify the Company and reserves the right to only pay that portion of the invoice not in dispute. In that event, the parties shall immediately make every effort to settle the disputed amount.

#### **4. TAXES, FEES AND LICENSES.**

- A. Company shall pay and maintain in current status, all necessary licenses, fees, assessments, permit charges, etc. necessary to conduct the work included under this Agreement. It is the Company's sole responsibility to monitor and determine changes or the enactment of any subsequent requirements for said fees, assessments, or changes and to immediately comply.
- B. The cost of any permits, licenses, fees, etc. arising as a result of the projects included in this Agreement shall be included in the project budgets.

#### **5. CITY OF SPOKANE BUSINESS LICENSE.**

Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid annual business registration. The Company shall be responsible for contacting the State of Washington Business License Services at [www.dor.wa.gov](http://www.dor.wa.gov) or 360-705-6741 to obtain a business registration. If the Company does not believe it is required to obtain a business registration, it may contact the City's Taxes and Licenses Division at (509) 625-6070 to request an exemption status determination.

#### **6. SOCIAL EQUITY REQUIREMENTS / NON-DISCRIMINATION.**

No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Agreement because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation including gender expression or gender identity, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. The Company agrees to comply with, and to require that all subcontractors comply with, federal, state and local nondiscrimination laws, including but not limited to: the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Age Discrimination in Employment Act, and the American's With Disabilities Act, to the extent those laws are applicable.

#### **7. INDEMNIFICATION.**

The Company shall defend, indemnify, and hold the City and its officers and employees harmless from all claims, demands, or suits at law or equity asserted by third parties for bodily injury (including death) and/or property damage which arise from the Company's negligence or willful misconduct under this Agreement, including attorneys' fees and litigation costs; provided that nothing herein shall require a Company to indemnify the City against and hold harmless the City from claims, demands or suits based solely upon the negligence of the City, its agents, officers, and employees. If a claim or suit is caused by or results from the concurrent negligence of the Company's agents or employees and the City, its agents, officers and employees, this indemnity provision shall be valid and enforceable to the extent of the negligence of the Company, its agents or employees. The Company specifically assumes liability and agrees to defend, indemnify, and hold the City harmless for actions brought by the Company's own employees against the City and, solely for the purpose of this indemnification and defense, the Company specifically waives any immunity under the Washington State industrial insurance law, or Title 51 RCW. The Company recognizes that this waiver was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. The indemnity and agreement to defend and hold the City harmless provided for in this section shall survive any termination or expiration of this agreement.

## **8. INSURANCE.**

During the period of the Agreement, the Company shall maintain in force at its own expense, each insurance noted below with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48:

- A. **Worker's Compensation Insurance** in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers and Employer's Liability Insurance in the amount of \$1,000,000;
- B. **General Liability Insurance** on an occurrence basis, with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this agreement. It shall provide that the City, its officers and employees are additional insureds but only with respect to the Company's services to be provided under this Agreement;
  - i. Acceptable **supplementary Umbrella insurance** coverage combined with Company's General Liability insurance policy must be a minimum of \$1,000,000, in order to meet the insurance coverage limits required in this Agreement; and
- C. **Automobile Liability Insurance** with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without forty-five (45) days written notice from the Company or its insurer(s) to the City. As evidence of the insurance coverage(s) required by this Agreement, the Company shall furnish acceptable Certificates of Insurance (COI) to the City at the time it returns this signed Agreement. The certificate shall specify the City of Spokane as "Additional Insured" specifically for Company's services under this Agreement, as well as all of the parties who are additional insureds, and include applicable policy endorsements, the forty-five (45) day cancellation clause, and the deduction or retention level. The Company shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

## **10. DEBARMENT AND SUSPENSION.**

The Company has provided its certification that it is in compliance with and shall not contract with individuals or organizations which are debarred, suspended, or otherwise excluded from or ineligible from participation in Federal Assistance Programs under Executive Order 12549 and "Debarment and Suspension", codified at 29 CFR part 98.

## **11. AUDIT.**

The Company and its sub-contractor shall maintain for a minimum of three (3) years following final payment all records related to its performance of the Agreement. The Company and its sub-contractors shall provide access to authorized City representatives, at reasonable times and in a reasonable manner to inspect and copy any such record. In the event of conflict between this provision and related auditing provisions required under federal law applicable to the Agreement, the federal law shall prevail.

## **12. ASSIGNMENT AND SUBCONTRACTING.**

The Company shall not assign or subcontract its obligations under this Agreement without the City's written consent, which may be granted or withheld in the City's sole discretion. Any subcontract made by the Company shall incorporate by reference this Agreement, except as otherwise provided. The Company shall ensure that all subcontractors comply with the

obligations and requirements of the subcontract. The City's consent to any assignment or subcontract does not release the Company from liability or any obligation within this Agreement, whether before or after City consent, assignment or subcontract.

### **13. TERMINATION.**

Either party may terminate this Agreement, with or without cause, by sixty (60) days written notice to the other party. In the event of such termination, the City shall pay the Company for all work previously authorized and performed prior to the termination date.

### **14. STANDARD OF PERFORMANCE.**

The standard of performance applicable to Company's services will be the degree of skill and diligence normally employed by professional Companies performing the same or similar services at the time the services under this Agreement are performed.

### **15. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS.**

Original documents, drawings, designs, reports, or any other records developed or created under this Agreement shall belong to and become the property of the City. All records submitted by the City to the Company shall be safeguarded by the Company. The Company shall make such data, documents and files available to the City upon the City's request. If the City's use of the Company's records or data is not related to this project, it shall be without liability or legal exposure to the Company.

Under Washington State Law (reference RCW Chapter 42.56, the *Public Records Act* [PRA]) all materials received or created by the City of Spokane are **public records** and are available to the public for viewing via the City Clerk's Records (online) or a valid Public Records Request (PRR).

### **16. ANTI KICK-BACK.**

No officer or employee of the City of Spokane, having the power or duty to perform an official act or action related to this Agreement shall have or acquire any interest in the Agreement, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in this Agreement.

### **17. MISCELLANEOUS PROVISIONS.**

- A. **Amendments/Modifications:** This Agreement may be modified by the City in writing when necessary, and no modification or Amendment of this Agreement shall be effective unless signed by an authorized representative of each of the parties hereto.
- B. The Company, at no expense to the City, shall comply with all laws of the United States and Washington, the Charter and ordinances of the City of Spokane; and rules, regulations, orders and directives of their administrative agencies and officers. Without limiting the generality of this paragraph, the Company shall comply with the requirements of this Section.
- C. This Agreement shall be construed and interpreted under the laws of Washington. The venue of any action brought shall be in a court of competent jurisdiction, located in Spokane County, Washington.
- D. **Captions:** The titles of sections or subsections are for convenience only and do not define or limit the contents.
- E. **Severability:** If any term or provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.

- F. **Waiver:** No covenant, term or condition or the breach shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed a waiver of any preceding or succeeding breach of the same or any other covenant, term of condition. Neither the acceptance by the City of any performance by the Company after the time the same shall have become due nor payment to the Company for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City in writing.
- G. **Entire Agreement:** This document along with any exhibits and all attachments, and subsequently issued addenda, comprises the entire agreement between the City and the Company. If conflict occurs between Agreement documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this Agreement to afford the City the maximum benefits.
- H. **No personal liability:** No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made or in any connection with this Agreement.

IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants contained, or attached and incorporated and made a part, the parties have executed this Agreement by having legally-binding representatives affix their signatures below.

**WESTERN PETERBILT, LLC  
dba DOBBS PETERBILT**

**CITY OF SPOKANE**

By \_\_\_\_\_  
Signature                      Date

By \_\_\_\_\_  
Signature                      Date

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney

**Attachments that are part of this Agreement:**

Exhibit A – Certificate Regarding debarment

Exhibit B – Company’s Response to RFP

24-062



**EXHIBIT A**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY AND VOLUNTARY EXCLUSION**

1. The undersigned (i.e., signatory for the Subrecipient / Contractor / Consultant) certifies, to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  - b. Have not within a three-year period preceding this contract been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
  - c. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and,
  - d. Have not within a three-year period preceding this contract had one or more public transactions (federal, state, or local) terminated for cause or default.
  
2. The undersigned agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
  
3. The undersigned further agrees by signing this contract that it will include the following clause, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:
 

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

  1. The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
  2. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.
  
4. I understand that a false statement of this certification may be grounds for termination of the contract.

<hr/> Name of Subrecipient / Contractor / Consultant (Type or Print)	<hr/> Program Title (Type or Print)
<hr/> Name of Certifying Official (Type or Print)	<hr/> Signature
<hr/> Title of Certifying Official (Type or Print)	<hr/> Date (Type or Print)

**EXHIBIT B**

**Agenda Sheet for City Council:****Committee:** Finance & Administration **Date:** 06/03/2024**Committee Agenda type:** Consent**Date Rec'd**

4/26/2024

**Clerk's File #****Renews #****Cross Ref #****Council Meeting Date:** 06/24/2024**Submitting Dept**

FLEET SERVICES

**Project #****Contact Name/Phone**

RICK GIDDINGS 625-7706

**Bid #**

RFP #6037-24

**Contact E-Mail**

RGIDDINGS@SPOKANECITY.ORG

**Requisition #****Agenda Item Type**

Contract Item

**Council Sponsor(s)**

MCATHCART BWILKERSON ZZAPPONE

**Agenda Item Name**

5100 - FLEET SERVICES TIERED HD VEHICLE REPAIR - GORDON TRUCK CTRS

**Agenda Wording**

Fleet Services would like to contract with Gordon Truck Centers as a tertiary vendor for repairs and maintenance on medium and heavy-duty City owned vehicles not to exceed \$100k per year. Contract term is 5 years.

**Summary (Background)**

Fleet Services, in conjunction with SFD and Purchasing, conducted an RFP to select vendors for tiered contracts to perform general repair and maintenance of City owned heavy duty vehicles. Each department rated responsive vendors based on cost, capability, and fit to the specific requirements of each department.

Lease? NO Grant related? NO Public Works? NO

**Fiscal Impact**

Approved in Current Year Budget? YES

Total Cost \$ 500,000

Current Year Cost \$ 100,000

Subsequent Year(s) Cost \$ 100,000

**Narrative**

RFP conducted, and vendors selected by a selection committee based on overall cost and vendor capability.

**Amount****Budget Account**

Expense \$ 100,000

# 5100-71700-48348-54803-99999

Select \$

#

Select \$

#

Select \$

#

\$

#

\$

#



**Continuation of Wording, Summary, Approvals, and Distribution**

**Agenda Wording**

**Summary (Background)**

**Approvals**

<b><u>Dept Head</u></b>	GIDDINGS, RICHARD
<b><u>Division Director</u></b>	BOSTON, MATTHEW
<b><u>Accounting Manager</u></b>	ORLOB, KIMBERLY
<b><u>Legal</u></b>	HARRINGTON,
<b><u>For the Mayor</u></b>	PICCOLO, MIKE

**Additional Approvals**

<b><u>PURCHASING</u></b>	PRINCE, THEA

**Distribution List**

rgiddings@spokanecity.org	atrussell@spokanecity.org
tprince@spokanecity.org	patrick.gendreau@gordontruckcenters.com
fleetservicesaccounting@spokanecity.org	

## Council Briefing Paper Finance & Administration Committee

<b>Committee Date</b>	May 03, 2024
<b>Submitting Department</b>	Fleet Services
<b>Contact Name</b>	Rick Giddings
<b>Contact Email &amp; Phone</b>	<a href="mailto:rgiddings@spokanecity.org">rgiddings@spokanecity.org</a>
<b>Council Sponsor(s)</b>	Cathcart, Wilkerson, Zappone
<b>Select Agenda Item Type</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion    Time Requested:
<b>Agenda Item Name</b>	Fleet – Tiered HD Vehicle Repair Contracts – Gordon Truck Centers
<b>Proposed Council Action</b>	<input checked="" type="checkbox"/> Approval to proceed to Legislative Agenda <input type="checkbox"/> Information Only
<b>Summary (Background)</b>  *use the Fiscal Impact box below for relevant financial information	<p>Fleet Services, in conjunction with SFD and Purchasing, conducted an RFP to select vendors for tiered contracts to perform general repair and maintenance of City owned heavy duty vehicles. Each department rated responsive vendors based on cost, capability, and fit to the specific requirements of each department. Fleet Services selected Gordon Truck Centers as one of two tertiary vendors.</p> <p>Fleet Services would like to contract with Gordon Truck Centers for an amount not to exceed \$100,000 per year including applicable sales tax. Contract term is 5 years.</p>
<p><b>Fiscal Impact</b></p> <p><b>Approved in current year budget?</b>    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No    <input type="checkbox"/> N/A</p> <p>Total Cost: <u>\$500,000</u></p> <p style="padding-left: 20px;">Current year cost: \$100,000</p> <p style="padding-left: 20px;">Subsequent year(s) cost: \$100,000</p> <p><b>Narrative:</b> <u>RFP conducted, and vendors selected by a selection committee based on overall cost and vendor capability.</u></p> <p><b>Funding Source</b>    <input type="checkbox"/> One-time    <input checked="" type="checkbox"/> Recurring    <input type="checkbox"/> N/A</p> <p>Specify funding source: Program revenue</p> <p>Is this funding source sustainable for future years, months, etc? Yes</p> <p><b>Expense Occurrence</b>    <input type="checkbox"/> One-time    <input checked="" type="checkbox"/> Recurring    <input type="checkbox"/> N/A</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	
<p><b>Operations Impacts</b> (If N/A, please give a brief description as to why)</p> <ul style="list-style-type: none"> <li>• What impacts would the proposal have on historically excluded communities? None Identified</li> <li>• How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities? Data will not be collected.</li> </ul>	

**COUNCIL RULES – ATTACHMENT B 1 (STANDARD BRIEFING PAPER)**

- How will data be collected regarding the effectiveness of this program, policy, or product to ensure it is the right solution? Ongoing cost and quality data will be collected by fleet to ensure vendor's adherence to standards.
- Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others? Aligns with Centralized Fleet Policy.

**Council Subcommittee Review**

- Please provide a summary of council subcommittee review. If not reviewed by a council subcommittee, please explain why not. No standing subcommittee for this topic.



**City of Spokane**

**PERSONAL SERVICE AGREEMENT**

Title: **GENERAL REPAIR AND MAINTENANCE OF MEDIUM/HEAVY DUTY TRUCKS AND EQUIPMENT**

This Agreement is made and entered into by and between the **CITY OF SPOKANE** as ("City"), a Washington municipal corporation, and **GORDON TRUCK CENTERS, INC., dba FREIGHTLINER NORTHWEST**, whose address is 10310 West Westbow Blvd., Spokane, Washington 99224 as ("Company"), individually hereafter referenced as a "party", and together as the "parties".

The parties agree as follows:

**1. PERFORMANCE.**

The Company shall provide General Repair and Maintenance of Medium and Heavy Duty Trucks and Equipment, in accordance with RFP 6037-24, and Company's Response, which is attached as Exhibit B. In the event of a conflict between these documents and this City Contract, the terms of this contract will control.

**2. TERM OF AGREEMENT.**

The term of this Agreement begins on May 1, 2024, and shall run through April 30, 2029, unless amended by written agreement or terminated earlier under the provisions of this Agreement.

**3. COMPENSATION / PAYMENT.**

Total annual compensation for Company's services under this Agreement shall not exceed **ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00)**, and applicable tax, per year, for everything furnished and done under this Agreement. This is an optional use contract. Services by the Company are provided on an as-needed basis upon request in accordance with the terms of the Contract documents. Only the services requested, received and accepted will be paid for by the City.

The Company shall submit its applications for payment to City of Spokane, Fleet Services Department, 914 East North Foothills Drive, Spokane, Washington, 99207. **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt of the Company's application except as provided by state law. If the City objects to all or any portion of the invoice, it shall notify the Company and reserves the right to only pay that portion of the invoice not in dispute. In that event, the parties shall immediately make every effort to settle the disputed amount.

#### **4. TAXES, FEES AND LICENSES.**

- A. Company shall pay and maintain in current status, all necessary licenses, fees, assessments, permit charges, etc. necessary to conduct the work included under this Agreement. It is the Company's sole responsibility to monitor and determine changes or the enactment of any subsequent requirements for said fees, assessments, or changes and to immediately comply.
- B. The cost of any permits, licenses, fees, etc. arising as a result of the projects included in this Agreement shall be included in the project budgets.

#### **5. CITY OF SPOKANE BUSINESS LICENSE.**

Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid annual business registration. The Company shall be responsible for contacting the State of Washington Business License Services at [www.dor.wa.gov](http://www.dor.wa.gov) or 360-705-6741 to obtain a business registration. If the Company does not believe it is required to obtain a business registration, it may contact the City's Taxes and Licenses Division at (509) 625-6070 to request an exemption status determination.

#### **6. SOCIAL EQUITY REQUIREMENTS / NON-DISCRIMINATION.**

No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Agreement because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation including gender expression or gender identity, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. The Company agrees to comply with, and to require that all subcontractors comply with, federal, state and local nondiscrimination laws, including but not limited to: the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Age Discrimination in Employment Act, and the American's With Disabilities Act, to the extent those laws are applicable.

#### **7. INDEMNIFICATION.**

The Company shall defend, indemnify, and hold the City and its officers and employees harmless from all claims, demands, or suits at law or equity asserted by third parties for bodily injury (including death) and/or property damage which arise from the Company's negligence or willful misconduct under this Agreement, including attorneys' fees and litigation costs; provided that nothing herein shall require a Company to indemnify the City against and hold harmless the City from claims, demands or suits based solely upon the negligence of the City, its agents, officers, and employees. If a claim or suit is caused by or results from the concurrent negligence of the Company's agents or employees and the City, its agents, officers and employees, this indemnity provision shall be valid and enforceable to the extent of the negligence of the Company, its agents or employees. The Company specifically assumes liability and agrees to defend, indemnify, and hold the City harmless for actions brought by the Company's own employees against the City and, solely for the purpose of this indemnification and defense, the Company specifically waives any immunity under the Washington State industrial insurance law, or Title 51 RCW. The Company recognizes that this waiver was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. The indemnity and agreement to defend and hold the City harmless provided for in this section shall survive any termination or expiration of this agreement.



## 8. INSURANCE.

During the period of the Agreement, the Company shall maintain in force at its own expense, each insurance noted below with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48:

- A. **Worker's Compensation Insurance** in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers and Employer's Liability Insurance in the amount of \$1,000,000;
- B. **General Liability Insurance** on an occurrence basis, with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this agreement. It shall provide that the City, its officers and employees are additional insureds but only with respect to the Company's services to be provided under this Agreement;
  - i. Acceptable **supplementary Umbrella insurance** coverage combined with Company's General Liability insurance policy must be a minimum of \$1,000,000, in order to meet the insurance coverage limits required in this Agreement; and
- C. **Automobile Liability Insurance** with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without forty-five (45) days written notice from the Company or its insurer(s) to the City. As evidence of the insurance coverage(s) required by this Agreement, the Company shall furnish acceptable Certificates of Insurance (COI) to the City at the time it returns this signed Agreement. The certificate shall specify the City of Spokane as "Additional Insured" specifically for Company's services under this Agreement, as well as all of the parties who are additional insureds, and include applicable policy endorsements, the forty-five (45) day cancellation clause, and the deduction or retention level. The Company shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

## 10. DEBARMENT AND SUSPENSION.

The Company has provided its certification that it is in compliance with and shall not contract with individuals or organizations which are debarred, suspended, or otherwise excluded from or ineligible from participation in Federal Assistance Programs under Executive Order 12549 and "Debarment and Suspension", codified at 29 CFR part 98.

## 11. AUDIT.

The Company and its sub-contractor shall maintain for a minimum of three (3) years following final payment all records related to its performance of the Agreement. The Company and its sub-contractors shall provide access to authorized City representatives, at reasonable times and in a reasonable manner to inspect and copy any such record. In the event of conflict between this provision and related auditing provisions required under federal law applicable to the Agreement, the federal law shall prevail.

## 12. ASSIGNMENT AND SUBCONTRACTING.

The Company shall not assign or subcontract its obligations under this Agreement without the City's written consent, which may be granted or withheld in the City's sole discretion. Any subcontract made by the Company shall incorporate by reference this Agreement, except as otherwise provided. The Company shall ensure that all subcontractors comply with the

obligations and requirements of the subcontract. The City's consent to any assignment or subcontract does not release the Company from liability or any obligation within this Agreement, whether before or after City consent, assignment or subcontract.

### **13. TERMINATION.**

Either party may terminate this Agreement, with or without cause, by sixty (60) days written notice to the other party. In the event of such termination, the City shall pay the Company for all work previously authorized and performed prior to the termination date.

### **14. STANDARD OF PERFORMANCE.**

The standard of performance applicable to Company's services will be the degree of skill and diligence normally employed by professional Companies performing the same or similar services at the time the services under this Agreement are performed.

### **15. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS.**

Original documents, drawings, designs, reports, or any other records developed or created under this Agreement shall belong to and become the property of the City. All records submitted by the City to the Company shall be safeguarded by the Company. The Company shall make such data, documents and files available to the City upon the City's request. If the City's use of the Company's records or data is not related to this project, it shall be without liability or legal exposure to the Company.

Under Washington State Law (reference RCW Chapter 42.56, the *Public Records Act* [PRA]) all materials received or created by the City of Spokane are **public records** and are available to the public for viewing via the City Clerk's Records (online) or a valid Public Records Request (PRR).

### **16. ANTI KICK-BACK.**

No officer or employee of the City of Spokane, having the power or duty to perform an official act or action related to this Agreement shall have or acquire any interest in the Agreement, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in this Agreement.

### **17. MISCELLANEOUS PROVISIONS.**

- A. **Amendments/Modifications:** This Agreement may be modified by the City in writing when necessary, and no modification or Amendment of this Agreement shall be effective unless signed by an authorized representative of each of the parties hereto.
- B. The Company, at no expense to the City, shall comply with all laws of the United States and Washington, the Charter and ordinances of the City of Spokane; and rules, regulations, orders and directives of their administrative agencies and officers. Without limiting the generality of this paragraph, the Company shall comply with the requirements of this Section.
- C. This Agreement shall be construed and interpreted under the laws of Washington. The venue of any action brought shall be in a court of competent jurisdiction, located in Spokane County, Washington.
- D. **Captions:** The titles of sections or subsections are for convenience only and do not define or limit the contents.
- E. **Severability:** If any term or provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.

- F. **Waiver:** No covenant, term or condition or the breach shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed a waiver of any preceding or succeeding breach of the same or any other covenant, term of condition. Neither the acceptance by the City of any performance by the Company after the time the same shall have become due nor payment to the Company for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City in writing.
- G. **Entire Agreement:** This document along with any exhibits and all attachments, and subsequently issued addenda, comprises the entire agreement between the City and the Company. If conflict occurs between Agreement documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this Agreement to afford the City the maximum benefits.
- H. **No personal liability:** No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made or in any connection with this Agreement.

IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants contained, or attached and incorporated and made a part, the parties have executed this Agreement by having legally-binding representatives affix their signatures below.

**GORDON TRUCK CENTERS, INC., dba  
FREIGHTLINER NORTHWEST,**

**CITY OF SPOKANE**

By \_\_\_\_\_  
Signature                                  Date

By \_\_\_\_\_  
Signature                                  Date

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney

**Attachments that are part of this Agreement:**

Exhibit A – Certificate Regarding debarment

Exhibit B – Company’s Response to RFP

24-066

**EXHIBIT A**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY AND VOLUNTARY EXCLUSION**

1. The undersigned (i.e., signatory for the Subrecipient / Contractor / Consultant) certifies, to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  - b. Have not within a three-year period preceding this contract been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
  - c. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and,
  - d. Have not within a three-year period preceding this contract had one or more public transactions (federal, state, or local) terminated for cause or default.
  
2. The undersigned agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
  
3. The undersigned further agrees by signing this contract that it will include the following clause, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:
 

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

  1. The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
  2. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.
  
4. I understand that a false statement of this certification may be grounds for termination of the contract.

<hr/> Name of Subrecipient / Contractor / Consultant (Type or Print)	<hr/> Program Title (Type or Print)
<hr/> Name of Certifying Official (Type or Print)	<hr/> Signature
<hr/> Title of Certifying Official (Type or Print)	<hr/> Date (Type or Print)

**EXHIBIT B**



STATE OF WASHINGTON

# BUSINESS LICENSE

Profit Corporation

GORDON TRUCK CENTERS, INC.  
FREIGHTLINER NORTHWEST  
10310 W WESTBOW BLVD  
SPOKANE WA 99224-9411

UNEMPLOYMENT INSURANCE - ACTIVE  
TAX REGISTRATION - ACTIVE  
MISCELLANEOUS VEHICLE DEALER #06025 - ACTIVE

INDUSTRIAL INSURANCE - ACTIVE  
MOTOR VEHICLE DEALER SUBAGENCY #00579 - ACTIVE

Issue Date: Jul 28, 2023

Unified Business ID #: 600633770

Business ID #: 001

Location: 0006

Expires: Jul 31, 2024

CITY/COUNTY ENDORSEMENTS:

SPOKANE GENERAL BUSINESS - NON-RESIDENT - ACTIVE

LICENSING RESTRICTIONS:

Not licensed to hire minors without a Minor Work Permit.

REGISTERED TRADE NAMES:

FREIGHTLINER NORTHWEST

This document lists the registrations, endorsements, and licenses authorized for the business named above. By accepting this document, the licensee certifies the information on the application was complete, true, and accurate to the best of his or her knowledge, and that business will be conducted in compliance with all applicable Washington state, county, and city regulations.

Director, Department of Revenue

UBI: 600633770 001 0006

GORDON TRUCK CENTERS, INC.  
FREIGHTLINER NORTHWEST  
10310 W WESTBOW BLVD  
SPOKANE WA 99224-9411

UNEMPLOYMENT INSURANCE - ACTIVE  
INDUSTRIAL INSURANCE - ACTIVE  
TAX REGISTRATION - ACTIVE  
MOTOR VEHICLE DEALER SUBAGENCY #00579 - ACTIVE  
MISCELLANEOUS VEHICLE DEALER #06025 - ACTIVE  
SPOKANE GENERAL BUSINESS - NON-RESIDENT - ACTIVE

STATE OF WASHINGTON

Expires: Jul 31, 2024

Director, Department of Revenue

## IMPORTANT!

### PLEASE READ THE FOLLOWING INFORMATION CAREFULLY BEFORE POSTING THIS LICENSE

#### General Information

Post this Business License in a visible location at your place of business.

If you were issued a Business License previously, **destroy the old one and post this one in its place.**

Login to My DOR at [dor.wa.gov](http://dor.wa.gov) if you need to make changes to your business name, location, mailing address, telephone number, or business ownership.

Telephone: 360-705-6741

#### Endorsements

All endorsements should be renewed by the expiration date that appears on the front of this license to avoid any late fees.

If there is no expiration date, the endorsements remain active as long as you continue required reporting. Tax Registration, Unemployment Insurance, and Industrial Insurance endorsements require you to submit periodic reports. Each agency will send you the necessary reporting forms and instructions.

For assistance or to request this document in an alternate format, visit <http://business.wa.gov/BLS> or call (360) 705-6741. Teletype (TTY) users may use the Washington Relay Service by calling 711.

BLS-700-107 (07/27/20)





## DESCRIPTIONS (Continued from Page 1)

1070 Stewart Re SW Pacific WA - Limit \$840,000  
13232 Case Rd SW Olympia, WA Limit \$2,500,000  
10310 W Westbow Blvd Spokane Limit \$8,000,000  
10220 W Westbow Blvd Spokane Limit \$ 360,000  
1910 Rudkin Rd Yakima, WA Limit \$300,000  
60596 Cristad Dr LaGrande, WA Limit \$150,000  
29265 Freedom Land, Hermiston OR Limit \$150,000  
600 S 56th Place Ridgefield WA Limit \$1,500,000  
2343 Biddle Rd Medford OR Limit \$2,500,000  
1214 N. Franklin Blvd Nampa ID Limit \$150,000  
151 Stewart Road Pacific WA Limit \$600,000  
3299 Lathrop St., Fairbanks AK Limit \$1,000,000  
222 W 92nd Ave ., Anchorage, AK Limit \$2,500,000  
4991 Caterpillar Road., Redding, CA Limit \$1,500,000

City of Spokane, its officers and employees are listed as Additional Insured as respects to General and Auto liability as required by written contract, subject to the terms and conditions of the policy.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

# **ADDITIONAL INSURED FOR COVERED AUTOS LIABILITY COVERAGE – DESIGNATED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

## **ADDITIONAL INSURED SCHEDULE**

Designated Person or Organization: **SEE CA T8 04**

Address:

### **PROVISIONS**

- 1. The following is added to Paragraph D.2., Who Is An Insured, of SECTION I – COVERED AUTOS COVERAGES:**

Any person or organization designated in the Additional Insured Schedule is an "insured", but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by the acts or omissions of an "insured" under para-

graphs **D.2.a.** or **b.** of SECTION I – COVERED AUTOS COVERAGES.

- 2. The following is added to Paragraph B., General Conditions, of the SECTION IV – CONDITIONS: Notice of Cancellation to Additional Insured**

In the event of cancellation of this policy, written notice of cancellation will be mailed by us to that person or organization designated in the Additional Insured Schedule.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED FOR COVERED AUTOS  
COVERAGES – PRIMARY AND NON-CONTRIBUTORY  
WITH OTHER INSURANCE**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

**SCHEDULE OF ADDITIONAL INSURED PERSONS OR ORGANIZATIONS**

as per written contract

**PROVISIONS**

- 1. The following is added to Paragraph c. in D.2., **Who Is An Insured**, of **SECTION I – COVERED AUTOS COVERAGES**:

This includes any person or organization designated in the Schedule Of Additional Insured Persons Or Organizations who you are required under a written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for auto liability coverage, but only for damages to which this insurance applies and only to the extent of that designated person's or organization's liability for the conduct of another "insured".

- 2. The following is added to Paragraph 5., **Other Insurance**, in B., **General Conditions**, of **SECTION IV –CONDITIONS**, but only for Covered Autos Liability C coverage:

Regardless of the provisions of paragraphs a. and f. of this part 5. **Other Insurance**, this insurance is primary to and non-contributory with applicable other insurance under which the person or organization designated in the Schedule Of Additional Insured Persons Or Organizations is the first named insured when the written contract or agreement between you and that designated person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY  
AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

**SCHEDULE**

**Name(s) Of Person(s) Or Organization(s):**

SEE CA T8 05

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED FOR GENERAL LIABILITY  
COVERAGES – DESIGNATED PERSON OR  
ORGANIZATION**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

**SCHEDULE OF ADDITIONAL INSUREDS**

Designated Persons or Organizations: SEE CA T8 07 09 21

**PROVISIONS**

1. The following is added to Paragraph D., **Who Is An Insured**, of SECTION II – GENERAL LIABILITY COVERAGES:

Any person or organization designated in the Schedule Of Additional Insureds is an "insured", but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertis-

ing injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing "auto dealer operations"; or
- b. In connection with your premises owned by or rented to you.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY  
AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

- COMMERCIAL GENERAL LIABILITY COVERAGE PART
- ELECTRONIC DATA LIABILITY COVERAGE PART
- LIQUOR LIABILITY COVERAGE PART
- POLLUTION LIABILITY COVERAGE PART DESIGNATED SITES
- POLLUTION LIABILITY LIMITED COVERAGE PART DESIGNATED SITES
- PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
- RAILROAD PROTECTIVE LIABILITY COVERAGE PART
- UNDERGROUND STORAGE TANK POLICY DESIGNATED TANKS

**SCHEDULE**

**Name Of Person(s) Or Organization(s):**  
 As per written contract

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us of Section IV – Conditions:**

We waive any right of recovery against the person(s) or organization(s) shown in the Schedule above because of payments we make under this Coverage

Part. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person(s) or organization(s) prior to loss. This endorsement applies only to the person(s) or organization(s) shown in the Schedule above.

This page has been left blank intentionally.



**Agenda Sheet for City Council:**

**Committee:** Finance & Administration **Date:** 06/03/2024

**Committee Agenda type:** Consent

**Date Rec'd**

4/26/2024

**Clerk's File #**

**Renews #**

**Cross Ref #**

**Council Meeting Date:** 06/24/2024

**Submitting Dept**

FLEET SERVICES

**Project #**

**Contact Name/Phone**

RICK GIDDINGS 625-7706

**Bid #**

RFP #6037-24

**Contact E-Mail**

RGIDDINGS@SPOKANECITY.ORG

**Requisition #**

**Agenda Item Type**

Contract Item

**Council Sponsor(s)**

MCATHCART BWILKERSON ZZAPPONE

**Agenda Item Name**

5100 - FLEET SERVICES TIERED HD VEHICLE REPAIR - KENWORTH SALES

**Agenda Wording**

Fleet Services would like to contract with Kenworth Sales as a secondary vendor for repairs and maintenance on medium and heavy-duty City owned vehicles not to exceed \$200k per year. Contract term is 5 years.

**Summary (Background)**

Fleet Services, in conjunction with SFD and Purchasing, conducted an RFP to select vendors for tiered contracts to perform general repair and maintenance of City owned heavy duty vehicles. Each department rated responsive vendors based on cost, capability, and fit to the specific requirements of each department. Fleet Services selected Kenworth Sales as one of two secondary vendors.

Lease? NO Grant related? NO Public Works? NO

**Fiscal Impact**

Approved in Current Year Budget? YES

Total Cost \$ 1,000,000

Current Year Cost \$ 200,000

Subsequent Year(s) Cost \$ 200,000

**Narrative**

RFP conducted, and vendors selected by a selection committee based on overall cost and vendor capability.

**Amount**

**Budget Account**

Expense \$ 200,000

# 5100-71700-48348-54803-99999

Select \$

#

Select \$

#

Select \$

#

\$

#

\$

#





**Continuation of Wording, Summary, Approvals, and Distribution**

**Agenda Wording**

**Summary (Background)**

**Approvals**

<b><u>Dept Head</u></b>	GIDDINGS, RICHARD
<b><u>Division Director</u></b>	BOSTON, MATTHEW
<b><u>Accounting Manager</u></b>	ORLOB, KIMBERLY
<b><u>Legal</u></b>	HARRINGTON,
<b><u>For the Mayor</u></b>	PICCOLO, MIKE

**Additional Approvals**

<b><u>PURCHASING</u></b>	PRINCE, THEA

**Distribution List**

rgiddings@spokanecity.org	atrussell@spokanecity.org
tprince@spokanecity.org	wbeal@kwsco.com
fleetservicesaccounting@spokanecity.org	

## Council Briefing Paper Finance & Administration Committee

<b>Committee Date</b>	May 03, 2024
<b>Submitting Department</b>	Fleet Services
<b>Contact Name</b>	Rick Giddings
<b>Contact Email &amp; Phone</b>	<a href="mailto:rgiddings@spokanecity.org">rgiddings@spokanecity.org</a>
<b>Council Sponsor(s)</b>	Cathcart, Wilkerson, Zappone
<b>Select Agenda Item Type</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion    Time Requested:
<b>Agenda Item Name</b>	Fleet – Tiered HD Vehicle Repair Contracts – Kenworth Sales
<b>Proposed Council Action</b>	<input checked="" type="checkbox"/> Approval to proceed to Legislative Agenda <input type="checkbox"/> Information Only
<b>Summary (Background)</b>  *use the Fiscal Impact box below for relevant financial information	<p>Fleet Services, in conjunction with SFD and Purchasing, conducted an RFP to select vendors for tiered contracts to perform general repair and maintenance of City owned heavy duty vehicles. Each department rated responsive vendors based on cost, capability, and fit to the specific requirements of each department. Fleet Services selected Kenworth Sales as one of two secondary vendors.</p> <p>Fleet Services would like to contract with Kenworth Sales for an amount not to exceed \$200,000 per year including applicable sales tax. Contract term is 5 years.</p>
<p><b>Fiscal Impact</b></p> <p><b>Approved in current year budget?</b>    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No    <input type="checkbox"/> N/A</p> <p>Total Cost: <u>\$1,000,000</u></p> <p style="padding-left: 20px;">Current year cost: \$200,000</p> <p style="padding-left: 20px;">Subsequent year(s) cost: \$200,000</p> <p><b>Narrative:</b> <u>RFP conducted, and vendors selected by a selection committee based on overall cost and vendor capability.</u></p> <p><b>Funding Source</b>    <input type="checkbox"/> One-time    <input checked="" type="checkbox"/> Recurring    <input type="checkbox"/> N/A</p> <p>Specify funding source: Program revenue</p> <p>Is this funding source sustainable for future years, months, etc? Yes</p> <p><b>Expense Occurrence</b>    <input type="checkbox"/> One-time    <input checked="" type="checkbox"/> Recurring    <input type="checkbox"/> N/A</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	
<p><b>Operations Impacts</b> (If N/A, please give a brief description as to why)</p> <ul style="list-style-type: none"> <li>• What impacts would the proposal have on historically excluded communities? None Identified</li> <li>• How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities? Data will not be collected.</li> </ul>	

**COUNCIL RULES – ATTACHMENT B 1 (STANDARD BRIEFING PAPER)**

- How will data be collected regarding the effectiveness of this program, policy, or product to ensure it is the right solution? Ongoing cost and quality data will be collected by fleet to ensure vendor's adherence to standards.
- Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others? Aligns with Centralized Fleet Policy.

**Council Subcommittee Review**

- Please provide a summary of council subcommittee review. If not reviewed by a council subcommittee, please explain why not. No standing subcommittee for this topic.



**City of Spokane**

**PERSONAL SERVICE AGREEMENT**

Title: **GENERAL REPAIR AND MAINTENANCE OF MEDIUM/HEAVY DUTY TRUCKS AND EQUIPMENT**

This Agreement is made and entered into by and between the **CITY OF SPOKANE** as ("City"), a Washington municipal corporation, and **KENWORTH SALES COMPANY**, whose address is 6420 East Broadway Avenue, Spokane, Washington 99212 as ("Company"), individually hereafter referenced as a "party", and together as the "parties".

The parties agree as follows:

**1. PERFORMANCE.**

The Company shall provide General Repair and Maintenance Of Medium and Heavy Duty Trucks and Equipment, in accordance with RFP 6037-24, and Company's Response, which is attached as Exhibit B. In the event of a conflict between these documents and this City Contract, the terms of this contract will control.

**2. TERM OF AGREEMENT.**

The term of this Agreement begins on May 1, 2024, and shall run through April 30, 2029, unless amended by written agreement or terminated earlier under the provisions of this Agreement.

**3. COMPENSATION / PAYMENT.**

Total annual compensation for Company's services under this Agreement shall not exceed **TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00)**, and applicable tax, per year, for everything furnished and done under this Agreement. This is an optional use contract. Services by the Company are provided on an as-needed basis upon request in accordance with the terms of the Contract documents. Only the services requested, received and accepted will be paid for by the City.

The Company shall submit its applications for payment to City of Spokane, Fleet Services Department, 914 East North Foothills Drive, Spokane, Washington, 99207. **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt of the Company's application except as provided by state law. If the City objects to all or any portion of the invoice, it shall notify the Company and reserves the right to only pay that portion of the invoice not in dispute. In that event, the parties shall immediately make every effort to settle the disputed amount.

#### **4. TAXES, FEES AND LICENSES.**

- A. Company shall pay and maintain in current status, all necessary licenses, fees, assessments, permit charges, etc. necessary to conduct the work included under this Agreement. It is the Company's sole responsibility to monitor and determine changes or the enactment of any subsequent requirements for said fees, assessments, or changes and to immediately comply.
- B. The cost of any permits, licenses, fees, etc. arising as a result of the projects included in this Agreement shall be included in the project budgets.

#### **5. CITY OF SPOKANE BUSINESS LICENSE.**

Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid annual business registration. The Company shall be responsible for contacting the State of Washington Business License Services at [www.dor.wa.gov](http://www.dor.wa.gov) or 360-705-6741 to obtain a business registration. If the Company does not believe it is required to obtain a business registration, it may contact the City's Taxes and Licenses Division at (509) 625-6070 to request an exemption status determination.

#### **6. SOCIAL EQUITY REQUIREMENTS / NON-DISCRIMINATION.**

No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Agreement because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation including gender expression or gender identity, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. The Company agrees to comply with, and to require that all subcontractors comply with, federal, state and local nondiscrimination laws, including but not limited to: the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Age Discrimination in Employment Act, and the American's With Disabilities Act, to the extent those laws are applicable.

#### **7. INDEMNIFICATION.**

The Company shall defend, indemnify, and hold the City and its officers and employees harmless from all claims, demands, or suits at law or equity asserted by third parties for bodily injury (including death) and/or property damage which arise from the Company's negligence or willful misconduct under this Agreement, including attorneys' fees and litigation costs; provided that nothing herein shall require a Company to indemnify the City against and hold harmless the City from claims, demands or suits based solely upon the negligence of the City, its agents, officers, and employees. If a claim or suit is caused by or results from the concurrent negligence of the Company's agents or employees and the City, its agents, officers and employees, this indemnity provision shall be valid and enforceable to the extent of the negligence of the Company, its agents or employees. The Company specifically assumes liability and agrees to defend, indemnify, and hold the City harmless for actions brought by the Company's own employees against the City and, solely for the purpose of this indemnification and defense, the Company specifically waives any immunity under the Washington State industrial insurance law, or Title 51 RCW. The Company recognizes that this waiver was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. The indemnity and agreement to defend and hold the City harmless provided for in this section shall survive any termination or expiration of this agreement.

## **8. INSURANCE.**

During the period of the Agreement, the Company shall maintain in force at its own expense, each insurance noted below with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48:

- A. **Worker's Compensation Insurance** in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers and Employer's Liability Insurance in the amount of \$1,000,000;
- B. **General Liability Insurance** on an occurrence basis, with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this agreement. It shall provide that the City, its officers and employees are additional insureds but only with respect to the Company's services to be provided under this Agreement;
  - i. Acceptable **supplementary Umbrella insurance** coverage combined with Company's General Liability insurance policy must be a minimum of \$1,000,000, in order to meet the insurance coverage limits required in this Agreement; and
- C. **Automobile Liability Insurance** with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without forty-five (45) days written notice from the Company or its insurer(s) to the City. As evidence of the insurance coverage(s) required by this Agreement, the Company shall furnish acceptable Certificates of Insurance (COI) to the City at the time it returns this signed Agreement. The certificate shall specify the City of Spokane as "Additional Insured" specifically for Company's services under this Agreement, as well as all of the parties who are additional insureds, and include applicable policy endorsements, the forty-five (45) day cancellation clause, and the deduction or retention level. The Company shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

## **10. DEBARMENT AND SUSPENSION.**

The Company has provided its certification that it is in compliance with and shall not contract with individuals or organizations which are debarred, suspended, or otherwise excluded from or ineligible from participation in Federal Assistance Programs under Executive Order 12549 and "Debarment and Suspension", codified at 29 CFR part 98.

## **11. AUDIT.**

The Company and its sub-contractor shall maintain for a minimum of three (3) years following final payment all records related to its performance of the Agreement. The Company and its sub-contractors shall provide access to authorized City representatives, at reasonable times and in a reasonable manner to inspect and copy any such record. In the event of conflict between this provision and related auditing provisions required under federal law applicable to the Agreement, the federal law shall prevail.

## **12. ASSIGNMENT AND SUBCONTRACTING.**

The Company shall not assign or subcontract its obligations under this Agreement without the City's written consent, which may be granted or withheld in the City's sole discretion. Any subcontract made by the Company shall incorporate by reference this Agreement, except as otherwise provided. The Company shall ensure that all subcontractors comply with the

obligations and requirements of the subcontract. The City's consent to any assignment or subcontract does not release the Company from liability or any obligation within this Agreement, whether before or after City consent, assignment or subcontract.

### **13. TERMINATION.**

Either party may terminate this Agreement, with or without cause, by sixty (60) days written notice to the other party. In the event of such termination, the City shall pay the Company for all work previously authorized and performed prior to the termination date.

### **14. STANDARD OF PERFORMANCE.**

The standard of performance applicable to Company's services will be the degree of skill and diligence normally employed by professional Companies performing the same or similar services at the time the services under this Agreement are performed.

### **15. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS.**

Original documents, drawings, designs, reports, or any other records developed or created under this Agreement shall belong to and become the property of the City. All records submitted by the City to the Company shall be safeguarded by the Company. The Company shall make such data, documents and files available to the City upon the City's request. If the City's use of the Company's records or data is not related to this project, it shall be without liability or legal exposure to the Company.

Under Washington State Law (reference RCW Chapter 42.56, the *Public Records Act* [PRA]) all materials received or created by the City of Spokane are **public records** and are available to the public for viewing via the City Clerk's Records (online) or a valid Public Records Request (PRR).

### **16. ANTI KICK-BACK.**

No officer or employee of the City of Spokane, having the power or duty to perform an official act or action related to this Agreement shall have or acquire any interest in the Agreement, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in this Agreement.

### **17. MISCELLANEOUS PROVISIONS.**

- A. **Amendments/Modifications:** This Agreement may be modified by the City in writing when necessary, and no modification or Amendment of this Agreement shall be effective unless signed by an authorized representative of each of the parties hereto.
- B. The Company, at no expense to the City, shall comply with all laws of the United States and Washington, the Charter and ordinances of the City of Spokane; and rules, regulations, orders and directives of their administrative agencies and officers. Without limiting the generality of this paragraph, the Company shall comply with the requirements of this Section.
- C. This Agreement shall be construed and interpreted under the laws of Washington. The venue of any action brought shall be in a court of competent jurisdiction, located in Spokane County, Washington.
- D. **Captions:** The titles of sections or subsections are for convenience only and do not define or limit the contents.
- E. **Severability:** If any term or provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.

- F. **Waiver:** No covenant, term or condition or the breach shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed a waiver of any preceding or succeeding breach of the same or any other covenant, term of condition. Neither the acceptance by the City of any performance by the Company after the time the same shall have become due nor payment to the Company for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City in writing.
- G. **Entire Agreement:** This document along with any exhibits and all attachments, and subsequently issued addenda, comprises the entire agreement between the City and the Company. If conflict occurs between Agreement documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this Agreement to afford the City the maximum benefits.
- H. **No personal liability:** No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made or in any connection with this Agreement.

IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants contained, or attached and incorporated and made a part, the parties have executed this Agreement by having legally-binding representatives affix their signatures below.

**KENWORTH SALES COMPANY**

**CITY OF SPOKANE**

By \_\_\_\_\_  
Signature                      Date

By \_\_\_\_\_  
Signature                      Date

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney

**Attachments that are part of this Agreement:**

- Exhibit A – Certificate Regarding debarment
- Exhibit B – Company’s Response to RFP

24-059



**EXHIBIT A**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY AND VOLUNTARY EXCLUSION**

1. The undersigned (i.e., signatory for the Subrecipient / Contractor / Consultant) certifies, to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  - b. Have not within a three-year period preceding this contract been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
  - c. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and,
  - d. Have not within a three-year period preceding this contract had one or more public transactions (federal, state, or local) terminated for cause or default.
  
2. The undersigned agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
  
3. The undersigned further agrees by signing this contract that it will include the following clause, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:
 

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

  1. The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
  2. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.
  
4. I understand that a false statement of this certification may be grounds for termination of the contract.

<hr/> Name of Subrecipient / Contractor / Consultant (Type or Print)	<hr/> Program Title (Type or Print)
<hr/> Name of Certifying Official (Type or Print)	<hr/> Signature
<hr/> Title of Certifying Official (Type or Print)	<hr/> Date (Type or Print)

**EXHIBIT B**



STATE OF  
WASHINGTON

# BUSINESS LICENSE

Profit Corporation

KENWORTH SALES COMPANY  
KENWORTH SALES-SPOKANE  
6420 E BROADWAY AVE  
SPOKANE VALLEY WA 99212-1037

UNEMPLOYMENT INSURANCE - ACTIVE  
TAX REGISTRATION - ACTIVE

INDUSTRIAL INSURANCE - ACTIVE

Issue Date: Oct 06, 2023

Unified Business ID #: 603238845

Business ID #: 001

Location: 0001

Expires: Sep 30, 2024

CITY/COUNTY ENDORSEMENTS:

SPOKANE VALLEY GENERAL BUSINESS - ACTIVE  
SPOKANE GENERAL BUSINESS - NON-RESIDENT - ACTIVE

LICENSING RESTRICTIONS:

Not licensed to hire minors without a Minor Work Permit.

REGISTERED TRADE NAMES:

KENWORTH SALES-SPOKANE

This document lists the registrations, endorsements, and licenses authorized for the business named above. By accepting this document, the licensee certifies the information on the application was complete, true, and accurate to the best of his or her knowledge, and that business will be conducted in compliance with all applicable Washington state, county, and city regulations.

Director, Department of Revenue

CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER: Moreton & Company - Utah, P.O. Box 58139, Salt Lake City, UT 84158-0139, 801 531-1234. CONTACT NAME: Moreton & Company, PHONE (A/C, No., Ext): 801 531-1234, FAX (A/C, No): 801 531-6117, E-MAIL ADDRESS: certificates@moreton.com. INSURER(S) AFFORDING COVERAGE: INSURER A: Travelers Prop. Casualty Co. of America (NAIC # 25674), INSURER B: Travelers Indemnity Co. of America (NAIC # 25666), INSURER C: Travelers Indemnity Company of CT, INSURER D: , INSURER E: , INSURER F: .

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSR, SUBR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Rows include Commercial General Liability (Garage GL), Automobile Liability, Umbrella Liability, Workers Compensation and Employers' Liability, and Blkt Building.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) City of Spokane, its officers and employees are additional insured as respects General Liability and Auto Liability, as required by written contract, subject to the terms and conditions of the policy.

CERTIFICATE HOLDER: City of Spokane, 915 North Nelson, Spokane, WA 99202. CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE: [Signature]



**Agenda Sheet for City Council:**

**Committee:** Finance & Administration **Date:** 06/03/2024

**Committee Agenda type:** Consent

**Date Rec'd**

4/26/2024

**Clerk's File #**

**Renews #**

**Cross Ref #**

**Council Meeting Date:** 06/24/2024

**Submitting Dept**

FLEET SERVICES

**Project #**

**Contact Name/Phone**

RICK GIDDINGS 625-7706

**Bid #**

RFP #6037-24

**Contact E-Mail**

RGIDDINGS@SPOKANECITY.ORG

**Requisition #**

**Agenda Item Type**

Contract Item

**Council Sponsor(s)**

MCATHCART BWILKERSON ZZAPPONE

**Agenda Item Name**

5100 - FLEET SERVICES TIERED HD VEHICLE REPAIR - SOLID WASTE SYSTEMS

**Agenda Wording**

Fleet Services would like to contract with Solid Waste Systems as a tertiary vendor for repairs and maintenance on medium and heavy-duty City owned vehicles not to exceed \$100k per year. Contract term is 5 years.

**Summary (Background)**

Fleet Services, in conjunction with SFD and Purchasing, conducted an RFP to select vendors for tiered contracts to perform general repair and maintenance of City owned heavy duty vehicles. Each department rated responsive vendors based on cost, capability, and fit to the specific requirements of each department.

Lease? NO Grant related? NO Public Works? NO

**Fiscal Impact**

Approved in Current Year Budget? YES

Total Cost \$ 500,000

Current Year Cost \$ 100,000

Subsequent Year(s) Cost \$ 100,000

**Narrative**

RFP conducted, and vendors selected by a selection committee based on overall cost and vendor capability.

**Amount**

**Budget Account**

Expense \$ 100,000

# 5100-71700-48348-54803-99999

Select \$

#

Select \$

#

Select \$

#

\$

#

\$

#



**Continuation of Wording, Summary, Approvals, and Distribution**

**Agenda Wording**

**Summary (Background)**

**Approvals**

<b><u>Dept Head</u></b>	GIDDINGS, RICHARD
<b><u>Division Director</u></b>	BOSTON, MATTHEW
<b><u>Accounting Manager</u></b>	ORLOB, KIMBERLY
<b><u>Legal</u></b>	HARRINGTON,
<b><u>For the Mayor</u></b>	PICCOLO, MIKE

**Additional Approvals**

<b><u>PURCHASING</u></b>	PRINCE, THEA

**Distribution List**

rgiddings@spokanecity.org	atrussell@spokanecity.org
tprince@spokanecity.org	seaniswsequipment.com
fleetservicesaccounting@spokanecity.org	

## Council Briefing Paper Finance & Administration Committee

<b>Committee Date</b>	May 03, 2024
<b>Submitting Department</b>	Fleet Services
<b>Contact Name</b>	Rick Giddings
<b>Contact Email &amp; Phone</b>	<a href="mailto:rgiddings@spokanecity.org">rgiddings@spokanecity.org</a>
<b>Council Sponsor(s)</b>	Cathcart, Wilkerson, Zappone
<b>Select Agenda Item Type</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion    Time Requested:
<b>Agenda Item Name</b>	Fleet – Tiered HD Vehicle Repair Contracts – SWS Equipment
<b>Proposed Council Action</b>	<input checked="" type="checkbox"/> Approval to proceed to Legislative Agenda <input type="checkbox"/> Information Only
<b>Summary (Background)</b>  *use the Fiscal Impact box below for relevant financial information	<p>Fleet Services, in conjunction with SFD and Purchasing, conducted an RFP to select vendors for tiered contracts to perform general repair and maintenance of City owned heavy duty vehicles. Each department rated responsive vendors based on cost, capability, and fit to the specific requirements of each department. Fleet Services selected SWS Equipment as one of two tertiary vendors.</p> <p>Fleet Services would like to contract with SWS Equipment for an amount not to exceed \$100,000 per year including applicable sales tax. Contract term is 5 years.</p>
<p><b>Fiscal Impact</b></p> <p><b>Approved in current year budget?</b>    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No    <input type="checkbox"/> N/A</p> <p>Total Cost: <u>\$500,000</u></p> <p style="padding-left: 20px;">Current year cost: \$100,000</p> <p style="padding-left: 20px;">Subsequent year(s) cost: \$100,000</p> <p><b>Narrative:</b> <u>RFP conducted, and vendors selected by a selection committee based on overall cost and vendor capability.</u></p> <p><b>Funding Source</b>    <input type="checkbox"/> One-time    <input checked="" type="checkbox"/> Recurring    <input type="checkbox"/> N/A</p> <p>Specify funding source: Program revenue</p> <p>Is this funding source sustainable for future years, months, etc? Yes</p> <p><b>Expense Occurrence</b>    <input type="checkbox"/> One-time    <input checked="" type="checkbox"/> Recurring    <input type="checkbox"/> N/A</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	
<p><b>Operations Impacts</b> (If N/A, please give a brief description as to why)</p> <ul style="list-style-type: none"> <li>• What impacts would the proposal have on historically excluded communities? None Identified</li> <li>• How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities? Data will not be collected.</li> </ul>	

**COUNCIL RULES – ATTACHMENT B 1 (STANDARD BRIEFING PAPER)**

- How will data be collected regarding the effectiveness of this program, policy, or product to ensure it is the right solution? Ongoing cost and quality data will be collected by fleet to ensure vendor's adherence to standards.
- Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others? Aligns with Centralized Fleet Policy.

**Council Subcommittee Review**

- Please provide a summary of council subcommittee review. If not reviewed by a council subcommittee, please explain why not. No standing subcommittee for this topic.





**City of Spokane**  
**PERSONAL SERVICE AGREEMENT**  
Title: **GENERAL REPAIR AND MAINTENANCE OF  
MEDIUM/HEAVY DUTY TRUCKS AND EQUIPMENT**

This Agreement is made and entered into by and between the **CITY OF SPOKANE** as (“City”), a Washington municipal corporation, and **SWS EQUIPMENT, INC.**, whose address is 6515 North Nixon Avenue, Spokane Valley, Washington 99212 as (“Company”), individually hereafter referenced as a “party”, and together as the “parties”.

The parties agree as follows:

**1. PERFORMANCE.**

The Company shall provide General Repair and Maintenance Of Medium and Heavy Duty Trucks and Equipment, in accordance with RFP 6037-24, and Company’s Response, which is attached as Exhibit B. In the event of a conflict between these documents and this City Contract, the terms of this contract will control.

**2. TERM OF AGREEMENT.**

The term of this Agreement begins on May 1, 2024, and shall run through April 30, 2029, unless amended by written agreement or terminated earlier under the provisions of this Agreement.

**3. COMPENSATION / PAYMENT.**

Total annual compensation for Company’s services under this Agreement shall not exceed **ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00)**, and applicable tax, per year, for everything furnished and done under this Agreement. This is an optional use contract. Services by the Company are provided on an as-needed basis upon request in accordance with the terms of the Contract documents. Only the services requested, received and accepted will be paid for by the City.

The Company shall submit its applications for payment to City of Spokane, Fleet Services Department, 914 East North Foothills Drive, Spokane, Washington, 99207. **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt of the Company's application except as provided by state law. If the City objects to all or any portion of the invoice, it shall notify the Company and reserves the right to only pay that portion of the invoice not in dispute. In that event, the parties shall immediately make every effort to settle the disputed amount.

#### **4. TAXES, FEES AND LICENSES.**

- A. Company shall pay and maintain in current status, all necessary licenses, fees, assessments, permit charges, etc. necessary to conduct the work included under this Agreement. It is the Company's sole responsibility to monitor and determine changes or the enactment of any subsequent requirements for said fees, assessments, or changes and to immediately comply.
- B. The cost of any permits, licenses, fees, etc. arising as a result of the projects included in this Agreement shall be included in the project budgets.

#### **5. CITY OF SPOKANE BUSINESS LICENSE.**

Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid annual business registration. The Company shall be responsible for contacting the State of Washington Business License Services at [www.dor.wa.gov](http://www.dor.wa.gov) or 360-705-6741 to obtain a business registration. If the Company does not believe it is required to obtain a business registration, it may contact the City's Taxes and Licenses Division at (509) 625-6070 to request an exemption status determination.

#### **6. SOCIAL EQUITY REQUIREMENTS / NON-DISCRIMINATION.**

No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Agreement because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation including gender expression or gender identity, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. The Company agrees to comply with, and to require that all subcontractors comply with, federal, state and local nondiscrimination laws, including but not limited to: the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Age Discrimination in Employment Act, and the American's With Disabilities Act, to the extent those laws are applicable.

#### **7. INDEMNIFICATION.**

The Company shall defend, indemnify, and hold the City and its officers and employees harmless from all claims, demands, or suits at law or equity asserted by third parties for bodily injury (including death) and/or property damage which arise from the Company's negligence or willful misconduct under this Agreement, including attorneys' fees and litigation costs; provided that nothing herein shall require a Company to indemnify the City against and hold harmless the City from claims, demands or suits based solely upon the negligence of the City, its agents, officers, and employees. If a claim or suit is caused by or results from the concurrent negligence of the Company's agents or employees and the City, its agents, officers and employees, this indemnity provision shall be valid and enforceable to the extent of the negligence of the Company, its agents or employees. The Company specifically assumes liability and agrees to defend, indemnify, and hold the City harmless for actions brought by the Company's own employees against the City and, solely for the purpose of this indemnification and defense, the Company specifically waives any immunity under the Washington State industrial insurance law, or Title 51 RCW. The Company recognizes that this waiver was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. The indemnity and agreement to defend and hold the City harmless provided for in this section shall survive any termination or expiration of this agreement.

## **8. INSURANCE.**

During the period of the Agreement, the Company shall maintain in force at its own expense, each insurance noted below with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48:

- A. **Worker's Compensation Insurance** in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers and Employer's Liability Insurance in the amount of \$1,000,000;
- B. **General Liability Insurance** on an occurrence basis, with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this agreement. It shall provide that the City, its officers and employees are additional insureds but only with respect to the Company's services to be provided under this Agreement;
  - i. Acceptable **supplementary Umbrella insurance** coverage combined with Company's General Liability insurance policy must be a minimum of \$1,000,000, in order to meet the insurance coverage limits required in this Agreement; and
- C. **Automobile Liability Insurance** with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without forty-five (45) days written notice from the Company or its insurer(s) to the City. As evidence of the insurance coverage(s) required by this Agreement, the Company shall furnish acceptable Certificates of Insurance (COI) to the City at the time it returns this signed Agreement. The certificate shall specify the City of Spokane as "Additional Insured" specifically for Company's services under this Agreement, as well as all of the parties who are additional insureds, and include applicable policy endorsements, the forty-five (45) day cancellation clause, and the deduction or retention level. The Company shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

## **10. DEBARMENT AND SUSPENSION.**

The Company has provided its certification that it is in compliance with and shall not contract with individuals or organizations which are debarred, suspended, or otherwise excluded from or ineligible from participation in Federal Assistance Programs under Executive Order 12549 and "Debarment and Suspension", codified at 29 CFR part 98.

## **11. AUDIT.**

The Company and its sub-contractor shall maintain for a minimum of three (3) years following final payment all records related to its performance of the Agreement. The Company and its sub-contractors shall provide access to authorized City representatives, at reasonable times and in a reasonable manner to inspect and copy any such record. In the event of conflict between this provision and related auditing provisions required under federal law applicable to the Agreement, the federal law shall prevail.

## **12. ASSIGNMENT AND SUBCONTRACTING.**

The Company shall not assign or subcontract its obligations under this Agreement without the City's written consent, which may be granted or withheld in the City's sole discretion. Any subcontract made by the Company shall incorporate by reference this Agreement, except as otherwise provided. The Company shall ensure that all subcontractors comply with the

obligations and requirements of the subcontract. The City's consent to any assignment or subcontract does not release the Company from liability or any obligation within this Agreement, whether before or after City consent, assignment or subcontract.

### **13. TERMINATION.**

Either party may terminate this Agreement, with or without cause, by sixty (60) days written notice to the other party. In the event of such termination, the City shall pay the Company for all work previously authorized and performed prior to the termination date.

### **14. STANDARD OF PERFORMANCE.**

The standard of performance applicable to Company's services will be the degree of skill and diligence normally employed by professional Companies performing the same or similar services at the time the services under this Agreement are performed.

### **15. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS.**

Original documents, drawings, designs, reports, or any other records developed or created under this Agreement shall belong to and become the property of the City. All records submitted by the City to the Company shall be safeguarded by the Company. The Company shall make such data, documents and files available to the City upon the City's request. If the City's use of the Company's records or data is not related to this project, it shall be without liability or legal exposure to the Company.

Under Washington State Law (reference RCW Chapter 42.56, the *Public Records Act* [PRA]) all materials received or created by the City of Spokane are **public records** and are available to the public for viewing via the City Clerk's Records (online) or a valid Public Records Request (PRR).

### **16. ANTI KICK-BACK.**

No officer or employee of the City of Spokane, having the power or duty to perform an official act or action related to this Agreement shall have or acquire any interest in the Agreement, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in this Agreement.

### **17. MISCELLANEOUS PROVISIONS.**

- A. **Amendments/Modifications:** This Agreement may be modified by the City in writing when necessary, and no modification or Amendment of this Agreement shall be effective unless signed by an authorized representative of each of the parties hereto.
- B. The Company, at no expense to the City, shall comply with all laws of the United States and Washington, the Charter and ordinances of the City of Spokane; and rules, regulations, orders and directives of their administrative agencies and officers. Without limiting the generality of this paragraph, the Company shall comply with the requirements of this Section.
- C. This Agreement shall be construed and interpreted under the laws of Washington. The venue of any action brought shall be in a court of competent jurisdiction, located in Spokane County, Washington.
- D. **Captions:** The titles of sections or subsections are for convenience only and do not define or limit the contents.
- E. **Severability:** If any term or provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.

- F. **Waiver:** No covenant, term or condition or the breach shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed a waiver of any preceding or succeeding breach of the same or any other covenant, term of condition. Neither the acceptance by the City of any performance by the Company after the time the same shall have become due nor payment to the Company for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City in writing.
- G. **Entire Agreement:** This document along with any exhibits and all attachments, and subsequently issued addenda, comprises the entire agreement between the City and the Company. If conflict occurs between Agreement documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this Agreement to afford the City the maximum benefits.
- H. **No personal liability:** No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made or in any connection with this Agreement.

IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants contained, or attached and incorporated and made a part, the parties have executed this Agreement by having legally-binding representatives affix their signatures below.

**SWS EQUIPMENT, INC.**

**CITY OF SPOKANE**

By \_\_\_\_\_  
Signature                      Date

By \_\_\_\_\_  
Signature                      Date

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney

**Attachments that are part of this Agreement:**

Exhibit A – Certificate Regarding debarment

Exhibit B – Company’s Response to RFP

24-060

**EXHIBIT A**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY AND VOLUNTARY EXCLUSION**

1. The undersigned (i.e., signatory for the Subrecipient / Contractor / Consultant) certifies, to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  - b. Have not within a three-year period preceding this contract been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
  - c. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and,
  - d. Have not within a three-year period preceding this contract had one or more public transactions (federal, state, or local) terminated for cause or default.
  
2. The undersigned agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
  
3. The undersigned further agrees by signing this contract that it will include the following clause, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:
 

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

  1. The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
  2. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.
  
4. I understand that a false statement of this certification may be grounds for termination of the contract.

<hr/> Name of Subrecipient / Contractor / Consultant (Type or Print)	<hr/> Program Title (Type or Print)
<hr/> Name of Certifying Official (Type or Print)	<hr/> Signature
<hr/> Title of Certifying Official (Type or Print)	<hr/> Date (Type or Print)

**EXHIBIT B**



STATE OF WASHINGTON

# BUSINESS LICENSE

Issue Date: May 05, 2023

Unified Business ID #: 601245968

Business ID #: 001

Location: 0001

Expires: Apr 30, 2024

Limited Liability Company

SWS EQUIPMENT LLC  
SOLID WASTE SYSTEMS, INC.  
6515 N NIXON AVE  
SPOKANE VALLEY WA 99212

UNEMPLOYMENT INSURANCE - ACTIVE  
MINOR WORK PERMIT - ACTIVE  
MOTOR VEHICLE DEALER #03960 - ACTIVE

INDUSTRIAL INSURANCE - ACTIVE  
TAX REGISTRATION - ACTIVE

### CITY/COUNTY ENDORSEMENTS:

- SPOKANE VALLEY GENERAL BUSINESS #00931 - ACTIVE
- PUYALLUP GENERAL BUSINESS - NON-RESIDENT #2009090 - ACTIVE
- CENTRALIA GENERAL BUSINESS - NON-RESIDENT #8859 - ACTIVE
- SHELTON GENERAL BUSINESS - NON-RESIDENT #8002580 - ACTIVE
- KIRKLAND GENERAL BUSINESS - NON-RESIDENT - ACTIVE
- BELLINGHAM GENERAL BUSINESS #032687 - ACTIVE
- DUPONT GENERAL BUSINESS - NON-RESIDENT #1164 - ACTIVE
- ENUMCLAW GENERAL BUSINESS - NON-RESIDENT #CUST00006676 - ACTIVE
- ISSAQUAH GENERAL BUSINESS - NON-RESIDENT - ACTIVE
- KENNEWICK GENERAL BUSINESS - NON-RESIDENT - ACTIVE
- LACEY GENERAL BUSINESS - NON-RESIDENT #19005 - ACTIVE
- MARYSVILLE GENERAL BUSINESS - NON-RESIDENT #9000CON604 - ACTIVE
- OLYMPIA GENERAL BUSINESS - NON-RESIDENT #12539 - ACTIVE
- PORT ORCHARD GENERAL BUSINESS - NON-RESIDENT #B004727 - ACTIVE

This document lists the registrations, endorsements, and licenses authorized for the business named above. By accepting this document, the licensee certifies the information on the application was complete, true, and accurate to the best of his or her knowledge, and that business will be conducted in compliance with all applicable Washington state, county, and city regulations.

*John Ryser*  
Director, Department of Revenue

UBI: 601245968 001 0001

SWS EQUIPMENT LLC  
SOLID WASTE SYSTEMS, INC.  
6515 N NIXON AVE  
SPOKANE VALLEY WA 99212

STATE OF WASHINGTON

FOLD HERE

UNEMPLOYMENT INSURANCE - ACTIVE  
INDUSTRIAL INSURANCE - ACTIVE  
MINOR WORK PERMIT - ACTIVE  
TAX REGISTRATION - ACTIVE  
MOTOR VEHICLE DEALER #03960 - ACTIVE  
SPOKANE VALLEY GENERAL BUSINESS #00931 - ACTIVE  
PUYALLUP GENERAL BUSINESS - NON-RESIDENT #2009090 - ACTIVE  
CENTRALIA GENERAL BUSINESS - NON-RESIDENT #8859 - ACTIVE  
SHELTON GENERAL BUSINESS - NON-RESIDENT #8002580 - ACTIVE

FOLD HERE

Expires: Apr 30, 2024

*John Ryser*  
Director, Department of Revenue





STATE OF WASHINGTON

# BUSINESS LICENSE

Issue Date: May 05, 2023

Unified Business ID #: 601245968

Business ID #: 001

Location: 0001

Expires: Apr 30, 2024

Limited Liability Company

SWS EQUIPMENT LLC  
SOLID WASTE SYSTEMS, INC.  
6515 N NIXON AVE  
SPOKANE VALLEY WA 99212

CITY/COUNTY ENDORSEMENTS:

- PORT TOWNSEND GENERAL BUSINESS - NON-RESIDENT #8611 - ACTIVE
- SEDRO WOOLLEY GENERAL BUSINESS - NON-RESIDENT #222007 - ACTIVE
- SUMNER GENERAL BUSINESS - NON-RESIDENT - ACTIVE
- VANCOUVER GENERAL BUSINESS - NON-RESIDENT - ACTIVE
- SPOKANE GENERAL BUSINESS - NON-RESIDENT #T12004607BUS - ACTIVE
- QUINCY GENERAL BUSINESS - NON-RESIDENT #2019-066 - ACTIVE
- CHENEY GENERAL BUSINESS - NON-RESIDENT #BUS2010-216 - ACTIVE
- MERCER ISLAND GENERAL BUSINESS - NON-RESIDENT #120589 - ACTIVE
- FEDERAL WAY GENERAL BUSINESS - NON-RESIDENT #14-104083-00-BL - ACTIVE
- LYNNWOOD GENERAL BUSINESS - NON-RESIDENT #015666-08-2012 - ACTIVE
- MOUNTLAKE TERRACE GENERAL BUSINESS - NON-RESIDENT - ACTIVE
- YAKIMA GENERAL BUSINESS - NON-RESIDENT #BL009415 - ACTIVE
- BURIEN GENERAL BUSINESS - NON-RESIDENT - ACTIVE
- REDMOND GENERAL BUSINESS - NON-RESIDENT #RED09-000312 - ACTIVE
- ABERDEEN GENERAL BUSINESS - NON-RESIDENT #214688 - ACTIVE
- BREMERTON GENERAL BUSINESS - NON-RESIDENT #28630 - ACTIVE

DUTIES OF MINORS:

Ages 16-17: SHOP HELPER - SWEEP SHOP FLOOR; PULL PARTS/SUPPLIES; HELP TECH WITH MINOR

This document lists the registrations, endorsements, and licenses authorized for the business named above. By accepting this document, the licensee certifies the information on the application was complete, true, and accurate to the best of his or her knowledge, and that business will be conducted in compliance with all applicable Washington state, county, and city regulations.

*John Ryser*  
Director, Department of Revenue

UBI: 601245968 001 0001

SWS EQUIPMENT LLC  
SOLID WASTE SYSTEMS, INC.  
6515 N NIXON AVE  
SPOKANE VALLEY WA 99212

STATE OF WASHINGTON

- UNEMPLOYMENT INSURANCE - ACTIVE
- INDUSTRIAL INSURANCE - ACTIVE
- MINOR WORK PERMIT - ACTIVE
- TAX REGISTRATION - ACTIVE
- MOTOR VEHICLE DEALER #03960 - ACTIVE
- SPOKANE VALLEY GENERAL BUSINESS #00931 - ACTIVE
- PUYALLUP GENERAL BUSINESS - NON-RESIDENT #2009090 - ACTIVE
- CENTRALIA GENERAL BUSINESS - NON-RESIDENT #8859 - ACTIVE
- SHELTON GENERAL BUSINESS - NON-RESIDENT #8002580 - ACTIVE

Expires: Apr 30, 2024

*John Ryser*  
Director, Department of Revenue



STATE OF WASHINGTON

# BUSINESS LICENSE

Limited Liability Company

SWS EQUIPMENT LLC  
SOLID WASTE SYSTEMS, INC.  
6515 N NIXON AVE  
SPOKANE VALLEY WA 99212  
DUTIES; PRESSURE WASH/CLEAN/DETAIL TRUCKS AND EQUIPMENT; ETC.

Issue Date: May 05, 2023  
Unified Business ID #: 601245968  
Business ID #: 001  
Location: 0001  
Expires: Apr 30, 2024

LICENSING RESTRICTIONS:

Aberdeen city license valid until canceled by either party.

It is the business's responsibility to comply with minor work permit requirements. See WAC 296-125-030 and WAC 296-125-033 for Non-Agricultural and WAC 296-131-125 for Agricultural guidelines and restricted activities.

Minors may not operate or work in close proximity to heavy moving equipment. This includes, but is not limited to, earth-moving machines, cranes, compactors, forklifts and tractors. WAC 296-125-030(17)

No person, or business, or those under their control, shall cause or allow the discharge of unauthorized pollutants (e.g. chemicals, oils, detergents, or wastewater) into a City of Redmond storm water drainage system, surface water bodies or groundwater.

Occupations involving exposure to substances which are carcinogenic, corrosive, highly toxic, toxic sensitizers, or that cause reproductive health effects or irreversible end organ damage is prohibited for minors under 18. WAC 296-125-030(25)

REGISTERED TRADE NAMES:

SWS EQUIPMENT, INC

This document lists the registrations, endorsements, and licenses authorized for the business named above. By accepting this document, the licensee certifies the information on the application was complete, true, and accurate to the best of his or her knowledge, and that business will be conducted in compliance with all applicable Washington state, county, and city regulations.

*John Ryser*  
Director, Department of Revenue

UBI: 601245968 001 0001

SWS EQUIPMENT LLC  
SOLID WASTE SYSTEMS, INC.  
6515 N NIXON AVE  
SPOKANE VALLEY WA 99212

STATE OF WASHINGTON

FOLD HERE

FOLD HERE

UNEMPLOYMENT INSURANCE - ACTIVE  
INDUSTRIAL INSURANCE - ACTIVE  
MINOR WORK PERMIT - ACTIVE  
TAX REGISTRATION - ACTIVE  
MOTOR VEHICLE DEALER #03960 - ACTIVE  
SPOKANE VALLEY GENERAL BUSINESS #00931 - ACTIVE  
PUYALLUP GENERAL BUSINESS - NON-RESIDENT #2009090 - ACTIVE  
CENTRALIA GENERAL BUSINESS - NON-RESIDENT #8859 - ACTIVE  
SHELTON GENERAL BUSINESS - NON-RESIDENT #8002580 - ACTIVE

Expires: Apr 30, 2024

*John Ryser*  
Director, Department of Revenue

## IMPORTANT!

### PLEASE READ THE FOLLOWING INFORMATION CAREFULLY BEFORE POSTING THIS LICENSE

#### General Information

Post this Business License in a visible location at your place of business.

If you were issued a Business License previously, **destroy the old one and post this one in its place.**

Login to My DOR at [dor.wa.gov](http://dor.wa.gov) if you need to make changes to your business name, location, mailing address, telephone number, or business ownership.

Telephone: 360-705-6741

#### Endorsements

All endorsements should be renewed by the expiration date that appears on the front of this license to avoid any late fees.

If there is no expiration date, the endorsements remain active as long as you continue required reporting. Tax Registration, Unemployment Insurance, and Industrial Insurance endorsements require you to submit periodic reports. Each agency will send you the necessary reporting forms and instructions.

For assistance or to request this document in an alternate format, visit <http://business.wa.gov/BLS> or call (360) 705-6741. Teletype (TTY) users may use the Washington Relay Service by calling 711.

BLS-700-107 (07/27/20)



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## CONTRACTORS ADDITIONAL INSURED - AUTOMATIC STATUS AND AUTOMATIC WAIVER OF SUBROGATION WHEN REQUIRED IN WRITTEN CONTRACT, AGREEMENT, PERMIT OR AUTHORIZATION

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### A. Additional Insured - Owners, Lessees Or Contractors - Automatic Status For Other Parties When Required In Written Contract Or Agreement With You

1. **Section II - Who Is An Insured** is amended to include as an additional insured any person or organization you have agreed in writing in a contract or agreement to add as an additional insured on this Coverage Part. Such person ) or organization(s) is an additional insured only with respect to liability for:

a. "Bodily injury", "property damage" or "personal and advertising injury" *caused, in whole or in part, by* the performance of your ongoing operations by you or on your behalf, under that written contract or written agreement. Ongoing operations does not apply to "bodily injury" or "property damage" occurring after:

(1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

(2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project; and

b. "Bodily injury" or "property damage" *caused, in whole or in part, by* "your work" performed under that written contract or written agreement and in-

cluded in the "products-completed operations hazard", but only if:

(1) The Coverage Part to which this endorsement is attached provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard"; and

(2) The written contract or written agreement requires you to provide additional insured coverage included within the "products-completed operations hazard" for that person or organization.

If the written contract or written agreement requires you to provide additional insured coverage included within the "products-completed operations hazard" for a specified length of time for that person or organization, the "bodily injury" or "property damage" must occur prior to the expiration of that period of time in order for this insurance to apply.

If the written contract or written agreement requires you to provide additional insured coverage for a person or organization per only ISO additional insured endorsement form number **CG 20 10**, without specifying an edition date, and without specifically requiring additional insured coverage included within the "products-completed operations hazard", this Paragraph b. does not apply to that person or organization.

2. If the written contract or written agreement described in Paragraph 1. above specifically requires you to provide additional insured coverage to that person or organization:

a. *Arising out of* your ongoing operations or *arising out of* "your work"; or

- b. By way of an edition of an ISO additional insured endorsement that includes *arising out of* your ongoing operations or *arising out of* "your work";

then the phrase *caused, in whole or in part, by* in Paragraph **A.1.a.** and/or Paragraph **A.1.b.** above, whichever applies, is replaced by the phrase *arising out of*.

- 3. With respect to the insurance afforded to the additional insureds described in Paragraph A.1., the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- a. The preparing, approving or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

- 4. This Paragraph **A.** does not apply to additional insureds described in Paragraph **B.**

**B. Additional Insured - State Or Governmental Agency Or Subdivision Or Political Subdivision - Automatic Status When Required In Written Permits Or Authorizations**

- 1. **Section II - Who Is An Insured** is amended to include as an additional insured any state or governmental agency or subdivision or political subdivision you have agreed in writing in a permit or authorization to add as an additional insured on this Coverage Part. Such state or governmental agency or subdivision or political subdivision is an additional insured only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued, in writing, a permit or authorization.

- 2. With respect to the insurance afforded to the additional insureds described in Paragraph **B.1.**, the following additional exclusions apply:

This insurance does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
- b. "Bodily injury" or "property damage" included within the "products-completed operations hazard."

- C. The insurance afforded to additional insureds described in Paragraphs **A.** and **B.:**

- 1. Only applies to the extent permitted by law; and
- 2. Will not be broader than that which you are required by the written contract, written agreement, written permit or written authorization to provide for such additional insured; and
- 3. Does not apply to any person, organization, state, governmental agency or subdivision or political subdivision specifically named as an additional insured for the same project in the schedule of an endorsement added to this Coverage Part.

- D. With respect to the insurance afforded to the additional insureds described in Paragraphs **A.** and **B.**, the following is added to **Section III - Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

- 1. Required by the written contract, written agreement, written permit or written authorization described in Paragraphs **A.** and **B.** For the purpose of determining the required amount of insurance only, we will include the minimum amount of any Umbrella Liability or Excess Liability coverage required for that additional insured in that written contract, written agreement, written permit or written authorization; or
- 2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

- E. **Section IV - Commercial General Liability Conditions** is amended to add the following:

**Automatic Additional Insured Provision**

This insurance applies only if the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" offense is committed:

1. During the policy period; and
2. Subsequent to your execution of the written contract or written agreement, or the issuance of a written permit or written authorization, described in Paragraphs A. and B.

- F. Except when G. below applies, the following is added to **Section IV - Commercial General Liability Conditions, Other Insurance**, and supersedes any provision to the contrary:

**When Other Additional Insured Coverage Applies On An Excess Basis**

This insurance is primary to other insurance available to the additional insured described in Paragraphs A. and B. except:

1. As otherwise provided in **Section IV - Commercial General Liability Conditions, Other Insurance, b. Excess Insurance**; or
2. For any other valid and collectible insurance available to the additional insured as an additional insured on another insurance policy that is written on an excess basis. In such case, this insurance is also excess.

- G. The following is added to **Section IV - Commercial General Liability Conditions, Other Insurance**, and supersedes any provision to the contrary:

**Primary Insurance When Required By Written Contract, Agreement, Permit Or Authorization**

Except when wrap-up insurance applies to the claim or "suit" on behalf of the additional insured, this insurance is primary to any other insurance available to the additional insured described in Paragraphs A. and B. provided that:

1. The additional insured is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract, agreement, permit or authorization de-

scribed in Paragraph A. or B. that this insurance would be primary to any other insurance available to the additional insured.

As used in this endorsement, wrap-up insurance means a centralized insurance program under which one party has secured either insurance or self-insurance covering some or all of the contractors or subcontractors performing work on one or more specific project(s).

**Primary And Noncontributory Insurance When Required By Written Contract, Agreement, Permit Or Authorization**

Except when wrap-up insurance applies to the claim or "suit" on behalf of the additional insured, this insurance is primary to and will not seek contribution from any other insurance available to the additional insured described in Paragraphs A. and B. provided that:

1. The additional insured is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract, agreement, permit or authorization described in Paragraph A. or B. that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

As used in this endorsement, wrap-up insurance means a centralized insurance program under which one party has secured either insurance or self-insurance covering some or all of the contractors or subcontractors performing work on one or more specific project(s).

- H. **Section IV - Commercial General Liability Conditions, Transfer Of Rights Of Recovery Against Others To Us** is amended by the addition of the following:

**Waiver of Subrogation**

We waive any right of recovery against any additional insured under this endorsement, because of any payment we make under this endorsement, to whom the insured has waived its right of recovery in a written contract, written agreement, written permit or written authorization. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such additional insured prior to loss.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**DESIGNATED CONSTRUCTION PROJECT(S)  
GENERAL AGGREGATE LIMIT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
**SCHEDULE**

<p><b>Designated Construction Project(s):</b></p> <p>ANY JOB SITE</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>

- A.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I - Coverage **A**, and for all medical expenses caused by accidents under Section I - Coverage **C**, which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
  - 1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
  - 2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage **C** regardless of the number of:
    - a. Insureds;
    - b. Claims made or "suits" brought; or
    - c. Persons or organizations making claims or bringing "suits".
  - 3. Any payments made under Coverage **A** for damages or under Coverage **C** for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
- B.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I - Coverage **A**, and for all medical expenses caused by accidents under Section I - Coverage **C**, which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
  - 1. Any payments made under Coverage **A** for damages or under Coverage **C** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
  - 2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
- C.** When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because



of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.

**D.** If the applicable designated construction project has been abandoned, delayed, or aban-

doned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.

**E.** The provisions of Section III - Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED BY CONTRACT**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM  
GARAGE COVERAGE FORM**

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective: 07-01-2023	Policy Number: EBA 014 81 50
Named Insured: SOLID WASTE SYSTEMS INC, SWS PROPERTIES LLC DBA SWS EQUIPMENT LLC	
Countersigned by:	

(Authorized Representative)

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

**SECTION II - LIABILITY COVERAGE, A. Coverage, I. Who is an Insured** is amended to include as an insured any person or organization for whom you have agreed in a valid written contract to provide insurance as afforded by this policy.

This provision is limited to the scope of the valid written contract.

This provision does not apply unless the valid written contract has been executed prior to the "bodily injury" or "property damage".

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET WAIVER OF SUBROGATION - GARAGE**

This endorsement modifies insurance provided under the following:

### **GARAGE COVERAGE FORM**

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective: 07-01-2023	Policy Number: EBA 014 81 50
Named Insured: SOLID WASTE SYSTEMS INC, SWS PROPERTIES LLC DBA SWS EQUIPMENT LLC	
Countersigned by:	

(Authorized Representative)

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

#### **1. Blanket Waiver of Subrogation**

**SECTION V - GARAGE CONDITIONS, A. Loss Conditions, 5. Transfer of Rights of Recovery Against Others to Us** is amended by the addition of the following:

We waive any right of recovery we may have against any person or organization because of payments we make for "bodily injury" or "property damage" when you have assumed liability for such "bodily injury" or "property damage" under an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the "insured contract."

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **NONCONTRIBUTORY INSURANCE**

This endorsement modifies insurance provided under the following:

### **GARAGE COVERAGE FORM**

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective: 07-01-2023	Policy Number: EBA 014 81 50
Named Insured: SOLID WASTE SYSTEMS INC, SWS PROPERTIES LLC DBA SWS EQUIPMENT LLC	
Countersigned by:	

(Authorized Representative)

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

#### **1. Noncontributory Insurance**

**SECTION V - GARAGE CONDITIONS, B. General Conditions, 5. Other Insurance** is amended by the addition of the following:

- e. Regardless of the provisions of Paragraph **d.** above, we will not seek contribution from any other insurance available to you for any person or organization for whom you are required under an "insured contract", which requires insurance to be assumed on a noncontributory basis, to provide insurance, but only to the extent that this is provided under **SECTION V - GARAGE CONDITIONS B. General Conditions, 5. Other Insurance.**

## **WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

### **Blanket Waiver of Subrogation**

If you are required by a written contract or agreement, which is executed before a loss, to waive your rights of recovery from others, we agree to waive our rights of recovery.

This waiver of rights applies to any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver, but shall not be construed to be a waiver with respect to any other operations in which the Insured has no contractual interest.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 07-01-2023 Policy No. EWC 050 55 25-05 Endorsement No.

Insured SWS EQUIPMENT LLC

Insurance Company THE CINCINNATI INDEMNITY COMPANY

Premium \$INCL

Countersigned by \_\_\_\_\_

**WC 00 03 13**

# COMMERCIAL UMBRELLA LIABILITY COVERAGE FORM

Various provisions in this Coverage Part restrict this insurance. Read the entire Coverage Part carefully to determine rights, duties and what is and is not covered.

Throughout this Coverage Part the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this Coverage Part. The words "we", "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under **SECTION II - WHO IS AN INSURED**.

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION V - DEFINITIONS**.

## SECTION I - COVERAGE

### A. Insuring Agreement

1. We will pay on behalf of the insured the "ultimate net loss" which the insured is legally obligated to pay as damages for "bodily injury", "personal and advertising injury" or "property damage" to which this insurance applies:
  - a. Which is in excess of the "underlying insurance"; or
  - b. Which is either excluded or not insured by "underlying insurance".
2. If any limit of insurance, such as a sublimit, is specified in the "underlying insurance", this insurance does not apply to "bodily injury", "personal and advertising injury" or "property damage" arising out of that exposure unless that limit of insurance is specified in the Schedule of Underlying Insurance.
3. This insurance applies to "bodily injury", "personal and advertising injury" or "property damage" only if:
  - a. The "bodily injury", "personal and advertising injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"; and
  - b. The "bodily injury" or "property damage" occurs during the policy period shown in the Declarations; or
  - c. The "personal and advertising injury" results from an "occurrence" that takes place during the policy period shown in the Declarations; and
- d. Prior to the "coverage term" no insured listed under Paragraph 1. of Section II - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part, or that the "personal and advertising injury" offense had been committed, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the "coverage term", that the "bodily injury" or "property damage" occurred, or that the "personal and advertising injury" offense had been committed, then any continuation, change or resumption of such "bodily injury", "personal and advertising injury" or "property damage" during or after the "coverage term" will be deemed to have been known prior to the policy period.
4. "Bodily injury" or "property damage" which occurs during the "coverage term" and was not, prior to the "coverage term", known to have occurred by any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the "coverage term".
5. "Personal and advertising injury" caused by an offense which was committed during the "coverage term" and was not, prior to the "coverage term", known to have been committed by any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "personal and advertising injury" offense after the end of the "coverage term".
6. "Bodily injury" or "property damage" will be deemed to have been known to have occurred, or a "personal and advertising injury" offense will be deemed to have been known to have been committed at the earliest time when any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- a. Reports all, or any part, of the "bodily injury", "personal and advertising injury" or "property damage" to us or any other insurer;
- b. Receives a written or verbal demand or claim for damages because of the "bodily injury", "personal and advertising injury" or "property damage"; or
- c. Becomes aware by any other means that "bodily injury" or "property damage" had occurred or has begun to occur, or that the "personal and advertising injury" offense had been committed or has begun to be committed.

7. The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE.**

No other obligation or liability to pay sums or perform acts or services is covered, unless expressly provided for under **SECTION I - COVERAGE, C. Defense and Supplementary Payments.**

## B. Exclusions

This insurance does not apply to:

### 1. Asbestos

Any liability arising out of, attributable to or any way related to asbestos in any form or transmitted in any manner.

### 2. Breach of Contract, Failure to Perform, Wrong Description and Violation of Another's Rights

"Personal and advertising injury":

- a. Arising out of breach of contract, except an implied contract to use another's advertising idea in your "advertisement";
- b. Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- c. Arising out of the wrong description of the price of goods, products or services stated in your "advertisement"; or
- d. Caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

### 3. Contractual Liability

Any liability for which the insured is obligated to pay damages by reason of the

assumption of liability in a contract or agreement. This exclusion does not apply to liability for "bodily injury", "personal and advertising injury" or "property damage":

- a. That the insured would have in the absence of the contract or agreement; or
- b. Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury", "personal and advertising injury" or "property damage" occurs subsequent to the execution of the contract or agreement.

### 4. Damage to Impaired Property or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- a. A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- b. A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

### 5. Damage to Property

"Property damage" to:

- a. Property:
  - (1) You own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property; or
  - (2) Owned or transported by the insured and arising out of the ownership, maintenance or use of an "auto".
- b. Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- c. Property loaned to you;
- d. Personal property in the care, custody or control of the insured;

- e. That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- f. That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph b. of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs a.(2), c., d., e. and f. of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs c. and d. of this exclusion do not apply to liability assumed under a written Trailer Interchange agreement.

Paragraph f. of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

#### 6. Damage to Your Product

"Property damage" to "your product" arising out of it or any part of it.

#### 7. Damage to Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

#### 8. Distribution or Recording of Material or Information in Violation of Law

Any liability arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- c. The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- d. Any federal, state or local statute, ordinance or regulation, other than the

TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

#### 9. Electronic Chatrooms or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

#### 10. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

However, this exclusion does not apply:

- (1) To liability for damages because of "bodily injury"; or
- (2) When such insurance is provided by valid and collectible "underlying insurance" listed in the Schedule of Underlying Insurance, or would have been provided by such listed "underlying insurance" except for the exhaustion by payment of claims of its limits of insurance, and then only for such hazards for which coverage is provided by such "underlying insurance", unless otherwise excluded by this Coverage Part.

#### 11. Employer's Liability Limitation

Any liability arising from any injury to:

- a. An "employee" of the insured sustained in the "workplace";
- b. An "employee" of the insured arising out of the performance of duties related to the conduct of the insured's business; or
- c. The spouse, child, parent, brother or sister of that "employee" as a consequence of a. or b. above.

This exclusion applies:

- a. Whether the insured may be liable as an employer or in any other capacity; and
- b. To any obligation to share damages with or repay someone else who must pay damages because of the injury.



This exclusion does not apply when such insurance is provided by valid and collectible "underlying insurance" listed in the Schedule of Underlying Insurance, or would have been provided by such listed "underlying insurance" except for the exhaustion by payment of claims of its limits of insurance, and then only for such hazards for which coverage is provided by such "underlying insurance", unless otherwise excluded by this Coverage Part.

## 12. Employment-Related Practices

Any liability arising from any injury to:

- a. A person arising out of any:
  - (1) Refusal to employ that person;
  - (2) Termination of that person's employment; or
  - (3) Other employment-related practices, policies, acts or omissions including but not limited to coercion, criticism, demotion, evaluation, failure to promote, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- b. The spouse, child, parent, brother or sister of that person as a consequence of any injury to that person at whom any of the employment-related practices described in Paragraphs **12.a.(1), (2), or (3)** above is directed.

This exclusion applies:

- a. Whether the injury-causing event described in Paragraphs **12.a.(1), (2), or (3)** above occurs before employment, during employment or after employment of that person;
- b. Whether the insured may be liable as an employer or in any other capacity; and
- c. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

## 13. Expected or Intended Injury

"Bodily injury" or "property damage" which may reasonably be expected to result from the intentional or criminal acts of the insured or which is in fact expected or intended by the insured, even if the injury or damage is of a different degree or type than actually intended or expected.

However, this exclusion does not apply to:

- a. "Bodily injury" resulting from the use of reasonable force to protect persons or property; or
- b. "Bodily injury" or "property damage" resulting from the use of reasonable force to prevent or eliminate danger in the operation of "autos" or watercraft.

## 14. Falsity, Prior Publication, Criminal Act and Media and Internet Type Businesses

"Personal and advertising injury":

- a. Arising out of oral or written publication in any manner of material, if done by or at the direction of the insured with knowledge of its falsity;
- b. Arising out of oral or written publication in any manner of material whose first publication took place before the later of the following:
  - (1) The inception of this Coverage Part; or
  - (2) The "coverage term" in which insurance coverage is sought;
- c. Arising out of a criminal act committed by or at the direction of the insured; or
- d. Committed by an insured whose business is:
  - (1) Advertising, broadcasting, publishing or telecasting;
  - (2) Designing or determining content of websites for others; or
  - (3) An Internet search, access, content or service provider.

However, Paragraph **d.** does not apply to Paragraphs **17.a., b., c., d.** and **i.** of "personal and advertising injury" under **SECTION V - DEFINITIONS.**

For the purposes of Paragraph **d.**, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

## 15. Infringement of Copyright, Patent, Trademark or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property

rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement in your "advertisement", of copyright, trade dress or slogan.

#### **16. Pollutant - Auto**

**a.** "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release, emission or escape of "pollutants":

**(1)** That are, or that are contained in any property that is:

**(a)** Being transported or towed by, handled, or handled for movement into, onto or from, an "auto" that an insured owns, hires, borrows, rents, leases, or that is operated on their behalf in any other fashion;

**(b)** Otherwise in the course of transit by or on behalf of the insured; or

**(c)** Being stored, disposed of, treated or processed in or upon an "auto" that an insured owns, hires, borrows, rents, leases, or that is operated on their behalf in any other fashion;

**(2)** Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the insured for movement into or onto an "auto" that an insured owns, hires, borrows, rents, leases, or that is operated on their behalf in any other fashion; or

**(3)** After the "pollutants" or any property in which the "pollutants" are contained are moved from an "auto" that an insured owns, hires, borrows, rents, leases, or that is operated on their behalf in any other fashion to the place where they are finally delivered, disposed of or abandoned by the insured.

Paragraph **(1)** above does not apply to "bodily injury" or "property damage" arising from fuels, lubricants, or other operating fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal

electrical, hydraulic or mechanical functioning of an "auto" that an insured owns, hires, borrows, rents, leases, or that is operated on their behalf in any other fashion or its parts, if:

**(a)** The "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and

**(b)** The "bodily injury" or "property damage" does not arise out of the operation of any equipment listed in Paragraphs **f.(2)** and **(3)** of the definition of "mobile equipment".

However, this exception to Paragraph **(1)** does not apply if the fuels, lubricants, or other operating fluids, exhaust gases or other similar "pollutants" are intentionally discharged, dispersed, emitted or released.

Paragraphs **(2)** and **(3)** above do not apply to an "occurrence" that occurs away from premises owned by or rented to an insured with respect to "pollutants" not in or upon an "auto" that an insured owns, hires, borrows, rents, leases, or that is operated on their behalf in any other fashion if:

**(a)** The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of an "auto" that an insured owns, hires, borrows, rents, leases, or that is operated on their behalf in any other fashion; and

**(b)** The discharge, dispersal, seepage, migration, release, emission or escape of the "pollutants" is caused directly by such upset, overturn or damage.

**b.** Any liability caused by "pollutants" and arising from the operation, maintenance, use, "loading or unloading" of an "auto", for which insurance coverage is excluded by "underlying insurance".

#### **17. Pollutant - Other Than Auto**

**a.** "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal,

seepage, migration, release, emission or escape of "pollutants":

- (1) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured.

However, Paragraph **a.(1)** of this exclusion does not apply to the following if such liability is covered by "underlying insurance" listed in the Schedule of Underlying Insurance, but only to the extent insurance is provided at the "underlying limit" specified in the Schedule of Underlying Insurance for the "underlying insurance" listed and subject to all its terms, limitations and conditions:

- (a) "Bodily injury", if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use by the building's occupants or their guests;
  - (b) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor, and the owner or lessee of such premises, site or location has been added to your "underlying insurance" as an additional insured with respect to your ongoing operations or "your work" performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
  - (c) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
- (2) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

- (3) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible;

- (4) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations, if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor.

However, Paragraph **a.(4)** of this exclusion does not apply to the following if such liability is covered by "underlying insurance" listed in the Schedule of Underlying Insurance, but only to the extent insurance is provided at the "underlying limit" specified in the Schedule of Underlying Insurance for the "underlying insurance" listed and subject to all its terms, limitations and conditions:

- (a) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

- (b) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
- (c) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
- (5) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations, if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of, "pollutants".

- b. "Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release, escape or emission of "pollutants" at any time.
- c. Any loss, cost or expense arising out of any:
  - (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this Paragraph c. does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

- d. Any liability caused by "pollutants", for which insurance coverage is excluded by "underlying insurance".

#### 18. Recall of Products, Work or Impaired Property

Any liability or damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- a. "Your product";
- b. "Your work"; or
- c. "Impaired Property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

#### 19. Unauthorized Use of Another's Name or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag or any other similar tactics to mislead another's potential customers.

#### 20. War

Any liability, however caused, arising directly or indirectly, out of:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack by any government, sovereign or authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

#### 21. Workers' Compensation

Any liability or obligation of the insured under any workers' compensation, unemployment compensation, disability benefits or similar law. However, this exclusion does not apply to liability of others assumed by you under an "insured contract" in existence at the time of "occurrence".

### C. Defense and Supplementary Payments

- 1. We will have the right and duty to defend the insured against any "suit" seeking

damages because of "bodily injury", "personal and advertising injury" or "property damage" to which this insurance applies. We will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "personal and advertising injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result when:

- a. The applicable limits of the "underlying insurance" and any other insurance have been exhausted by payment of claims; or
  - b. Damages are sought for "bodily injury", "personal and advertising injury" or "property damage" which are not covered by "underlying insurance" or other insurance.
2. Our right and duty to defend ends when the applicable Limit of Insurance, as stated in the Declarations, has been exhausted by payment of claims.
  3. We have no duty to investigate, settle or defend any claim or "suit" other than those circumstances described in Paragraph **C.1**. However, we do have the right to participate in the investigation, settlement or defense of any claim or "suit" to which this insurance applies. If we exercise this right, we will do so at our expense.
  4. If there is no underlying insurer or other insurance obligated to do so, we will pay the following when we provide a defense:
    - a. All expenses we incur.
    - b. The cost of bail bonds up to \$3,000 (including bonds for related traffic law violations) required because of an "occurrence" we cover. We do not have to furnish these bonds.
    - c. The cost of bonds to appeal a judgment or award in any claim or "suit" we defend and the cost of bonds to release attachments, but only for bond amounts within the applicable Limits of Insurance. We do not have to furnish these bonds.
    - d. Reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including the actual loss of earnings.
    - e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys'

fees or attorneys' expenses taxed against the insured.

5. If there is no underlying insurer obligated to do so, we will pay the following for an "occurrence" to which this insurance applies, even if we have no duty to provide a defense:
  - a. Prejudgment interest awarded against the insured on that part of the judgment we become obligated to pay and which falls within the applicable Limit of Insurance. If we make an offer to pay the applicable Limits of Insurance, we will not pay any prejudgment interest based on the period of time after the offer.
  - b. All interest awarded against the insured on the full amount of any judgment that accrues:
    - (1) After entry of the judgment; and
    - (2) Before we have paid, offered to pay or deposited in court the part of the judgment that is within the applicable Limit of Insurance.
6. The payments described in Paragraphs **4**. and **5**. above will not reduce the Limits of Insurance provided by this Coverage Part when defense or supplementary payments provided by the "underlying insurance" do not reduce their Limits of Insurance. However, when defense or supplementary payments provided by the "underlying insurance" reduce their Limits of Insurance then such expense payments paid by us will reduce the Limits of Insurance provided by this Coverage Part.
7. If we are prevented by law or otherwise from carrying out any of the provisions of **SECTION I - COVERAGE, C. Defense and Supplementary Payments**, we will pay any expense incurred with our written consent.

## **SECTION II - WHO IS AN INSURED**

1. Except for liability arising out of the ownership, maintenance, occupancy or use of an "auto":
  - a. If you are designated in the Declarations as:
    - (1) An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
    - (2) A partnership or joint venture, you are an insured. Your members, partners and their spouses are also insureds, but only with respect to the conduct of your business.

- (3) A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - (4) An organization other than a partnership, joint venture, or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders. Each of the following is also a Named Insured:
    - (a) Any "subsidiary" company of such organization, including any "subsidiary" of such "subsidiary":
      - 1) Existing at the inception of this Coverage Part; or
      - 2) Formed or acquired on or after the inception of this Coverage Part.
    - (b) Any other company controlled and actively managed by such organization or any "subsidiary" thereof:
      - 1) At the inception of this Coverage Part; or
      - 2) If the control and active management thereof is acquired on or after the inception of this Coverage Part.
  - (5) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
- b.** Each of the following is also an insured:
- (1) Any "employee" of yours while acting within the scope of their duties as such.
  - (2) Any person or organization while acting as your real estate manager.
  - (3) Any person or organization having proper temporary custody of your property if you die, but only:
    - (a) With respect to liability arising out of the maintenance or use of that property; and
    - (b) Until your legal representative has been appointed.
  - (4) Your legal representative if you die, but only with respect to duties as such.
- 2.** Only with respect to liability arising out of the ownership, maintenance, occupancy or use of an "auto":
- a.** You are an insured.
  - b.** Anyone else while using with your permission an "auto" you own, hire or borrow is also an insured except:
    - (1) The owner or any other person or organization (except your "executive officers" or principals) from whom you hire or borrow an "auto", unless such persons or organizations are insureds in your "underlying insurance" listed in the Schedule of Underlying Insurance, and then only for such hazards for which coverage is provided by such "underlying insurance". This exception does not apply if the "auto" is a trailer or semi-trailer connected to an "auto" you own.
    - (2) Your "employee", if the "auto" is owned by that "employee" or a member of his or her household, unless:
      - (a) Such "employee" is an insured with respect to that "auto" in the "underlying insurance" listed in the Schedule of Underlying Insurance, and then only for such hazards for which coverage is provided by such "underlying insurance"; or
      - (b) The "bodily injury" or "property damage" is sustained by a co-"employee" of such "employee".
    - (3) Someone using an "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos", unless that business is yours.
    - (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their "employees", while moving property to or from an "auto".
- c.** Anyone liable for the conduct of an insured described in Paragraphs **2.a.** and **b.** above is also an insured, but only if they are provided insurance coverage for such liability by valid and collectible "underlying insurance" listed in the Schedule of Underlying Insurance and then only for such hazards for which coverage is provided by such "underlying insurance".

3. At your option and subject to the terms and conditions of this insurance, any other person or organization not addressed by Paragraphs 1. and 2. above, but covered in the "underlying insurance" listed in the Schedule of Underlying Insurance are also insureds, but only to the extent that insurance is provided for such person or organization by the "underlying insurance".

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture, or limited liability company that is not shown as a Named Insured in the Declarations.

### SECTION III - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made, "suits" brought or number of vehicles involved or insured; or
- c. Persons or organizations making claims or bringing "suits".

2. The Aggregate Limit is the most we will pay for all damages:

- a. Included in the "products-completed operations hazard";
- b. Because of "bodily injury" by disease sustained by your "employees" arising out of and in the course of their employment by you; or
- c. Because of "bodily injury", "personal and advertising injury" or "property damage" not included within a. or b. above. However, this Aggregate Limit will not apply to damages which are not subject to an Aggregate Limit in the "underlying insurance".

The Aggregate Limit applies separately to a., b. and c. The Aggregate Limit described in c. will apply only to damages not subject to a. or b. above.

3. Subject to the Limit of Insurance described in 2.c. above:

- a. Only in the event that "underlying insurance" specifically listed in the Schedule of Underlying Insurance provides an annual Aggregate Limit of Insurance for damages that would not be subject to 2.a. or b. above that is applicable separately to each:

- (1) Location owned by, or rented or leased to you solely with respect to damages which are the result of a claim or "suit" for "bodily injury" or "property damage" which can be at-

tributed to operations at only a single location, then the Aggregate Limit described in 2.c. above applies separately to each location owned by, or rented or leased to you.

- (2) Of your construction projects solely with respect to damages which are the result of a claim or "suit" for "bodily injury" or "property damage" which can be attributed only to ongoing operations and only at a single construction project, then the Aggregate Limit described in 2.c. above applies separately to each of your construction projects.

- b. Only with respect to the application of Limits of Insurance described in 3.a. above, the following terms location and construction project will have the following meanings:

- (1) Location means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

- (2) Construction project means a location you do not own, rent or lease where ongoing improvements, alterations, installation, demolition or maintenance work is performed by you or on your behalf. All connected ongoing improvements, alterations, installation, demolition or maintenance work performed by you or on your behalf at the same location for the same persons or entities, no matter how often or under how many different contracts, will be deemed to be a single construction project.

4. Subject to the limits described in 2. and 3. above, the Each Occurrence Limit is the most we will pay for the "ultimate net loss":

- a. In excess of the applicable limits of "underlying insurance"; or
- b. If an "occurrence" is not covered by "underlying insurance", but covered by the terms and conditions of this Coverage Part,

for all "bodily injury", "personal and advertising injury" and "property damage" arising out of any one "occurrence".

We will not pay more than the Limit of Insurance shown in this Coverage Part's Declarations for each "occurrence" because any Personal Umbrella Liability Policy(ies) is/are attached to this policy.

5. Subject to, and included within, the Limit of Insurance described in 4. above, we will not pay more than the limit of insurance required for the layer of insurance provided by this Coverage Part on behalf of:
  - a. An additional insured, as set forth in **SECTION II - WHO IS AN INSURED, Paragraph 3**; or
  - b. A party you have agreed to indemnify in an "insured contract".
6. Subject to the limits described in 2., 3., 4. and 5. above and to the terms and conditions of the "underlying insurance":
  - a. If the limits of "underlying insurance" have been reduced by payment of claims, this Coverage Part will continue in force as excess of the reduced "underlying insurance"; or
  - b. If the limits of "underlying insurance" have been exhausted by payment of claims, this Coverage Part will continue in force as "underlying insurance".
7. The Limits of Insurance of this Coverage Part apply separately to each "coverage term".

#### **SECTION IV - CONDITIONS**

##### **1. Appeals**

If the insured or any insurer who provides the applicable "underlying insurance" elects not to appeal a judgment which exceeds the "underlying limit", we may elect to do so at our own expense. We shall be liable for the taxable costs and disbursements and interest incidental thereto, but in no event shall this provision increase our liability beyond:

- a. Our applicable Limits of Insurance for all "ultimate net loss";
- b. Our applicable Defense and Supplementary Payments as described in **SECTION I - COVERAGE, C. Defense and Supplementary Payments**; and
- c. The expense of such appeal.

##### **2. Audit**

If this Coverage Part is subject to Audit, as indicated in the Declarations, then the following Condition applies:

- a. The premium shown in the Premium Computation Endorsement as Advance Premium is a deposit premium. At the close of each audit period, we will compute the earned premium for that period. If:

- (1) The earned premium is less than the deposit premium, we will return the excess to the first Named Insured; or
- (2) The earned premium is greater than the deposit premium, the difference will be due and payable to us by the first Named Insured upon notice from us. The due date for audit and retrospective premiums is the date shown as the due date on the bill.

However, in no event will the earned premium be less than the Minimum Premium stated in the Premium Computation Endorsement.

- b. The first Named Insured must keep records of the information we need for premium computation and send us copies at such times as we may request.

##### **3. Bankruptcy**

Bankruptcy or insolvency of the insured or the insured's estate shall not relieve us of any obligations under this Coverage Part.

##### **4. Duties in the Event of Occurrence, Claim or Suit**

- a. You must see to it that we are notified as soon as practicable of an "occurrence" which may result in a claim or "suit". To the extent possible, notice should include:

- (1) How, when and where the "occurrence" took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence".

This requirement applies only when the "occurrence" is known to an "authorized representative".

- b. If a claim is made or "suit" is brought against any insured you must:
  - (1) Immediately record the specifics of the claim or "suit" and the date received; and
  - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

This requirement will not be considered breached unless the breach occurs after such claim or "suit" is known to an "authorized representative".



c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

#### 5. First Named Insured

The person or organization first named in the Declarations will act on behalf of all other insureds where indicated in this Coverage Part.

#### 6. Legal Action Against Us and Loss Payments

- a. No legal action may be brought against us unless there has been full compliance with all the terms of this Coverage Part nor until the amount of the insured's obligation to pay has been finally determined as provided below. No person or organization has any right under this Coverage Part to bring us into any action to determine the liability of the insured.
- b. We shall be liable for payment of the "ultimate net loss" for any "occurrence" to which this Coverage Part applies:
  - (1) For "occurrences" not covered by "underlying insurance"; or
  - (2) In excess of the "underlying limit" applicable to the "occurrence" only after the insurers who provide the applicable "underlying insurance" have paid or become obligated to pay the amount of the "underlying limit" applicable to the "occurrence".

Our payment will be made following final determination of the amount of the insured's obligation to pay either by final judgment against the insured or by written agreement with the insured, the claimant, the underlying insurers and us.

#### 7. Liberalization

If, within 60 days prior to the beginning of this Coverage Part or during the policy period, we make any changes to any forms or endorsements of this Coverage Part for which there is currently no separate premium charge, and that change provides more coverage than this Coverage Part, the change will automatically apply to this Coverage Part at the latter of:

- a. The date we implemented the change in your state; or
- b. The date this Coverage Part became effective; and

will be considered as included until the end of the current policy period. We will make no additional premium charge for this additional coverage during the interim.

#### 8. Maintenance of Underlying Insurance

- a. While this Coverage Part is in effect, the insured shall maintain in force the "underlying insurance" listed in the Schedule of Underlying Insurance as collectible insurance. The terms, conditions and endorsements of "underlying insurance" will not materially change and renewals or replacements of "underlying insurance" will not be more restrictive in coverage.
- b. Limits of "underlying insurance" will not be reduced, except for any reduction or exhaustion in the aggregate limits of insurance due to payment of claims which are in accordance with **SECTION I - COVERAGE, A. Insuring Agreement**, Paragraph 2. of this Coverage Part.
- c. In the event you fail or neglect to maintain "underlying insurance" as required, this Coverage Part will apply as though such "underlying insurance" was in force and collectible at the time a claim is presented to us which is in accordance with **SECTION I - COVERAGE, A. Insuring Agreement**, Paragraph 2. of this Coverage Part.
- d. The limits of "underlying insurance" shall be deemed applicable, regardless of any defense which the insurer who provides the "underlying insurance" may assert because of the insured's failure to comply with any Condition of the policy or the inability of the insurer to pay by reason of bankruptcy or insolvency.
- e. You must notify us in writing as soon as practicable when any "underlying insurance" is no longer in effect or the limits or scope of coverage of any "underlying insurance" is changed.

## 9. Other Insurance

- a. This insurance is excess over, and shall not contribute with any other insurance, whether primary, excess, contingent or on any other basis. This condition will not apply to insurance specifically written as excess over this Coverage Part.

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends and coverage is otherwise applicable, we will have the right, but not the duty to undertake to do so, provided that whomever we agree to defend and the Named Insured assign their rights to us under the policies of the insurers who did not defend. Such assignment must be in writing.

- b. When this insurance is excess over other insurance, we will pay only our share of the "ultimate net loss" that exceeds the sum of:
  - (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
  - (2) The total of all deductible and self-insured amounts under all that other insurance.

## 10. Premium

The premium for this Coverage Part shall be as stated in the Declarations. The advance and anniversary premiums are not subject to adjustment, except as stated in the Declarations, or as stated in an endorsement issued by us to form a part of this Coverage Part.

You shall maintain records of such information as is necessary for premium computation, and shall, if requested by us, send copies of such records to us at the end of the "coverage term" and at such times during the policy period as we may direct.

## 11. Representations

- a. By acceptance of this Coverage Part, you agree that the statements in the Declarations are your agreements and representations, that this Coverage Part is issued in reliance upon the truth of such representations and that this Coverage Part embodies all agreements existing between you and us or any of our agents relating to this insurance.
- b. However, to the extent that the following applies in the "underlying insurance" listed specifically in the Schedule of Underlying Insurance, it will also apply to this Coverage Part:

Based on our reliance upon your representations as to existing hazards, if unintentionally you should fail to disclose all such hazards at the inception date of this Coverage Part, we will not reject coverage under this Coverage Part based solely on such failure.

## 12. Separation of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

## 13. Transfer of Rights of Recovery Against Others to Us

- a. If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.
- b. Any recoveries shall be applied as follows:
  - (1) First, we will reimburse anyone, including the insured, the amounts actually paid by them that were in excess of our payments;
  - (2) Next, we will be reimbursed to the extent of our actual payment; and
  - (3) Lastly, any amounts left after meeting the obligations outlined in (1) and (2) above will be distributed to anyone else known to us at the time a recovery is made and who is legally entitled to such recovery.

Expenses incurred in the recovery shall be apportioned among all interests in the ratio of their respective recoveries as finally settled. If there is no recovery as a result of our attempts, we shall bear all of the recovery expenses.

- c. If prior to an "occurrence" to which this Coverage Part would apply, you and the issuer of your applicable "underlying insurance" listed specifically in the Schedule of Underlying Insurance waive any right of recovery against a person or organization for injury or damage, we will also waive any rights we may have against such person or organization.

#### 14. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

#### SECTION V - DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. "Advertisement" includes a publicity article. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding websites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an "advertisement".
2. "Authorized representative" means:
  - a. If you are:
    - (1) An individual, you and your spouse are "authorized representatives".
    - (2) A partnership or joint venture, your members, your partners, and their spouses are "authorized representatives".
    - (3) A limited liability company, your members and your managers are "authorized representatives".
    - (4) An organization other than a partnership, joint venture or limited liability company, your "executive officers" and directors are "authorized representatives". Provided you are not a publicly traded organization, your stockholders are also "authorized representatives".
    - (5) A trust, your trustees are "authorized representatives".
  - b. Your "employees" assigned to manage your insurance program, or assigned to give or receive notice of an "occurrence", claim or "suit" are also "authorized representatives".
3. "Auto" means:
  - a. Any land motor vehicle, trailer or semi-trailer designed for travel on public roads; or
  - b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged."Auto" does not include "mobile equipment".
4. "Bodily injury" means bodily harm or injury, sickness, disease, disability, humiliation, shock, fright, mental anguish or mental injury, including care, loss of services or death resulting from any of these at any time.
5. "Coverage term" means the following individual increment, or if a multi-year policy period, increments, of time, which comprise the policy period of this Coverage Part:
  - a. The year commencing on the Effective Date of this Coverage Part at 12:01 AM standard time at your mailing address shown in the Declarations, and if a multi-year policy period, each consecutive annual period thereafter, or portion thereof if any period is for a period of less than 12 months, constitute individual "coverage terms". The last "coverage term" ends at 12:00 AM standard time at your mailing address shown in the Declarations on the earlier of:
    - (1) The day the policy period shown in the Declarations ends; or
    - (2) The day the policy to which this Coverage Part is attached is terminated or cancelled.
  - b. However, if after the issuance of this Coverage Part, any "coverage term" is extended for an additional period of less than 12 months, that additional period of time will be deemed to be part of the last preceding "coverage term".
6. "Coverage territory" means anywhere.
7. "Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any similar governing document.
10. "Hostile fire" means one that becomes uncontrollable or breaks out from where it was intended to be.
11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
  - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement,
 if such property can be restored to use by:
  - a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
  - b. Your fulfilling the terms of the contract or agreement.
12. "Insured contract" means:
  - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for "property damage" by fire or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
  - b. A sidetrack agreement;
  - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  - e. An elevator maintenance agreement;
  - f. That part of any other contract or agreement pertaining to your business, other than a contract or agreement pertaining to the rental or lease of any "auto", (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury", "property damage" or "personal and advertising injury" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement; or

- g. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees".

Paragraphs **f.** and **g.** do not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury", "property damage" or "personal and advertising injury" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing. However, if such liability is insured by valid and collectible "underlying insurance" as listed in the Schedule of Underlying Insurance, this Paragraph (1) shall not apply for such hazards for which insurance coverage is afforded by such "underlying insurance";
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in Paragraph (2) above and supervisory, inspection, architectural or engineering activities;
- (4) That indemnifies an advertising, public relations or media consulting firm for "personal and advertising injury" arising out of the planning, execution or failure to execute marketing communications programs. Marketing communications programs include but are not limited to comprehensive marketing campaigns; consumer, trade and corporate advertising for all media; media planning, buying, monitoring and analysis; direct mail; promotion; sales materials; design; presentations; point-of-sale materials; market research;

public relations and new product development;

- (5) Under which the insured, if an advertising, public relations or media consulting firm, assumes liability for "personal and advertising injury" arising out of the insured's rendering or failure to render professional services, including those services listed in Paragraph (4), above;
  - (6) That indemnifies a website designer or content provider, or Internet search, access, content or service provider for injury or damage arising out of the planning, execution or failure to execute Internet services. Internet Services include but are not limited to design, production, distribution, maintenance and administration of websites and web-banners; hosting websites; registering domain names; registering with search engines; marketing analysis; and providing access to the Internet or other similar networks;
  - (7) Under which the insured, if a website designer or content provider, or Internet search, access, content or service provider, assumes liability for injury or damage arising out of the insured's rendering or failure to render Internet services, including those listed in Paragraph (6), above;
  - (8) That pertains to the loan, lease or rental of an "auto" to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver; or
  - (9) That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of an "auto" over a route or territory that person or organization is authorized to serve by public authority.
13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the conduct of your business. "Leased worker" includes supervisors furnished to you by the labor leasing firm. "Leased worker" does not include a "temporary worker".
14. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
  - b. While it is in or on an aircraft, watercraft or "auto"; or
  - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - b. Vehicles maintained for use solely on or next to premises you own or rent;
  - c. Vehicles that travel on crawler treads;
  - d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - (1) Power cranes, shovels, loaders, diggers or drills; or
    - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
  - e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well-servicing equipment; or
    - (2) Cherry pickers and similar devices used to raise or lower workers;
  - f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding,

building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Any land vehicle subject to a compulsory or financial responsibility law or other motor vehicle insurance law is considered an "auto".

**16. "Occurrence" means:**

- a. An accident, including continuous or repeated exposure to substantially the same general harmful conditions, that results in "bodily injury" or "property damage"; or
- b. An offense that results in "personal and advertising injury".

All damages arising from the same accident, continuous or repeated exposure to substantially the same general harmful conditions, act or offense shall be deemed to arise from one "occurrence" regardless of:

- (1) The frequency of repetition;
- (2) The number or kind of media used; or
- (3) The number of claimants.

**17. "Personal and advertising injury" means injury, including "bodily injury", arising out of one or more of the following offenses:**

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. Abuse of process;
- d. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- e. Defamation of character, including oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- f. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- g. The use of another's advertising idea in your "advertisement";
- h. Infringing upon another's copyright, trade dress or slogan in your "advertisement"; or

- i. Discrimination, unless insurance coverage therefor is prohibited by law or statute.

**18. "Pollutants" mean any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, petroleum, petroleum products and petroleum by-products, and waste. Waste includes materials to be recycled, reconditioned or reclaimed. "Pollutants" include, but are not limited to, substances which are generally recognized in industry or government to be harmful or toxic to persons, property or the environment regardless of whether the injury or damage is caused directly or indirectly by the "pollutants" and whether:**

- a. The insured is regularly or otherwise engaged in activities which taint or degrade the environment; or
- b. The insured uses, generates or produces the "pollutant".

**19. "Products-completed operations hazard":**

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

(a) When all of the work called for in your contract has been completed.

(b) When all of the work to be done at the site has been completed, if your contract calls for work at more than one site.

(c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:

(1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition

was created by the "loading or unloading" of that vehicle by any insured; or

- (2) The existence of tools, uninstalled equipment or abandoned or unused materials.

20. "Property damage" means:

- a. Physical injury to or destruction of tangible property including all resulting loss of use. All such loss of use shall be deemed to occur at the time of the physical injury or destruction that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, "electronic data" is not tangible property.

21. "Subsidiary" means any organization in which more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors is owned or controlled, directly or indirectly, in any combination, by one or more of the Named Insureds.

22. "Suit" means a civil proceeding in which money damages because of "bodily injury", "personal and advertising injury" or "property damage" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such money damages are claimed and to which the insured must submit or does submit with our consent;
- b. Any other alternative dispute resolution proceeding in which such money damages are claimed and to which the insured submits with our consent; or
- c. An appeal of a civil proceeding.

23. "Temporary worker" means a person who is furnished to you to:

- a. Substitute for a permanent "employee" on leave; or
- b. Meet seasonal or short-term workload conditions.

24. "Ultimate net loss" means the sum actually paid or payable in the settlement or satisfaction of the insured's legal obligation for damages, covered by this insurance, either by adjudication or compromise. "Ultimate net loss" does not include Defense and Supplementary Payments as described in **SECTION I - COVERAGE, C. Defense and Supplementary Payments** of this Coverage Part.

25. "Underlying insurance" means the insurance listed in the Schedule of Underlying Insurance and the insurance available to the insured under all other insurance policies applicable to the "occurrence". "Underlying insurance" also includes any type of self-insurance or alternative method by which the insured arranges for funding of legal liabilities that affords coverage that this Coverage Part covers.

26. "Underlying limit" means the total of the applicable limits of all "underlying insurance" less the amount, if any, by which the applicable limit of the applicable policy listed in the Schedule of Underlying Insurance has been reduced solely by payment of loss resulting from claims which are in accordance with **SECTION I - COVERAGE, A. Insuring Agreement**, Paragraph 2. of this Coverage Part.

27. "Workplace" means that place and during such hours to which the "employee" sustaining injury was assigned by you, or any other person or entity acting on your behalf, to work on the date of "occurrence".

28. "Your product":

a. Means:

(1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

- (a) You;
- (b) Others trading under your name; or
- (c) A person or organization whose business or assets you have acquired; and

(2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of your product; and

(2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

29. "Your work":

a. Means:

(1) Work or operations performed by you or on your behalf; and





# NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

## COMMERCIAL UMBRELLA LIABILITY COVERAGE PART

**A. SECTION I - COVERAGE, B. Exclusions** is modified to add the following:

This insurance does not apply to:

1. Any liability:
  - a. With respect to which an insured under this Coverage Part is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
  - b. Resulting from the "hazardous properties" of "nuclear material" and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the insured is, or had this Coverage Part not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
2. Any liability resulting from the "hazardous properties" of "nuclear material", if
  - a. The "nuclear material" (1) is at any "nuclear facility" owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;
  - b. The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
  - c. The injury or damage arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this

Exclusion c. applies only to "property damage" to such "nuclear facility" and any property thereat.

**B. SECTION V - DEFINITIONS** is hereby modified to add the following definitions:

1. "Hazardous properties" include radioactive, toxic or explosive properties;
2. "Nuclear material" means "source material", "special nuclear material" or "by-product material";
3. "Source material", "special nuclear material" and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;
4. "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor";
5. "Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".
6. "Nuclear facility" means:
  - a. Any "nuclear reactor";
  - b. Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", (3) or handling, processing or packaging "waste";
  - c. Any equipment or device used for the processing, fabricating or alloying of "special nuclear materials", if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

d. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

7. "Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

8. "Property damage" includes all forms of radioactive contamination of property.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**AUTOMATIC PRIMARY AND NON-CONTRIBUTORY COVERAGE  
ENDORSEMENT - WHERE REQUIRED BY WRITTEN CONTRACT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL UMBRELLA LIABILITY COVERAGE PART**

**SCHEDULE**

<b>LIMITS OF INSURANCE:</b> \$ 5,000,000 Each Occurrence Limit \$ 5,000,000 Aggregate Limit	
---	--

**COMMERCIAL UMBRELLA LIABILITY COVERAGE FORM, US 101 and US 101 UM**, is amended as follows:

**A. SECTION III - LIMITS OF INSURANCE** is amended to add the following:

7. For the purposes of this endorsement only, the Limits of Insurance stated in the Schedule of this endorsement and described below will apply on a "primary and non-contributory basis" within the parameters set forth in **SECTION III - LIMITS OF INSURANCE** of the Coverage Part to which this endorsement is attached:

We will not pay more on behalf of a "non-contributory additional insured" than the lesser of:

- a. The Limits of Insurance stated in the Schedule of this endorsement; or
- b. The limits of insurance required in a written contract on a "primary and non-contributory basis" for such "non-contributory additional insured", but only to the extent the required limits of insurance are in excess of the "underlying insurance"; or
- c. The Limits of Insurance available after the payment of "ultimate net loss" on any insured's behalf from any claim or "suit".

This provision is included within and does not act to increase the Limits of Insurance stated in the Declarations.

**B. SECTION IV - CONDITIONS** is amended as follows:

1. Condition **9. Other Insurance** is amended to add the following:

It is agreed that this condition does not apply to the "non-contributory additional insured's" own insurance program on which they are a named insured.

However:

- a. This exception to the Other Insurance Condition shall only apply if the applicable "underlying insurance" applies on a "primary and non-contributory basis" for such "non-contributory additional insured" and only to the extent of the specific limits of insurance required in a written contract or agreement on a "primary and non-contributory basis" that is in excess of the "underlying insurance"; and
- b. It is understood and agreed that the insurance provided by this Coverage Part is excess of:
  - (1) "Underlying insurance" listed in the Schedule of Underlying Insurance;
  - (2) Any other insurance available to the "non-contributory additional insured" as an additional insured; and
  - (3) Any other insurance available to the "non-contributory additional insured" on which they are not a named insured.

2. The following condition is added:

15. As a precedent to the receipt of insurance coverage hereunder, the "non-contributory additional insured" must give written notice of such claim or "suit", including a demand for de-

fense and indemnity, to any other insurer who had coverage for the claim or "suit" under its policies. Such notice must demand the full coverage available and the "non-contributory additional insured" shall not waive or limit such other available coverage.

This condition does not apply to the "non-contributory additional insured's" own insurance program on which they are a named insured.

**C. SECTION IV - DEFINITIONS** is amended to add the following:

**30.** "Non-contributory additional insured" means any person or organization:

- a.** Qualifying as an additional insured under **SECTION II - WHO IS AN INSURED**, Paragraph **3.** of the Coverage Part to which this endorsement is attached; and
- b.** Being granted additional insured status on a "primary and non-contributory basis" in the "underlying insurance" as required in a written

contract between an additional insured and a Named Insured provided:

**(1)** The written contract or agreement is executed before the "occurrence" resulting in "bodily injury", "personal and advertising injury" or "property damage" for which coverage is being sought under this endorsement; and

**(2)** The written contract or agreement requires a specific limit of insurance on a "primary and non-contributory basis" that is in excess of "underlying insurance".

**31.** "Primary and non-contributory basis" means that the limits of insurance of the Coverage Part to which this endorsement is attached apply to insured loss on behalf of the "non-contributory additional insured" prior to limits of insurance from other insurance in which the "non-contributory additional insured" is a named insured.



**EVANSTON INSURANCE COMPANY**  
**ADVANTAGE CONTRACTOR’S POLLUTION LIABILITY PLUS**  
**COVERAGE FORM**

**TABLE OF CONTENTS**

SECTION I – COVERAGES .....2  
    A. Insuring Agreements.....2  
    B. Claims And Defense .....4  
    C. Supplementary Payments.....5  
    D. Coverage Extensions..... 7  
SECTION II – EXCLUSIONS .....7  
SECTION III – WHO IS AN INSURED .....13  
SECTION IV – LIMITS OF INSURANCE AND SELF-INSURED RETENTION.....14  
    A. Limits Of Insurance .....14  
    B. Self-Insured Retention .....15  
    C. Multiple Insureds, Claims, And Claimants .....15  
SECTION V – EXTENDED REPORTING PERIOD .....16  
SECTION VI – CONDITIONS.....16  
SECTION VII – DEFINITIONS .....21



## EVANSTON INSURANCE COMPANY

### ADVANTAGE CONTRACTOR'S POLLUTION LIABILITY PLUS COVERAGE FORM

VARIOUS PROVISIONS IN THIS POLICY MAY RESTRICT OR EXCLUDE COVERAGE. PLEASE READ THE ENTIRE POLICY CAREFULLY TO DETERMINE THE INSURED'S RIGHTS AND DUTIES AND WHAT IS AND IS NOT COVERED.

THE PROFESSIONAL LIABILITY INSURING AGREEMENT, PROFESSIONAL LIABILITY RECTIFICATION EXPENSE INSURING AGREEMENT, AND DISCIPLINARY PROCEEDING LEGAL EXPENSE REIMBURSEMENT COVERAGE EXTENSION PROVIDE CLAIMS-MADE AND REPORTED COVERAGE AND REQUIRE THAT A CLAIM BE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE COMPANY IN WRITING DURING THE POLICY PERIOD OR ANY APPLICABLE EXTENDED REPORTING PERIOD WE PROVIDE UNDER SECTION V – EXTENDED REPORTING PERIOD.

AMOUNTS INCURRED AS SUPPLEMENTARY PAYMENTS WILL BE APPLIED AGAINST THE APPLICABLE SELF-INSURED RETENTION. ANY AMOUNTS INCURRED AS SUPPLEMENTARY PAYMENTS IN EXCESS OF THE DEFENSE EXPENSES AGGREGATE LIMIT SHOWN IN THE DECLARATIONS WILL REDUCE THE LIMIT OF INSURANCE AVAILABLE.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations and any other person or organization qualifying as a Named Insured under this policy. The word "insured" means any person or organization qualifying as such under Section III – Who Is An Insured. The words "we", "us", and "our" refer to the company providing this insurance. Other words and phrases that appear in quotation marks have special meaning. Refer to Section VII – Definitions.

#### SECTION I – COVERAGES

##### A. Insuring Agreements

Although various Insuring Agreements may be referenced in this policy, an Insuring Agreement is included within this policy only if that Insuring Agreement is designated as purchased by an "X" in the Declarations.

1. The following Insuring Agreements apply only if the "pollution condition" that causes a "pollution loss" takes place in the "coverage territory". The amount we will pay is limited as described in Section IV – Limits Of Insurance And Self-Insured Retention.

##### a. Contractor's Pollution Liability (Including Mold And Legionella)

We will pay on behalf of the insured those sums in excess of the Pollution Liability Self-Insured Retention shown in the Declarations that the insured becomes legally obligated to pay as "pollution loss" caused by a "pollution condition" to which this insurance applies, provided:

- (1) The "pollution condition" arises out of "your work"; and
- (2) The "bodily injury" or "property damage" occurs, or "cleanup costs" are incurred, during the policy period.

With respect to "bodily injury", "property damage", or "cleanup costs" caused by legionella, there must be a direct relation to a documented case of a legionella outbreak for coverage to apply.

##### b. Transportation Pollution Liability

We will pay on behalf of the insured those sums in excess of the Pollution Liability Self-Insured Retention shown in the Declarations that the insured becomes legally obligated to pay as "pollution loss" resulting from a "transportation pollution condition" to which this insurance applies, provided:

- (1) The "transportation pollution condition" arises out of "transported cargo" that is transported, delivered, or shipped by you in a "covered conveyance" or by a "carrier" on your behalf; and
- (2) The "bodily injury" or "property damage" occurs, or the "cleanup costs" are incurred, during the policy period.

This coverage shall not be utilized to evidence financial responsibility of any insured under any federal, state, provincial, or local law.

**c. Non-Owned Disposal Site Liability**

We will pay on behalf of the insured those sums in excess of the Pollution Liability Self-Insured Retention shown in the Declarations that the insured becomes legally obligated to pay as "pollution loss" resulting from a "pollution condition" at, on, or under a "non-owned disposal site"; provided:

- (1) Such "pollution condition" originates at a "non-owned disposal site";
- (2) The "pollution condition" arises from waste or material generated by "your work"; and
- (3) The "bodily injury" or "property damage" occurs, or the "cleanup costs" are incurred, during the policy period.

**d. Sudden And Accidental Discharge, Release, Or Escape Of Pollutants Liability**

We will pay on behalf of the insured those sums in excess of the Pollution Liability Self-Insured Retention shown in the Declarations that the insured becomes legally obligated to pay as "pollution loss" resulting from a sudden and accidental "pollution condition":

- (1) At, on, or under a Designated Location shown in the Declarations; or
- (2) Originating at and migrating from a Designated Location shown in the Declarations;

provided:

- (a) The "pollution condition" is the result of an unforeseen, unplanned, or unexpected event or circumstance;
- (b) The "pollution condition" commences during the policy period;
- (c) The "pollution condition" is first discovered by any insured no later than 7 days after it commences;
- (d) The insured reports the commencement of the "pollution condition" to us in writing no later than 21 days following its discovery by any insured; and
- (e) The "claim" is first made during the policy period.

**e. Crisis Management And Emergency Response Costs**

We will indemnify you for:

- (1) "Crisis management costs" you incur as a direct result of a "crisis management event", provided that the "crisis management event":
  - (a) Arises directly from a "pollution condition" that has resulted or is reasonably likely to result in a "pollution loss" covered under this policy;
  - (b) Commences during the policy period; and
  - (c) First becomes known to any "responsible insured" during the policy period and is reported to us in writing as soon as practicable, but in any event during the policy period or within 30 days after the end of the policy period.

We will pay those "crisis management costs" you incur even if coverage hereunder is still to be confirmed by us, but we will stop paying such "crisis management costs" as soon as it becomes evident, to either you or us, that this insurance does not apply. "Crisis management costs" are not subject to the Self-Insured Retention.

- (2) "Emergency response costs" you incur in excess of the Pollution Liability Self-Insured Retention shown in the Declarations as a direct result of a "pollution condition" that occurs in the "coverage territory" and has resulted in a "pollution loss" covered under this policy.

2. The following Insuring Agreements apply only if the "wrongful act" takes place in the "coverage territory". The amount we will pay is limited as described in Section IV – Limits Of Insurance And Self-Insured Retention.

**a. Professional Liability**

- (1) We will pay on behalf of the insured those sums in excess of the Professional Liability Self-Insured Retention shown in the Declarations that the insured becomes legally obligated to pay as "professional loss".
- (2) This insurance applies to "professional loss" only if:
- (a) The "wrongful act" takes place on or after the Professional Liability Retroactive Date, if any, shown in the Declarations and before the end of the policy period; and
- (b) A "claim" is first made against any insured during the policy period and reported to us during the policy period or the Extended Reporting Period, if applicable.

**b. Professional Liability Rectification Expense**

Upon the Named Insured's submission to us of satisfactory written proof of payment, we will reimburse the Named Insured for "rectification expense" incurred in excess of the Professional Liability Rectification Expense Self-Insured Retention shown in the Declarations with respect to any action to rectify or mitigate an actual, negligent act, error, or omission that would otherwise lead to a "claim" covered under this policy, provided that:

- (1) The act, error, or omission giving rise to the "rectification expense" happens during the policy period and on or after the Professional Liability Rectification Expense Retroactive Date shown in the Declarations;
- (2) The insured must provide us notice of the act, error, or omission and any proposed corrective action in writing as soon as practicable but in any event during the policy period or the Extended Reporting Period, if applicable; and
- (3) All "rectification expenses" must be approved by us prior to being incurred by the insured.

If we and the insured do not agree that the insured's proposed rectification action is reasonable, we and the insured may agree to submit such dispute to any form of alternative dispute resolution acceptable to both parties. Should we and the insured be unable to agree on the form of alternative dispute resolution, then such dispute will be submitted to binding arbitration administered by the American Arbitration Association under its Commercial Arbitration rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction.

**B. Claims And Defense**

1. Solely with respect to Insuring Agreements **A.1.a.** Contractors Pollution Liability (Including Mold And Legionella), **A.1.b.** Transportation Pollution Liability, and **A.1.c.** Non-owned Disposal Site Liability under Section I – Coverages, coverage applies only if, prior to the policy period, no "responsible insured" knew that the "bodily injury", "property damage", or "cleanup costs" had occurred, in whole or in part. If any "responsible insured" knew, prior to the policy period, that the "bodily injury", "property damage", or "cleanup costs" occurred, then any continuation, change, or resumption of such "bodily injury", "property damage", or "cleanup costs" during or after the policy period will be deemed to have been known prior to the policy period.

"Bodily injury", "property damage", or "cleanup costs" which occur during the policy period and were not, prior to the policy period, known to have occurred by any "responsible insured", includes any continuation, change, or resumption of the "bodily injury", "property damage", or "cleanup costs" after the end of the policy period.

"Bodily injury", "property damage", or "cleanup costs" will be deemed to have been known to have occurred at the earliest time when any "responsible insured":

- a. Reports all or any part of the "bodily injury", "property damage", or "cleanup costs" to us or any other insurer;
- b. Receives a written or verbal demand or "claim" for "loss" because of the "bodily injury", "property damage", or "cleanup costs"; or
- c. Becomes aware by any other means that the "bodily injury", "property damage", or "cleanup costs" have occurred or have begun to occur.

"Loss" because of "bodily injury" includes damages claimed by any person or organization for care, loss of services, or death resulting at any time from the "bodily injury".



2. Solely with respect to the Insuring Agreement **2.a. Professional Liability**, a "claim" by a person or organization seeking "loss" directly arising out of a "wrongful act" will be deemed to have been made at the earlier of when notice of such "claim" is received by any insured or by us.

All "claims" for "loss" arising out of the same, related, or continuous "wrongful act" will be considered a single "claim", and will be deemed to have been made and reported at the time the first of those "claims" is made against any insured.

Any reported "wrongful act" that subsequently becomes a "claim" made against the insured and reported to us in writing will be deemed to have been first made on the date that the written notice of the "wrongful act" was first reported to us and will be subject to all of the terms and conditions of this policy

3. We will:

- a. Have the right to investigate any "claim"; and
- b. Have the right and duty to defend the insured against any "suit";

for "loss" to which this insurance applies.

However, we will have no duty to defend the insured against any "claim" seeking "loss" to which this insurance does not apply. We may, at our discretion, investigate any "pollution condition" or "wrongful act" and settle any "claim" that may result. But:

- (1) The amount we will pay for "loss" is limited as described in Section **IV – Limits Of Insurance And Self-Insured Retention**; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements,

### **C. Supplementary Payments**

#### **1. Loss Of Earnings And Expense Reimbursement**

We will pay, with respect to any "claim" we investigate or settle, or any "suit" against an insured we defend:

- a. All expenses we incur.
- b. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the "claim", including actual loss of earnings up to \$5,000 a day because of time off from work.
- c. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- d. Pre-judgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any pre-judgment interest based on that period of time after the offer.
- e. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

Amounts paid under this Loss Of Earnings And Expense Reimbursement Supplementary Payment will reduce the Defense Expenses Aggregate Limit shown in the Declarations. Once that limit has been exhausted, amounts paid under this Supplementary Payment will reduce the applicable Limits Of Insurance shown in the Declarations.

#### **2. Suit Against Indemnitee**

If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- a. The "suit" against the indemnitee seeks "loss" for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense of, that indemnitee has also been assumed by the insured in the same "insured contract";
- d. The allegations in the "suit" and the information we know about the "pollution condition" or "wrongful act" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;

- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f. The indemnitee:
  - (1) Agrees in writing to:
    - (a) Cooperate with us in the investigation, settlement, or defense of the "suit";
    - (b) Immediately send us copies of any demands, notices, summonses, or legal papers received in connection with the "suit";
    - (c) Notify any other insurer whose coverage is available to the indemnitee; and
    - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
  - (2) Provides us with written authorization to:
    - (a) Obtain records and other information related to the "suit"; and
    - (b) Conduct and control the defense of the indemnitee in such "suit".

As long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us, and necessary litigation expenses incurred by the indemnitee at our request will be paid as supplementary payments.

We may, at our option, appoint one counsel to defend all of the insureds and indemnitees of the insureds who are or may be involved with respect to such "suit".

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as supplementary payments ends when we have used up the applicable limit of insurance in the payment of judgments, settlements, or supplementary payments, or the conditions or the terms of the agreement set forth above are no longer met.

Amounts paid under this Suit Against Indemnity Supplementary Payment will reduce the Defense Expenses Aggregate Limit shown in the Declarations. Once that limit has been exhausted, amounts paid under this Supplementary Payment will reduce the Limits Of Insurance shown in the Declarations.

### **3. Pre-Claim Investigation Expenses**

- a. If, during the policy period, the insured first becomes aware of a specific "wrongful act" that is reasonably expected to result in a "claim" within the scope of this coverage, then the insured may elect to provide notice of a potential "claim" to us. Such notice to us shall be in writing, sent to us at the address shown in the claim reporting policyholder notice, and contain the following information:
  - (1) The description of the specific "wrongful act";
  - (2) The date on which such "wrongful act" took place;
  - (3) The damage which has or may result from such "wrongful act";
  - (4) The identity of any injured person or organization subject to such injury or damage; and
  - (5) The date and circumstances by which the insured first became aware of such "wrongful act".
- b. If such written notice is received by us during the policy period, we may, at our sole option, choose to investigate the "wrongful act". Such an investigation will be at our expense and will not reduce the Limits Of Insurance or be subject to the Self-Insured Retention provisions until one of the following occurs:
  - (1) A "claim" results from the "wrongful act" under investigation; or
  - (2) We incur the Pre-Claim Investigation Expenses Limit shown in the Declarations in expenses arising from the investigation.
- c. If a "claim" is made and reported to us, or once we incur the Pre-Claim Investigation Expenses Limit shown in the Declarations, any further payment will be considered "claims expense" and will reduce the applicable Limits Of Insurance and be subject to the Self-Insured Retention provisions of this insurance.

Any "claim" subsequently made against the "insured" arising out of such "wrongful act" will be deemed to have been first made on the date on which such written notice is first received by the company.

No coverage for pre-claim investigation expenses is provided by this Policy except as provided by this Paragraph C.3. Pre-Claim Investigation Expenses of Section I – Coverages.

## **D. Coverage Extensions**

Although various Coverage Extensions are referenced in this policy, a Coverage Extension is included within this policy only if that Coverage Extension is designated as purchased by an "X" in the Declarations.

### **1. Disciplinary Proceeding Legal Expense Reimbursement**

- a. Upon the Named Insured's submission to us of satisfactory written proof of payment, we will reimburse the Named Insured for all reasonable and necessary legal fees and legal expenses incurred in response to a "disciplinary proceeding" against the Named Insured first initiated during the policy period or the Extended Reporting Period, if applicable, provided:
  - (1) The "wrongful act" giving rise to the "disciplinary proceeding" happens during the policy period and on or after the Professional Liability Retroactive Date shown in the Declarations; and
  - (2) Prior to the effective date of the first date of continuous coverage for this Coverage Extension with us, no "responsible insured" knew that such "wrongful act" had occurred, or any fact, circumstance, situation, or incident which would lead a reasonable person in the insured's position to conclude that a "claim" was likely.
- b. The most we will reimburse the Named Insured under this Coverage Extension for legal fees or legal expenses as the result of any one "disciplinary proceeding" is the Each Disciplinary Proceeding Limit shown in the Declarations.

The most we will reimburse the Named Insured under this Coverage Extension for the sum of legal fees and legal expenses as the result of all "disciplinary proceeding" is the Aggregate Disciplinary Proceeding Limit shown in the Declarations.

The remaining legal fees or legal expenses are the sole responsibility of the Named Insured and do not reduce the Professional Liability Self-Insured Retention shown in the Declarations.

- c. The Named Insured must provide to us written notice as soon as practicable of any "disciplinary proceeding" first initiated against the Named Insured during the policy period or the Extended Reporting Period, if applicable. In any event, such "disciplinary proceeding" must be reported to us no later than 60 days after the end of the policy period or the Extended Reporting Period, if applicable.
- d. No reimbursement will be made for the Named Insured's payment of any taxes; criminal or civil fines, penalties, or sanctions; registration or licensing fees; or any monetary judgment, award, or settlement of any kind.

### **2. Subpoena Assistance**

In the event that during the policy period:

- a. The insured first receives a subpoena or a written request for the insured's records or files or notice of deposition relative to a "pollution condition" or a "wrongful act" in the performance of "your work"; and
- b. The insured reports the receipt of such subpoena or written request to us within 30 days of such receipt and prior to a "claim" being first made against the insured arising out of such "pollution condition" or "wrongful act";

then we will pay on behalf of the insured up to the Subpoena Assistance Limit shown in the Declarations per policy period for reasonable and necessary legal fees and expenses incurred for engaging the services of legal counsel we select to assist the insured in responding to such subpoena or request.

Payments under these Coverage Extensions will be in addition to the General Aggregate Limit shown in the Declarations and not subject to the Self-Insured Retention.

## **SECTION II – EXCLUSIONS**

A. With respect to all Insuring Agreements, Supplementary Payments, and Coverage Extensions, t

### **1. Contractual Liability**

"Loss" the insured is legally obligated to pay as damages as a result of the assumption of liability in a contract or agreement. However, this exclusion does not apply to liability:

- a. That the insured would have in the absence of the contract or agreement; or

- b. Solely with respect to coverage provided under Insuring Agreement **1.**, assumed in a contract or agreement that is an "insured contract", provided the "loss" occurs subsequent to the execution of the contract or agreement.

## **2. Fines, Penalties, And Punitive Damages**

Any punitive damages, exemplary damages, multiplied damages, fines, or penalties. However, this exclusion does not apply to punitive or exemplary damages where insurable by law.

## **3. Damage To Property**

"Property damage" in any way related to any real property or facility that is or was at any time owned, operated, or occupied by, or rented to you. However, this exclusion does not apply:

- a. If the real property or facility is operated or occupied by you for the purpose of performing "your work"; or
- b. To coverage provided under Insuring Agreements **A.1.d.** Sudden And Accidental Discharge, Release, Or Escape Of Pollutants Liability or **A.2.b.** Professional Liability Rectification Expense, if shown as purchased on the Declarations.

## **4. Damage To Your Product Or Your Work**

"Property damage" to "your product" or "your work" or any part of "your product" or "your work". This exclusion does not apply:

- a. If the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor; or
- b. To coverage provided under Insuring Agreement **A.2.b.** Professional Liability Rectification Expense, if shown as purchased in the Declarations.

## **5. Employer's Liability**

"Bodily injury" to:

- a. An "employee" of the insured arising out of and in the course of:
  - (1) Employment by the insured; or
  - (2) Performing duties related to the conduct of the insured's business; or
- b. The spouse, child, parent, brother, or sister of that "employee" as a consequence of such "bodily injury".

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury. However, this exclusion does not apply to liability assumed by the insured under an "insured contract".

## **6. Expected Or Intended Injury**

"Bodily injury" or "property damage" expected or intended from the standpoint of any "responsible insured".

## **7. Impaired Property**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- a. A defect, deficiency, inadequacy, or dangerous condition in "your product" or "your work"; or
- b. A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to:

- (1) The loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use; or
- (2) "Rectification expense" to the extent coverage is provided under Section I – Coverages, Paragraph **A.** Insuring Agreements, **2.b.** Professional Liability Rectification Expense.

## **8. Insured Versus Insured**

Any "claim" made by or on behalf of an insured against any other insured. However, solely with respect to coverage provided under Insuring Agreement **1.**, this exclusion does not apply with respect to "claims" against you by any

insured seeking coverage or indemnification pursuant to a written contract or agreement for a "claim" otherwise covered for "bodily injury", "property damage", or "cleanup costs".

## 9. Intentional Acts

"Loss" arising out of intentional, willful, or deliberate:

- a. Injury to persons or property; or
- b. Failure to comply with any permit, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental or public agency or body.

However, this exclusion does not apply to:

- (1) An insured who did not commit, participate in, or have knowledge of any of the acts described above; or
- (2) "Claim expenses" incurred until an allegation is determined through final and non-appealable adjudication.

## 10. Known Circumstances Or Conditions

"Loss" caused by, arising out of, or in any way involving:

- a. A "pollution condition", including any subsequent continuation or resumption of or changes in such "pollution condition", that existed prior to the policy period and was known to any "responsible insured" at any time before the beginning of the policy period;
- b. A fact, event, circumstance, or condition known by any "responsible insured" prior to the inception date of this policy where any "responsible insured" should have reasonably foreseen that such fact, event, circumstance, or condition could give rise to a "claim" under this policy; or
- c. The rendering of or failure to render "professional services" prior to the inception date of this policy, if any "responsible insured" knew or should have reasonably foreseen that such rendering of or failure to render "professional services" could give rise to a "claim" under this policy.

## 11. Nuclear Energy Liability

"Loss":

- a. With respect to which an insured under this policy is also an insured under a nuclear energy liability policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada, or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of insurance;
- b. Resulting from the "hazardous properties" of "nuclear material" and with respect to which:
  - (1) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
  - (2) The insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization; or
- c. Resulting from the "hazardous properties" of "nuclear material", if:
  - (1) The "nuclear material":
    - (a) Is at any "nuclear facility" owned by or operated by or on behalf of an insured; or
    - (b) Has been discharged or dispersed therefrom;
  - (2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported, or disposed of by or on behalf of an insured; or
  - (3) The "loss" arises out of the furnishing by an insured of services, materials, parts, or equipment in connection with the planning, construction, maintenance, operation, or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.

As used in this exclusion:

"Hazardous properties" includes radioactive, toxic, or explosive properties.

"Nuclear facility" means:

- a. Any "nuclear reactor";
  - b. Any equipment or device designed or used for:
    - (1) Separating the isotopes of uranium or plutonium;
    - (2) Processing or utilizing "spent fuel"; or
    - (3) Handling, processing, or packaging "waste";
  - c. Any equipment or device used for the processing, fabricating, or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
  - d. Any structure, basin, excavation, premises, or place prepared or used for the storage or disposal of "waste";
- and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear material" means "source material", "special nuclear material", or "by-product material".

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material:

- a. Containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content; and
- b. Resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

## 12. Other Enterprises

"Loss" arising out of any business enterprise owned, operated, or managed by the insured or its parent company or any affiliate, successor, or assignee of such company not named in the Declarations. However, this exclusion does not apply to any person or organization who has controlling interest over you with respect to their liability arising out of their financial control over you or premises they own, maintain, or control while you lease or occupy such premises.

## 13. Professional Services

"Loss" arising out of any "wrongful act". This exclusion applies even if the "claim" against any insured alleges negligence or other wrongdoing in the supervision, hiring, employment, training, or monitoring of others by that insured.

However, this exclusion does not apply to:

- a. A "claim" in which you committed a "wrongful act" relating to improper or inadequate supervision, direction, or control of any subcontractors for which you are legally liable when such subcontractors are performing operations on your behalf at a job site; or
- b. Coverage provided under Insuring Agreements **A.2.a.** Professional Liability or **A.2.b.** Professional Liability Rectification Expense, if shown as purchased in the Declarations

## 14. Property Damage To Cargo

"Property damage" to "transported cargo".

## 15. Property Damage To Conveyances

"Property damage" to any "auto", railcar, train, watercraft, or aircraft operated by or on behalf of any insured resulting from a "pollution condition" caused by "transported cargo". However, this exclusion does not apply to any "claim" brought by any "carrier" for "property damage" arising out of the insured's negligence.

## 16. Vehicles

"Loss" arising out of the ownership, maintenance, use, operation, or entrustment to others of any aircraft, "unmanned aircraft", "auto", or watercraft. Use includes "loading or unloading", but does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, "unmanned aircraft", "auto", or watercraft.

However, this exclusion does not apply to:

- a. "Loading or unloading" within the boundaries of any location covered by this policy;
- b. "Bodily injury" or "property damage" arising out of:

(1) The delivery of any liquid product into a wrong receptacle or to a wrong address; or

(2) The erroneous delivery of one liquid product for another by an "auto";

if the "bodily injury" or "property damage" occurs after such operations have been completed or abandoned at the site of such delivery.

Operations which may require further service, maintenance, correction, repair, or replacement of performance at the wrong address or because of any error, defect, or deficiency, but which are otherwise completed, will be deemed completed; or

- c. Coverage provided under Insuring Agreement **A.1.b.** Transportation Pollution Liability, if shown as purchased in the Declarations.

## 17. War

"Loss", however caused, arising, directly or indirectly, out of:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action taken in the hindering or defending against an actual or expected attack, by any government, sovereign, or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

## 18. Workers' Compensation And Similar Laws

Any obligation of any insured under workers' compensation, disability benefits, unemployment compensation law, or any similar law.

## 19. Your Products

"Loss" arising out of "your product":

- a. Designed, manufactured, sold, handled, distributed, altered, or repaired by you or by others trading under your name, any failure to warn, or any reliance upon a representation or warranty made at any time with respect thereto; or
- b. Fabricated or installed by you, unless a "pollution condition" arises from the fabrication or installation of "your products" as part of "your work".

- B.** With respect to Insuring Agreement **A.2.**, Supplementary Coverages, and Coverage Extensions, this insurance does not apply to

### 1. Breach Of Contract

"Claims" in any way involving an actual or alleged breach of contract, including, but not limited to, a breach of a written, express, oral, implied-in-law, or implied-in-fact contract.

## **2. Employment Practices**

"Claims" arising out of the employment relationship or the nature, terms, or conditions of employment or any workplace tort brought by or on behalf of any "employee", former "employee", prospective "employee", independent contractor, or consultant of the insured including, but not limited to, the following:

- a. Refusal to employ that person;
- b. Termination of that person's employment; or
- c. Employment-related practices, policies, acts, or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, or malicious prosecution directed at that person.

## **3. Executive Officer**

"Claims" arising out of your services or capacity as an executive officer, director, partner, trustee, or employee of a business enterprise not named in the Declarations.

## **4. Express Warranties**

"Claims" arising out of any express warranties or guarantees.

## **5. Financial Related Matters**

"Claims" arising out of any:

- a. Liability or breach of any duty or obligation owed by you:
  - (1) In connection with the operation or administration of any health, pension, or employee benefit scheme, plan, trust, or fund, including but not limited to, violation or alleged violation of any related legislation or regulation such as the Employee Retirement Income Security Act of 1974, as amended; or
  - (2) Regarding the sale or purchase of any stocks, shares, or other securities, or the misuse of any information relating to them, including breach or alleged breach of any related legislation or regulation, including but not limited to the Securities Act of 1933 and Securities Exchange Act of 1934, both as amended; or
- b. Breach of any fiduciary duty owed by you.

## **6. Insurance Or Bonds**

"Claims" arising out of the advising of, requiring of, or failure to advise of or require, or failure to obtain or maintain, any form of insurance or surety bond.

## **7. Intellectual Property Hazard**

"Claims" in any way involving any "intellectual property hazard", or any non-disclosure, non-compete, or non-solicitation agreement.

## **8. Knowingly Wrongful Acts**

"Claims" arising out of any dishonest, fraudulent, criminal, malicious, intentional, or illegal "wrongful act" or knowingly "wrongful act" of any "responsible insured".

## **9. Not Licensed As Required By Law**

"Claims" arising out of any acts or services performed by any insured that is not licensed or certified to perform such acts or services if such licensing or certification is required by law.

## **10. Patents Or Trade Secrets**

"Claims" arising out of any:

- a. Infringement or inducement of infringement of patent or trade secret or misappropriation of trade secrets or confidential or proprietary information relating to the Named Insured's business operations;
- b. Unfair competition based upon infringement of copyright, patent, trademark, service mark, trade name, or trade secret;
- c. The value of trade secrets, confidential processing methods, or other confidential or proprietary information; or
- d. Any dispute related to ownership of any intellectual property.



## 11. Prior Claims

"Claims" first made against you prior to the inception of this coverage.

## 12. Prior Notice

"Claims" arising out of any fact, circumstance, or situation that has been the subject of any notice given prior to the policy period under any other policy of insurance or to any reinsurer, risk retention group or captive (or any other self-insurance plan or trust by whatsoever name), or insurance representative

### SECTION III – WHO IS AN INSURED

A. Each of the following is an insured under all Insuring Agreements, Supplementary Payments, and Coverage Extensions:

1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse or "domestic partner" are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouse or "domestic partner" are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - d. A corporation or an organization other than a partnership, joint venture, or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
2. Any subsidiary company of yours and any company over which you have active control or majority ownership interest, or exercise management or financial control is a Named Insured with respect to the conduct of your business, provided:
  - a. You report all such entities to us within 180 days after you have acquired the organization; and
  - b. There is no other similar primary insurance available to that organization, unless such entity has been specifically endorsed onto this policy.

However:

- (1) Coverage is afforded only until the 180<sup>th</sup> day after you acquire the subsidiary or the end of the policy period, whichever is earlier; and
  - (2) Coverage does not apply to "loss" that first commences before you acquired the subsidiary.
3. Your "employees", other than either your "executive officers" (if you are a corporation or an organization other than a partnership, joint venture, or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of "your work".
  4. In the event of your bankruptcy, your trustees, and in the event of your death or incapacity, your legal representatives or executors, but only with respect to each such trustee's, representative's, or executor's vicarious liability resulting from "your work".
  5. Any organization you newly form, including any partnership, joint venture, or limited liability company, and over which you maintain ownership or majority interest, will qualify as an insured, if:
    - a. You have contractually agreed to provide insurance for such organization;
    - b. There is no other similar primary insurance available to that organization, unless such entity has been specifically endorsed onto this policy; and
    - c. You report to us within 180 days after such formation that you acquired or formed the organization.

However:

- (1) Coverage is afforded only until the 180<sup>th</sup> day after you form the organization or the end of the policy period, whichever is earlier; and
- (2) Coverage does not apply to "loss" that first commences before you formed the organization.

B. Solely with respect to coverage provided under Insuring Agreements **A.1.a.** through **A.1.e.** and Supplementary Payments, each of the following is also an insured:

1. Any person or organization who has controlling interest over you, but only with respect to their liability arising out of their financial control over you or premises they own, maintain, or control while you lease or occupy those premises.
2. Any person or organization with whom the insured has agreed to provide additional insured status in a written contract or agreement executed prior to the "pollution loss", but only with respect to liability for "pollution loss" arising out of "your work"; however, any insurance afforded to such insured:
  - a. Only applies to the extent permitted by law;
  - b. Will not be broader than that which you are required by the contract or agreement to provide for such insured;
  - c. Does not provide coverage for such insured's own negligence or wrongful acts or omissions; and
  - d. Is limited to the lesser of the applicable Limits Of Insurance shown in the Declarations or the amount required by the written contract or agreement. This Paragraph 2. does not apply to any person or organization specifically named as an additional insured in an endorsement attached to this policy.

## SECTION IV – LIMITS OF INSURANCE AND SELF-INSURED RETENTION

### A. Limits Of Insurance

1. The Limits Of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of insureds, "claims" made, or persons or organizations making "claims".
2. The General Aggregate Limit shown in the Declarations is the most we will pay for the sum of all "loss" and supplementary payments arising out of all "pollution conditions" and "wrongful acts" under all Insuring Agreements.
3. Subject to the General Aggregate Limit shown in the Declarations
  - a. The Each Contractor's Pollution Condition Limit shown in the Declarations is the most we will pay under Insuring Agreement **A.1.a.** Contractor's Pollution Liability (Including Mold And Legionella) for the sum of all "pollution loss" and supplementary payments arising out of any one "pollution condition".
  - b. The Each Transportation Pollution Condition Limit shown in the Declarations is the most we will pay under Insuring Agreement **A.1.b.** Transportation Pollution Liability for the sum of all "pollution loss" and supplementary payments arising out of any one "transportation pollution condition".
  - c. The Each Non-Owned Disposal Site Pollution Condition Limit shown in the Declarations is the most we will pay under Insuring Agreement **A.1.c.** Non-Owned Disposal Site Liability for the sum of all "pollution loss" and supplementary payments arising out of any one "pollution condition" at a "non-owned disposal site".
  - d. The Each Sudden And Accidental Pollution Condition Limit shown in the Declarations is the most we will pay under Insuring Agreement **A.1.d.** Sudden And Accidental Discharge, Release, Or Escape Of Pollutants Liability for the sum of all "pollution loss" and supplementary payments arising out of any one "pollution condition".
  - e. The Each Crisis Management And Emergency Response Limit shown in the Declarations is the most we will pay under Insuring Agreement **A.1.e.** Crisis Management And Emergency Response Costs for the sum of all "crisis management costs " and "emergency response costs" arising out of any one "pollution condition".
  - f. The Each Wrongful Act Limit shown in the Declarations is the most we will pay under Insuring Agreement **A.2.a.** Professional Liability for the sum of all "professional loss" and supplementary payments arising out of any one "wrongful act".
  - g. The Each Professional Liability Rectification Expense Limit shown in the Declarations is the most we will pay under Insuring Agreement **A.2.b.** Professional Liability Rectification Expense for the sum of all "rectification expenses" arising out of any one "wrongful act". The remaining "rectification expenses" will be the sole responsibility of the Named Insured and do not reduce the Professional Liability Rectification Expense Self-Insured Retention shown in the Declarations.

In the event a "claim" arises out of the same reported "wrongful act" for which the insured incurred "rectification expense", the limit available for payment of the "claim" will be the Each Wrongful Act Limit shown in the Declarations excess of the Professional Liability Rectification Expense Self-Insured Retention, minus the amount we reimbursed the insured for "rectification expense" under Insuring Agreement **A.2.b.**

4. Amounts paid under Supplementary Payments **C.1.** Loss Of Earnings And Expense Reimbursement and **C.2.** Suit Against Indemnitee will reduce the Defense Expenses Aggregate Limit shown in the Declarations. Once that limit

has been exhausted, amounts paid as supplementary payments will reduce the applicable limits described in Paragraphs 2. and 3. above.

The limits of insurance of this policy apply separately to each policy period, unless the policy period is extended after issuance for an additional period. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the limits of insurance.

## **B. Self-Insured Retention**

1. You agree to assume the:
  - a. Pollution Liability Self-Insured Retention shown in the Declarations with respect to the Insuring Agreements under Section **A.1.**;
  - b. Professional Liability Self-Insured Retention shown in the Declarations with respect to Insuring Agreement **A.2.a.**; and
  - c. Professional Liability Rectification Expense Self-Insured Retention shown in the Declarations with respect to Insuring Agreement **A.2.b.**

Our obligation to pay "loss" or supplementary payments under this insurance and the applicable limit of insurance shown in the Declarations will apply in excess of the applicable Self-Insured R

2. Regardless of whether or not there is any other insurance, whether or not collectible, applicable to a "claim", "pollution condition", or "wrongful act" within the Self-Insured Retention, you must make actual payment of the full Self-Insured Retention before the limits of insurance will apply. Compliance with this clause is a condition precedent for coverage under this insurance. We will make no payments of any type in the event you fail to comply with this clause.
3. You must not incur costs other than adjusting expenses without our written consent in the event of any "claim", "pollution condition", or "wrongful act" which appears likely to exceed the applicable Self-Insured Retention.
4. We have the right in all cases to assume control of the investigation, defense, and settlement of any "claim", "pollution condition", or "wrongful act" to which this insurance applies. When we exercise this right, the following apply:
  - a. You will remain responsible for the cost of all "loss" and supplementary payments within the applicable Self-Insured Retention;
  - b. At our request, you will advance to us any portion of the applicable Self-Insured Retention that we deem reasonable to pay for any "claim", "pollution condition", or "wrongful act";
  - c. If you have paid to us all or part of the applicable Self-Insured Retention and the total amount of the "loss" and supplementary payments that we pay for that "claim", "pollution condition", or "wrongful act" is less than the applicable Self-Insured Retention, then we will reimburse you the amount you paid in excess of the amount we pay; and
  - d. We will have the sole and absolute right to settle the "claim" for any amount we deem reasonable, including any amount within the Self-Insured Retention. Although we agree to attempt to advise and consult with you prior to making any settlement, we will have no obligation to obtain your consent or the consent of any other insured to any settlement we make that requires payment from you of any amount within the Self-Insured Retention. You and any other insured hereby waive any claim or defense against us resulting from our entering into any such settlement without your approval.

## **C. Multiple Insureds, Claims, And Claimants**

The inclusion herein of more than one insured in any "claim" or the making of "claims" by more than one person or organization will not operate to increase the Limits Of Insurance shown in the Declarations. More than one "claim" arising out of a single "pollution condition" or "wrongful act" will be treated as a single "claim". Such single "claim" will be deemed first made on the date on which the earliest "claim" arising out of such "pollution condition" or "wrongful act" is made or, with respect to written notice given to and accepted by us, on the date within the policy period on which such written notice of potential "claim" is first received by us.

## **SECTION V – EXTENDED REPORTING PERIOD**

For the applicable claims-made coverages, the following applies:

- A.** We will provide one or more Extended Reporting Periods, as described below, if:

1. Claims-made coverage provided by this policy is canceled or not renewed; or
2. We renew or replace the claims-made coverage provided by this policy with insurance that:
  - a. Has a Retroactive Date later than the date shown in the Declarations; or
  - b. Does not apply to "professional services" coverage on a claims-made basis.

The quotation of a different premium, deductible, or limit of insurance for renewal does not constitute a cancellation or refusal to renew for the purpose of this provision.

- B.** The Extended Reporting Periods do not extend the policy period or change the scope of coverage provided. They apply only to injury from acts, errors, or omissions that occur before the end of the policy period but not before the applicable Retroactive Date shown in the Declarations, provided a "claim" for such injury is first made during the Extended Reporting Period.

Once in effect, the Extended Reporting Period may not be canceled.

- C.** A Basic Extended Reporting Period is automatically provided without additional charge. This period starts with the end of the policy period and lasts for 60 days.

The Basic Extended Reporting Period does not apply to "claims" that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such "claims".

- D.** An Optional Extended Reporting Period is available, subject to Paragraph **E.** below, but only by an endorsement and for an extra charge. This Optional Extended Reporting Period starts when the Basic Extended Reporting Period, set forth in Paragraph **C.** above, ends.

You must give us a written request for the endorsement within 60 days after the end of the policy period. The Optional Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due.

We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:

1. The exposures insured;
2. Previous types and amounts of insurance;
3. Limits of insurance available under this policy for future payment of "professional loss"; and
4. Other related factors.

This endorsement will set forth the terms, not inconsistent with this section, applicable to the Optional Extended Reporting Period, including a provision to the effect that the insurance afforded for "claims" first received during such period is excess over any other valid and collectible insurance available under policies in force after the Optional Extended Reporting Period starts.

- E.** We do not have to provide an Optional Extended Reporting Period if:
1. There is any failure to pay any outstanding premiums when due;
  2. Any insured fails to repay any self-insured retention amount we have paid;
  3. Any insured has purchased any other insurance to replace the insurance provided under this endorsement; or
  4. The application for this policy, including any addenda thereto, contains any material misrepresentation of fact.
- F.** The Extended Reporting Period will not reinstate or in any way increase the Limits Of Insurance shown in the Declarations.

## **SECTION VI – CONDITIONS**

### **A. Assignment**

This insurance may not be assigned without our prior consent, which consent will not be unreasonably withheld or delayed. Assignment of interest under this insurance will not bind us until our consent has been endorsed hereon.

### **B. Bankruptcy**

Bankruptcy or insolvency of the insured or the insured's estate will not relieve us of our obligations or increase our liability under this policy.

### **C. Cancellation Or Nonrenewal**

1. This policy may be canceled by you by surrender thereof to us or any of our authorized representatives or by mailing to us written notice stating when thereafter the cancellation will be effective.
2. If we decide to cancel or not to renew this policy, we will mail or deliver to the first Named Insured shown in the Declarations written notice of cancellation or nonrenewal not less than:
  - a. 10 days prior to cancellation if we cancel for non-payment of premium;
  - b. 90 days prior to cancellation if we cancel for material misrepresentation or material change in risk covered by this policy; or
  - c. 60 days prior to nonrenewal.
3. If we cancel this policy for a reason listed in Paragraph 2. above, we will provide written notice of cancellation to any person or organization who has been issued a certificate of insurance under this policy stating when, not less than 90 days from the date of such notice, cancellation will become effective, but only if:
  - a. Cancellation is for reasons other than nonpayment of premium or self-insured retention reimbursement;
  - b. You are required by written contract to provide the additional insured with such notice; and
  - c. You provide us with a list of the applicable additional insureds, including their complete mailing addresses, within 7 days of our request.
4. If notice is mailed, proof of mailing is sufficient proof of such notice.

### **D. Changes**

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations will act on behalf of all insureds for the receipt and acceptance of any endorsement issued by us to form a part of this policy. This policy's terms and conditions can be amended or waived only by endorsement issued by us and made a part of this policy. Notice to any agent or knowledge possessed by any agent or by any other person will not effect a waiver or change in any part of this policy or estop us from asserting any right under the terms and conditions of this policy.

### **E. Choice Of Law**

Unless otherwise expressly endorsed in this policy, the laws of New York, without giving effect to its conflicts of law principles, governs all matters arising out of or relating to this policy and all of the transactions it contemplates including, without limitation, its formation, validity, interpretation, construction, performance, and enforcement.

### **F. Currency Provision**

The limits of insurance, self-insured retention amount, and premiums shown in this policy are in United States currency. Any payments by us or you will be in United States currency.

### **G. Duties In The Event Of A Pollution Condition, Claim, Or Wrongful Act**

1. You must see to it that we are notified as soon as practicable in writing of a "pollution condition" or "wrongful act". To the extent possible, notice must contain:
  - a. How, when, and where the "pollution condition" or "wrongful act" took place;
  - b. The names and addresses of any claimants, injured persons, and witnesses;
  - c. The nature and location of any injury or damage arising out of the "pollution condition" or "wrongful act";
  - d. The date and details of "your work" that may have caused the "pollution condition" or "wrongful act";
  - e. Copies of any contracts that have been entered into by any insured that are related to "your work" performed or "professional services" rendered; and
  - f. Details explaining how the insured first became aware of the "pollution condition" or "wrongful act".
2. Any reported "wrongful act" that subsequently becomes a "claim" made against the insured and reported to us in writing will be deemed to have been first made on the date that the written notice of the "wrongful act" was first received by us and will be subject to all of the terms and conditions of this policy.
3. If a "claim" is made against any insured:

- a. You must record and notify us as soon as practicable in writing of the specifics of the "claim" and the date received; and
- b. You and any other involved insured must:
  - (1) Send us copies as soon as practicable of any demands, notices, summons, or legal papers received in connection with the "claim";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation, settlement, or defense of the "claim"; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- 4. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our written consent. However, written consent is not required with respect to:
  - a. "Crisis management costs" that have been reported in accordance with Insuring Agreement **A.1.e.** Crisis Management Or Emergency Response Costs; or
  - b. "Emergency response costs" that have been reported and approved by us or our appointed representative by use of the emergency response hotline.
- 5. Notice to your insurance agent or broker does not constitute notice to us for purposes of the receipt of notice.

#### **H. Inspections And Surveys**

- 1. We have the right to:
  - a. Make inspections and surveys at any time;
  - b. Give you reports on the conditions we find; and
  - c. Recommend changes.
- 2. We are not obligated to make any inspections, surveys, reports, or recommendations, and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
  - a. Are safe or healthful; or
  - b. Comply with laws, regulations, codes, or standards.
- 3. Paragraphs **a.** and **b.** of this condition apply not only to us but also to any rating, advisory, rate service, or similar organization which makes insurance inspections, surveys, reports, or recommendations.
- 4. Paragraph **b.** of this condition does not apply to any inspections, surveys, reports, or recommendations we may make relative to certification, under state or municipal statutes, ordinances, or regulations, of boilers, pressure vessels, or elevators.

#### **I. Legal Action Against Us**

No person or organization has a right under this policy:

- 1. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- 2. To sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for "losses" that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured, and the claimant or the claimant's legal representative.

#### **J. No Duplication Of Coverage**

Only one Insuring Agreement will apply to the same "pollution condition". In the event that more than one Insuring Agreement can apply to the same "pollution condition", then the only Insuring Agreement that will apply will be that Insuring Agreement under which we have accepted coverage or that Insuring Agreement that has been held to apply to such "pollution condition".

However, this condition does not apply to Insuring Agreement **A.1.e. Crisis Management And Emergency Response Costs**.

## **K. Other Insurance**

If other valid and collectible insurance is available to the insured for "loss" we cover under this policy, our obligations are limited as follows:

### **1. Primary Insurance**

This insurance is primary except when Paragraph **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. In that case, we will share with all such other insurance by the method described in Paragraph **c.** below.

### **2. Excess Insurance**

**a.** This insurance is excess over:

- (1)** Any other insurance, whether primary, excess, contingent, or on any other basis, if you are an insured on an insurance policy that applies to "your work" performed at a specific job site and that insurance policy applies to a specific job site;
- (2)** Any other valid and collectible insurance available to you covering liability for "loss" arising out of "your work" or "professional services", including that work or "professional services" for which you have been added as an additional insured by an endorsement, by definition in a contract or agreement, or by combination thereof; or
- (3)** Any other valid and collectible insurance available to any person or entity performing functions for others on your behalf as defined in "your work" or "professional services" in this policy.

**b.** When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

**c.** When this insurance is excess over other insurance, we will pay only our share of the amount of the "loss", if any, that exceeds the sum of:

- (1)** The total amount that all such other insurance would pay for the damages in the absence of this insurance; and
- (2)** The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining "loss", if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits Of Insurance shown in the Declarations of this policy.

### **3. Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the "loss" remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

### **4. Primary And Non-Contributory Insurance**

Regardless of Paragraphs **1.** through **3.** above, this insurance is primary to, and will not seek contribution from:

- a.** Any other insurance available to any additional insured with whom you agree in a written contract or agreement to provide insurance on a primary and non-contributory basis;
- b.** Any other insurance available to any additional insured specifically named in an endorsement attached to this policy as an additional insured on a primary and non-contributory basis; or
- c.** Other valid and collectible insurance available, with respect to a "claim" covered under Insuring Agreement **A.1.b. Transportation Pollution Liability**.

## **L. Premium Audit**

1. We will compute all premiums for this policy in accordance with our rules, rates, rating plans, and minimum premium requirements.
2. Premium shown as Advance And Deposit Premium in the Declarations is a deposit premium only. At the close of each audit period, we will compute earned premium for that period. All audit premiums are due and payable on notice to the first Named Insured.
3. The first Named Insured must keep records of the information we need for premium computation and send us copies at such times as we may request.

#### **M. Premiums**

The first Named Insured shown in the Declarations is responsible for the payment of all premiums and will be the payee for any return premiums we pay.

#### **N. Representations**

By accepting this policy, you agree:

1. The statements in the applications, other materials submitted to us, and Declarations are accurate and complete;
2. Those statements are based upon representations you made to us; and
3. We have issued this policy in reliance upon your representations.

#### **O. Separation Of Insureds**

Except with respect to the limits of insurance, and any rights or duties specifically assigned to the first Named Insured shown in the Declarations, this insurance applies:

1. As if each Named Insured were the only Named Insured; and
2. Separately to each insured against whom a "claim" is made.

#### **P. Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this insurance, those rights are transferred to us. The insured must do nothing after "loss" to impair our rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

However, we waive any right of recovery we may have against any person or organization with whom the insured has agreed in a written contract or agreement to provide a waiver of transfer of rights of recovery because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a written contract with that person or organization. But this waiver does not apply to any person or organization specifically named in an endorsement attached to this policy which waives our rights of subrogation and recovery.

#### **Q. Transfer Of Your Rights And Duties Under This Policy**

Your rights and duties under this policy may not be transferred without our prior written consent except in the case of death of an individual Named Insured. If you die, your rights and duties will be transferred to your legal representative, but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

#### **R. Waiver Of Self-Insured Retention Upon Successful Mediation**

The self-insured retention will be waived, up to a maximum of \$10,000, if:

1. A "claim" has not entered into litigation;
2. We and you mutually agree to "mediation" as a means to settle a "claim" made against the insured; and
3. Such "claim" is settled as a direct result of the "mediation" and within 30 days of the end of the "mediation".

When this occurs, we will not seek reimbursement from you for any qualifying self-insured retention amount we pay prior to the "mediation".

### **SECTION VII – DEFINITIONS**

- A. "Auto" means a land motor vehicle, trailer, or semitrailer designed for travel on public roads, including any attached machinery or equipment.



- B.** "Bodily injury" means physical injury, sickness, disease, mental anguish, or emotional distress sustained by any person, including medical monitoring, loss of services, or death resulting from any of these at any time.
- C.** "Cargo" means waste, products, or materials carried or delivered by a "covered conveyance".
- D.** "Carrier" means a person or an entity, other than any insured or any subsidiary or affiliate company of any insured, engaged by the insured to transport material by aircraft, "auto", or watercraft, but only if such person or entity is properly licensed to transport such material and in the business of transporting such material.
- E.** "Claim" means the insured's or our receipt of:
1. A written demand for "loss"; or
  2. The service of "suit" or institution of arbitration proceedings against the insured.
- However, "claim" does not include any "disciplinary proceeding".
- F.** "Cleanup costs" means reasonable and necessary expenses incurred in the investigation, evaluation, monitoring, testing, removal, containment, treatment, disposal, remediation, detoxification, or neutralization of, or response to any "pollutants":
1. To the extent required by federal, state, local, or provincial laws, including, but not limited to, statutes, rules, ordinances, guidance documents, regulations, and all amendments thereto, including state voluntary cleanup or risk-based corrective action guidance, governing the liability or responsibilities of the insured; or
  2. Which have been actually incurred by the government or any political subdivision of the United States of America or any state thereof, or by third parties.
- "Cleanup costs" includes "restoration costs".
- G.** "Completed operations" means "your work" that has been completed. "Completed operations" does not include "your work" that has been abandoned or has not yet been completed. "Your work" will be deemed completed at the earliest of the following times:
1. When all work to be performed under the contract has been completed;
  2. When all of the work to be done at the site has been completed if the contract calls for work at more than one site; or
  3. When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project. "Your work" that may require further service, maintenance, correction, repair, or replacement, but is otherwise complete, will be deemed completed.
- H.** "Coverage territory" means:
1. The United States of America and its territories or possessions; and
  2. International waters or airspace, but only if the "loss" occurs in the course of travel or transportation between any places included in Paragraph 1. above.
- I.** "Covered conveyance" means any conveyance operated by or on behalf of an insured used for transporting property.
- J.** "Crisis management consultant" means a professional firm or consultant that provides crisis management services and has been approved in writing by us, the approval for which will not be unreasonably withheld.
- K.** "Crisis management costs" means those reasonable and necessary fees and expenses:
1. Incurred by you within 90 days after the "crisis management event" is discovered by you and is thereafter approved by us in writing; and
  2. For services provided to you by a "crisis management consultant" for the sole purpose of assisting you with:
    - (a) Managing the media in direct response to a "crisis management event" to which this insurance applies; or
    - (b) Minimizing the economic harm to you caused by a "crisis management event" to which this insurance applies by consulting with you with respect to maintaining and restoring your company's public image or reputation.
- You must take reasonable steps to minimize "crisis management costs".
- L.** "Crisis management event" means the public announcement by a third party that a "pollution condition" for which you are legally responsible has caused:

1. "Bodily injury" involving third parties; or
  2. "Property damage", but only to the extent resulting in actual physical damage to real property owned by third parties; provided that one of your "executive officers" has proffered, at our sole discretion, a good faith opinion that the public announcement or accusation has caused or is reasonably likely to cause economic harm to, or a material adverse effect on, your company's image or goodwill.
- M.** "Disciplinary proceeding" means the insured's receipt of any proceeding by a United States of America domiciled regulatory body, disciplinary board, or governmental agency, any of which has the authority to investigate charges of professional misconduct in the performance of "professional services"; however, "disciplinary proceedings" will not include any criminal proceeding.
- N.** "Domestic partner" means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state, or local law.
- O.** "Emergency response costs" means reasonable and necessary costs incurred to mitigate a "pollution condition" constituting an emergency situation under applicable law whereby in the absence of such mitigation:
1. "Bodily injury" or "property damage" to third parties is imminent; or
  2. "Cleanup costs" pursuant to environmental law are incurred.
- P.** "Employee" includes temporary and leased staff working on your behalf and under your direct supervision, but only with respect to "your work".
- Q.** "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws, or any other similar governing document.
- R.** "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
1. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate, or dangerous; or
  2. You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by the repair, replacement, adjustment, or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.
- S.** "Insured contract" means:
1. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality; or
  2. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
- T.** "Intellectual property hazard" means:
1. Infringement, in any manner, of a copyright, patent, trademark, service mark, trade dress, title or slogan, service name, trade name, or copyright joint ownership, or other intellectual property rights;
  2. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products, services, or claims;
  3. Piracy or unfair competition;
  4. Oral or written publication, in any manner, of material that violates a person's right to privacy;
  5. The use of another's style of doing business, intellectual property, trade secrets, or market share agreements;
  6. The use of another's advertising idea in your advertisement;
  7. Violations of the Lanham Act (15 USC §1051-1141N); and
  8. Violations of the Computer Fraud and Abuse Act (CFAA) (18 USC §1030), including violations of any regulations implementing the CFAA, and any similar state or federal law or regulation.

- U.** "Interrelated wrongful acts" means any "wrongful acts" that have as a common connection or nexus any fact, circumstance, situation, event, cause, transaction, or series of facts, circumstances, situations, events, causes, or transactions.
- V.** "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto a vehicle;
  - b. While it is in or on a vehicle; or
  - c. While it is being moved from a vehicle to the place where it is finally delivered.
- W.** "Loss" means "pollution loss" or "professional loss".
- X.** "Mediation" means the voluntary process in which an objective third party, who is a qualified professional mediator selected by the parties to the "claim" with our written agreement, intervenes between the parties to promote settlement of a "claim". "Mediation" does not include litigation, arbitration, or court mandated proceeding.
- Y.** "Mold" means any permanent or transient fungus, mold, mildew, or mycotoxin or any of the spores, scents, or by-products produced or released by fungus.
- Z.** "Natural resource damages" means physical injury to or destruction of, as well as the assessment of such injury or destruction, including the resulting loss of value of land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States of America, any state or local government, any Native American tribe, or, if such resources are subject to a trust restriction on alienation, any member of a Native American tribe.
- AA.** "Non-owned disposal site" means a location you use for the treatment, storage, or disposal of waste or material, provided the "non-owned disposal site":
1. Is not managed, operated, owned, or leased by any insured or any subsidiary or affiliate of any insured;
  2. Is permitted or licensed by the applicable federal, state, local, or provincial authorities to accept such waste or material as of the date the waste or material is treated, stored, or disposed of at the "non-owned disposal site"; and
  3. Is not listed on a proposed or final Federal National Priorities List or any state or provincial equivalent National Priorities List, Superfund, or Hazardous Waste List prior to the treatment, storage, or disposal of the waste or material at the "non-owned disposal site".
- BB.** "Pollutants" means any solid, liquid, gaseous, thermal, biological, or low-level radioactive substance, material, or matter, irritant, or contaminant, including, but not limited to, electromagnetic frequency, smoke, vapor, soot, silt, sedimentation, fumes, acids, alkalis, chemicals, or waste. Waste includes medical waste and all other materials to be disposed of, recycled, stored, reconditioned, or reclaimed. With respect to Insuring Agreements **A.1.a.** Contractors Pollution Liability (Including Mold And Legionella) and **A.1.e.** Crisis Management And Emergency Response Costs only, "pollutants" includes "mold" and legionella pneumophila.
- CC.** "Pollution condition" means the discharge, dispersal, seepage, migration, growth, release, or escape of "pollutants". With respect to Insuring Agreements **A.1.b.** Transportation Pollution Liability and **A.1.e.** Crisis Management And Emergency Response Costs only, "pollution condition" includes "transportation pollution condition".
- DD.** "Pollution loss" means:
1. A monetary judgment, award, or settlement for "bodily injury" or "property damage"; or
  2. "Cleanup costs".
- EE.** "Professional loss" means a monetary judgment, award, or settlement for a "wrongful act", including punitive or exemplary damages where insurable by law; however, "professional loss" does not include:
1. Multiplied portions of damages in excess of actual damages, including trebling of damages;
  2. Any cost required to repair, build, or modify property to comply with any award or order by a court, administrative order, arbitration award, or any similar judgment;
  3. Taxes, fines, or penalties imposed by law;
  4. Sanctions;
  5. Matters which are uninsurable under the law pursuant to which this policy will be construed;

6. The return, restitution, disgorgement, or off-set of any fees, costs, or expenses paid to or charged by any insured or any interest thereon;
7. Any other equitable relief;
8. Claimants' attorneys' fees or damages awarded for breach of contract, except attorneys' fees awarded for the successful prosecution of a "claim" otherwise covered by this policy; or
9. Any "rectification expense".

**FF.** "Professional services" means those functions as disclosed on the application or which are specifically shown in an endorsement to this policy performed for others by you or on your behalf that are related to your practice as a consultant, engineer, architect, surveyor, laboratory, project manager, or construction manager including, but not limited to, engineering services or the preparation or approval of maps, drawings, opinions, reports, surveys, designs, or specifications

**GG.** "Property damage" means:

1. Physical injury to tangible property, including all resulting loss of use or diminution in value of that property. All such loss of use or diminution in value will be deemed to occur at the time of the physical injury that caused it;
2. Loss of use or diminution in value of tangible property that is not physically injured. All such loss of use or diminution in value will be deemed to occur at the time of the "claim"; or
3. "Natural resource damages".

**HH.** "Rectification Expense" means reasonable and necessary direct costs and expense incurred by the insured with respect to any action to rectify or mitigate a covered "wrongful act".

"Rectification expense" does not include any of the insured's profit, overhead, or mark-up, or any betterment to a project to which "rectification expense" applies.

**II.** "Responsible insured" means:

1. You, your "executive officer", director, partner, member, or manager;
2. Any insured who has responsibility, in whole or in part, for risk control, risk management, health and safety, or environmental affairs, control, or compliance; or
3. Any insured who signed or who has responsibility, in whole or in part, for completing the application on which we relied in issuing this policy.

**JJ.** "Restoration costs" means reasonable and necessary costs incurred by the insured with our consent, which will not be unreasonably withheld or delayed, to restore, repair, or replace real or personal property to substantially the same condition it was in prior to being damaged during work performed in the course of incurring "cleanup costs". However, such "restoration costs" will not exceed the actual cash value of such property immediately prior to incurring "cleanup costs" or include costs associated with improvements, betterments, ordinance, or law.

**KK.** "Suit" means a civil proceeding in which "loss" to which this insurance applies is alleged. "Suit" includes:

1. An arbitration proceeding in which such "loss" is claimed and to which the insured must submit or does submit with our consent; or
2. Any other alternative dispute resolution proceeding in which such "loss" is claimed and to which the insured submits with our consent.

"Suit" does not include any "disciplinary proceeding".

**LL.** "Transportation pollution condition" means the emission, discharge, dispersal, release, or escape of "pollutants" from a "covered conveyance" which occurs beyond the boundaries of a premises owned or occupied by, or rented or leased to, any insured.

**MM.** "Transported cargo" means the insured's "cargo" after it is moved from the place where it is accepted by or on behalf of an insured for movement into or onto a "covered conveyance", until the "cargo" is moved from the "covered conveyance" to the place where it is finally delivered on behalf of the insured. "Transported cargo" also includes "cargo" during "loading or unloading" to or from a "covered conveyance".

"Transported cargo" does not include "cargo" at rest for a period longer than 72 hours after it has been accepted on behalf of the insured for movement into or onto a "covered conveyance" but before it reaches the place of final delivery.

**NN.** "Unmanned aircraft" means an aircraft that is not designed, manufactured, or modified after manufacture to be controlled directly by a person from within or on the aircraft.

**OO.** "Wrongful act" means any actual or alleged act, error, or omission in the performance of "professional services" by you or any person for whose acts you are legally responsible.

"Wrongful act" includes "interrelated wrongful acts".

**PP.** "Your product":

1. Means:

(a) Any goods or products, other than real property, manufactured, sold, handled, distributed, or disposed of by:

(1) You;

(2) Others trading under your name; or

(3) A person or organization whose business or assets you have acquired; and

(b) Containers (other than vehicles), materials, parts, or equipment furnished in connection with such goods or products.

2. Includes:

(a) Warranties or representations made at any time with respect to the fitness, quality, durability, performance, or use of "your product"; and

(b) The providing of or failure to provide warnings or instructions.

3. Does not include vending machines or other property rented to or located for the use of others but not sold.

**QQ.** "Your work":

1. Means:

(a) Contracting work or contracting operations performed by you or on your behalf for others at a location that you do not own, control, rent, or occupy other than for the purpose of performing "your work"; and

(b) Materials, parts, or equipment furnished in connection with such work or operations.

2. Includes:

(a) Warranties or representations made at any time with respect to the fitness, quality, durability, performance, or use of "your work";

(b) The providing of or failure to provide warnings or instructions; and

(c) The "completed operations" of "your work".



**Agenda Sheet for City Council:**

**Committee:** Finance & Administration **Date:** 06/03/2024

**Committee Agenda type:** Consent

**Date Rec'd**

4/29/2024

**Clerk's File #**

**Renews #**

**Cross Ref #**

**Council Meeting Date:** 06/24/2024

**Submitting Dept**

FLEET SERVICES

**Project #**

**Contact Name/Phone**

RICK GIDDINGS 625-7706

**Bid #**

RFP #6037-24

**Contact E-Mail**

RGIDDINGS@SPOKANECITY.ORG

**Requisition #**

RFP # 6037-24

**Agenda Item Type**

Contract Item

**Council Sponsor(s)**

MCATHCART BWILKERSON ZZAPPONE

**Agenda Item Name**

5100 - FLEET SERVICES TIERED HD VEHICLE REPAIR - RWC

**Agenda Wording**

Fleet Services would like to contract with RWC as a tertiary vendor for repairs and maintenance on medium and heavy-duty City owned vehicles not to exceed \$100k per year. Contract term is 5 years.

**Summary (Background)**

Fleet Services, in conjunction with SFD and Purchasing, conducted an RFP to select vendors for tiered contracts to perform general repair and maintenance of City owned heavy duty vehicles. Each department rated responsive vendors based on cost, capability, and fit to the specific requirements of each department.

Lease? NO Grant related? NO Public Works? NO

**Fiscal Impact**

Approved in Current Year Budget? YES

Total Cost \$ 500,000

Current Year Cost \$ 100,000

Subsequent Year(s) Cost \$ 100,000

**Narrative**

RFP conducted, and vendors selected by a selection committee based on overall cost and vendor capability.

**Amount**

**Budget Account**

Expense \$ 100,000

# 5100-71700-48348-54803-99999

Select \$

#

Select \$

#

Select \$

#

\$

#

\$

#



**Continuation of Wording, Summary, Approvals, and Distribution**

**Agenda Wording**

**Summary (Background)**

**Approvals**

<b><u>Dept Head</u></b>	GIDDINGS, RICHARD
<b><u>Division Director</u></b>	BOSTON, MATTHEW
<b><u>Accounting Manager</u></b>	ORLOB, KIMBERLY
<b><u>Legal</u></b>	HARRINGTON,
<b><u>For the Mayor</u></b>	PICCOLO, MIKE

**Additional Approvals**

<b><u>PURCHASING</u></b>	PRINCE, THEA

**Distribution List**

rgiddings@spokanecity.org	atrussell@spokanecity.org
tprince@spokanecity.org	jhornby@rwcgroup.com
fleetservicesaccounting@spokanecity.org	

## Council Briefing Paper Finance & Administration Committee

<b>Committee Date</b>	May 03, 2024
<b>Submitting Department</b>	Fleet Services
<b>Contact Name</b>	Rick Giddings
<b>Contact Email &amp; Phone</b>	<a href="mailto:rgiddings@spokanecity.org">rgiddings@spokanecity.org</a>
<b>Council Sponsor(s)</b>	Cathcart, Wilkerson, Zappone
<b>Select Agenda Item Type</b>	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion    Time Requested:
<b>Agenda Item Name</b>	Fleet – Tiered HD Vehicle Repair Contracts - RWC
<b>Proposed Council Action</b>	<input checked="" type="checkbox"/> Approval to proceed to Legislative Agenda <input type="checkbox"/> Information Only
<b>Summary (Background)</b>  *use the Fiscal Impact box below for relevant financial information	<p>Fleet Services, in conjunction with SFD and Purchasing, conducted an RFP to select vendors for tiered contracts to perform general repair and maintenance of City owned heavy duty vehicles. Each department rated responsive vendors based on cost, capability, and fit to the specific requirements of each department. Fleet Services selected RWC as one of two tertiary vendors.</p> <p>Fleet Services would like to contract with RWC for an amount not to exceed \$100,000 per year including applicable sales tax. Contract term is 5 years.</p>
<p><b>Fiscal Impact</b></p> <p><b>Approved in current year budget?</b>    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No    <input type="checkbox"/> N/A</p> <p>Total Cost: <u>\$500,000</u></p> <p style="padding-left: 20px;">Current year cost: \$100,000</p> <p style="padding-left: 20px;">Subsequent year(s) cost: \$100,000</p> <p><b>Narrative:</b> <u>RFP conducted, and vendors selected by a selection committee based on overall cost and vendor capability.</u></p> <p><b>Funding Source</b>    <input type="checkbox"/> One-time    <input checked="" type="checkbox"/> Recurring    <input type="checkbox"/> N/A</p> <p>Specify funding source: Program revenue</p> <p>Is this funding source sustainable for future years, months, etc? Yes</p> <p><b>Expense Occurrence</b>    <input type="checkbox"/> One-time    <input checked="" type="checkbox"/> Recurring    <input type="checkbox"/> N/A</p> <p>Other budget impacts: (revenue generating, match requirements, etc.)</p>	
<p><b>Operations Impacts</b> (If N/A, please give a brief description as to why)</p> <ul style="list-style-type: none"> <li>• What impacts would the proposal have on historically excluded communities? None Identified</li> <li>• How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities? Data will not be collected.</li> </ul>	



## COUNCIL RULES – ATTACHMENT B 1 (STANDARD BRIEFING PAPER)

- How will data be collected regarding the effectiveness of this program, policy, or product to ensure it is the right solution? Ongoing cost and quality data will be collected by fleet to ensure vendor's adherence to standards.
- Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others? Aligns with Centralized Fleet Policy.

### **Council Subcommittee Review**

- Please provide a summary of council subcommittee review. If not reviewed by a council subcommittee, please explain why not. No standing subcommittee for this topic.



**City of Spokane**

**PERSONAL SERVICE AGREEMENT**

Title: **GENERAL REPAIR AND MAINTENANCE OF MEDIUM/HEAVY DUTY TRUCKS AND EQUIPMENT**

This Agreement is made and entered into by and between the **CITY OF SPOKANE** as ("City"), a Washington municipal corporation, and **RWC INTERNATIONAL, LTD., RWC GROUP**, whose address is 824 North Thierman Road, Spokane Valley, Washington 99212 as ("Company"), individually hereafter referenced as a "party", and together as the "parties".

The parties agree as follows:

**1. PERFORMANCE.**

The Company shall provide General Repair and Maintenance Of Medium and Heavy Duty Trucks and Equipment, in accordance with RFP 6037-24, and Company's Response, which is attached as Exhibit B. In the event of a conflict between these documents and this City Contract, the terms of this contract will control.

**2. TERM OF AGREEMENT.**

The term of this Agreement begins on May 1, 2024, and shall run through April 30, 2029, unless amended by written agreement or terminated earlier under the provisions of this Agreement.

**3. COMPENSATION / PAYMENT.**

Total annual compensation for Company's services under this Agreement shall not exceed **ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00)**, and applicable tax, per year, for everything furnished and done under this Agreement. This is an optional use contract. Services by the Company are provided on an as-needed basis upon request in accordance with the terms of the Contract documents. Only the services requested, received and accepted will be paid for by the City.

The Company shall submit its applications for payment to City of Spokane, Fleet Services Department, 914 East North Foothills Drive, Spokane, Washington, 99207. **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt of the Company's application except as provided by state law. If the City objects to all or any portion of the invoice, it shall notify the Company and reserves the right to only pay that portion of the invoice not in dispute. In that event, the parties shall immediately make every effort to settle the disputed amount.

#### **4. TAXES, FEES AND LICENSES.**

- A. Company shall pay and maintain in current status, all necessary licenses, fees, assessments, permit charges, etc. necessary to conduct the work included under this Agreement. It is the Company's sole responsibility to monitor and determine changes or the enactment of any subsequent requirements for said fees, assessments, or changes and to immediately comply.
- B. The cost of any permits, licenses, fees, etc. arising as a result of the projects included in this Agreement shall be included in the project budgets.

#### **5. CITY OF SPOKANE BUSINESS LICENSE.**

Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid annual business registration. The Company shall be responsible for contacting the State of Washington Business License Services at [www.dor.wa.gov](http://www.dor.wa.gov) or 360-705-6741 to obtain a business registration. If the Company does not believe it is required to obtain a business registration, it may contact the City's Taxes and Licenses Division at (509) 625-6070 to request an exemption status determination.

#### **6. SOCIAL EQUITY REQUIREMENTS / NON-DISCRIMINATION.**

No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Agreement because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation including gender expression or gender identity, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. The Company agrees to comply with, and to require that all subcontractors comply with, federal, state and local nondiscrimination laws, including but not limited to: the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Age Discrimination in Employment Act, and the American's With Disabilities Act, to the extent those laws are applicable.

#### **7. INDEMNIFICATION.**

The Company shall defend, indemnify, and hold the City and its officers and employees harmless from all claims, demands, or suits at law or equity asserted by third parties for bodily injury (including death) and/or property damage which arise from the Company's negligence or willful misconduct under this Agreement, including attorneys' fees and litigation costs; provided that nothing herein shall require a Company to indemnify the City against and hold harmless the City from claims, demands or suits based solely upon the negligence of the City, its agents, officers, and employees. If a claim or suit is caused by or results from the concurrent negligence of the Company's agents or employees and the City, its agents, officers and employees, this indemnity provision shall be valid and enforceable to the extent of the negligence of the Company, its agents or employees. The Company specifically assumes liability and agrees to defend, indemnify, and hold the City harmless for actions brought by the Company's own employees against the City and, solely for the purpose of this indemnification and defense, the Company specifically waives any immunity under the Washington State industrial insurance law, or Title 51 RCW. The Company recognizes that this waiver was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. The indemnity and agreement to defend and hold the City harmless provided for in this section shall survive any termination or expiration of this agreement.

## **8. INSURANCE.**

During the period of the Agreement, the Company shall maintain in force at its own expense, each insurance noted below with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48:

- A. **Worker's Compensation Insurance** in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers and Employer's Liability Insurance in the amount of \$1,000,000;
- B. **General Liability Insurance** on an occurrence basis, with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this agreement. It shall provide that the City, its officers and employees are additional insureds but only with respect to the Company's services to be provided under this Agreement;
  - i. Acceptable **supplementary Umbrella insurance** coverage combined with Company's General Liability insurance policy must be a minimum of \$1,000,000, in order to meet the insurance coverage limits required in this Agreement; and
- C. **Automobile Liability Insurance** with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without forty-five (45) days written notice from the Company or its insurer(s) to the City. As evidence of the insurance coverage(s) required by this Agreement, the Company shall furnish acceptable Certificates of Insurance (COI) to the City at the time it returns this signed Agreement. The certificate shall specify the City of Spokane as "Additional Insured" specifically for Company's services under this Agreement, as well as all of the parties who are additional insureds, and include applicable policy endorsements, the forty-five (45) day cancellation clause, and the deduction or retention level. The Company shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

## **10. DEBARMENT AND SUSPENSION.**

The Company has provided its certification that it is in compliance with and shall not contract with individuals or organizations which are debarred, suspended, or otherwise excluded from or ineligible from participation in Federal Assistance Programs under Executive Order 12549 and "Debarment and Suspension", codified at 29 CFR part 98.

## **11. AUDIT.**

The Company and its sub-contractor shall maintain for a minimum of three (3) years following final payment all records related to its performance of the Agreement. The Company and its sub-contractors shall provide access to authorized City representatives, at reasonable times and in a reasonable manner to inspect and copy any such record. In the event of conflict between this provision and related auditing provisions required under federal law applicable to the Agreement, the federal law shall prevail.

## **12. ASSIGNMENT AND SUBCONTRACTING.**

The Company shall not assign or subcontract its obligations under this Agreement without the City's written consent, which may be granted or withheld in the City's sole discretion. Any subcontract made by the Company shall incorporate by reference this Agreement, except as otherwise provided. The Company shall ensure that all subcontractors comply with the

obligations and requirements of the subcontract. The City's consent to any assignment or subcontract does not release the Company from liability or any obligation within this Agreement, whether before or after City consent, assignment or subcontract.

### **13. TERMINATION.**

Either party may terminate this Agreement, with or without cause, by sixty (60) days written notice to the other party. In the event of such termination, the City shall pay the Company for all work previously authorized and performed prior to the termination date.

### **14. STANDARD OF PERFORMANCE.**

The standard of performance applicable to Company's services will be the degree of skill and diligence normally employed by professional Companies performing the same or similar services at the time the services under this Agreement are performed.

### **15. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS.**

Original documents, drawings, designs, reports, or any other records developed or created under this Agreement shall belong to and become the property of the City. All records submitted by the City to the Company shall be safeguarded by the Company. The Company shall make such data, documents and files available to the City upon the City's request. If the City's use of the Company's records or data is not related to this project, it shall be without liability or legal exposure to the Company.

Under Washington State Law (reference RCW Chapter 42.56, the *Public Records Act* [PRA]) all materials received or created by the City of Spokane are **public records** and are available to the public for viewing via the City Clerk's Records (online) or a valid Public Records Request (PRR).

### **16. ANTI KICK-BACK.**

No officer or employee of the City of Spokane, having the power or duty to perform an official act or action related to this Agreement shall have or acquire any interest in the Agreement, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in this Agreement.

### **17. MISCELLANEOUS PROVISIONS.**

- A. **Amendments/Modifications:** This Agreement may be modified by the City in writing when necessary, and no modification or Amendment of this Agreement shall be effective unless signed by an authorized representative of each of the parties hereto.
- B. The Company, at no expense to the City, shall comply with all laws of the United States and Washington, the Charter and ordinances of the City of Spokane; and rules, regulations, orders and directives of their administrative agencies and officers. Without limiting the generality of this paragraph, the Company shall comply with the requirements of this Section.
- C. This Agreement shall be construed and interpreted under the laws of Washington. The venue of any action brought shall be in a court of competent jurisdiction, located in Spokane County, Washington.
- D. **Captions:** The titles of sections or subsections are for convenience only and do not define or limit the contents.
- E. **Severability:** If any term or provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.

- F. **Waiver:** No covenant, term or condition or the breach shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed a waiver of any preceding or succeeding breach of the same or any other covenant, term of condition. Neither the acceptance by the City of any performance by the Company after the time the same shall have become due nor payment to the Company for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City in writing.
- G. **Entire Agreement:** This document along with any exhibits and all attachments, and subsequently issued addenda, comprises the entire agreement between the City and the Company. If conflict occurs between Agreement documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this Agreement to afford the City the maximum benefits.
- H. **No personal liability:** No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made or in any connection with this Agreement.

IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants contained, or attached and incorporated and made a part, the parties have executed this Agreement by having legally-binding representatives affix their signatures below.

**RWC INTERNATIONAL, LTD., RWC GROUP**

**CITY OF SPOKANE**

By \_\_\_\_\_  
Signature                      Date

By \_\_\_\_\_  
Signature                      Date

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney

**Attachments that are part of this Agreement:**

Exhibit A – Certificate Regarding debarment

Exhibit B – Company’s Response to RFP

24-060

**EXHIBIT A**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY AND VOLUNTARY EXCLUSION**

1. The undersigned (i.e., signatory for the Subrecipient / Contractor / Consultant) certifies, to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  - b. Have not within a three-year period preceding this contract been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
  - c. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and,
  - d. Have not within a three-year period preceding this contract had one or more public transactions (federal, state, or local) terminated for cause or default.
  
2. The undersigned agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
  
3. The undersigned further agrees by signing this contract that it will include the following clause, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:
 

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

  1. The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
  2. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.
  
4. I understand that a false statement of this certification may be grounds for termination of the contract.

<hr/> Name of Subrecipient / Contractor / Consultant (Type or Print)	<hr/> Program Title (Type or Print)
<hr/> Name of Certifying Official (Type or Print)	<hr/> Signature
<hr/> Title of Certifying Official (Type or Print)	<hr/> Date (Type or Print)

**EXHIBIT B**





STATE OF WASHINGTON

# BUSINESS LICENSE

Profit Corporation

RWC INTERNATIONAL, LTD.  
RWC GROUP  
824 N THIERMAN RD  
SPOKANE VALLEY WA 99212-1124

UNEMPLOYMENT INSURANCE - ACTIVE  
TAX REGISTRATION - ACTIVE

INDUSTRIAL INSURANCE - ACTIVE  
MOTOR VEHICLE DEALER SUBAGENCY #00661 - ACTIVE

Issue Date: Dec 15, 2023

Unified Business ID #: 603436098

Business ID #: 001

Location: 0004

Expires: Jan 31, 2025

CITY/COUNTY ENDORSEMENTS:

SPOKANE VALLEY GENERAL BUSINESS - ACTIVE  
SPOKANE GENERAL BUSINESS - NON-RESIDENT - ACTIVE

LICENSING RESTRICTIONS:

Not licensed to hire minors without a Minor Work Permit.

REGISTERED TRADE NAMES:

RWC GROUP

This document lists the registrations, endorsements, and licenses authorized for the business named above. By accepting this document, the licensee certifies the information on the application was complete, true, and accurate to the best of his or her knowledge, and that business will be conducted in compliance with all applicable Washington state, county, and city regulations.

Director, Department of Revenue

UBI: 603436098 001 0004

RWC INTERNATIONAL, LTD.  
RWC GROUP  
824 N THIERMAN RD  
SPOKANE VALLEY WA 99212-1124

FOLD HERE

UNEMPLOYMENT INSURANCE - ACTIVE  
INDUSTRIAL INSURANCE - ACTIVE  
TAX REGISTRATION - ACTIVE  
MOTOR VEHICLE DEALER SUBAGENCY #00661 - ACTIVE  
SPOKANE VALLEY GENERAL BUSINESS - ACTIVE  
SPOKANE GENERAL BUSINESS - NON-RESIDENT - ACTIVE

STATE OF WASHINGTON

FOLD HERE

Expires: Jan 31, 2025

Director, Department of Revenue

## IMPORTANT!

### PLEASE READ THE FOLLOWING INFORMATION CAREFULLY BEFORE POSTING THIS LICENSE

#### General Information

Post this Business License in a visible location at your place of business.

If you were issued a Business License previously, **destroy the old one and post this one in its place.**

Login to My DOR at [dor.wa.gov](http://dor.wa.gov) if you need to make changes to your business name, location, mailing address, telephone number, or business ownership.

Telephone: 360-705-6741

#### Endorsements

All endorsements should be renewed by the expiration date that appears on the front of this license to avoid any late fees.

If there is no expiration date, the endorsements remain active as long as you continue required reporting. Tax Registration, Unemployment Insurance, and Industrial Insurance endorsements require you to submit periodic reports. Each agency will send you the necessary reporting forms and instructions.

For assistance or to request this document in an alternate format, visit <http://business.wa.gov/BLS> or call (360) 705-6741. Teletype (TTY) users may use the Washington Relay Service by calling 711.

BLS-700-107 (07/27/20)



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/9/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> RSC Insurance Brokerage, Inc. P.O. Box 419013 Kansas City MO 64105	<b>CONTACT NAME:</b> Jen Pellegrino <b>PHONE (A/C. No. Ext):</b> 816-842-4800 <b>FAX (A/C. No):</b> 816-472-5018 <b>E-MAIL ADDRESS:</b> jpellegrino@risk-strategies.com	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> RWC International LTD; RWC Idealease LLC; Idealease of Arizona Inc; 600 N 75th Ave Phoenix AZ 85043	<b>INSURER A :</b> OLD REPUBLIC INSURANCE COMPANY *	
	<b>INSURER B :</b> Navigators Insurance Company	
	<b>INSURER C :</b>	
	<b>INSURER D :</b>	
	<b>INSURER E :</b>	
<b>INSURER F :</b>		

**COVERAGES**

CERTIFICATE NUMBER: 224086880

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			MWZY 307818 23	7/1/2023	7/1/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> Garage Liab			MWD 307817 23	7/1/2023	7/1/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Hired Auto Deductible \$ \$250/\$500
B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0			HO23EXCZ05HJVIV	7/1/2023	7/1/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
A	<input checked="" type="checkbox"/> <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N <input type="checkbox"/> N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			MWC 307816 23	7/1/2023	7/1/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Garagekeepers			MWD 307817 23	7/1/2023	7/1/2024	Limit Schedule on File

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

City of Spokane, its officers and employees are included as additional insured when required by written contract, subject to the terms and conditions of the policy.

**CERTIFICATE HOLDER****CANCELLATION**

City of Spokane  
915 North Nelson  
Spokane WA 99202

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.