

**CITY COUNCIL MEETINGS
RULES – PUBLIC DECORUM**

Strict adherence to the following rules of decorum by the public will be observed and adhered to during City Council meetings, including open forum, public comment period on legislative items, and Council deliberations:

- 1. No Clapping!**
- 2. No Cheering!**
- 3. No Booing!**
- 4. No public outbursts!**
- 5. Three-minute time limit for comments made during open forum and public testimony on legislative items!**

In addition, please silence your cell phones when entering the Council Chambers!

Further, keep the following City Council Rules in mind:

Rule 2.2 Open Forum

2.2.4 The open forum is a limited public forum and all matters discussed shall relate to affairs of the City. No person may use the open forum to speak on such matters and in such a manner as to violate the laws governing the conduct of municipal affairs. No person shall be permitted to speak on matters related to the current or advance agendas, potential or pending hearing items, or ballot propositions for a pending election. Individuals speaking during the open forum shall address their comments to the Council President and shall not make personal comment or verbal insults about any individual.

Rule 5.4 Public Testimony Regarding Legislative Agenda Items – Time Limits

- 5.3.1 Members of the public may address the Council regarding items on the Council's legislative agenda, special consideration items, hearing items and other items before the City Council requiring Council action that are not adjudicatory or administrative in nature. This rule shall not limit the public's right to speak during the open forum.
- 5.3.2 No one may speak without first being recognized for that purpose by the Chair. Except for named parties to an adjudicative hearing, a person may be required to sign a sign-up sheet and provide his or her address as a condition of recognition. In order for a council member to be recognized by the Chair for the purpose of obtaining the floor, the council member shall either raise a hand or depress the call button on the dais until recognized by the Council President.
- 5.3.3 Each person speaking at the public microphone shall verbally identify him(her)self by name and, if appropriate, representative capacity.
- 5.3.4 Each speaker shall follow all written and verbal instructions so that verbal remarks are electronically recorded and documents submitted for the record are identified and marked by the Clerk.
- 5.3.5 In order that evidence and expressions of opinion be included in the record and that — decorum befitting a deliberative process be maintained, no modes of expression not provided by these rules, such as demonstrations, banners, applause and the like will be permitted.
- 5.3.6 A speaker asserting a statement of fact may be asked to document and identify the source of the factual datum being asserted.
- 5.3.7 When addressing the Council, members of the public shall direct all remarks to the Council President and shall confine remarks to the matters that are specifically before the Council at that time.
- 5.3.8 When any person, including members of the public, City staff and others are addressing the Council, council members shall observe the same decorum and process, as the rules require among the members inter se. That is, a council member shall not engage the person addressing the Council in colloquy, but shall speak only when granted the floor by the Council President. All persons and/or council members shall not interrupt one another. The duty of mutual respect set forth in Rule 1.2 and the rules governing debate set forth in *Robert's Rules of Order* shall extend to all speakers before the City Council. The council president pro-tem shall be charged with the task of assisting the council president to insure that all individuals desiring to speak, be they members of the public, staff or council members, shall be identified and provided the opportunity to speak.

THE CITY OF SPOKANE



ADVANCE COUNCIL AGENDA

MEETING OF MONDAY, JUNE 29, 2015

MISSION STATEMENT

TO DELIVER EFFICIENT AND EFFECTIVE SERVICES
THAT FACILITATE ECONOMIC OPPORTUNITY
AND ENHANCE QUALITY OF LIFE.

MAYOR DAVID A. CONDON

COUNCIL PRESIDENT BEN STUCKART

COUNCIL MEMBER MICHAEL A. ALLEN

COUNCIL MEMBER CANDACE MUMM

COUNCIL MEMBER KAREN STRATTON

COUNCIL MEMBER MIKE FAGAN

COUNCIL MEMBER JON SNYDER

COUNCIL MEMBER AMBER WALDREF

CITY COUNCIL CHAMBERS
CITY HALL

808 W. SPOKANE FALLS BLVD.
SPOKANE, WA 99201

CITY COUNCIL BRIEFING SESSION

Council will adopt the Administrative Session Consent Agenda after they have had appropriate discussion. Items may be moved to the 6:00 p.m. Legislative Session for formal consideration by the Council at the request of any Council Member.

SPOKANE CITY COUNCIL BRIEFING SESSIONS (BEGINNING AT 3:30 P.M. EACH MONDAY) AND LEGISLATIVE SESSIONS (BEGINNING AT 6:00 P.M. EACH MONDAY) ARE BROADCAST LIVE ON CITY CABLE CHANNEL FIVE AND STREAMED LIVE ON THE CHANNEL FIVE WEBSITE. THE SESSIONS ARE REPLAYED ON CHANNEL FIVE ON THURSDAYS AT 6:00 P.M. AND FRIDAYS AT 10:00 A.M.

The Briefing Session is open to the public, but will be a workshop meeting. Discussion will be limited to Council Members and appropriate Staff and Counsel. There will be an opportunity for the expression of public views on any issue not relating to the Current or Advance Agendas during the Open Forum at the beginning and the conclusion of the Legislative Agenda.

ADDRESSING THE COUNCIL

- No one may speak without first being recognized for that purpose by the Chair. Except for named parties to an adjudicative hearing, a person may be required to sign a sign-up sheet as a condition of recognition.
- Each person speaking at the public microphone shall print his or her name and address on the sheet provided at the entrance and verbally identify him/herself by name, address and, if appropriate, representative capacity.
- If you are submitting letters or documents to the Council Members, please provide a minimum of ten copies via the City Clerk. The City Clerk is responsible for officially filing and distributing your submittal.
- In order that evidence and expressions of opinion be included in the record and that decorum befitting a deliberative process be maintained, modes of expression such as demonstration, banners, applause and the like will not be permitted.
- A speaker asserting a statement of fact may be asked to document and identify the source of the factual datum being asserted.

SPEAKING TIME LIMITS: Unless deemed otherwise by the Chair, each person addressing the Council shall be limited to a three-minute speaking time.

CITY COUNCIL AGENDA: The City Council Advance and Current Agendas may be obtained prior to Council Meetings from the Office of the City Clerk during regular business hours (8 a.m. - 5 p.m.). The Agenda may also be accessed on the City website at www.spokanecity.org. Agenda items are available for public review in the Office of the City Clerk during regular business hours.

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 also 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 Christine Cavanaugh at (509) 625-6383, 808 W. Spokane Falls Blvd, Spokane, WA, 99201; or ccavanaugh@spokanecity.org. Persons who are deaf or hard of hearing may contact Ms. Cavanaugh at (509) 625-7083 through the Washington Relay Service at 7-1-1. Please contact us forty-eight (48) hours before the meeting date.

If you have questions, please call the Agenda Hotline at 625-6350.

BRIEFING SESSION

(3:30 p.m.)

(Council Chambers Lower Level of City Hall)

(No Public Testimony Taken)

Council Reports

Staff Reports

Committee Reports

Advance Agenda Review

Current Agenda Review

ADMINISTRATIVE SESSION

Roll Call of Council

CONSENT AGENDA

REPORTS, CONTRACTS AND CLAIMS

RECOMMENDATION

- | | | | |
|----|--|------------------------------------|------------------------------|
| 1. | Purchases from Freedom Truck Centers (Spokane, WA) for the City of Spokane Fleet Services Department for: | Approve All | |
| | a. Installation of a heavy duty platform, storage bins, HD ICC Bumper, crane and outriggers, as a replacement unit for the Water Department—\$172,949.09. | | OPR 2015-0556 BID 4135-15 |
| | b. Installation of one custom fabricated platform/hoist and winch with accessories as a replacement unit for the Parks Department—\$60,604.60. | | OPR 2015-0557 BID 4136-15 |
| | Gene Jakubczak | | |
| 2. | Purchase of three Ford F-150 extended cab 4x4 pickup trucks from Wendle Motors (Spokane, WA) by the Fleet Services Department for the Engineering Services Department—\$79,723.91 (incl. tax). | Approve | OPR 2015-0558 BID 4139-15 |
| | Gene Jakubczak | | |
| 3. | Low Bid of T. LaRiviere Equipment & Excavation, Inc. (Athol, ID) for 1st Avenue from Helena Street to Altamont Street—\$521,706.75 (plus tax). An | Approve & Authorize Contract | PRO 2015-0021 ENG 2014118 |

administrative reserve of \$52,170.68 (plus tax), which is 10% of the contract price, will be set aside.

Dan Buller

- | | | | |
|----------------------|--|------------------------------------|------------------------------|
| 4. | Consultant Agreement with OAC Services, Inc to provide consulting services relating to designing and building membrane filtration at Riverside Park Water Reclamation Facility via the General Contractor/Construction Manager form of project delivery—\$197,417. | Approve | OPR 2015-0559 |
| Mike Taylor | | | |
| 5. | Contract Amendment with Moloney & O'Neill Life, Inc (Spokane, WA) for benefit insurance broker services effective July 1, 2015 through June 30, 2017—Annual fee: \$135,000. | Approve | OPR 2012-0526 BID 3854-12 |
| Heather Lowe | | | |
| 6. | Loan Agreement and other documents with Volunteers LIHTC LLC (Spokane, WA) for construction of VOA 2nd Avenue, a 51-unit apartment building at 217 East 2nd Avenue—\$1,100,000 HOME funds. (East Central neighborhood) | Approve | OPR 2015-0560 |
| Melora Sharts | | | |
| 7. | Interdepartmental agreement between the City's Utilities, Finance, and Business & Developer Services divisions regarding the use of the right of way system for managing stormwater and accommodating water and wastewater utility infrastructure needs. | Approve | OPR 2015-0561 |
| Rick Romero | | | |
| 8. | Parking Lot Lease Agreement Amendment related to Spokane Transit Authority and the under I-90 parking currently used for the Eastern Washington Park and Ride through May 10, 2021. | Approve | OPR 2005-0440 |
| Dave Steele | | | |
| 9. | Report of the Mayor of pending: | Approve & Authorize Payments | |
| | a. Claims and payments of previously approved obligations, including those of Parks and Library, through _____, 2015, total \$_____, with Parks and Library claims approved by their respective boards. Warrants excluding Parks and Library total \$_____. | | CPR 2015-0002 |
| | b. Payroll claims of previously approved obligations through _____, 2015: \$_____. | | CPR 2015-0003 |
| 10. | City Council Meeting Minutes: _____, 2015. | Approve All | CPR 2015-0013 |

EXECUTIVE SESSION

(Closed Session of Council)

(Executive Session may be held or reconvened during the 6:00 p.m. Legislative Session)

CITY COUNCIL SESSION

(May be held or reconvened following the 3:30 p.m. Administrative Session)

(Council Briefing Center)

This session may be held for the purpose of City Council meeting with Mayoral nominees to Boards and/or Commissions. The session is open to the public.

LEGISLATIVE SESSION

(6:00 P.M.)

(Council Reconvenes in Council Chamber)

WORDS OF INSPIRATION

PLEDGE OF ALLEGIANCE

ROLL CALL OF COUNCIL

ANNOUNCEMENTS

(Announcements regarding Changes to the City Council Agenda)

BOARDS AND COMMISSIONS APPOINTMENTS

(Includes Announcements of Boards and Commissions Vacancies)

APPOINTMENTS

RECOMMENDATION

Spokane Public Library Board: One Appointment

Confirm

CPR 1981-0400

CITY ADMINISTRATION REPORT

COUNCIL COMMITTEE REPORTS

(Committee Reports for Finance, Neighborhoods, Public Safety, Public Works, and Planning/Community and Economic Development Committees and other Boards and Commissions)

OPEN FORUM

This is an opportunity for citizens to discuss items of interest not relating to the Current or Advance Agendas nor relating to political campaigns/items on upcoming election ballots. This Forum shall be

for a period of time not to exceed thirty minutes. After all the matters on the Agenda have been acted on, unless it is 10:00 p.m. or later, the open forum shall continue for a period of time not to exceed thirty minutes. Each speaker will be limited to three minutes, unless otherwise deemed by the Chair. If you wish to speak at the forum, please sign up on the sign-up sheet located in the Chase Gallery.

LEGISLATIVE AGENDA

EMERGENCY BUDGET ORDINANCES

(Require Five Affirmative, Recorded Roll Call Votes)

Ordinances amending Ordinance No. C35185 passed the City Council November 24, 2014, and entitled, "An Ordinance adopting the Annual Budget of the City of Spokane for 2015, making appropriations to the various funds, departments and programs of the City of Spokane government for the fiscal year ending December 31, 2015, and providing it shall take effect immediately upon passage," and declaring an emergency and appropriating funds in:

ORD C35275 General Fund
FROM: Unappropriated Reserves, \$25,000,
TO: Parks & Recreation, \$25,000;

and

Parks and Recreation Fund
FROM: Transfer from General Fund, \$25,000,
TO: Contractual Services, \$25,000;

(This action appropriates funding for a study of the area around Corbin Art Center to allow for a bike and pedestrian pathway that connects the central portion of the South Hill to Downtown.)

Council President Stuckart

ORD C35276 General Fund
FROM: Unappropriated Reserves, \$25,000,
TO: Transfer to Golf Fund, \$25,000;

and

Golf Fund
FROM: Transfer from General Fund, \$25,000,
TO: Advertising, \$25,000;

(This action provides a one-time transfer for marketing the City's golf courses/programs to increase rounds of play and introduce new people to golf.)

Council President Stuckart

ORD C35277 General Fund
FROM: Unappropriated Reserves, \$45,000,
TO: Asset Management, \$45,000;

and

Asset Management Fund

FROM: Transfer from General Fund, \$45,000,

TO: Land Acquisition, \$45,000;

(This action mitigates the impacts of the North/South Freeway by working with the Public Development Authority to purchase a lot in Hillyard via an intergovernmental arrangement.)

Council President Stuckart

NO EMERGENCY ORDINANCES

RESOLUTIONS

(Require Four Affirmative, Recorded Roll Call Votes)

- RES 2015-0062** Relating to Assessment Segregation relating to LID No. 2011082, for the improvement of 15th Avenue from Chestnut Street to Inland Empire Way; 14th Avenue from Chestnut Street to Inland Empire Way; and to segregate County Assessor's Parcel Numbers 25251.0621 in the amount of \$5,958.95 and 25251.0622 in the amount of \$6,213.13.

Dan Buller

FINAL READING ORDINANCE

(Requires Four Affirmative, Recorded Roll Call Votes)

- ORD C35258** Relating to indecent public exposure, public visibility, and disclosure standards for adult-oriented businesses; adopting a new section 10.06.050 to chapter 10.06 of the Spokane Municipal Code. (Deferred from June 15, 2015, Agenda)

Council Members Allen & Fagan

- ORD C35274** Relating to the process for filling vacancies in the position of police ombudsman; amending SMC section 4.32.080 and SMC section 4.32.090.

Council Member Snyder

NO FIRST READING ORDINANCES

NO SPECIAL CONSIDERATIONS

NO HEARINGS

Motion to Approve Advance Agenda for June 29, 2015
(per Council Rule 2.1.2)

OPEN FORUM (CONTINUED)

This is an opportunity for citizens to discuss items of interest not relating to the Current or Advance Agendas nor relating to political campaigns/items on upcoming election ballots. This Forum shall be for a period of time not to exceed thirty minutes. After all the matters on the Agenda have been acted on, unless it is 10:00 p.m. or later, the open forum shall continue for a period of time not to exceed thirty minutes. Each speaker will be limited to three minutes, unless otherwise deemed by the Chair. If you wish to speak at the forum, please sign up on the sign-up sheet located in the Chase Gallery.

ADJOURNMENT

The June 29, 2015, Regular Legislative Session of the City Council is adjourned to July 13, 2015.

Note: The regularly scheduled City Council meeting for Monday, July 6, 2015, has been canceled.

NOTES

**Agenda Sheet for City Council Meeting of:**

06/29/2015

| | |
|-------------------------|--|
| <u>Date Rec'd</u> | 6/16/2015 |
| <u>Clerk's File #</u> | OPR 2015-0556 |
| <u>Renews #</u> | |
| <u>Cross Ref #</u> | |
| <u>Project #</u> | |
| <u>Bid #</u> | BID #4135-15 |
| <u>Requisition #</u> | 17264 |
| <u>Agenda Item Name</u> | 5100-FLEET PURCHASE OF PLATFORM CRANE MOUNTED ON TRUCK CHASSIS |

Agenda Wording

Purchase and installation of a heavy duty platform, storage bins, HD ICC Bumper, crane and outriggers from Freedom Truck Centers (Spokane, WA) for the City of Spokane Fleet Services Department - \$172,949.09

Summary (Background)

On April 27, 2015 sealed bids were received for the purchase and installation of a platform crane on a city owned truck chassis. One response was received and Freedom Truck Centers is the lowest responsible bidder. This is a replacement vehicle for the City of Spokane Water Department.

Fiscal Impact**Budget Account**

| | | |
|---------|---------------|--------------------------|
| Expense | \$ 172,949.09 | # 4100-42490-94000-56404 |
| Select | \$ | # |
| Select | \$ | # |
| Select | \$ | # |

Approvals**Council Notifications**

| | | | |
|------------------------------------|------------------|---------------------------------|-------------|
| <u>Dept Head</u> | RIGGS, STEVEN | <u>Study Session</u> | |
| <u>Division Director</u> | ROMERO, RICK | <u>Other</u> | PWC 6./8/15 |
| <u>Finance</u> | SALSTROM, JOHN | <u>Distribution List</u> | |
| <u>Legal</u> | WHALEY, HUNT | GJAKUBCZAK` | |
| <u>For the Mayor</u> | SANDERS, THERESA | TPRINCE | |
| <u>Additional Approvals</u> | | TAXES & LICENSES | |
| <u>Purchasing</u> | PRINCE, THEA | | |
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**FLEET SERVICES
MEMORANDUM**

June 18, 2015

TO: PURCHASING DEPARTMENT

**FROM: GENE JAKUBCZAK
FLEET SERVICES DIRECTOR**

SUBJ: BID # 4135-15

After careful consideration, the Fleet Services Department recommends bid #4135-15 be awarded to Freedom Truck Centers, Inc., the lowest responsive bidder for a truck flatbed body, crane and accessories. One bid was received. This is a replacement vehicle for the Water Department.

| QTY | ITEM | UNIT PRICE |
|--------------|---|---------------------|
| 1 | Provide and install a heavy duty platform storage bins, HD LOC bumper, crane and outriggers | \$159,107.00 |
| 1 | Sales tax (8.7%) | \$13,842.09 |
| TOTAL | | \$172,949.09 |

cc: Dan Kegl ey
Roger Burchell
Mike Cavanaugh

BRIEFING PAPER
Public Works Committee
Fleet Services
June 8, 2015

Subject

Purchase of one flatbed dump body and large crane with accessories for the Water Department for \$172,949.09 (tax incl.) from Freedom Truck Centers of Spokane. This equipment will be mounted on a new truck chassis purchased separately.

Background

This equipment, mounted on a truck chassis, will replace a large crane that was surplused last year.

Impact

This equipment is used by the Water department to transport large, heavy pipe to construction sites as needed.

Action

Recommend approval.

Funding

Funding is available in the Water Department's 2015 budget.

**Agenda Sheet for City Council Meeting of:**

06/29/2015

| | |
|-------------------------|---|
| <u>Date Rec'd</u> | 6/16/2015 |
| <u>Clerk's File #</u> | OPR 2015-0557 |
| <u>Renews #</u> | |
| <u>Cross Ref #</u> | |
| <u>Project #</u> | |
| <u>Bid #</u> | BID #4136-15 |
| <u>Requisition #</u> | 17298 |
| <u>Agenda Item Name</u> | 5100-FLEET PURCHASE OF CUSTOM FABRICATED PLATFORM/WINCH, ETC. |

Agenda Wording

Provide and Install one (1) custom fabricated platform/hoist & winch with accessories from Freedom Truck Centers (Spokane, WA) - \$60,604.60 including tax

Summary (Background)

On May 4, 2015 sealed bids were opened to provide the city with and install one (1) custom fabricated platform/hoist/winch with accessories. One (1) bid was received with Freedom Truck Centers being the lowest responsive bidder. This is a replacement vehicle for the Parks Department.

Fiscal Impact**Budget Account**

| | | |
|---------|--------------|--------------------------|
| Expense | \$ 60,604.60 | # 1950-54925-94000-56404 |
| Select | \$ | # |
| Select | \$ | # |
| Select | \$ | # |

Approvals**Council Notifications**

| | | | |
|------------------------------------|------------------|---------------------------------|------------|
| <u>Dept Head</u> | RIGGS, STEVEN | <u>Study Session</u> | |
| <u>Division Director</u> | ROMERO, RICK | <u>Other</u> | PWC 6/8/15 |
| <u>Finance</u> | SALSTROM, JOHN | <u>Distribution List</u> | |
| <u>Legal</u> | WHALEY, HUNT | GJAKUBCZAK | |
| <u>For the Mayor</u> | SANDERS, THERESA | TPRINCE | |
| <u>Additional Approvals</u> | | TAXES & LICENSES | |
| <u>Purchasing</u> | PRINCE, THEA | | |
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**FLEET SERVICES
MEMORANDUM**

June 18, 2015

TO: PURCHASING DEPARTMENT

**FROM: GENE JAKUBCZAK
FLEET SERVICES DIRECTOR**

SUBJ: BID # 4135-15

After careful consideration, the Fleet Services Department recommends bid #4135-15 be awarded to Freedom Truck Centers, Inc., the lowest responsive bidder for a truck flatbed body, crane and accessories. One bid was received. This is a replacement vehicle for the Water Department.

| QTY | ITEM | UNIT PRICE |
|--------------|---|---------------------|
| 1 | Provide and install a heavy duty platform storage bins, HD LOC bumper, crane and outriggers | \$159,107.00 |
| 1 | Sales tax (8.7%) | \$13,842.09 |
| TOTAL | | \$172,949.09 |

cc: Dan Kegl ey
Roger Burchell
Mike Cavanaugh

BRIEFING PAPER
Public Works Committee
Fleet Services
June 8, 2015

Subject

Purchase of one flatbed dump body and large crane with accessories for the Water Department for \$172,949.09 (tax incl.) from Freedom Truck Centers of Spokane. This equipment will be mounted on a new truck chassis purchased separately.

Background

This equipment, mounted on a truck chassis, will replace a large crane that was surplusd last year.

Impact

This equipment is used by the Water department to transport large, heavy pipe to construction sites as needed.

Action

Recommend approval.

Funding

Funding is available in the Water Department's 2015 budget.

**Agenda Sheet for City Council Meeting of:**

06/29/2015

| | |
|-----------------------|---------------|
| <u>Date Rec'd</u> | 6/16/2015 |
| <u>Clerk's File #</u> | OPR 2015-0558 |
| <u>Renews #</u> | |
| <u>Cross Ref #</u> | |
| <u>Project #</u> | |
| <u>Bid #</u> | BID #4139-15 |
| <u>Requisition #</u> | 17292 |

| | |
|---------------------------|--|
| <u>Submitting Dept</u> | FLEET SERVICES |
| <u>Contact Name/Phone</u> | GENE JAKUBCZAK 509-625-7865 |
| <u>Contact E-Mail</u> | GJAKUBCZAK@SPOKANECITY.ORG |
| <u>Agenda Item Type</u> | Purchase w/o Contract |
| <u>Agenda Item Name</u> | 5100-FLEET PURCHASE OF THREE FORD F150 PICKUPS |

Agenda Wording

Purchase of three (3) Ford F-150 extended cab 4x4 pickup trucks from Wendle Motors (Spokane, WA) for the City of Spokane Fleet Services Department - \$79,723.91 including tax

Summary (Background)

On May 18, 2015 sealed bids were received to purchase three (3) or more 1/2 Ton Pickup Trucks. Three (3) responses were received with Wendle Ford being the lowest responsive bidder. These pickup trucks are additional trucks for the engineering Services Department for the new inspectors recently added to the construction management office.

| | | | |
|-----------------------------|------------------|------------------------------|------------------------|
| <u>Fiscal Impact</u> | | <u>Budget Account</u> | |
| Expense | \$ 79,723.91 | # | 0370-30210-94000-56404 |
| Select | \$ | # | |
| Select | \$ | # | |
| Select | \$ | # | |
| <u>Approvals</u> | | <u>Council Notifications</u> | |
| <u>Dept Head</u> | RIGGS, STEVEN | <u>Study Session</u> | |
| <u>Division Director</u> | ROMERO, RICK | <u>Other</u> | PWC - 6/8/15 |
| <u>Finance</u> | SALSTROM, JOHN | <u>Distribution List</u> | |
| <u>Legal</u> | WHALEY, HUNT | GJAKUBCZAK | |
| <u>For the Mayor</u> | SANDERS, THERESA | TPRINCE | |
| <u>Additional Approvals</u> | | TAXES & LICENSES | |
| <u>Purchasing</u> | PRINCE, THEA | | |
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**FLEET SERVICES
MEMORANDUM**

June 18, 2015

TO: PURCHASING DEPARTMENT

FROM: GENE JAKUBCZAK
FLEET SERVICES DIRECTOR

SUBJ: BID # 4139-15

After careful consideration, the Fleet Services Department recommends bid #4139-15 be awarded to Wendle Motors, Inc., the lowest responsive bidder, for the purchase of three Ford F-150 extended cab 4 wheel drive pick-ups. These vehicles are for the Engineering Services Department.

| QTY | ITEM | EACH | TOTAL |
|--------------|--------------------------------------|-------------|--------------------|
| 3 | 2015 Ford F-150 ext. cab 4x4 pick-up | \$24,402.79 | \$73,208.37 |
| Sales Tax | 8.9% | | \$ 6,515.54 |
| TOTAL | | | \$79,723.91 |

cc: Kyle Twohig

BRIEFING PAPER
Public Works Committee
Fleet Services
June 8, 2015

Subject

Purchase of three Ford F-150 pick-ups for the Engineering Services Department for \$79,723.91 (tax incl.) from Wendle Ford Motors of Spokane.

Background

These are additional trucks for the new inspectors recently added to the construction management office via EBO to support the Levy Project workload.

Impact

They will be used by public works inspectors on the projects they will be assigned to inspect.

Action

Recommend approval.

Funding

Funding is available in the Engineering Services Department's 2015 budget.

EXTENDED CAB 4X4 ½ TON PICKUPS

BID #4139-15 OPENED: 5/18/15

| | | | |
|--|---|---|--|
| | KNUDTSEN CHEVROLET 1900 E POLSTON AVE POST FALLS ID 83854 208-664-8107 Dave Benedict daved@knudtsen.com 2015 Chevrolet Silverado 1500 | WENDLE MOTORS INC. 9000 N DIVISION SPOKANE WA 99228 509-343-7438 Aaron Austin aarona@wendle.com 2015 Ford F150 X1E 4x4 | POWER FORD LINCOLN 1107 NORTH COAST HWY #101 NEWPORT OR 97365 503-871-0703 Don Kasinger dpkasinger@aol.com 2015 Ford F150 X1E XL |
| 3 or more ½ ton Pickup Trucks w/extended cab and four wheel drive plus options as stated | \$25,025.00/ea | \$24,402.79/ea | \$24,993.00/ea |
| Engine Bid | 4.3 liter 285 hp | 3.5 liter 283 hp | 3.5 liter 283 hp |
| Options: | | | |
| Limited Slip Rear Axle | \$335.75 | \$486.00 * Option = 3.73 Electronic Locking Rear Axle | \$486.00 |
| Cloth Seats | 0.00 | No Charge | No charge |
| Exceptions: | 150 amp alt 730 CCA Battery 5 year/100,000 mile powertrain warranty | | 200 amp alt 610 CCA |
| TOTAL | \$75,075.00 | \$73,208.37 | \$74,979.00 |
| Delivery | 75 days FRO | 80 days FRO ** current fleet order schedule states 8-10 weeks | 90-120 days FRO |
| Additional Items | Yes thru 7/23/15 | Yes | YES |
| Credit Card | No | No | No |
| | | | |
| | | | |
| | | | |

**Agenda Sheet for City Council Meeting of:**

06/29/2015

| | |
|-----------------------|---------------|
| <u>Date Rec'd</u> | 6/16/2015 |
| <u>Clerk's File #</u> | PRO 2015-0021 |
| <u>Renews #</u> | |

| | | | |
|---------------------------|--|----------------------|----------|
| <u>Submitting Dept</u> | ENGINEERING SERVICES | <u>Cross Ref #</u> | |
| <u>Contact Name/Phone</u> | DAN BULLER 625-6391 | <u>Project #</u> | 2014118 |
| <u>Contact E-Mail</u> | DBULLER@SPOKANECITY.ORG | <u>Bid #</u> | |
| <u>Agenda Item Type</u> | Contract Item | <u>Requisition #</u> | CR 15665 |
| <u>Agenda Item Name</u> | 0370 - LOW BID AWARD - T. LARIVIERE EQUIPMENT & EXCAVATION, INC. | | |

Agenda Wording

Low Bid of T. LaRiviere Equipment & Excavation, Inc. (Athol, ID) for 1st Avenue from Helena Street to Altamont Street - \$521,706.75 plus tax. An administrative reserve of \$52,170.68 plus tax, which is 10% of the contract price plus tax, will

Summary (Background)

On June 15, 2015 bids were opened for the above project. The low bid was from T. LaRiviere Equipment & Excavation, Inc. in the amount of \$521,706.75, which is \$3,342.75 or .53% under the Engineer's Estimate; two other bids were received as follows: Shamrock Paving, Inc. - \$528,945.75 and Inland Asphalt Company - \$555,222.00.

| | | | |
|-----------------------------|-------------------|------------------------------|------------------------------|
| <u>Fiscal Impact</u> | | <u>Budget Account</u> | |
| Expense | \$ 355,205.65 | # | 6785 49825 42800 54201 99999 |
| Expense | \$ 154,079.96 | # | 4250 42300 94000 56501 99999 |
| Expense | \$ 19,501.22 | # | 3200 49199 42800 54201 99999 |
| Expense | \$ 43,352.07 | # | 3200 49199 42800 54201 99999 |
| <u>Approvals</u> | | <u>Council Notifications</u> | |
| <u>Dept Head</u> | TWOHIG, KYLE | <u>Study Session</u> | |
| <u>Division Director</u> | SIMMONS, SCOTT M. | <u>Other</u> | Public Works 6/8/15 |
| <u>Finance</u> | SALSTROM, JOHN | <u>Distribution List</u> | |
| <u>Legal</u> | WHALEY, HUNT | lhattenburg@spokanecity.org | |
| <u>For the Mayor</u> | SANDERS, THERESA | kbustos@spokanecity.org | |
| <u>Additional Approvals</u> | | jsalstrom@spokanecity.org | |
| <u>Purchasing</u> | | htrautman@spokanecity.org | |
| | | kgoodman@spokanecity.org | |
| | | jahensley@spokanecity.org | |
| | | | |



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

be set aside. (East Central Neighborhood Council)

Summary (Background)

Fiscal Impact

Expense \$ 3,335.92

Select \$

Budget Account

4250 42300 94000 56501 04100

#

Distribution List

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City Of Spokane
Engineering Services Department
***** Bid Tabulation *****

Project Number: 2014118

Project Description 1st Ave from Helena St to Altamont St

Original Date 5/28/2015 8:36:09 AM

Funding Source Local

Update Date 6/15/2015 1:52:51 PM

Preparer Jonathan Adams

Addendum

| Project Number: 2014118 | | | Engineer's Estimate | | T LaRiviere Equipment & Excavation Inc | | Shamrock Paving Inc | | Inland Asphalt Company | |
|--------------------------------|-----------------------------|---------------------------|----------------------------|---------------|--|---------------|---------------------|---------------|------------------------|---------------|
| Item No | Bid Item Description | Estimated Quantity | Unit Price | Amount | Unit Price | Amount | Unit Price | Amount | Unit Price | Amount |

| Schedule Description | | | | | Tax Classification | | | | | |
|-----------------------------|---|--------|--------|-----------|---------------------------|-----------|--------|-----------|--------|-----------|
| Schedule 01 Street | | | | | Public Street Improvement | | | | | |
| 101 | REIMBURSEMENT FOR THIRD PARTY DAMAGE | 1 EST | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 |
| 102 | SPCC PLAN | 1 LS | ***** | 500.00 | ***** | 650.00 | ***** | 500.00 | ***** | 500.00 |
| 103 | POTHOLING | 4 EA | 500.00 | 2,000.00 | 250.00 | 1,000.00 | 325.00 | 1,300.00 | 250.00 | 1,000.00 |
| 104 | REFERENCE AND REESTABLISH SURVEY MONUMENT | 6 EA | 500.00 | 3,000.00 | 300.00 | 1,800.00 | 450.00 | 2,700.00 | 420.00 | 2,520.00 |
| 105 | CLASSIFICATION AND PROTECTION OF SURVEY MONUMENTS | 1 LS | ***** | 2,000.00 | ***** | 2,500.00 | ***** | 2,200.00 | ***** | 2,100.00 |
| 106 | MOBILIZATION | 1 LS | ***** | 40,000.00 | ***** | 45,000.00 | ***** | 32,000.00 | ***** | 56,500.00 |
| 107 | PROJECT TEMPORARY TRAFFIC CONTROL | 1 LS | ***** | 25,000.00 | ***** | 15,000.00 | ***** | 20,000.00 | ***** | 28,000.00 |
| 108 | SPECIAL SIGNS | 28 SF | 20.00 | 560.00 | 25.00 | 700.00 | 25.00 | 700.00 | 12.50 | 350.00 |
| 109 | TYPE III BARRICADE | 40 EA | 75.00 | 3,000.00 | 45.00 | 1,800.00 | 35.00 | 1,400.00 | 37.50 | 1,500.00 |
| 110 | REMOVE EXISTING CURB | 700 LF | 10.00 | 7,000.00 | 10.00 | 7,000.00 | 5.00 | 3,500.00 | 10.50 | 7,350.00 |
| 111 | REMOVE CEMENT CONCRETE SIDEWALK AND DRIVEWAY | 540 SY | 12.00 | 6,480.00 | 13.00 | 7,020.00 | 8.00 | 4,320.00 | 13.50 | 7,290.00 |
| 112 | REMOVE MANHOLE, CATCH BASIN OR DRYWELL | 15 EA | 500.00 | 7,500.00 | 400.00 | 6,000.00 | 425.00 | 6,375.00 | 415.00 | 6,225.00 |
| 113 | REMOVE CURB/GRATE INLET | 3 EA | 350.00 | 1,050.00 | 350.00 | 1,050.00 | 300.00 | 900.00 | 365.00 | 1,095.00 |
| 114 | SAWCUTTING CURB | 63 EA | 25.00 | 1,575.00 | 35.00 | 2,205.00 | 30.00 | 1,890.00 | 22.00 | 1,386.00 |

| <i>Project Number:</i> 2014118 | | | <i>Engineer's Estimate</i> | | T LaRiviere Equipment & Excavation Inc. | | Shamrock Paving Inc | | Inland Asphalt Company | |
|---------------------------------------|---|---------------------------|----------------------------|---------------|---|---------------|---------------------|---------------|---------------------------|---------------|
| <i>Item No</i> | <i>Bid Item Description</i> | <i>Estimated Quantity</i> | <i>Unit Price</i> | <i>Amount</i> | <i>Unit Price</i> | <i>Amount</i> | <i>Unit Price</i> | <i>Amount</i> | <i>Unit Price</i> | <i>Amount</i> |
| <i>Schedule Description</i> | | | | | <i>Tax Classification</i> | | | | | |
| <i>Schedule 01</i> | Street | | | | Public Street Improvement | | | | | |
| 115 | SAWCUTTING RIGID PAVEMENT | 1500 LFI | 1.00 | 1,500.00 | 1.00 | 1,500.00 | 1.50 | 2,250.00 | 0.70 | 1,050.00 |
| 116 | SAWCUTTING FLEXIBLE PAVEMENT | 9400 LFI | 0.30 | 2,820.00 | 0.35 | 3,290.00 | 0.35 | 3,290.00 | 0.30 | 2,820.00 |
| 117 | CSTC FOR SIDEWALK AND DRIVEWAYS | 30 CY | 45.00 | 1,350.00 | 100.00 | 3,000.00 | 64.00 | 1,920.00 | 70.00 | 2,100.00 |
| 118 | HMA CL. 1/2 IN. PG 64-28, 2 INCH THICK | 12355 SY | 9.50 | 117,372.50 | 9.25 | 114,283.75 | 9.45 | 116,754.75 | 9.25 | 114,283.75 |
| 119 | HMA FOR PRELEVELING CL. 3/8 IN. PG 64-28 | 20 TO | 100.00 | 2,000.00 | 178.00 | 3,560.00 | 225.00 | 4,500.00 | 178.00 | 3,560.00 |
| 120 | HMA FOR PAVEMENT REPAIR CL. 1/2 IN. PG 64-28, 3 INCH THICK | 2500 SY | 21.00 | 52,500.00 | 21.00 | 52,500.00 | 22.00 | 55,000.00 | 20.50 | 51,250.00 |
| 121 | HMA FOR TRANSITION, CL. 1/2 IN. PG 64-28, 2 INCH THICK | 15 SY | 18.00 | 270.00 | 105.00 | 1,575.00 | 48.00 | 720.00 | 96.00 | 1,440.00 |
| 122 | CRACK SEALING 1-INCH TO 3-INCH | 11500 LF | 2.00 | 23,000.00 | 2.00 | 23,000.00 | 1.00 | 11,500.00 | 1.50 | 17,250.00 |
| 123 | PAVEMENT REPAIR EXCAVATION INCL. HAUL | 2500 SY | 14.00 | 35,000.00 | 11.00 | 27,500.00 | 21.00 | 52,500.00 | 16.50 | 41,250.00 |
| 124 | PLANING BITUMINOUS PAVEMENT | 5900 SY | 3.00 | 17,700.00 | 3.00 | 17,700.00 | 3.00 | 17,700.00 | 2.40 | 14,160.00 |
| 125 | JOB MIX COMPLIANCE PRICE ADJUSTMENT | 1 CAL | -1.00 | -1.00 | -1.00 | -1.00 | -1.00 | -1.00 | -1.00 | -1.00 |
| 126 | COMPACTION PRICE ADJUSTMENT | 1 EST | 2,400.00 | 2,400.00 | 2,400.00 | 2,400.00 | 2,400.00 | 2,400.00 | 2,400.00 | 2,400.00 |
| 127 | MANHOLE TYPE 48, BASIC PRICE | 1 EA | 2,600.00 | 2,600.00 | 1,900.00 | 1,900.00 | 4,000.00 | 4,000.00 | 2,200.00 | 2,200.00 |
| 128 | MANHOLE TYPE 96, DOGHOUSE | 1 EA | 15,000.00 | 15,000.00 | 12,000.00 | 12,000.00 | 20,000.00 | 20,000.00 | 12,500.00 | 12,500.00 |
| 129 | ADJUST EXISTING VALVE BOX, MONUMENT OR CLEANOUT IN ASPHALT | 8 EA | 300.00 | 2,400.00 | 300.00 | 2,400.00 | 300.00 | 2,400.00 | 315.00 | 2,520.00 |
| 130 | CATCH BASIN TYPE 1 | 10 EA | 2,100.00 | 21,000.00 | 1,800.00 | 18,000.00 | 2,100.00 | 21,000.00 | 1,825.00 | 18,250.00 |
| 131 | CATCH BASIN TYPE 3 | 6 EA | 2,300.00 | 13,800.00 | 2,100.00 | 12,600.00 | 2,100.00 | 12,600.00 | 2,100.00 | 12,600.00 |
| 132 | RETROFIT SURFACE INLET CATCH BASIN WITH FRAME & VANED GRATE | 1 EA | 500.00 | 500.00 | 650.00 | 650.00 | 750.00 | 750.00 | 685.00 | 685.00 |

| <i>Project Number:</i> 2014118 | | | <i>Engineer's Estimate</i> | | T LaRiviere Equipment & Excavation Inc. | | Shamrock Paving Inc | | Inland Asphalt Company | |
|---------------------------------------|--|---------------------------|----------------------------|---------------|---|---------------|---------------------|---------------|---------------------------|---------------|
| <i>Item No</i> | <i>Bid Item Description</i> | <i>Estimated Quantity</i> | <i>Unit Price</i> | <i>Amount</i> | <i>Unit Price</i> | <i>Amount</i> | <i>Unit Price</i> | <i>Amount</i> | <i>Unit Price</i> | <i>Amount</i> |
| <i>Schedule Description</i> | | | | | <i>Tax Classification</i> | | | | | |
| <i>Schedule 01</i> Street | | | | | Public Street Improvement | | | | | |
| 133 | RETROFIT SURFACE INLET FRAME & GRATE WITH HOOD, FRAME AND BI-DIRECTIONAL VANED GRATE | 1 EA | 700.00 | 700.00 | 650.00 | 650.00 | 700.00 | 700.00 | 685.00 | 685.00 |
| 134 | MANHOLE OR DRYWELL FRAME AND COVER (STANDARD) | 7 EA | 400.00 | 2,800.00 | 500.00 | 3,500.00 | 700.00 | 4,900.00 | 580.00 | 4,060.00 |
| 135 | MANHOLE OR DRYWELL FRAME AND COVER (LOCKABLE) | 1 EA | 400.00 | 400.00 | 650.00 | 650.00 | 700.00 | 700.00 | 685.00 | 685.00 |
| 136 | VALVE BOX AND COVER | 2 EA | 400.00 | 800.00 | 300.00 | 600.00 | 385.00 | 770.00 | 315.00 | 630.00 |
| 137 | CLEANING EXISTING DRAINAGE STRUCTURE | 2 EA | 225.00 | 450.00 | 300.00 | 600.00 | 225.00 | 450.00 | 315.00 | 630.00 |
| 138 | TRENCH SAFETY SYSTEM | 1 LS | ***** | 500.00 | ***** | 800.00 | ***** | 2,200.00 | ***** | 846.00 |
| 139 | CATCH BASIN SEWER PIPE 8 IN. DIAM. | 365 LF | 30.00 | 10,950.00 | 42.00 | 15,330.00 | 34.00 | 12,410.00 | 44.00 | 16,060.00 |
| 140 | CATCH BASIN DUCTILE IRON SEWER PIPE 8 IN. DIAM. | 100 LF | 40.00 | 4,000.00 | 50.00 | 5,000.00 | 55.00 | 5,500.00 | 52.00 | 5,200.00 |
| 141 | CONNECT 8 IN. DIAMETER PIPE TO EXISTING CATCH BASIN, DRYWELL, OR MANHOLE | 3 EA | 250.00 | 750.00 | 225.00 | 675.00 | 300.00 | 900.00 | 235.00 | 705.00 |
| 142 | CONNECT 8 IN. DIAM. SEWER PIPE TO EXISTING SEWER PIPE | 6 EA | 150.00 | 900.00 | 800.00 | 4,800.00 | 350.00 | 2,100.00 | 1,150.00 | 6,900.00 |
| 143 | CONNECT 12 IN. DIAM. SEWER PIPE TO EXISTING SEWER PIPE | 1 EA | 200.00 | 200.00 | 1,000.00 | 1,000.00 | 475.00 | 475.00 | 1,550.00 | 1,550.00 |
| 144 | REMOVE EXISTING SEWER PIPE | 38 LF | 10.00 | 380.00 | 6.00 | 228.00 | 17.00 | 646.00 | 31.50 | 1,197.00 |
| 145 | TEMPORARY ADJACENT UTILITY SUPPORT | 1 LS | ***** | 1,000.00 | ***** | 500.00 | ***** | 350.00 | ***** | 1,575.00 |
| 146 | CLEANING EXISTING SANITARY SEWER | 6 EA | 300.00 | 1,800.00 | 300.00 | 1,800.00 | 300.00 | 1,800.00 | 525.00 | 3,150.00 |
| 147 | SANITARY SEWER PIPE 12 IN. DIAM. INCL. STRUCTURAL EXCAVATION CLASS B | 42 LF | 50.00 | 2,100.00 | 100.00 | 4,200.00 | 39.00 | 1,638.00 | 105.00 | 4,410.00 |
| 148 | ESC LEAD | 1 LS | ***** | 1,000.00 | ***** | 1,200.00 | ***** | 1,000.00 | ***** | 425.00 |
| 149 | INLET PROTECTION | 33 EA | 80.00 | 2,640.00 | 90.00 | 2,970.00 | 75.00 | 2,475.00 | 94.25 | 3,110.25 |

| Project Number: 2014118 | | | Engineer's Estimate | | T LaRiviere Equipment & Excavation Inc. | | Shamrock Paving Inc | | Inland Asphalt Company | |
|-------------------------|---|--------------------|---------------------|------------|---|------------|---------------------|------------|---------------------------|------------|
| Item No | Bid Item Description | Estimated Quantity | Unit Price | Amount | Unit Price | Amount | Unit Price | Amount | Unit Price | Amount |
| Schedule Description | | | | | Tax Classification | | | | | |
| Schedule 01 | | Street | | | Public Street Improvement | | | | | |
| 150 | TOPSOIL TYPE A, 2 INCH THICK | 50 SY | 7.00 | 350.00 | 20.00 | 1,000.00 | 18.90 | 945.00 | 19.00 | 950.00 |
| 151 | HYDROSEEDING | 60 SY | 5.00 | 300.00 | 15.00 | 900.00 | 8.65 | 519.00 | 8.50 | 510.00 |
| 152 | SOD INSTALLATION | 50 SY | 10.00 | 500.00 | 20.00 | 1,000.00 | 18.90 | 945.00 | 19.00 | 950.00 |
| 153 | CEMENT CONCRETE CURB | 380 LF | 15.00 | 5,700.00 | 15.00 | 5,700.00 | 14.00 | 5,320.00 | 13.65 | 5,187.00 |
| 154 | CEMENT CONC. CURB AND GUTTER | 600 LF | 22.00 | 13,200.00 | 18.00 | 10,800.00 | 16.50 | 9,900.00 | 16.00 | 9,600.00 |
| 155 | CEMENT CONC. SIDEWALK | 560 SY | 40.00 | 22,400.00 | 36.00 | 20,160.00 | 36.00 | 20,160.00 | 36.00 | 20,160.00 |
| 156 | RAMP DETECTABLE WARNING | 152 SF | 21.00 | 3,192.00 | 20.00 | 3,040.00 | 20.00 | 3,040.00 | 20.00 | 3,040.00 |
| 157 | SIGNING, PERMANENT | 1 LS | ***** | 4,000.00 | ***** | 5,000.00 | ***** | 4,473.00 | ***** | 4,450.00 |
| 158 | WORD AND SYMBOL MARKINGS - DURABLE HEAT APPLIED | 16 EA | 200.00 | 3,200.00 | 230.00 | 3,680.00 | 240.00 | 3,840.00 | 240.00 | 3,840.00 |
| Schedule Totals | | | | 495,089.50 | | 485,366.75 | | 495,225.75 | | 516,640.00 |

| | | | | | | | | | | |
|--------------------------------|-----------------------------|---------------------------|----------------------------|---------------|--|---------------|---------------------|---------------|------------------------|---------------|
| Project Number: 2014118 | | | Engineer's Estimate | | T LaRiviere Equipment & Excavation Inc | | Shamrock Paving Inc | | Inland Asphalt Company | |
| Item No | Bid Item Description | Estimated Quantity | Unit Price | Amount | Unit Price | Amount | Unit Price | Amount | Unit Price | Amount |

Schedule Description

Tax Classification

Schedule 02

| | | | | | | | | | | |
|------------------------|---|--------|----------|-----------|----------|-----------|----------|-----------|----------|-----------|
| 201 | TRENCH SAFETY SYSTEM | 1 LS | ***** | 500.00 | ***** | 1,500.00 | ***** | 1,800.00 | ***** | 1,550.00 |
| 202 | HYDRANT ASSEMBLY | 2 EA | 5,000.00 | 10,000.00 | 4,700.00 | 9,400.00 | 6,500.00 | 13,000.00 | 4,900.00 | 9,800.00 |
| 203 | HYDRANT LEAD | 3 EA | 2,500.00 | 7,500.00 | 800.00 | 2,400.00 | 2,000.00 | 6,000.00 | 840.00 | 2,520.00 |
| 204 | TRENCH EXCAVATION FOR WATER SERVICE TAP | 120 LF | 30.00 | 3,600.00 | 12.00 | 1,440.00 | 38.00 | 4,560.00 | 12.60 | 1,512.00 |
| 205 | WATER TAP APPLICATION FEE | 8 EA | 40.00 | 320.00 | 1,200.00 | 9,600.00 | 40.00 | 320.00 | 1,200.00 | 9,600.00 |
| 206 | 2 INCH DOMESTIC WATER TAP INSTALLATION | 8 EA | 1,005.00 | 8,040.00 | 1,500.00 | 12,000.00 | 1,005.00 | 8,040.00 | 1,700.00 | 13,600.00 |
| Schedule Totals | | | | 29,960.00 | | 36,340.00 | | 33,720.00 | | 38,582.00 |

Project Number 2014118 1st Ave from Helena St to Altamont St

| | SCHEDULE SUMMARY | | | | | | | | |
|-----------------------|------------------|-----------|---------|---------|---------|---------|---------|---------|------------|
| | Sched 1 | Sched 2 | Sched 3 | Sched 4 | Sched 5 | Sched 6 | Sched 7 | Sched 8 | Total |
| Engineer's Est | 495,089.50 | 29,960.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 525,049.50 |
| T LaRiviere Equipment | 485,366.75 | 36,340.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 521,706.75 |
| Shamrock Paving Inc | 495,225.75 | 33,720.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 528,945.75 |
| Inland Asphalt Compan | 516,640.00 | 38,582.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 555,222.00 |

Low Bid Contractor: T LaRiviere Equipment & Excavation Inc

| | Contractor's Bid | Engineer's Estimate | % Variance | |
|-------------|------------------|---------------------|------------|------------------|
| Schedule 01 | \$485,366.75 | \$495,089.50 | 1.96 | % Under Estimate |
| Schedule 02 | \$39,501.58 | \$32,566.52 | 21.30 | % Over Estimate |
| Bid Totals | \$524,868.33 | \$527,656.02 | 0.53 | % Under Estimate |



Agenda Sheet for City Council Meeting

of:

06/29/2015

Date Rec'd

6/16/2015

Clerk's File #

OPR 2015-0559

Renews #

Submitting Dept

INTEGRATED CAPITAL MGMT

Contact

MIKE TAYLOR 625-6307

Contact E-Mail

PMTAYLOR@SPOKANECITY.ORG

Agenda Item Type

Contract Item

Agenda Item Name

4250 RPWRF MEMBRANE FILTRATION SYSTEM CONSULTING SERVICES

Agenda Wording

Consultant Agreement with OAC Services, Inc to provide consulting services relating to designing and building membrane filtration at Riverside Park Water Reclamation Facility via the General Contractor/Construction Manager form of project delivery.

Summary (Background)

The City intends to use the GC/CM method to install a membrane filtration system and related upgrades at RPWRF to meet the effluent requirements in the City's Waste Discharge Permit issued by Ecology. GC/CM project delivery differs from traditional design-bid-build by involving the contractor throughout the design and by allocating risk more equitably. GC/CM is an open-book process that minimizes change orders, claims, and litigation. To ensure State approval to use GC/CM and to guide the City

Fiscal Impact

Budget Account

Expense \$ 197,417.00

4250-94338-94000-56501

Select \$

#

Select \$

#

Select \$

#

Approvals

Council Notifications

Dept Head

TAYLOR, MIKE

Study Session

PWC 6/8/15

Division Director

ROMERO, RICK

Other

Finance

SALSTROM, JOHN

Distribution List

Legal

WHALEY, HUNT

pmtaylor@spokanecity.org

For the Mayor

SANDERS, THERESA

darnold@spokanecity.org

Additional Approvals

lhendron@spokanecity.org

Purchasing

hwhaley@spokanecity.org

dchandler@oacsvcs.com

kbrooks@spokanecity.org, mlesesne@spokanecity.org

jsalstrom@spokanecity.org



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

The contract is \$179,470 plus a 10% Management Reserve for a total contract amount of \$197,417.

Summary (Background)

regarding its use, the City must retain an experienced GC/CM Consultant. OAC's qualifications include being the GC/CM consultant for Oak Harbor's wastewater membrane filtration facility and the City of Spokane's Design-Build Consultant for the Nelson Service Center. The budget for Design Phase services is about \$90,000 and about another \$90,000 for Construction Phase services.

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List

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BRIEFING PAPER
Public Works Committee
Wastewater Management
June 8, 2015

Subject

Contract with OAC Services, Inc., of Spokane per RFP No. 3141-15 for consulting services in the amount of approximately \$180,000 relating to designing and building membrane filtration at Riverside Park Water Reclamation Facility (RPWRF) via the General Contractor / Construction Manager (GC/CM) form of project delivery.

Background

The City intends to use the GC/CM method to install a membrane filtration system and related upgrades at RPWRF to meet the effluent requirements in the City's Waste Discharge Permit issued by Ecology. GC/CM project delivery differs from traditional design-bid-build by involving the contractor throughout the design and by allocating risk more equitably. GC/CM is an open-book process that minimizes change orders, claims, and litigation. To ensure State approval to use GC/CM and to guide the City regarding its use, the City must retain an experienced GC/CM Consultant.

OAC Services was the sole respondent to the RFP. Potentially qualified firms that did not respond cited reasons such as having sufficient work and/or perhaps not being sufficiently qualified for the range of services sought. With more than 50 staff, OAC is one of the largest alternative project delivery professional services organizations in the northwest. OAC's qualifications include being the GC/CM consultant for Oak Harbor's wastewater membrane filtration facility and the City of Spokane's Design-Build Consultant for the Nelson Service Center. The budget for Design Phase services is about \$90,000 and about another \$90,000 for Construction Phase services.

Impact

Retaining OAC provides the City with the experience and credibility to successfully implement the RPWRF Membrane Treatment Facility project using GC/CM.

Action

Recommend approval.

Funding

Funding is provided in the Wastewater Management budget and generated from Sewer Rates.



701 Dexter Avenue N, Suite 301, Seattle, WA 98109
206.285.4300 : main 206.285.4371 : fax
www.oacservicesinc.com

June 15, 2015

Lars Hendron

Principal Engineer
City of Spokane
808 W Spokane Falls Blvd, Suite 334
Spokane, WA 99201

Subj: Riverside Park Water Reclamation Facility, Next Level Treatment Project—GC/CM Consulting Services Proposal—REVISED

Dear Lars:

This letter is intended to serve as OAC's scope of work and fee proposal to provide consulting services to assist the City of Spokane Public Works in the application of the General Contractor/Construction Manager (GC/CM) delivery method. OAC's overall role is to advise the Public Works team on the application of this delivery method to maximize value, reduce risk and develop Public Works' internal capacity to use GC/CM on future projects.

Following is a list of tasks to be undertaken by OAC:

1. **Develop project understanding.** Meet with CH2MHill and City project staff to gain a deeper understanding of the overall goals of the project, the expectations of the GC/CM contractor, the integration of BIM other Virtual Design and Construction (VDC) techniques. This information will guide all future OAC efforts on behalf of the project.
2. **Develop Roles and Responsibilities Matrix.** Clearly define the overall management structure and
3. **Provide GC/CM orientation to City staff (if needed).** John and Dan are available to provide a briefing on GC/CM delivery to City staff if needed. This may help all project participants align expectations including capital projects staff members, plant operators and procurement staff.
4. **Contribute to Project Review Committee Application.** OAC will edit drafts of the PRC application including draft preparation, detailed information gathering, editing and final preparation. OAC will draft responses to PRC questions, prepare PRC presentation materials and organize presentation.
5. **Prepare GC/CM procurement documents.** Using our highly refined RFQ, RFFP and Fee Proposal templates used on 27 past GC/CM projects, OAC will customize procurement for the Riverside Park project, focusing our procurement on obtaining the strongest possible team at a market fee structure.
6. **Prepare GC/CM contract documents.** Working with Spokane attorneys, build contracts and general conditions to promote collaboration, risk management and open communications.
7. **Organize and oversee GC/CM evaluation, scoring, interviews and award.** Together with City procurement officials, OAC will schedule scoring meetings, documentation, short-listing and notification. OAC will schedule, convene and chair contractor interviews, scoring, and notification focusing on the strength of contractor team members and alignment with the City's overall goals. OAC will prepare total scoring spreadsheets for Fee and General Conditions proposals, organize fee proposal opening and recommend award in alignment with City policies.
8. **Maintain and deliver complete files of all procurement documentation for turn over to City officials.**

- 9. Organize and support GC/CM kickoff and partnering session.** OAC will support fast GC/CM-City-Engineer team integration by attending kickoff meetings, assisting in the negotiations of the pre-construction services agreement, and any contract term negotiations.
- 10. Consult with the City throughout design and construction regarding GC/CM application.** OAC project managers will stay in touch with job progress through meeting minutes, phone conferences and meetings on a regular basis in support of effective use of GC/CM delivery. OAC will advise the City and other project participants on subcontractor and supplier procurement, MACC negotiations, MCCM and ECCM use, contingencies, negotiated support services, incentives and other issues.

Schedule of Service

The following is an overview schedule showing the key timeframes for the major phases of the project. OAC will work with City upon award of the consulting services to update and develop a more detailed schedule to include in the procurement process.

To maximize the value of GC/CM delivery, OAC recommends procuring the GC/CM contractor at the earliest possible timeframe. The following major milestones were used to assemble this proposal:

| | |
|--------------------------------|--------------------------------------|
| Execute OAC agreement | June 23, 2015 |
| Complete PRC application | July 1, 2015—next available deadline |
| Complete GC/CM contract docs | June-July, 2015 |
| Present application to PRC | July 23, 2015—next available meeting |
| Advertise GC/CM RFQ | July 24 and 31, 2015 |
| Receive SOQ's | August 17, 2015 |
| Short-list contractors | August 20, 2015 |
| Interviews | August 25-26, 2015 |
| Receive and open Fee Proposals | August 31, 2015 |
| Award GC/CM contract | September 24, 2015 |
| Begin pre-construction work | September 24, 2015 |
| Procure Membrane through GC/CM | September-October 2015 |
| Preconstruction Phase | October 2015-December 2016 |
| Construction Phase | January 2017-December 2019 |
| Commissioning, Startup | January 2020-December 2020 |

Deliverables

OAC anticipates project deliverables the following deliverables at each project stage.

Many of these documents, spreadsheets and forms are ready to go templates based on OAC's extensive GC/CM portfolio.

| Project Phase | Deliverables |
|---|--|
| Project Initiation | <ul style="list-style-type: none"> • Roles and Responsibilities Matrix—who does what? • Communications Plan—how does OAC fit in • Master Schedule—informs pre-construction services fees • Project Budget and Reporting Tools—how does GC/CM integrate |
| Project Review Committee Approval | <ul style="list-style-type: none"> • Project Approval Application—with City input • PRC questions and answers prior to presentation • PRC presentation Power Point • PRC presentation coaching |
| GC/CM Procurement | <ul style="list-style-type: none"> • Procurement strategy—assume Heavy Civil • GC/CM presentation and discussion to City staff (if needed) • Request for Qualifications, (RFQ) • Cost Responsibility Matrix • Request for Fee Proposal (RFFP) • Specified General Conditions and Fee Proposal form • GC/CM contracts—prepared by attorney • Selection matrices and record of decisions |
| Design, Pre-Construction Phase | <ul style="list-style-type: none"> • Pre-construction fee negotiations and recommendations • Early procurement recommendations—including membrane procurement • Meeting attendance as needed |
| Construction , Commissioning and Occupancy | <ul style="list-style-type: none"> • Contractor payment review report (monthly) • Site Observation Reports (monthly) • Monthly Progress Reports • Contract Change Orders (if needed) • Project Integration and Move-in Schedule |
| Closeout | <ul style="list-style-type: none"> • Final change order draft and negotiation • Organize and oversee final audit and closeout of any findings. |

Proposed Fees

OAC proposes services to be provided on a time and expense basis with an agreed not-to-exceed contract sum. The proposed not-to-exceed fee proposal is based on the information available at the time of proposal. OAC staff rates listed below are applicable through December, 2015 and are adjusted annually by 5%. Hourly rates including all labor, benefits, taxes, insurance, technology and supplies. Travel expenses including standard mileage and airfare will be marked up by 10%.

| | |
|--|-------|
| Principal, Dan Chandler | \$230 |
| Program Manager, Greg Brown | \$140 |
| Project Coordinator, Elizabeth Rosenbeck | \$75 |

| Task | Senior PM | Principal | Admin | Totals |
|--|-----------|-----------|----------|-----------|
| Develop project understanding | 8 | 8 | 0 | 16 |
| GC/CM orientation | 4 | 4 | 2 | 10 |
| Prepare Project Review Committee Application | 40 | 16 | 24 | 80 |
| Contractor Procurement | 120 | 24 | 32 | 176 |
| Team Integration | 16 | 8 | 8 | 32 |
| Subcontractor Procurement/Pre-Construction | 180 | 48 | 64 | 292 |
| Construction Phase | 400 | 96 | 80 | 576 |
| Closeout | 60 | 8 | 16 | 84 |
| Total Estimated Hours | 820 | 204 | 226 | 1250 |
| | | | | |
| Hourly Rates | \$140 | \$230 | \$75 | |
| Estimated Fees | \$114,800 | \$46,920 | \$16,950 | \$178,670 |

| | | | | |
|---------------------------------|--|--|--|-------|
| Estimated Reimbursable Expenses | | | | |
| Travel | | | | \$800 |
| Total Estimated Expenses | | | | \$800 |

This scope and fee proposal is subject to agreeable contract terms and conditions.

Sincerely,



Dan Chandler, PE, AIA
Principal

City of Spokane

PLACE HOLDER CONTRACT

CONSULTANT AGREEMENT

Title: GC/CM Consulting Services

...[City of Spokane & OAC...addresses, etc...]parties to the Agreement...

-- NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance of the Scope of Work contained herein, the City and Consultant mutually agree as follows:

1. TERM OF AGREEMENT.

The term of this Agreement begins on **May 18, 2015** and ends on **June 30, 2020**, unless amended by written agreement or terminated earlier under the provisions.

2. TIME OF BEGINNING AND COMPLETION.

The Consultant shall begin the work outlined in the "Scope of Work" ("Work") upon receipt of written notice to proceed from the City. The City will acknowledge in writing when the Work is complete. Time limits established under this Agreement shall not be extended because of delays for which the Consultant is responsible, but may be extended by the City, in writing, for the City's convenience or conditions beyond the Consultant's control.

3. SCOPE OF WORK.

The Scope of Work for this Agreement and the time schedule for completion of such Work are described in Exhibit A and A-1, which is attached to and made a part of this Agreement.

The Work is subject to City review and approval. The Consultant shall confer with the City periodically, and prepare and present information and materials (e.g. detailed outline of completed Work) requested by the City to determine the adequacy of the Work or Consultant's progress.

4. PAYMENT.

This Agreement provides for monthly payments for Consultant's services. These charges are based on Consultants' cost to complete the Scope of Work, and shall include only those costs allowed, which are incorporated by reference. Total compensation Consultant's services and travel under this Agreement shall not exceed **ONE HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$180,000.00)**, unless modified by a written amendment to this Agreement.

5. REIMBURSABLES

- A. City will reimburse the Consultant at actual cost for expenditures that are pre-approved by the City in writing and are necessary and directly applicable to the work required by this Contract provided that similar direct project costs related to the contracts of other clients are consistently accounted for in a like manner. Such direct project costs may not be charged as part of overhead expenses or include a markup. Other direct charges may include, but are not limited to the following types of items: travel, printing, cell phone, supplies, materials, computer charges, and fees of subconsultants.

- B. The billing for third party direct expenses specifically identifiable with this project shall be an itemized listing of the charges supported by copies of the original bills, invoices, expense accounts, subconsultant paid invoices, and other supporting documents used by the Consultant to generate invoice(s) to the City. The original supporting documents shall be available to the City for inspection upon request. All charges must be necessary for the services provided under this Contract.
- C. The City will reimburse the actual cost for travel expenses incurred as evidenced by copies of receipts (excluding meals) supporting such travel expenses, and in accordance with the City of Spokane Travel Policy, details of which can be provided upon request.
- D. **Airfare:** Airfare will be reimbursed at the actual cost of the airline ticket. The City will reimburse for Economy or Coach Fare only. Receipts detailing each airfare are required.
- E. **Meals:** Meals will be reimbursed at the Federal Per Diem daily meal rate (*excluding the "Incidental" portion of the published CONUS Federal M&I Rate*) for the city in which the work is performed. *Receipts are not required as documentation.* The invoice shall state "the meals are being billed at the Federal Per Diem daily meal rate", and shall detail how many of each meal is being billed (e.g. the number of breakfasts, lunches, and dinners). The City will not reimburse for alcohol at any time.
- F. **Lodging:** Lodging will be reimbursed at actual cost incurred up to a maximum of the published Runzheimer Cost Index for the city in which the work is performed (*the current maximum allowed reimbursement amount can be provided upon request*). Receipts detailing each day / night lodging are required. The City will not reimburse for ancillary expenses charged to the room (e.g. movies, laundry, mini bar, refreshment center, fitness center, sundry items, etc.)
- G. **Vehicle mileage:** Vehicle mileage will be reimbursed at the Federal Internal Revenue Service Standard Business Mileage Rate in affect at the time the mileage expense is incurred (currently that rate is 56.5 cents per mile.) Please note: payment for mileage for long distances traveled will not be more than an equivalent trip round-trip airfare of a common carrier for a coach or economy class ticket.
- H. **Rental Car:** Rental car expenses will be reimbursed at the actual cost of the rental. Rental car receipts are required for all rental car expenses. The City will reimburse for a standard car of a mid-size class or less. The City will not reimburse for ancillary expenses charged to the car rental (e.g. GPS unit).
- I. **Miscellaneous Travel** (e.g. parking, rental car gas, taxi, shuttle, toll fees, ferry fees, etc.): Miscellaneous travel expenses will be reimbursed at the actual cost incurred. Receipts are required for each expense of \$10.00 or more.
- J. **Miscellaneous other business expenses** (e.g. printing, photo development, binding): Other miscellaneous business expenses will be reimbursed at the actual cost incurred and may not include a mark up. Receipts are required for all miscellaneous expenses that are billed.

Subconsultant: Subconsultant expenses will be reimbursed at the actual cost incurred and may not include a mark up. Copies of all Subconsultant invoices that are rebilled to the City are required.

6. PAYMENT PROCEDURES.

The Consultant may submit invoices to the City as frequently as once per month during progress of work, for partial payment for work completed to date. Payment shall be made by the City to the Consultant upon the City's receipt of an invoice containing the information listed below.

| Invoices shall be submitted to: |
|--|
| <p>CITY OF SPOKANE – INTEGRATED CAPITAL MANAGEMENT DEPARTMENT Attn: Lars Hendron 808 West Spokane Falls Boulevard Spokane, WA 99201</p> |

| |
|--|
| |
| Invoices under this Contract shall clearly display the following information (sub-consultants' invoices shall also include this information): |
| <ul style="list-style-type: none"> • Invoice Date and Invoice Number • Department Director: (Please do not put name in the address portion of the invoice) • Department Contract No. OPR # _____ • Contract Title: Period covered by the invoice • Task # and title • Employee's name and classification • Employee's all-inclusive hourly rate and # of hours worked • Total labor costs per task • Itemization of direct, non-salary costs (per task, if so allocated) • The following Sub-Consultant payment information will be provided <i>[if needed]</i> (attach Sub-Consultant invoices as backup): <ul style="list-style-type: none"> ○ Amount Paid to all Sub-Consultants for the invoice period (list separate totals for each Sub-Consultant). ○ Cumulative To-Date amount paid to all Sub-Consultants (list separate totals for each Sub-Consultant). • Cumulative costs per task and for the total project |

- A. If there are any grant or loan monies involved in this Contract, the Consultant shall retain all required records for three years after the funding agency has audited the grant or loan. The funding agency shall be allowed access to such records for the same time duration.

| Funding Agency | Project Grant or Loan Number. |
|----------------|-------------------------------|
| __N/A__ | __N/A__ |

Third Party Beneficiary. If there are ever any Department of Ecology grant monies involved in this Contract, the State Department of Ecology shall be designated as an express third party beneficiary with full rights as such.

7. TAXES, FEES AND LICENSES.

- A. Consultant shall pay and maintain in current status, all necessary licenses, fees, assessments, permit charges, etc. It is the Consultant'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. Where required by state statute, ordinance or regulation, Consultant shall pay and maintain in current status all taxes necessary for performance. Consultant shall not charge the City for federal excise taxes. The City will furnish Consultant an exemption certificate where appropriate.
- C. The Director of Finance and Administrative Services may withhold payment pending satisfactory resolution of unpaid taxes and fees due the City.

8. 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 Consultant shall be responsible for contacting the State of Washington Business License Services at <http://bls.dor.wa.gov> or 1-800-451-7985 to obtain a business registration. If the Contractor 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.

9. ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS.

Deliver all official notices under this Agreement to:

| If to the City: | If to the Consultant: |
|---|------------------------------|
| Mayor, City of Spokane (or his designee) 7 th Floor – City Hall 808 West Spokane Falls Boulevard Spokane, WA 99201 (Copy to the City Attorney – 5 th Floor – City Hall) | |

10. SOCIAL EQUITY REQUIREMENTS.

Consultant shall not discriminate against any employee or applicant for employment because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Consultant shall affirmatively try to ensure applicants are employed, and employees are treated during employment, without regard to race, color, age, sex, marital status, sexual orientation, gender identify, political ideology, creed, religion, ancestry, national origin, or any sensory, mental or physical handicap. Such efforts include, but are not limited to: employment, upgrading, demotion, transfer, recruitment, layoff, termination, rates of pay or other compensation, and training. The Consultant 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 Consultant.

11. INDEMNIFICATION.

The Consultant shall indemnify and hold the Agency and the State and their officers and employees harmless from all claims, demands, or suits at law or equity arising from the Consultant's negligence or breach of any of its obligations under this Agreement; provided that nothing herein shall require a Consultant to indemnify the Agency against and hold harmless the Agency from claims, demands or suits based upon the conduct of the Agency, its agents, officers and employees and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the Consultant's agents or employees and (b) the Agency, its agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence, (2) the costs to the Agency of defending such claims and suits, etc.; shall be valid and enforceable only to the extent of the negligence of the Consultant, its agents or employees. In furtherance of these obligations, and only regarding the City and its officers, employees, and agents, the Consultant waives any immunity it may have or limitation on the amount or type of damages imposed The Consultant specifically assumes potential liability for actions brought by the Consultant's own employees against the Agency and, solely for the purpose of this indemnification and defense, the Consultant specifically waives any immunity under the state industrial insurance law, Title 51 RCW, or any other industrial insurance, workers compensation, disability, employee benefit or similar laws. . The Consultant 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 indemnification provided for in this section shall survive any termination or expiration of this Agreement.

12. INSURANCE.

The Consultant shall comply with all federal, state and local laws and ordinances applicable to the work to be done under this Agreement. This Agreement shall be interpreted and construed in accord with the laws of Washington.

During the period of the Agreement, the Consultant 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 \$2,000,000 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 Agency, its officers and employees are additional insureds but only with respect to the Consultant's services to be provided under 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.
- 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 Agreement. The coverage must remain in effect for at least two (2) years after the Agreement is completed.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without sixty (60) days written notice from the Consultant or its insurer(s) to the City. As evidence of the insurance coverages required by this Agreement, the Consultant shall furnish acceptable insurance certificates to the City at the time it returns the signed Agreement. The certificate shall specify all of the parties who are additional insureds, and include applicable policy endorsements, the sixty (60) day cancellation clause, and the deduction or retention level. The Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

13. AUDIT.

Upon request, the Consultant shall permit the City and any other governmental agency ("Agency") involved in the funding of the Work to inspect and audit all pertinent books and records. This includes work of the Consultant, any subconsultant, or any other person or entity that performed connected or related Work. Such books and records shall be made available at any and all times deemed necessary by the Agency, including up to six (6) years after final payment or release of withheld amounts. Such inspection and audit shall occur in Spokane County, Washington, or other reasonable locations that the Agency selects. The Consultant shall supply or permit the Agency to copy such books and records. The Consultant shall ensure that inspection, audit and copying rights of the Agency is a condition of any subcontract, agreement or other arrangement under which any other persons or entity may perform Work under this Agreement.

14. INDEPENDENT CONSULTANT.

- A. The Consultant is an independent Consultant. This Agreement does not intend the Consultant to act as a City employee. The City has neither direct nor immediate control over the Consultant nor the right to control the manner or means by which the Consultant works. Neither the Consultant nor any Consultant employee shall be an employee of the City. This Agreement prohibits the Consultant to act as an agent or legal representative of the City. The Consultant is not granted express or implied rights or authority to assume or create any obligation or responsibility for or in the name of the City, or to bind the City. The City is not liable for or obligated to pay sick leave, vacation pay, or any other benefit of employment, nor to pay social security or other tax that may arise from employment. The

Consultant shall pay all income and other taxes as due. The Consultant may perform work for other parties; the City is not the exclusive user of the services that the Consultant provides.

- B. If the City needs the Consultant to Work on City premises and/or with City equipment, the City may provide the necessary premises and equipment. Such premises and equipment are exclusively for the Work and not to be used for any other purpose.
- C. If the Consultant works on the City premises using City equipment, the Consultant remains an independent Consultant and does not as a City employee. The Consultant will notify the City Project Manager if s/he or any other Workers are within ninety (90) days of a consecutive 36-month placement on City property. If the City determines using City premises or equipment is unnecessary to complete the Work, the Consultant will be required to work from its own office space or in the field. The City may negotiate a reduction in Consultant fees or charge a rental fee based on the actual costs to the City, for City premises or equipment.

15. KEY PERSONS.

The Consultant shall not transfer or reassign any individual designated in this Agreement as essential to the Work, without the express written consent of the City, which shall not be unreasonably withheld. If any such individual leaves the Consultant's employment, the Consultant shall present to the City one or more individuals with greater or equal qualifications as a replacement, subject to the City's approval, which shall not be unreasonably withheld. The City's approval does not release the Consultant from its obligations under this Agreement.

16. ASSIGNMENT AND SUBCONTRACTING.

The Consultant 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 Consultant shall incorporate by reference this Agreement, except as otherwise provided. The Consultant shall ensure that all subconsultants comply with the obligations and requirements of the subcontract. The City's consent to any assignment or subcontract does not release the consultant from liability or any obligation within this Agreement, whether before or after City consent, assignment or subcontract. The City shall not assign its obligations under this Agreement without the Consultant's consent.

17. FEDERAL DEBARMENT.

The Consultant shall immediately notify the City of any suspension or debarment or other action that excludes the Consultant or any subconsultant from participation in Federal contracts. Consultant shall verify all subconsultants intended and/or used by the Consultant for performance of City Work are in good standing and are not debarred, suspended or otherwise ineligible by the Federal Government. Debarment shall be verified at <https://www.sam.gov>. Consultant shall keep proof of such verification within the Consultant records.

18. CITY ETHICS CODE.

- A. Consultant shall promptly notify the City in writing of any person expected to be a Consultant Worker (including any Consultant employee, subconsultant, principal, or owner) who was a former City officer or employee within the past twelve (12) months.
- B. Consultant shall ensure compliance with the City Ethics Code by any Consultant Worker when the Work or matter related to the Work is performed by a Consultant Worker who has been a City officer or employee within the past two (2) years.
- C. Consultant shall provide written notice to the City of any Consultant worker who shall or is expected to perform over 1,000 hours of contract work for the City within a rolling 12-month period. Such hours include those performed for the Consultant and other hours that the worker performed for the City under any other contract. The Consultant shall advise their Consultant Workers.
- D. Consultant shall not directly or indirectly offer anything of value (such as retainers, loans, entertainment, favors, gifts, tickets, trips, favors, bonuses, donations, special discounts, work or meals) to any City employee, volunteer or official that is intended, or may appear to a reasonable

person to be intended, to obtain or give special consideration to the Consultant. Promotional items worth less than \$25 may be distributed by the Consultant to City employees if the Consultant uses the items as routine and standard promotional materials. Any violation of this provision may cause termination of this Agreement. Nothing in this Agreement prohibits donations to campaigns for election to City office, so long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.

19. NO CONFLICT OF INTEREST.

Consultant confirms that the Consultant or workers have no business interest or a close family relationship with any City officer or employee who was or will be involved in the consultant selection, negotiation, drafting, signing, administration or evaluation of the Consultant's work. As used in this Section, the term Consultant includes any worker of the Consultant who was, is, or will be, involved in negotiation, drafting, signing, administration or performance of the Agreement. The term "close family relationship" refers to: spouse or domestic partner, any dependent parent, parent-in-law, child, son-in-law, daughter-in-law; or any parent, parent in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of a City officer or employee described above.

20. ERRORS AND OMISSIONS, CORRECTIONS.

Consultant is responsible for professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by or on the behalf of the Consultant under this Agreement. Consultant, without additional compensation, shall correct or revise errors or mistakes in designs, drawings, specifications, and/or other consultant services immediately upon notification by the City. The obligation provided for in this Section regarding acts or omissions resulting from this Agreement survives Agreement termination or expiration.

21. INTELLECTUAL PROPERTY RIGHTS.

- A. Copyrights. The Consultant shall retain the copyright (including the right of reuse) to all materials and documents prepared by the Consultant for the Work, whether or not the Work is completed. The Consultant grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use copy and distribute every document and all the materials prepared by the Consultant for the City under this Agreement. If requested by the City, a copy of all drawings, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs, and other storage facilities), software program or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials and/or any other related documents or materials developed solely for and paid for by the City to perform the Work, shall be promptly delivered to the City.
- B. Patents: The Consultant assigns to the City all rights in any invention, improvement, or discovery, with all related information, including but not limited to designs, specifications, data, patent rights and findings developed with the performance of the Agreement or any subcontract. Notwithstanding the above, the Consultant does not convey to the City, nor does the City obtain, any right to any document or material utilized by the Consultant created or produced separate from the Agreement or was pre-existing material (not already owned by the City), provided that the Consultant has identified in writing such material as pre-existing prior to commencement of the Work. If pre-existing materials are incorporated in the work, the Consultant grants the City an irrevocable, non-exclusive right and/or license to use, execute, reproduce, display and transfer the pre-existing material, but only as an inseparable part of the work.
- C. The City may make and retain copies of such documents for its information and reference with their use on the project. The Consultant does not represent or warrant that such documents are suitable for reuse by the City or others, on extensions of the project or on any other project.

22. CONFIDENTIALITY.

Under Washington State Law (reference RCW Chapter 42.56, the *Public Records Act*) all materials received or created by the City of Spokane are **public records**. These records include but are not

limited to bid or proposal submittals, agreement documents, contract work product, or other bid material. Some records or portions of records are legally *exempt from disclosure* and can be redacted or withheld. The Public Records Act (RCW 42.56 and RCW 19.10) describes those exemptions. Consultant must familiarize themselves with the Washington State Public Records Act (PRA) and the City of Spokane's process for managing records.

The City will try to redact anything that seems obvious in the City opinion for redaction. For example, the City will black out (redact) Social Security Numbers, federal tax identifiers, and financial account numbers before records are made viewable by the public. However, this does not replace your own obligations to identify any materials you wish to have redacted or protected, and that you think are so under the Public Records Act (PRA).

Protecting your Materials from Disclosure (Protected, Confidential, or Proprietary): You must determine and declare any materials you want exempted (redacted), and that you also believe are eligible for redaction. This includes but is not limited to your bid submissions, contract materials and work products.

Contract Work Products: If you wish to assert exemptions for your contract work products you must notify the City Project Manager at the time such records are generated.

Please note the City cannot accept a generic marking of materials, such as marking everything with a document header or footer, page stamp, or a generic statement that a document is non-disclosable, exempt, confidential, proprietary, or protected. You may not exempt an entire page unless each sentence is entitled to exemption; instead, identify paragraphs or sentences that meet the RCW exemption criteria you are relying upon.

City's Response to a Public Records Act Requests: The City will prepare two versions of your materials:

Full Redaction: A public copy that redacts (blacks out) both the exemptions (such as social security numbers) identified by the City and also materials or text you identified as exempt. The fully redacted version is made public upon contract execution and will be supplied with no notification to you.

Limited Redaction: A copy that redacts (blacks out) only the exemptions (such as social security numbers) identified by the City. This does not redact (black out) exemptions you identified. The Limited Redaction will be released only after you are provided "third party notice" that allows you the legal right under RCW 42.56.540 to bring a legal action to enjoin the release of any records you believe are not subject to disclosure.

If any requestor seeks the Limited Redacted or original versions, the City will provide you "third party notice", giving ten business days to obtain a temporary restraining order while you pursue a court injunction. A judge will determine the status of your exemptions and the Public Records Act.

23. DISPUTES.

Any dispute or misunderstanding that may arise under this Agreement, concerning the Consultant's performance, shall first be through negotiations, if possible, between the Consultant's Project Manager and the City's Project Manager. It shall be referred to the Director and the Consultant's senior executive(s). If such officials do not agree upon a decision within a reasonable period of time, either party may decline or discontinue such discussions and may then pursue the legal means to resolve such disputes, including but not limited to alternative dispute resolution processes. Nothing in this dispute process shall mitigate the rights of the City to terminate the Agreement. Notwithstanding all of the above, if the City believes in good faith that some portion of the Work has not been completed satisfactorily, the City may require the Consultant to correct such work prior to the City payment. The City will provide to

the Consultant an explanation of the concern and the remedy that the City expects. The City may withhold from any payment otherwise due, an amount that the City in good faith finds to be under dispute, or if the Consultant provides no sufficient remedy, the City may retain the amount equal to the cost to the City for otherwise correcting or remedying the work not properly completed.

24. TERMINATION.

- A. For Cause: The City may terminate the Agreement if the Consultant is in material breach of this Agreement, and such breach has not been corrected to the City's reasonable satisfaction in a timely manner.
- 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.
- C. For City's Convenience: The City may terminate this Agreement without cause and including the City's convenience, upon written notice to the Consultant.
- D. Notice: 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.
- E. Actions upon Termination: if termination occurs not the fault of the Consultant, the Consultant shall be paid for the services properly performed prior to termination, 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.
- F. 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.

25. EXPANSION FOR NEW WORK.

This Agreement scope may be expanded for new work. Any expansion for New Work (work not specified within the original Scope of Work Section of this Agreement, and/or not specified in the original RFP as intended work for the Agreement) must comply with all the following limitations and requirements: (a) the New Work is not reasonable to solicit separately; (b) the New Work is for reasonable purpose; (c) the New Work was not reasonably known either the City or Consultant at time of contract or else was mentioned as a possibility in the solicitation (such as future phases of work, or a change in law); (d) the New Work is not significant enough to be reasonably regarded as an independent body of work; (e) the New Work would not have attracted a different field of competition; and (f) the change does not vary the essential identified or main purposes of the Agreement. The City may make exceptions for immaterial changes, emergency or sole source conditions, or other situations required in City opinion. Certain changes are not New Work subject to these limitations, such as additional phases of Work anticipated at the time of solicitation, time extensions, Work Orders issued on an On-Call contract, and similar. New Work must be mutually agreed and issued by the City through written Addenda. New Work performed before an authorizing Amendment may not be eligible for payment.

26. MISCELLANEOUS PROVISIONS.

- A. Amendments: No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.

- B. Binding Agreement: This Agreement shall not be binding until signed by both parties. The provisions, covenants and conditions in this Agreement shall bind the parties, their legal heirs, representatives, successors and assigns.
- C. Americans with Disabilities Act (ADA): Specific attention by the designer is required in association with the Americans with Disabilities Act (ADA) 42 U.S.C. 12101-12213 and 47 U.S.C. 225 and 611, its requirements, regulations, standards and guidelines, which were updated in 2010 and are effective and mandatory for all State and local government facilities and places of public accommodation for construction projects including alteration of existing facilities, as of March 15, 2012. The City advises that the requirements for accessibility under the ADA, may contain provisions that differ substantively from accessibility provisions in applicable State and City codes, and if the provisions of the ADA impose a greater or equal protection for the rights of individuals with disabilities or individuals associated with them than the adopted local codes, the ADA prevail unless approval for an exception is obtained by a formal documented process. Where local codes provide exceptions from accessibility requirements that differ from the ADA Standards; such exceptions may not be permitted for publicly owned facilities subject to Title II requirements unless the same exception exists in the Title II regulations. It is the responsibility of the designer to determine the code provisions.
- D. The Consultant, 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 Consultant shall comply with the requirements of this Section.
- E. This Agreement shall be construed and interpreted under the laws of Washington. The venue of any action brought shall be in the Superior Court of Spokane County.
- F. Remedies Cumulative: Rights under this Agreement are cumulative and nonexclusive of any other remedy of law or in equity.
- G. Captions: The titles of sections or subsections are for convenience only and do not define or limit the contents.
- H. 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.
- I. 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 Consultant after the time the same shall have become due nor payment to the Consultant 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.
- J. Entire Agreement: This document along with any exhibits and all attachments, and subsequently issued addenda, comprises the entire agreement between the City and the Consultant. The solicitation (Request for Proposal or Solicitation for Qualifications), Addenda, and Consultants Proposal, are each explicitly included as Attachments material to the Agreement. Where there are conflicts between these documents, the controlling document will first be this Agreement as amended, the Consultant's Proposal, then the City Solicitation documents. If conflict occurs between contract 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.
- K. Negotiated Agreement: The parties acknowledge this is a negotiated agreement, that they have had this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship.
- L. No personal liability: No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Contract, 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.

CONSULTANT

By _____
Signature Date

Type or Print Name

Title

CITY OF SPOKANE

By _____
Signature Date

Type or Print Name

Title

City of Spokane Business License Number: _____
Washington State Unified Business Identifier Number (UBI): _____

Attachments: Exhibit A - Scope of Work
Exhibit A-1 – Letter to the City RE: Scope of Work

PLACE HOLDER CONTRACT

**Agenda Sheet for City Council Meeting of:**

06/29/2015

| | |
|-----------------------|---------------|
| <u>Date Rec'd</u> | 6/3/2015 |
| <u>Clerk's File #</u> | OPR 2012-0526 |
| <u>Renews #</u> | |

| | | | |
|---------------------------|------------------------|----------------------|---------------|
| <u>Submitting Dept</u> | HUMAN RESOURCES | <u>Cross Ref #</u> | OPR 2007-0467 |
| <u>Contact Name/Phone</u> | HEATHER LOWE 6233 | <u>Project #</u> | |
| <u>Contact E-Mail</u> | HLOWE@SPOKANECITY.ORG | <u>Bid #</u> | 3854-12 |
| <u>Agenda Item Type</u> | Contract Item | <u>Requisition #</u> | 15634 |
| <u>Agenda Item Name</u> | 5830 - BROKER SERVICES | | |

Agenda Wording

Extend contract with Moloney & O'Neill Life, Inc (Spokane, WA) for benefit insurance broker services for two years, beginning July 1, 2015. Annual fee of \$135,000.

Summary (Background)

A request for poposal was completed and the incumbant Moloney & O'Neill was successful based upon the review committee's scoring. Services include marketing as needed for benefits plans, participation in educational aspects of benefitis to management, and providing website and electronic communication of benefits to employees and their families and to the insurance carriers.

| | | |
|-----------------------------|------------------|------------------------------|
| <u>Fiscal Impact</u> | | <u>Budget Account</u> |
| Expense | \$ 95,000 | # 5830-78710-17310-54620 |
| Expense | \$ 20,000 | # 6200-85020-17210-54620 |
| Expense | \$ 20,000 | # 6300-85030-17210-54620 |
| Select | \$ | # |
| <u>Approvals</u> | | <u>Council Notifications</u> |
| <u>Dept Head</u> | LOWE, HEATHER | <u>Study Session</u> |
| <u>Division Director</u> | LOWE, HEATHER | <u>Other</u> |
| <u>Finance</u> | SALSTROM, JOHN | <u>Distribution List</u> |
| <u>Legal</u> | WHALEY, HUNT | rkokot@spokanecity.org |
| <u>For the Mayor</u> | SANDERS, THERESA | jsalstrom@spokanecity.org |
| <u>Additional Approvals</u> | | cwahl@spokanecity.org |
| <u>Purchasing</u> | WAHL, CONNIE | Moloney & O'Neill |
| | | |
| | | |
| | | |

AMENDMENT

THIS CONTRACT AMENDMENT is between the CITY OF SPOKANE, a Washington State municipal corporation, as "City", and MOLONEY & O'NEILL LIFE, INC., whose address is 818 West Riverside Avenue, Suite 800, Spokane, Washington 99201, as "Broker".

WHEREAS, the parties entered into a BROKER/CONSULTANT AGREEMENT wherein the Broker agreed to PROVIDE EMPLOYEE BENEFITS BROKER/CONSULTANT SERVICES; and

WHEREAS, the original Agreement allowed for a two (2) year extension upon written approval of both parties; -- Now, Therefore,

The parties agree as follows:

1. DOCUMENTS. The Contract dated June 29, 2012 and July 12, 2012, 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 July 1, 2015 through June 30, 2017.
3. COMPENSATION. The City shall pay an annual amount of ONE HUNDRED THIRTY FIVE THOUSAND AND NO/100 DOLLARS (\$135,000.00) for everything furnished and done under this Contract Amendment.

Dated: _____

CITY OF SPOKANE

By: _____

Title: _____

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Dated: _____

MOLONEY & O'NEILL LIFE, INC.

E-Mail address, if available:

By: _____

Title: _____

15-134

**Agenda Sheet for City Council Meeting of:**

06/29/2015

| | |
|-----------------------|---------------|
| <u>Date Rec'd</u> | 7/12/2013 |
| <u>Clerk's File #</u> | OPR 2015-0560 |
| <u>Renews #</u> | |

| | | | |
|---------------------------|----------------------------|----------------------|-----|
| <u>Submitting Dept</u> | COMMUNITY, HOUSING & HUMAN | <u>Cross Ref #</u> | |
| <u>Contact Name/Phone</u> | M SHARTS X6840 | <u>Project #</u> | |
| <u>Contact E-Mail</u> | MSHARTS@SPOKANECITY.ORG | <u>Bid #</u> | |
| <u>Agenda Item Type</u> | Contract Item | <u>Requisition #</u> | EBO |
| <u>Agenda Item Name</u> | 1680 VOLUNTEERS LIHTC LLC | | |

Agenda Wording

Loan Agreement & other documents with Volunteers LIHTC LLC(Spokane, WA)for construction of VOA 2nd Avenue, a 51-unit apartment building at 217 E 2nd Ave -\$1,100,000 HOME funds (East Central neighborhood)

Summary (Background)

The City receives HOME grants from HUD for rental housing projects affordable to low-income households. The loan agreement requires that 37 units (19 studios & 18 1-bdrm) benefit households at or below 30% of the area median income for 37 years. Project is permanent housing for homeless persons. Other financing includes a construction loan and tax credit equity. Volunteers of America of E. WA and No. Idaho (Spokane) is the sole member of the LLC that is the managing member of the borrower.

| | | | |
|-----------------------------|---------------------|------------------------------|-----------------------------------|
| <u>Fiscal Impact</u> | | <u>Budget Account</u> | |
| Expense | \$ 350,000.00 | # | 1710-95844-59210-54201-72002 HOME |
| Expense | \$ 750,000.00 | # | 1710-95845-59210-54201-72002 HOME |
| Select | \$ | # | |
| Select | \$ | # | |
| <u>Approvals</u> | | <u>Council Notifications</u> | |
| <u>Dept Head</u> | STAPLETON, JENNIFER | <u>Study Session</u> | PCED 12/15/14, 1/12/15 |
| <u>Division Director</u> | TRAUTMAN, HEATHER | <u>Other</u> | |
| <u>Finance</u> | SALSTROM, JOHN | <u>Distribution List</u> | |
| <u>Legal</u> | WHALEY, HUNT | jphillips, cbrown | |
| <u>For the Mayor</u> | SANDERS, THERESA | mhughes | |
| <u>Additional Approvals</u> | | jstapleton | |
| <u>Purchasing</u> | | msharts | |
| | | ptippy@ccsww.org | |
| | | mroloff@voaspokane.org | |
| | | kkeenan | |

ATTACHMENT 2
PROPOSED BUDGET

**VOLUNTEERS LIHTC LLC
VOA EAST 2ND AVENUE**

217 East 2nd Avenue
51-unit Apartment Building

| | | | |
|------------------------------|-------------------|------------------------|-------------------|
| Land acquisition | 317,900 | LIHTC equity | 9,195,399 |
| Construction | 5,106,429 | | |
| Contractor overhead & profit | 510,643 | City HOME funds | 1,100,000 |
| Construction Contingency | 594,644 | | |
| Sales tax | 579,571 | | |
| Infrastructure/sitework | 300,000 | | |
| Bond | 100,000 | | |
| Permits/fees/hookups | 80,000 | | |
| Bridge loan costs | 1,700 | | |
| Construction loan costs | 290,904 | | |
| Lease-up period interest | 70,189 | | |
| LIHTC/perm financing costs | 144,277 | | |
| Architect | 200,000 | | |
| Development consultant | 200,000 | | |
| Other soft costs | 29,825 | | |
| Soft cost contingency | 20,000 | | |
| Other development costs | 90,000 | | |
| City compliance | 20,000 | | |
| Equipment & furnishings | 175,000 | | |
| Nonprofit donation | 25,718 | | |
| Construction guaranty fee | 225,000 | | |
| Operating reserve | 130,000 | | |
| Services reserve | 423,599 | | |
| Developer Fee | 660,000 | | |
| TOTAL | 10,295,399 | TOTAL | 10,295,399 |

Acquisition of land and construction of a 51-unit, 4-story residential building with 1 elevator on a lot of approximately 13,750 sf. Units will include 26 studio apartments and 24 one-bedroom units for rent and a one-bedroom resident manager's unit. The building will include fire sprinklers, a management office, a television room, a computer lab, onsite mail boxes, and coin-operated laundry. Units have a stove top (no oven) and refrigerator. The building will meet or exceed the State's Evergreen Sustainable Development Standards. Design and materials will incorporate durability and energy and water efficiencies. Upon completion of the work, three units will meet ADA and one (1) additional unit shall be accessible to individuals with sensory impairments pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). There will be a construction loan, which will be repaid upon completion.

BRIEFING PAPER

City of Spokane

Community, Housing and Human Services Department (CHHS)

HOME Fund Allocations / VOA project

December 15, 2014

Subject

Update regarding CHHS Board approval of the proposed HOME Multifamily Housing grant funds and approval of staff efforts to identify additional funding for VOA East 2nd project.

Background

The City receives federal funds from the U.S. Department of Housing and Urban Development (HUD) through its HOME Investment Partnerships Program (HOME), which is administered by the CHHS department. Eligible uses include the construction, rehabilitation, and acquisition of rental properties, which are affordable to low-income tenants. Eligible recipients include for-profit and non-profit housing providers and housing authorities. Some funding is restricted to non-profits designated as Community Housing Development Organizations (CHDO).

The department received requests for 5 projects requesting \$1,771,180. Following an RFP process and reviews by its Affordable Housing subcommittee, the CHHS Board recommends 3 projects for allocations of \$896,616 in HOME funds. The three projects are included in the attached table, which shows proposed projects and projects that are currently underway from prior funding rounds. The pending projects are:

- **West 315** will consolidate parcels to construct 33-unit apartment building with 31 one-bedroom and 2 2-bedroom units, which will have some units designated for homeless people and those with disabilities. A portion of the site currently has a one-story office building, which is owned by the Community Frameworks (CF), the project sponsor. In January 2015, the project will apply for low-income housing tax credits, which will apply affordability restrictions to all units, except the manager unit. The County has committed \$1.2 million in 2060 funds to the project. The project budget has a shortfall of \$100k, as the City did not fully fund the request. It is looking for alternative additional funding and/or cost savings. Project-based rent subsidies for some units have been recommended by the State. Spokane Housing Ventures (SHV) will be the property manager. CF and SHV work with Frontier Behavioral Health and other service providers to locate tenants and for services, as needed.

- **TIP City Lots** will develop five units on 3 City-owned lots in the Sprague Targeted Improvement Pilot program area. East Central Community Organization (ECCO) proposed two duplexes with four 3-bedroom units and a 2-bedroom single family residence. ECCO will apply for a bank loan and County 2060 funds to complete the project. The project has a funding shortfall, as its allocation was \$214k below what ECCO requested. It might request additional CHDO funds from the City in a future funding round. Depending upon funding received, the project might be scaled back. If it is, the unused City lots will be made available for other projects. ECCO will manage the units.
- **East 2nd Avenue** is a 51-unit, 4 story apartment building with 17 studio apartments, 33 one-bedroom units and a manager's unit for previously homeless persons. It is a collaborative effort of Volunteers of America of Eastern Washington and Northern Idaho and Catholic Housing Services, which plans to use County 2060 funds and low-income housing tax credit to construct Father Bach Haven II for the same population on an adjacent site. In January 2015, the VOA will apply for low-income housing tax credits, which will apply affordability restrictions to all units, except the manager unit. The project budget has a shortfall of \$675k, which is has asked the City to fill. The project expects to receive project-based rental assistance from the Spokane Housing Authority. Catholic Housing Services will manage the property. Services will be coordinated by VOA.

One of the recommended recipients (VOA) will require additional funding to successfully bring their project to fruition. Based on this project meeting the priority need of serving chronically homeless, the CHHS Affordable Housing committee and full CHHS board authorized CHHS staff to negotiate with VOA to assist in meeting their funding shortfall. Potential sources of funding have been identified and staff has begun to research those that would be the most appropriate fit for this project. Additionally, efforts will be made to identify ways to reduce the project costs and need for additional funding. As it stands, VOA's recommended allocation is \$525,388 and their HOME request was \$730,000. VOA also had a stated funding need of \$470,000 that has not been identified.

Impact

Combined, these projects will provide 89 housing units (41 designated as HOME units). Most are targeted to households at or below 30% of the AMI (Area Median Income). The VOA project will serve chronically homeless individuals – a need that has been identified as a high priority for the City by the CHHS Board, and the administration.

Action

No formal action is required at this time. Final proposals will be brought to City Council for each project separately.

Funding

Potential funding sources include UDAG, HOPE Acquisition Fund, Rental Rehabilitation Fund, and Program Income from the Delaney project. Only unappropriated sources are being considered (e.g. by funding this project, we are not defunding something else).

HOME-FUNDED RENTAL PROJECTS PROPOSED AND UNDERWAY

Pending (allocations recommended for approval by Community, Housing & Human Services Board)

| Project name | Owner/Sponsor | Ownership type | City HOME funds | Total cost | Leverage 1 to X | Total no. of units | Unit type & approx sq ft | Cost/ unit | Cost/ sq ft | Tenant income level | AH Committee Allocation | CHHS Board approval |
|---|--|---|------------------|---------------------|-----------------|--------------------|---|------------|-------------|---------------------|-------------------------|---------------------|
| West 315 315 W Mission (Emerson Garfield) Buses: 27 & 91 (0 ft), 1 & 25 (.2 mi) | Community Frameworks | Non-profit sponsor/ for-profit owner, LIHTC | \$200,000 | \$6,446,096 | 31.2 | 33 | 32 1bd/560 sf 1 2bd/825 sf | \$195,336 | \$ 269 | ELI, VLI-40, LI-60 | 11/20/14 | 12/3/2014 |
| TIP City Lots 1808 E 1st/2418 E 1st/118 S Napa (East Central) Buses: 90 & 94 (1-4 blocks) | East Central Community Organization | Non-profit, CHDO | \$171,228 | \$774,130 | 3.5 | 5 | 1 2bd /920 sf 4 3bd/1,170 sf | \$154,826 | \$138 | ELI, VLI-50 | 11/20/14 | 12/3/2014 |
| East 2nd Avenue 217 & 223 E 2nd (East Central) Buses: 94, 45 (0 ft & 1 block), 90 (4 blocks) | Volunteers of America Eastern WA & Northern ID | Non-profit sponsor/ for-profit owner, LIHTC | \$525,388 | \$10,054,605 | 18.1 | 51 | 17 stu/sf TBD 33 1bd/sf TBD 1 mngr/sf TBD | \$197,149 | \$359 | ELI, VLI-40, VLI-50 | 11/20/14 | 12/3/2014 |
| Total | | | \$896,616 | \$17,274,831 | 18.3 | 89 | | | | | | |

Previously Approved by City Council (Underway)

| Project name | Owner/Sponsor | Ownership type | City HOME funds | Total cost | Leverage 1 to X | Total no. of units | Unit type/ approx sq ft | Cost/ unit | Cost/ sq ft | Tenant income level | Allocation date | Council approval |
|--|---|---|--------------------|---------------------|-----------------|--------------------|--|------------|-------------|---------------------|-----------------|---------------------------------|
| The Delaney 242 W Riverside (Downtown) | Catholic Housing Services of Eastern Washington | Non-profit sponsor/ for-profit owner, LIHTC | \$300,000 | \$7,566,586 | 24.2 | 71 | 70 1bd/414-440 sf 1 mngr | \$106,572 | \$133 | ELI, VLI-40, LI-60 | 11/6/12 | 2013-611 8/19/13 |
| Sharp Residence 2808 E Sharp (Chief Garry Park) | C&H Duplexes, LLC | For-profit | \$80,000 | \$151,731 | 0.9 | 1 | 1 4bd/1,773 sf | \$151,731 | \$86 | VLI-50 | 5/1/14 | 2014-530 5/16/2014 |
| Liberty Park Terrace 1411 E Hartson (East Central) | Proclaim Liberty | Non-profit | \$203,007 | \$1,616,000 | 7.0 | 48 | 24 2bd/753sf 24 3bd/934sf | \$33,667 | \$40 | ELI, VLI-50 | 5/1/14 | 2014-772 5/16/2014 |
| Lilac Plaza 7007 N Wiscomb (Nevada Lidgerwood) | Spokane Baptist Association Homes | Non-profit sponsor/ for-profit owner, LIHTC | \$300,000 | \$13,326,833 | 43.4 | 175 | 126 stu/360-440sf 49 1bd/470-612sf | \$76,153 | \$107 | ELI, VLI-50, mkt | 11/6/12 | 2013-685 9/30/13 |
| Garfield Apts. 532 S Garfield (East Central) | Vasilenko | For-profit | \$400,000 | \$651,960 | 0.6 | 10 | 2 1bd/671 sf 2 2bd/956 sf 6 3bd/1,186 sf | \$65,196 | \$71 | ELI, VLI-50, MKT | 5/1/14 | 2014-492 5/16/2014 |
| Luhn House 2236 W Pacific (Browne's Addition) | Volunteers of America Eastern WA & Northern ID | Non-profit | \$37,500 | \$235,000 | 5.3 | 1 | 1 6bd/4379sf | \$235,000 | \$54 | ELI, VLI-50 | 10/11/11 | 2013-310 minor contract 4/15/13 |
| Total | | | \$1,320,507 | \$23,548,110 | 16.8 | 306 | | | | | | |

Income levels relate to Spokane area median income (AMI):
 Extremely low-income (ELI)
 Very low-income (VLI-45)
 Very low-income (VLI-50)
 Very low-income (LI-60)
 Market (MKT)

Household income at or below 30% AMI.
 Household income at or below 45% AMI.
 Household income at or below 50% AMI.
 Household income at or below 60% AMI.
 Unrestricted income.

**CITY OF SPOKANE
VOLUNTEERS LIHTC LLC**

VOA 2ND AVENUE

HOME PROGRAM LOAN AGREEMENT

This HOME Program Loan Agreement (the "Loan Agreement") is made effective this ____ day of June, 2015 ("Effective Date"), by and between the **City of Spokane**, Washington, a Washington municipal corporation (the "City"), whose address is City of Spokane, c/o Community, Housing and Human Services Department (the "Department"), 808 W. Spokane Falls Blvd., Room 650, Spokane, WA 99201, and **Volunteers LIHTC LLC**, a Washington limited liability company (the "Borrower"), whose address is c/o Volunteers of America of Eastern Washington and Northern Idaho, 525 W. Second Avenue, Spokane, WA 99201. Borrower and City are together referenced as the "Parties". This Loan Agreement is part of a transaction further reflected in a Promissory Note (the "Note") and a HOME Program Loan Covenant Agreement ("Covenant Agreement"). The City's disbursements under the Loan Agreement are further secured by a Deed of Trust of even date herewith ("Deed of Trust"). The terms of said documents are incorporated herein as if fully set forth herein, and together shall be referenced as the "Related Documents." The capitalized terms in said documents shall have the same meaning in this Loan Agreement unless the context clearly suggests otherwise. In the event of conflict in the terms of any of these documents, the terms most favorable to the City shall apply.

WITNESSETH: The Parties hereby agree to diligently fulfill the following duties and to perform the following services in accordance with all of the conditions, terms and requirements of this Loan Agreement.

I. PURPOSE

- A. The purpose of this Loan Agreement is to expand the supply of decent, safe, sanitary, and affordable housing for extremely low-income households pursuant to the HOME Investment Partnerships Program (24 CFR part 92 et seq., CFDA #14.239) ("HOME").
- B. To accomplish the purpose of this Loan Agreement, the City shall provide a portion of the financing for the Borrower's acquisition and construction of the VOA 2nd Avenue project, a 51-unit apartment building to be located at 217 East 2nd Avenue in Spokane, WA (the "Project"). The legal description of the Project is:

All that certain real property situate in the City of Spokane, County of Spokane, State of Washington, being a portion of Block 14, Saunders Addition, as per plat recorded in Volume "A" of Plats, Page 32, records of Spokane County, Washington and being described as follows:

BEGINNING at the Southwest corner of said Block 14, being hereinabove described; thence along the South line of said Block 14, South 89°59'39" East 136.38 feet to the TRUE POINT OF BEGINNING of this description; thence leaving said South line of Block 14, North 00°00'00" East 125.03 North line of a 12.5 foot wide vacated strip North of and adjacent to said Block 14, thence along said North line, South 89°59'55" East 38.60 feet to the Northerly prolongation of the East line of Lot 7 of said Block 14; thence along said line, South 00°00'00" East 39.97 feet to the North line of the South 85 feet of said Block 14; thence along said line South 89°59'04" East 124.98 feet to the East line of said Block 14; thence along said East line, South 00°00'00" East 85.04 feet to the Southeast corner of said Block 14; thence along the South line of said Block 14, North 89°59'39" West 163.58 feet to the said TRUE POINT OF BEGINNING of this description, containing 15,456 square feet of land, more or less.

Assessor's Parcel Number: 35202.1917

Property Address: 217 East 2nd Avenue, Spokane, WA 99202

The Project includes thirty-seven (37) HOME-assisted units, as follows: nineteen (19) studio and eighteen (18) one-bedroom apartments. Borrower shall provide the City with the address (e.g., street address and apartment number) of each HOME-assisted unit no later than the time of initial occupancy. All HOME-assisted units will be "floating" units, which means that the units originally designated as HOME-assisted may change over time, but the number of HOME-assisted units, for purposes of this Loan Agreement and Related Documents, shall never be less than the number designated in this section, and any replacement units must be comparable in size, features, and number of bedrooms to those units originally identified as HOME-assisted in this section.

Upon completion, at least three (3) units in the project shall be accessible to individuals with mobility impairments and one (1) additional unit shall be accessible to individuals with sensory impairments pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

- C. The Project is expected to conform to the estimates noted in the Project Budget, attached hereto as Attachment 1 and incorporated herein. All additional costs over and above the sum noted as compensation for this Loan Agreement shall be borne by the Borrower.

II. DURATION OF THE LOAN AGREEMENT

This Loan Agreement shall commence and be effective on the Effective Date and shall terminate on the later of the end of the HOME Affordability Period or full repayment of sums due under the Note.

III. AMOUNT OF LOAN

The City shall loan the Borrower a sum not to exceed ONE MILLION ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,100,000.00) from HOME funds, to be disbursed as provided herein, subject to the terms and conditions of this Loan Agreement and Related Documents.

IV. PRICING

This loan is subject to interest on the outstanding principal balance loaned at the rate of three percent (3%) per annum, such interest commencing on the time of disbursement(s) and compounding annually during the loan term. Payments shall be made pursuant to the Note and Section XV herein below. If rents for any HOME-assisted in the Project are increased above the level of the Affordability Requirements defined in this Loan Agreement or any other provisions, covenants, terms, conditions or restrictions of this Loan Agreement are not adhered to, then the interest rate on the outstanding balance shall be increased to the prevailing prime lending rate as published in The Wall Street Journal, plus three percent (3%) for the remaining term of the loan, compounded annually, and may be subject to accelerated repayment pursuant to XV.A. herein below; provided, however, prior to increasing the interest rate or accelerating repayment pursuant to this Section IV, the City will provide the Borrower and Tax Credit Investor (as defined below) with notice of such default and provide the Borrower and the Tax Credit Investor with the cure rights specified in Section XIV.

V. SECURITY/SUPPORT

- A. Borrower shall assure and maintain the City's security position on the underlying real estate as evidenced by the Deed of Trust, which will be subordinate only to housing covenant agreements or regulatory agreements and/or deeds of trust from the Washington State Housing Finance Commission, the City, and interim construction financing provided by Wells Fargo Bank. The sum of all loans against the Project, including the City's, cannot exceed ninety percent (90%) of the lesser of cost, the estimated value, or appraised value upon completion.
- B. The Affordability Requirement outlined in this Loan Agreement shall be recorded as a **covenant running with the Project**, and shall apply without regard to the term of any loan or mortgage or transfer of ownership.
- C. Borrower shall keep in force, continuously, insurance covering the Project and property legally described above, listing the City of Spokane as policy beneficiary, pursuant to Section IX of this Loan Agreement.

VI. FUNDING DISBURSEMENTS

- A. The timing and disbursement of HOME funds shall be determined by the City in its sole discretion, consistent with the provisions of this Loan Agreement.

Without limiting the forgoing, funding disbursements are subject to the following conditions:

1. City HOME funds shall be disbursed only after completion of all requirements imposed by the United States Department of Housing and Urban Development ("HUD"), as determined by the City in its sole discretion, and upon completion of an environmental review by the City.
 2. All funds committed under this Agreement must be utilized by December 31, 2016.
 3. Borrower may not request disbursement of funds until needed for payment of eligible project costs, as defined by 24 CFR §92.206 and as further defined in the Program Description of the City's Multifamily Housing Program, and the amount of each request must be limited to the amount needed. Architectural, engineering, or related professional services required to prepare plans, drawings, specifications, or work write-ups may be reimbursed if they were incurred not more than 24 months before the date of this Loan Agreement. In case of a dispute between the Parties regarding when the funds shall be disbursed, the determination of the Director of the Department of Community, Housing, and Human Services of the City of Spokane ("Director") shall govern.
- B. Notwithstanding any other provision of this Loan Agreement, except as approved by the City, prior to the drawdown or disbursement of any City HOME funds hereunder, the Borrower shall provide documentation, in a form reasonably acceptable to the City, that the following actions have been taken to the City's satisfaction:
1. Recording of the Covenant Agreement and Deed of Trust.
 2. The Borrower has in place all applicable construction, land use, environmental, zoning permits and/or other federal, state and local governmental approvals as necessary for undertaking the activity for which the specific draw request is to be used.
 3. For projects including acquisition of land and/or buildings, an appropriate assessment of fair market value must be reviewed and approved by the City.
 4. Notwithstanding any provision in this Loan Agreement, the Borrower and the City hereto agree and acknowledge that Borrower shall not be entitled to any drawdown or disbursement of funds until satisfactory completion of environmental review and receipt by the City of a release of funds from HUD under 24 CFR Part 58. The Borrower and the City further agree that the provision of any funds to the Project shall be conditioned upon the City's determination to proceed with, modify, or cancel the project based on the results of a subsequent environmental review. The Borrower shall not spend any funds on physical or choice-limiting actions, including property acquisitions, demolition, movement, rehabilitation, conversion, repair, or construction prior to the

environmental clearance as described herein. Violation of this provision may result in the denial of any funds under this Loan Agreement. The Borrower shall perform all the required mitigation measures referenced in the environmental review record completed by the City.

5. As applicable, the Borrower shall demonstrate, to the City's satisfaction, full compliance with the minimum wage requirements set forth in Section XVIII herein below.
- C. Notwithstanding the foregoing, a retainage of twenty percent (20%) of the total amount allocated under this Loan Agreement shall be held by the City until all permits have been received, final inspections are complete, a final Certificate of Occupancy is issued, the Borrower accepts the work, federal requirements are fully satisfied, and all other obligations under this Loan Agreement or related agreements are carried out to the satisfaction of the Director.

VII. INCOME DETERMINATIONS

- A. For purposes of this Loan Agreement, tenant "annual income" is defined pursuant to 24 CFR §92.203, and includes income from all persons in the household, less income adjustments pursuant to 24 CFR §5.611. An individual does not qualify as a low-income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR §5.612.
- B. Initial tenant annual income determinations shall be made by the Borrower pursuant to 24 CFR §92.203. Subsequent tenant income determinations shall be made by the Borrower pursuant to 24 CFR §92.203 and 24 CFR §92.252(h).
- C. Rent increases and annual income recertifications shall be governed by the terms outlined in the Affordability Requirements.

VIII. AFFORDABILITY REQUIREMENTS

- A. HOME Affordability Period. The HOME Affordability Period, established pursuant to 24 CFR §92.252, is twenty (20) years, beginning after Project Completion, as determined by the Director. "Project Completion" means that all necessary title transfer requirements and construction work have been performed; the Project complies with the requirements of 24 CFR §92, including the property standards under 24 CFR §92.251; the final drawdown of HOME funds has been disbursed for the Project; and the project completion information has been entered in the disbursement and information system established by HUD, except that with respect to rental housing project completion, for the purposes of 24 CFR §92.502(d), Project Completion occurs upon completion of construction and before occupancy. Repayment of the loan during the HOME Affordability Period will not extinguish the requirements of the Related Documents.
- B. City Affordability Period. The City Affordability Period is thirty-seven (37) years, from the date of this Loan Agreement. The HOME Affordability Period and City

Affordability Period shall run concurrently. Collectively, the two periods are hereinafter referred to as the "Affordability Period." Upon expiration of the HOME Affordability Period, the City Affordability Period shall continue, but HUD will no longer monitor compliance with the Affordability Requirements. The requirements of the Affordability Period and other conditions of the Related Documents shall apply, as long as there are funds owing under the Note.

- C. Rent Limit. During the Affordability Period, rents (i.e., exclusive of rent paid through project-based subsidies) on the thirty-seven (37) HOME-assisted units shall not exceed thirty percent (30%) of the adjusted income of a family whose annual income equals thirty percent (30%) of Spokane area median income ("AMI"), as defined by HUD and adjusted for family size, unit size by number of bedrooms, tenant-paid utilities, and tenant-supplied appliances. These units shall include nineteen (19) studio units and eighteen (18) one-bedroom units. Should the HUD rents decline below the initial project rents, the Borrower's rents do not need to be reduced below the initial rents. A table of initial HOME rents for the Project as established by HUD is attached to this Loan Agreement as Attachment 2. The adjustment for tenant-paid utilities and tenant-supplied appliances is subject to 24 CFR §92.252, which previously used the Section 8 existing housing allowance for tenant-furnished utilities and other services as published annually by and issued by the Spokane Housing Authority or twelve (12) months of documented actual utility costs as acceptable to the City's Community, Housing & Human Services Department. New HUD requirements are being clarified and may include that the adjustment for tenant-paid utilities and tenant-supplied appliances be based on the HUD Utility Schedule Model, twelve (12) months of documented actual utility costs as acceptable to the City's Community, Housing & Human Services Department, or other methods as determined by HUD. Currently, the HUD Utility Schedule Model can be found at: <http://huduser.org/portal/resources/utilmodel.html>.

However, any HOME-assisted unit receiving federal or state project-based rental subsidy, where the tenant pays not more than thirty percent (30%) of the household's adjusted income as a contribution toward rent, shall be limited to the maximum rent allowed under the federal or state project-based rental assistance program.

The City will provide Borrower with information on updated HOME rent limits so that rents may be adjusted (not to exceed the maximum HOME rent limits exclusive of rent paid through project-based subsidies) in accordance with this Loan Agreement and 24 CFR §92.252(f)(2). Owners must annually provide the City with information on rents and occupancy of HOME-assisted units to demonstrate compliance with the Affordability Requirements of this Loan Agreement. The City will review rents for compliance and approve or disapprove them every year.

- D. LIHTC Rent Clause. For tenants of low-income tax credit assisted units (if low-income housing tax credits are awarded to the Project or portions of the Project), any increases in rent associated with tenant income shall be governed

solely by section 42 of the Internal Revenue Code of 1986, as amended from time to time (the "Code").

- E. Upon completion of the HOME Affordability Period, if the maximum rent and income limits are exceeded, the loan will be subject to repayment at the higher interest rate as provided for in Paragraph 2 of the Promissory Note.
- F. Income Limit. At initial occupancy, tenants of the thirty-seven (37) HOME-assisted units shall have incomes not greater than thirty percent (30%) of AMI, as defined by HUD. If any of these tenants' incomes increases to a level exceeding fifty percent (50%) of AMI, then the next available HOME-assisted unit shall be made available to families at or below thirty percent (30%) of AMI. If the income of a tenant of a HOME-assisted unit increases and exceeds eighty percent (80%) of AMI, then the tenant's rent shall increase to the lesser of thirty percent (30%) of the tenant's adjusted monthly income or Fair Market Rent, subject to paragraph VIII.D hereof.
- G. Adjustments if Project-based Rent Support Ends. The Project has a commitment for forty (40) project-based housing choice vouchers through the Spokane Housing Authority. These vouchers are expected to be available to the project for at least fifteen years. Should all or some of these vouchers end, the Project's income could be affected. If the project-based housing choice vouchers are reduced or eliminated, the Borrower must notify the City as soon as possible, but no less than 90 days before, the anticipated change in the number of vouchers and provide information on its anticipated impact on the Project's cash flow. If the number of project-based vouchers assigned to HOME-assisted units falls below thirty-seven, the City and Borrower may revise or amend the documentation to adjust the rent and income limits applicable to the HOME-assisted units; this will not change the total number of HOME-assisted units, nor the unit sizes, consisting of nineteen studio apartments and eighteen one-bedroom apartments. Whether or not rental assistance is available, at least eighteen (18) of the thirty-seven (37) HOME-assisted units will be occupied by households with incomes upon their initial occupancy not greater than thirty percent (30%) of AMI occupying units with rents not to exceed thirty percent (30%) of adjusted income of a family whose annual income equals thirty percent (30%) of AMI.

For the remaining nineteen of the thirty-seven HOME-assisted units, the unit affordability may be modified for each HOME-assisted housing unit that loses its federal project-based rental assistance ("No-Assistance"). For the first (1st) through seventeenth (17th) No-Assistance units, the units shall be occupied by households with incomes upon their initial occupancy not greater than forty-percent (40%) of AMI and the rent shall not exceed thirty percent (30%) of adjusted income of a family whose annual income equals forty percent (40%) of AMI. For the eighteenth (18th) and nineteenth (19th) No-Assistance units, the units shall be occupied by households with incomes upon their initial occupancy not greater than fifty-percent (50%) of AMI and rent shall not exceed

thirty percent (30%) of adjusted income of a family whose annual income equals fifty percent (50%) of AMI.

If any of these tenants' incomes increases to a level exceeding fifty percent (50%) of AMI, then the next available HOME-assisted unit shall be made available to families at or below the income level that returns the HOME units to the appropriate level. If the income of a tenant of a HOME-assisted unit increases and exceeds eighty percent (80%) of AMI, then the tenant's rent shall increase to the lesser of thirty percent (30%) of the tenant's adjusted monthly income or Fair Market Rent, subject to paragraph VIII.D hereof.

- H. Income Certifications. All tenants' incomes shall be recertified annually by the Borrower. Any applicable rent increases will be effective upon the next lease renewal, and are subject to thirty (30) days' written notice.
- I. Additional Affordability Requirements. The Project must comply with the affordable housing requirements of 24 CFR §92.252.
- J. Relocation. Tenants in occupancy prior to the Project are subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended ("URA"), 42 USC 4601 et seq. and the regulations promulgated thereunder. All relocation payments and expenses shall be borne by the Borrower.
- K. Protection of Affordability Requirements – City Purchase Option. The Affordability Requirements may terminate upon foreclosure or transfer in lieu of foreclosure at the sole election of the Director. In the event of a pending or threatened foreclosure, once applicable notice and cure periods have expired, the City is hereby granted an option and a right of first refusal to purchase the Project before foreclosure or deed in lieu of foreclosure to preserve affordability. The City may exercise its right to purchase the Project in any reasonable manner following the City's receipt of written notice of pending or threatened foreclosure proceedings and/or a possible deed in lieu of foreclosure, which notice Borrower hereby agrees to provide to City. The purchase price shall be the assessed value of the Project at the time of the City's exercise of its purchase rights, less any financial obligations assumed by the City at the time of the City's acquisition of the Project. Pursuant to 24 CFR §92.252(e)(3), the City further reserves the right to revive any affordability restrictions according to the original terms of this Loan Agreement if, during the HOME Affordability Period (as defined herein), the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Project or property.

IX. INSURANCE

The Borrower shall keep the Project and all improvements now existing or hereafter erected thereon continuously insured as required in the Deed of Trust, the

Note and the Covenant Agreement and this Loan Agreement, naming the City as mortgagee and/or loss payee. The insurance requirements apply during the Affordability Period or during any such time as there are outstanding sums due under the Note, whichever is longer.

X. PROPERTY STANDARDS

- A. All HOME-assisted housing under this Loan Agreement shall meet the requirements of 24 CFR §92.251, which includes applicable Federal, State and local code requirements and housing quality standards, rehabilitation standards, ordinances and zoning ordinances at the time of Project completion and for the duration of the Affordability Period. Where relevant, the housing must be constructed to mitigate the impact of potential disasters (e.g., earthquakes, hurricanes, flooding, and wildfires), in accordance with applicable State and local codes, ordinances, or other State and local requirements, or such other requirements as HUD may establish. The standards under 24 CFR §92.251 were modified in 2013 and implementation awaits further clarification from HUD, at this time.
- B. Any accessible HOME-assisted housing units under this Loan Agreement shall, for the duration of the Affordability Period, meet the accessibility requirements of 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable. Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601-3619). The foregoing shall not be interpreted as limiting Borrower's obligation to comply with accessibility requirements applicable to the Project as whole.
- C. The Borrower shall comply with the provisions of 24 CFR §92.251.

XI. ADDITIONAL MISCELLANEOUS COVENANTS

Borrower shall:

- A. Comply with the Affordability Requirements described in this Loan Agreement and Related Documents.
- B. Maintain all required insurance, including without limitation the insurance required by the Deed of Trust.
- C. Maintain Project financial reports, Project financial records, and provide all other information and documentation that the City may reasonably request.
- D. Make prompt payment of all taxes and financial liabilities.

- E. Not hypothecate or encumber Project assets in any way, except to the extent provided for under this Loan Agreement or as approved of by the Director in writing. The Director may withhold such approval at his/her reasonable discretion.
- F. Promptly provide (i) rent and tenant income information at initial tenant occupancy and (ii) rent, occupancy, and tenant income information annually throughout the term of this Loan Agreement, or as otherwise requested by the City. If the Project has floating HOME units, the Borrower must provide the City with information regarding the unit substitution and filling vacancies so that the Project remains in compliance with HOME rental occupancy requirements.
- G. Promptly provide, upon request by the City, such documentation as is necessary (including financial statements) to enable the City to determine the financial condition and continued financial viability of the Project.
- H. During the Affordability Period, prohibit occupancy of any HOME-assisted unit by Borrower (or officer, employee, agent, elected or appointed official, or consultant of the Borrower, or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of Borrower) whether private, for-profit or nonprofit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor).
- I. Comply with all applicable federal, state, and local regulations and requirements, including, but not limited to Uniform Administrative Requirements, Federal Labor Standards, Davis-Bacon and Related Acts, Uniform Relocation Act requirements applicable as of the date of the execution of this Loan Agreement, and the provisions of the Lead-Based Paint Poisoning Prevention Act. The Federal Labor Standards Provisions with which Borrower must comply are attached as Attachment 3 and incorporated herein. The City's costs to administer Davis-Bacon Federal Labor Standards, and Related Acts shall be borne by the Borrower. When Washington State prevailing wages apply, the Borrower shall comply with all State requirements under RCW 39.12 to the satisfaction of the State of Washington. When applicable, the higher of Washington State prevailing wages or Davis-Bacon wages shall apply.
- J. Comply with all HOME program project requirements pursuant to 24 CFR part 92 et seq.
- K. Maintain housing in compliance with the property standards of 24 CFR §92.251 and local code requirements throughout the term of this Loan Agreement.
- L. Upon Project completion, the Project shall obtain a final Certificate of Occupancy, meet all licensing requirements needed to operate the facility as proposed by Borrower in its various funding applications, and meet the property standards of 24 CFR §92.251, and all applicable state and local codes

and ordinances. New construction projects must also meet HUD, state, and local requirements relating to accessibility and disaster mitigation.

- M. Cause each of the thirty-seven (37) HOME-assisted units to have been occupied by income-eligible households within eighteen (18) months after the Project is completed. If any HOME-assisted units have not been occupied by eligible tenants within 6 months following the date of Project Completion, Borrower shall submit to the City current marketing information and, if the City requests it, an enhanced marketing plan for leasing the unoccupied units as quickly as possible, which information the City will provide to HUD as required by 24 CFR §92.252. If any HOME-assisted unit has not been rented to eligible tenants within eighteen (18) months after the date of Project Completion, Borrower shall repay the City \$29,729.73/unit for each such unit within thirty (30) days of the City's written request for repayment. This reflects the proportionate per unit share of HOME funds, i.e., \$1,100,000 HOME dollars/37 HOME units. The number of HOME-assisted units required hereunder shall be reduced in proportion to the amounts so repaid.

The Borrower shall cause the Covenant Agreement (which shall contain the foregoing covenants) to be recorded as a covenant running with the land and the Project.

Borrower shall pay at loan closing all costs associated with the negotiation, documentation and closing of the loan, including without limitation title premiums escrow fees, recording fees, appraisal fees and City's attorneys' fees.

XII. PROJECT TIMETABLE

- A. The Borrower agrees to complete work required in accordance with the timetable set forth in Attachment 4. Timely completion of the work is an integral and essential part of performance. The expenditure of HOME funds is subject to Federal deadlines and failure to meet deadlines could result in the loss of the Federal funds. By the acceptance and execution of this Loan Agreement, the Borrower agrees that the Project will be completed as expeditiously as possible and make every effort to ensure the project will proceed and will not be delayed. Failure to meet these deadlines can result in cancellation of this contract and revocation of HOME funds. Since it is mutually agreed that time is of the essence, the Borrower shall cause appropriate provisions to be included in all contracts or subcontracts relative to the work tasks in Attachment 4. It is intended that such provisions included in any subcontracts be, to the fullest extent permitted by law and equity, binding for the benefit of the City and enforceable by the City against the Borrower and its successors and assigns to the project or any part thereof or any interest therein.
- B. In the event the Borrower is unable to meet the above schedule or complete the above services due to delays resulting from Acts of God, untimely review and approval by the City and other governmental authorities having jurisdiction

over the Project, or other delays that are not caused by the Borrower, the City shall grant a reasonable extension of time for completion of the work. It shall be the responsibility of the Borrower to notify the City promptly in writing whenever a delay is anticipated or experienced, and to inform the City of all facts and delays related to the delay.

XIII. DEFAULT

A. The following shall be considered "Events of Default" for purposes of this Loan Agreement:

1. Failure of Borrower to make any principal and interest payment within fifteen (15) days after such payment is due.
2. Failure to perform, observe or comply with the Affordability Requirements, Income Determinations, or any other provisions, related covenants, terms, conditions or restrictions of this Loan Agreement or any agreement relating to the Project (i.e., the occurrence of an event of default under other indebtedness secured by the Project property) or any part thereof, and failure to fully cure the same within the period of time, if any, permitted for cure and, if no period for cure is otherwise provided for, within sixty (60) days of written notice from the City of such failure, requesting the same to be remedied; provided, after a second non-compliance of any provision in a five- (5-) year period, only fourteen (14) days written notice is needed.
3. Failure to perform required maintenance or performance of any act by Borrower which would, in the City's reasonable opinion, adversely affect the value of the Project.
4. Except as otherwise permitted under this Loan Agreement, the sale, transfer, lease, or other conveyance of the Project or any portion thereof, including assumptions and subordinations, without obtaining the prior written consent of the Director.
5. Filing a voluntary or involuntary petition not dismissed within ninety (90) days after filing under the United States Bankruptcy Code by or against the Borrower.
6. Any representation, warranty, or disclosure made to the City or any other Project lender which proves to be materially false or misleading as of the date made, whether or not such representation, warranty or disclosure appears in this Loan Agreement.
7. Failure to maintain and keep in force adequate amounts of insurance as is usual in the business carried on by the Borrower, or as required herein.

8. Without limiting any of the foregoing, Borrower's failure to comply with the minimum wage requirements set forth in Section XVIII of this Loan Agreement.

XIV. REMEDIES

- A. Upon the occurrence of an event of default not timely cured after notice, the City may, in addition to any other remedies which the City may have hereunder or under this Loan Agreement or by law or equity, at its option and upon written notice to the Borrower, take any or all of the following actions:
 1. Immediately terminate any further advance of loan funds.
 2. Declare the debt incurred hereunder and under the Related Documents immediately due and payable and commence collection proceedings against the Borrower.
 3. Seek judicial appointment of a receiver.
 4. Foreclose under the security documents or instruments, judicially or non-judicially.
 5. File suit against the Borrower.
 6. Seek specific performance or injunctive relief to enforce performance of the undertakings, duties, and agreements provided in this Loan Agreement or any related security document or instrument, whether or not a remedy at law exists or is adequate.
- B. All remedies of the City provided for herein are cumulative and shall be in addition to all other rights and remedies provided by law or in equity or by this Loan Agreement. The exercise of any right or remedy by the City shall not in any way constitute a cure or waiver of default under this Loan Agreement or any other related Project agreement, or invalidate any act done pursuant to any notice of default, or prejudice the City in the exercise of any of its rights unless, in the exercise of such rights, the City realizes all amounts owed to it by the Borrower.
- C. A failure to declare or a delay in declaring a default shall not constitute a waiver of any rights or remedies or excuse any failure by the Borrower to strictly comply with its obligations under this Loan Agreement or any other related Project agreement or document.
- D. As long as Wells Fargo Affordable Housing Community Development Corporation, a North Carolina corporation ("Tax Credit Investor") or an affiliate thereof remains the investor member of Borrower, if a default occurs under this Loan Agreement or any other related document, and City intends to exercise any of its remedies on account of such default, then prior to the initiation of

any remedy by City on account of such default, then City at the same time as it delivers notice to Borrower shall deliver written notice of such default to the Tax Credit Investor at the address specified in Section XXVII. City shall accept cure of the defaults by the Tax Credit Investor within the cure periods, if any, provided in this Loan Agreement or any other related document, and in any event, shall not exercise any rights to accelerate or foreclose with respect to this Loan until Tax Credit Investor has been given the notice (but not the obligation) to remedy any default forming the basis with respect to such remedy.

- E. Notwithstanding anything to the contrary herein, Borrower, its partners, officers, directors, employees, agents and contractors shall have no personal liability for payment of the indebtedness evidenced hereby or performance of the covenants set forth in this Loan Agreement and in the Related Documents and the sole recourse of the City shall be confined to the exercise of its rights under this Loan Agreement and the Related Documents, provided that nothing shall diminish Borrower's liability for damages or deficiencies resulting from theft, waste, fraud, material misrepresentation and misuse of rents.

XV. REPAYMENT

- A. Principal and accrued interest on this Note shall be due on June 1, 2052. During the Affordability Period, Borrower shall notify the City in writing if, for any reason, Borrower and/or the Project will not comply with the Affordability Requirements, at which time any remaining balance would become immediately due and payable. Such payment shall not extinguish the requirements of the Related Documents.
- B. The Borrower may pay all or any portion of the outstanding principal of the Note at any time, without penalty. Repayment during the HOME Affordability Period, as described in this Loan Agreement, shall not extinguish the Affordability Requirements.
- C. Payments received will first be applied to late charges, then to interest, and finally to principal.
- D. Payments of principal, interest, and fees shall be made in lawful money of the United States of America in immediately available funds to the City of Spokane, at the Community, Housing and Human Services Department, 808 W. Spokane Falls Blvd., Room 650, Spokane, WA 99201, or at such other place as the City may designate to Borrower in writing.

XVI. NONDISCRIMINATION/RENT SUBSIDY

Neither the Borrower nor any of its agents shall refuse to lease HOME-assisted units to a certificate or voucher holder under 24 CFR part 982 – Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program or to the holder of a comparable document evidencing participation in a HOME tenant-based rental

assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document.

XVII. FAITH-BASED ACTIVITIES AND ORGANIZATIONS

- A. Borrower, in providing services supported in whole or in part with HOME program funds, shall not discriminate against current or prospective program beneficiaries (i.e., tenants) on the basis of religion, a religious belief, or a refusal to attend or participate in a religious practice.
- B. If Borrower engages in explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization, Borrower must perform such activities and offer such services outside of and separately in time or location, from the activities or programs financed under this Loan Agreement, and participation in any such explicitly religious activities must be voluntary for the program beneficiaries of the HUD-funded programs or services (i.e., tenants).
- C. Whether or not Borrower is a faith-based organization, it may use the loan proceeds provided under this Loan Agreement as provided under relevant regulations and this Loan Agreement without impairing its independence, autonomy, expression of religious beliefs, or religious character. Borrower will retain its independence from Federal, State, and local government, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct HOME funds to support or engage in any explicitly religious activities, including activities that involve overt religious content, such as worship, religious instruction, or proselytization, or any manner prohibited by law. Borrower may use space in its facilities to provide program-funded services, without removing or altering religious art, icons, scriptures, or other religious symbols. In addition, Borrower retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.
- D. The loan proceeds provided to Borrower pursuant to this Loan Agreement may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are or will be used for explicitly religious activities. Subject to other limitations in this Loan Agreement, loan proceeds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under HOME regulations. When a structure is or will be used for both eligible and explicitly religious activities, HOME funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to the HOME program. Sanctuaries, chapels, or other rooms that Borrower uses as its principal place of worship, however, are ineligible for HOME-funded improvements. Disposition of real property after

the term of the loan or grant, or any change in use of the property during the term of the loan or grant, is subject to government-wide regulations governing real property disposition (see 24 CFR parts 84 and 85).

- E. This limitations in this Section XVII shall apply regardless whether the loan proceeds under this Loan Agreement includes local funds that the City has voluntarily contributed to supplement federally funded activities.

XVIII. COMPLIANCE WITH LAWS

- A. The Borrower shall comply with all HOME Program requirements as outlined in 24 CFR part 92 et seq., as may be amended from time to time.
- B. The Borrower shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), the Fair Housing Act (42 U.S.C. 3601 et seq.), E.O. 11063 (3 CFR, 1959-1963 Comp., p. 652), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD regulations issued pursuant thereto.
- C. The Borrower shall comply with the nondiscrimination and equal opportunity, disclosure requirements, debarred, suspended or ineligible contractors, and drug-free workplace, per 24 CFR §92.350.
- D. The Borrower shall comply with the affirmative marketing and minority outreach program of 24 CFR §92.351, and shall further comply with the tenant selection requirements set forth in 24 CFR 92.253(d).
- E. The Borrower shall comply with the National Environmental Policy Act of 1969, as outlined in 24 CFR 92.352 and Borrower agrees to implement City-identified conditions on safeguards to protect and enhance environmental quality or minimize adverse environmental impacts.
- F. Minimum Wages (State Prevailing Wage and Federal Davis-Bacon Wage).
1. Federal Labor Standards/Davis-Bacon Act of 1931 (Title 40 U.S.C. 3141) ☒ Applicable ☐ Not Applicable. If the "Applicable" box is checked, the following provisions apply:
- a. The Borrower shall pay prevailing wages, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5) [<http://www.dol.gov/whd/regs/statutes/dbra.htm>], to all laborers and mechanics employed in the development of the Project; provided, in the event the Project is subject to state minimum wage requirements, and if the state minimum wage rate exceeds the Department of Labor rate, the conflict will be resolved by applying the higher rate. The Contractor and all subcontractors will submit a "Statement of Intent to Pay Prevailing Wages" certified by the industrial statistician of the State Department of Labor and Industries, prior to any payments. The "Statement of Intent to Pay

Prevailing Wages" shall include: (1) the Contractor's registration number; and (2) the prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020 and the number of workers in each classification. Each voucher claim submitted by the Contractor for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the "Statement(s) of Intent to Pay Prevailing Wages" on file with the City. Prior to the payment of funds held under chapter 60.28 RCW, the Contractor and subcontractors must submit an "Affidavit of Wages Paid" certified by the industrial statistician.

- b. All contracts relating to the Project shall contain a provision requiring the payment of such wages, as predetermined by the Secretary of Labor under the Davis-Bacon Act, 40 USC 276(a) under wage decision WA150120, dated January 2, 2015.
- c. The Borrower shall pay overtime, as applicable, pursuant to the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332).
- d. The Borrower shall comply with all regulations issued under the Davis-Bacon Act and the Contract Work Hours and Safety Standards Act, all Federal laws and regulations pertaining to labor standards, Federal Labor Standards, HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), and 24 CFR §92.354, as applicable.
- e. The Borrower shall provide contracts with the prime contractor and major subcontractors as soon as these contracts are available and the contracts shall evidence compliance with Federal Labor Standards.
- f. These prevailing wage requirements do not apply to volunteers or sweat equity pursuant to 24 CFR §92.354(a) and (b).
- g. Borrower shall reimburse the City for all costs incurred by the City in administering Borrower's compliance with applicable Davis-Bacon, Federal Labor Standards, and Related Acts.

2. Labor Standards. If applicable, the Federal Labor Standards Provisions (HUD 4010) are attached as Attachment 3.

3. State Minimum Wage. When Washington State prevailing wages apply, the Borrower shall comply with all State requirements under RCW 39.12 to the satisfaction of the State of Washington. When applicable, the higher of Washington State prevailing wages or Davis-Bacon wages shall apply.

G. Conflict of Interest. The Borrower shall comply with the conflict of interest provisions prescribed in 24 CFR §92.356(f). During the Affordability Period, Borrower shall prohibit occupancy of any HOME-assisted unit by Borrower (or officer, employee, agent, elected or appointed official, or consultant of the Borrower, or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of the Borrower), whether private, for-profit or nonprofit (including a community

housing development organization (CHDO) when acting as an owner, developer, or sponsor).

- H. The Borrower shall comply with the equal employment opportunities for low- and very low-income persons pursuant to 24 CFR part 135.
- I. The Borrower shall comply with the Fair Housing Act as implemented by 24 CFR parts 100-115, as applicable.

XIX. TENANT AND PARTICIPANT PROTECTIONS

- A. There must be a written lease between the tenant and the Borrower that complies with 24 CFR 92.253 (Tenant Protections and Selection) and that is for a period of not less than one year, unless by mutual agreement between the tenant and the owner a shorter period is specified.
- B. Leases between the Borrower and a tenant shall not contain any of the following provisions:
 - 1. Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the Borrower in a lawsuit brought in connection with the lease.
 - 2. Agreement by the tenant that Borrower may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the Borrower and tenant. This prohibition does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. Borrower may dispose of this personal property in accordance with Washington state law.
 - 3. Agreement by the tenant not to hold the Borrower or the Borrower's agents legally responsible for any action or failure to act, whether intentional or negligent.
 - 4. Agreement by the tenant that the Borrower may institute a lawsuit against a tenant or affecting a tenant's interests without notice to tenant.
 - 5. Agreement by the tenant that the Borrower may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the Borrower and tenant.
 - 6. Agreement by the tenant to waive any right to a trial by jury.
 - 7. Agreement by the tenant to waive the tenant's right to appeal, or otherwise challenge in court, a court decision in connection with the lease.

8. Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the Borrower against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.
 9. Agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered.
- C. Borrower may not terminate the tenancy or refuse to renew the lease of a tenant occupying a HOME-assisted unit except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional housing or failure to follow any required transitional housing supportive services plan; or for other good cause. Good cause does not include an increase in the tenant's income or refusal of the tenant to purchase the housing. To terminate or refuse to renew tenancy, Borrower must serve written notice upon the tenant specifying the grounds for the action at least thirty (30) days before the termination of tenancy.
- D. Borrower shall adopt and follow written tenant selection policies and criteria that:
1. Limit the HOME-assisted units to very low-income and low-income families;
 2. Are reasonably related to the applicants' ability to perform the obligations of the lease (i.e., to pay the rent, not to damage the housing, not to interfere with the rights and quiet enjoyment of other tenants);
 3. Limit eligibility or give a preference to a particular segment of the population if otherwise permitted in this Loan Agreement (and only if the limitation or preference is described in the City's consolidated plan).
- E. Borrower shall select tenants from a written waiting list in the chronological order of their application, insofar as is practicable, and give prompt written notification to any rejected applicant of the grounds for any rejection pursuant to 24 CFR §92.253(d)(5) and 24 CFR §92.253(d)(6).
- F. Borrower shall not charge fees that are not customarily charged in rental housing (e.g., laundry room access fees), except that Borrower may charge: (i) reasonable application fees to prospective tenants; (ii) parking fees to tenants only if such fees are customary for rental projects in the neighborhood; and (iii) fees for services such as bus transportation or meals, as long as such services are voluntary and fees are charged for services provided.

XX. TENANT PARTICIPATION PLAN

If the Borrower is a Community Housing Development Organization ("CHDO") as defined by 24 CFR 92.2, the Borrower shall adhere to a fair lease and grievance

procedure approved by the City and shall provide a plan for and follow a program of tenant participation in management decisions pursuant to 24 CFR §92.303.

XXI. UNIFORM ADMINISTRATIVE REQUIREMENTS/PROJECT REQUIREMENTS

- A. The Borrower shall comply with the applicable uniform administrative requirements of 24 CFR §92.505 if the Borrower is organized as a non-profit organization.
- B. The Borrower shall comply with all applicable Project requirements of Subpart F of 24 CFR part 92 et seq.
- C. The Borrower shall maintain all tenant and Project records for the most recent five- (5-) year period until five (5) years after the Affordability Period, terminates. The Borrower shall permit the Department, the HUD, and the Comptroller General of the United States, or their authorized representatives, access to all books, records, and papers of the Borrower pertinent to the Project. The Borrower shall keep and retain records sufficient to document invoices of all expenditures, project beneficiary data, and all other records required to be kept pursuant to 24 CFR §92.508.
- D. The Borrower shall permit the Department, HUD, the Comptroller General of the United States, or their authorized representatives, site visits at all times upon reasonable notice throughout the Affordability Period.

XXII. TRANSFER/ASSIGNMENT

The Borrower shall not assign, transfer, subordinate or sublet any obligation of this Loan Agreement nor shall it sell or otherwise transfer any property subject to this Loan Agreement without prior written consent of the Director, who may withhold consent at his/her discretion. Notwithstanding any other provision of this Loan Agreement or the Related Documents, the Director's consent will not be required for any of the following transactions ("Permitted Transfers"):

- A. The transfer by Tax Credit Investor, as investor member of the Borrower as provided for in that certain Amended and Restated Operating Agreement of Borrower dated on or about the date hereof ("Borrower's Governing Agreement"), of its equity interests in Borrower to one or more Affiliates (as defined in Borrower's Governing Agreement) of Tax Credit Investor, subject to any and all requirements for such a transfer set forth in Borrower's Governing Agreement and so long as Tax Credit Investor or its Affiliate is not relieved of its obligation to make capital contributions to Borrower required under the terms of Borrower's Governing Agreement;
- B. The transfer of interests within Tax Credit Investor;
- C. The removal by Tax Credit Investor or its Affiliate of a managing member or manager of Borrower for cause in accordance with the terms of Borrower's

Governing Agreement, and the replacement of such removed managing member or manager with an Affiliate, with the special limited member designated in the Borrowers Governing Agreement, or with an individual or entity, not an Affiliate, who or which is reasonably acceptable to the City and meets the requirements of Paragraph XXIV regarding suspension and debarment;

- D. Execution and/or exercise of a purchase option and/or right of first refusal agreement by Borrower's managing member or manager and/or or its Affiliate to be exercised following expiration of the fifteen-year "compliance period" as defined in and determined in accordance with Section 42(i) of the Code, or any corresponding provision or provisions of succeeding law ("Section 42"); and
- E. Recording of the Washington State Housing Finance Commission's ("WSHFC") Regulatory Agreement (Extended Use Agreement), as required by Section 42.

The provisions of this Loan Agreement shall apply to all persons or entities performing obligations set forth by this Loan Agreement, including approved persons or entities to whom or to which the Borrower assigns, transfers, or sublets services as above. Such approved persons or entities shall be subject to the provisions for faith-based activities and organizations as outlined in this Loan Agreement, as applicable.

XXIII. HAZARDOUS SUBSTANCES/REPRESENTATIONS AND WARRANTIES

- A. The Borrower shall not cause or permit the presence, use, disposal, storage, or release of any "Hazardous Substances" (as defined below) on or in the Property. The Borrower shall not perform any act, nor allow, cause or permit the performance of any act, affecting the Property when such act constitutes a violation of any federal, state or local Environmental Law, ordinance or rule. As used in this provision, "Environmental Law" means federal laws, state laws and local codes, laws, and/or ordinances of the jurisdiction where the Property is located that relate to health, safety, or environmental protection.
- B. The Borrower shall promptly give the City written notice of any investigation, claim, demand, lawsuit, or other action by any governmental or regulatory agency or private party involving the Property, and any hazardous substance or Environmental Law of which the Borrower has actual knowledge. If the Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any hazardous substance affecting the Property is necessary, the Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law and shall bear all costs and expenses thereof.
- C. The Borrower hereby represents and warrants that, to the best of the Borrower's knowledge and belief, and after reasonable investigation and inquiry, the Project has never been and is not being used to make, store, handle, treat, dispose of, generate, or transport Hazardous Substances in violation of any applicable law, which Hazardous Substances have not been or will not be abated according to all applicable law and regulations related thereto

prior to tenant occupancy of the rehabilitated project. To the best of Borrower's knowledge and belief, and after reasonable investigation and inquiry, there has not been a release of Hazardous Substances on, from, or near the Project, which release has not been or will not be abated to levels acceptable under all applicable law and regulations related thereto prior to tenant occupancy of the rehabilitated project. The Borrower has never received any notification, citation, complaint, violation, or notice of any kind from any person relating or pertaining to the making, storing, handling, treating, disposing, generating, transporting, or release of Hazardous Substances, for which there has not been or will not be abatement to levels acceptable under all applicable law and regulations related thereto prior to tenant occupancy. Borrower represents and warrants that any asbestos and lead-based paint found within the Project will be abated to levels acceptable under applicable law prior to tenant occupancy of the rehabilitated project. "Hazardous Substances" means (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, et seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, et seq.), as amended from time to time, and regulations promulgated thereunder; (iii) "oil, petroleum products and their by-products" as defined under Washington law as amended from time to time, and regulations promulgated thereunder; (iv) any "hazardous substance" as defined under Washington law, as amended from time to time, and regulations promulgated thereunder; (v) any "asbestos material" as defined under Washington law, as amended from time to time, and regulations promulgated thereunder and/or as defined by 40 C.F.R. Section 61.141, as amended from time to time; (vi) any "radon gas" in excess of levels recommended in U. S. Environmental Protection Agency Guidance Documents, as modified from time to time, or lower levels as provided by any applicable law or regulation now or hereafter in effect; (vii) any "infectious waste" as defined under Washington law, as amended from time to time, and regulations promulgated thereunder; (viii) any substance the presence of which on any property attributable to the operations of the Borrower is prohibited, restricted or regulated by any law or regulation similar to those laws, regulations and/or documents set forth above, including without limitation, polychlorinated biphenyls ("PCBs") and lead-based paints; and (ix) any other substance which by law or regulation requires special handling in its collection, generation, storage, transportation, treatment or disposal.

XXIV. DEBARMENT AND SUSPENSION

The Borrower shall comply with the provisions of 24 CFR Part 24 that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract by any federal department or agency. Additionally, the Borrower shall not use, directly or indirectly, any of the funds provided by this contract to employ, award contracts to, or otherwise engage the services of, or fund any contractor/ subcontractor during any period that the contractor/subcontractor is debarred, suspended or ineligible under the provisions of 24 CFR Part 24. Using the System for Award Management

(<https://www.sam.gov>), the City has determined, as of the date of this contract that the Borrower is not excluded from federal procurement and non-procurement programs. The Borrower has provided in Attachment 5 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.

XXV. ANTI-LOBBYING

Borrower certifies that, to the best of Borrower's knowledge and belief:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Borrower, 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 the awarding of this loan;
- B. 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 employees of Congress, or an employee of a Member of Congress in connection with this loan, Borrower shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying" in accordance with its instruction; and
- C. Borrower shall require that the language of paragraphs A and B of this anti-lobbying certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all such subrecipients shall certify and disclose accordingly.

XXVI. SEVERABILITY

The invalidity of any clause, part or provision of this Loan Agreement shall not affect the validity of the remaining portions thereof.

XXVII. NOTICES

All notices given pursuant to this Loan Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the Parties hereto at the addresses set forth below, or to such other place as a Party may from time to time designate in writing:

City of Spokane
Community, Housing and Human Services Department
808 W. Spokane Falls Blvd.
Spokane, WA 99201-3339

Volunteers LIHTC LLC
c/o Volunteers of America of Eastern Washington and Northern Idaho

525 W. Second Avenue
Spokane, WA 99201

Wells Fargo Affordable Housing Community Development Corporation
MAC D1053-170
301 South College Street
Charlotte, North Carolina 28288
Attn: Asset Management

XXVIII. INDEMNIFICATION

The Borrower shall protect, defend, indemnify, and hold harmless the City, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of the Borrower, its officers, employees or agents, in its performance and/or non-performance of its obligations under this Loan Agreement. The Borrower agrees that its obligations under this indemnification shall extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. ***This agreement to indemnify is a separate agreement, shall survive any foreclosure action, attempted transfer or the like, is a legal obligation of the Borrower and action may be brought thereon independently of any other remedy at law or provided for herein.***

XXIX. TERMINATION

In accordance with 24 CFR §85.43, this Loan Agreement may be suspended or terminated if the Borrower materially fails to comply with any term of this Loan Agreement; provided, however, prior to increasing the interest rate or accelerating repayment pursuant to this Section IV, the City will provide the Borrower and Tax Credit Investor (as defined below) with notice of such default and provide the Borrower and the Tax Credit Investor with the cure rights specified in Section XIV. This Loan Agreement may be terminated for convenience in accordance with 24 CFR §85.44.

XXX. CERTAIN CITY REPRESENTATIONS

The City represents and warrants to the Borrower that none of the money used by the City to make this loan is or will be derived, directly or indirectly, from any obligation the interest on which is exempt from tax under Section 103 of the Code.

XXXI. EXECUTION IN COUNTERPARTS

This Loan Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, TO EXTEND CREDIT, TO MODIFY OR AMEND ANY AGREEMENT TERMS, TO RELEASE

ANY GUARANTOR, TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT OR FORBEAR FROM EXERCISING ANY REMEDIES, OR TO MAKE ANY OTHER FINANCIAL ACCOMMODATION RELATED TO THIS LOAN AGREEMENT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

IN WITNESS WHEREOF, the Parties have executed this Loan Agreement as of the Effective Date.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.)

**VOLUNTEERS LIHTC LLC,
A Washington limited liability company**

By: Volunteers MM LLC, a Washington limited liability company
Its: Managing Member

By: Volunteers of America of Eastern Washington and Northern Idaho, a Washington nonprofit corporation
Its: Sole member

By: _____
Name: Marilee K. Roloff
Title: President/CEO

Date: _____

STATE OF WASHINGTON)
) ss.
County of Spokane)

On this ____ day of _____, 2015, personally appeared before me **Marilee K. Roloff**, to me known to be the President/CEO of Volunteers of America of Eastern Washington and Northern Idaho, a Washington nonprofit corporation, which is the sole member of Volunteers MM LLC, a Washington limited liability company, which is the managing member of Volunteers LIHTC LLC, a Washington limited liability company, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the Grantor, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute the said instrument.

GIVEN under my hand and official seal the day and year in this certificate
above written.

NOTARY PUBLIC, in and for the State of
Washington, residing at _____
My Commission expires _____

By: David A. Condon, Mayor

ATTEST:

STATE OF WASHINGTON)
) ss.
County of Spokane)

On this ____ day of _____, 2015, personally appeared before me **David A. Condon and Terri L. Pfister**, to me known to be the Mayor and City Clerk, respectively, of and for the City of Spokane, Washington, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument.

NOTARY PUBLIC, in and for the State of
Washington, residing at _____
My Commission expires _____

ATTACHMENT 1
PROPOSED BUDGET

**VOLUNTEERS LIHTC LLC
VOA EAST 2ND AVENUE**

217 East 2nd Avenue
51-unit Apartment Building

| | | | |
|------------------------------|---------------------|------------------------|---------------------|
| Land acquisition | \$317,900 | LIHTC equity | \$9,195,399 |
| Construction | 5,106,429 | | |
| Contractor overhead & profit | 510,643 | City HOME funds | 1,100,000 |
| Construction Contingency | 594,644 | | |
| Sales tax | 579,571 | | |
| Infrastructure/sitework | 300,000 | | |
| Bond | 100,000 | | |
| Permits/fees/hookups | 80,000 | | |
| Bridge loan costs | 1,700 | | |
| Construction loan costs | 290,904 | | |
| Lease-up period interest | 70,189 | | |
| LIHTC/perm financing costs | 144,277 | | |
| Architect | 200,000 | | |
| Development consultant | 200,000 | | |
| Other soft costs | 29,825 | | |
| Soft cost contingency | 20,000 | | |
| Other development costs | 90,000 | | |
| City compliance | 20,000 | | |
| Equipment & furnishings | 175,000 | | |
| Nonprofit donation | 25,718 | | |
| Construction guaranty fee | 225,000 | | |
| Operating reserve | 130,000 | | |
| Services reserve | 423,599 | | |
| Developer Fee | 660,000 | | |
| TOTAL | \$10,295,399 | TOTAL | \$10,295,399 |

Acquisition of land and construction of a 51-unit, 4-story residential building with 1 elevator on a lot of approximately 13,750 sf. Units will include 26 studio apartments and 24 one-bedroom units for rent and a one-bedroom resident manager's unit. The building will include fire sprinklers, a management office, a television room, a computer lab, onsite mail boxes, and coin-operated laundry. Units have a stove top (no oven) and refrigerator. The building will meet or exceed the State's Evergreen Sustainable Development Standards. Design and materials will incorporate durability and energy and water efficiencies. Upon completion of the work, three units will meet ADA and one (1) additional unit shall be accessible to individuals with sensory impairments pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). There will be a construction loan, which will be repaid upon completion.

HOME Rent and Income Limits

SOURCE: HUD

MSA: Spokane, WA

EFFECTIVE: June 1, 2015

2015 ESTIMATED MEDIAN INCOME: \$64,500



City of Spokane
Community, Housing and
Human Services Department
808 W. Spokane Falls Blvd.
Spokane, WA 99201-3339
(509) 625-6325
FAX (509) 625-6315

2015 INCOME LIMITS

| | 1 PERSON | 2 PERSON | 3 PERSON | 4 PERSON | 5 PERSON | 6 PERSON | 7 PERSON | 8 PERSON | 9 PERSON [▲] |
|--------------------------------|----------|----------|----------|----------|----------|----------|----------|----------|-----------------------|
| AREA MEDIAN INCOME (100% AMI) | 45,200 | 51,600 | 58,100 | 64,500 | 69,700 | 74,900 | 80,000 | 85,200 | 90,300 |
| LOW-INCOME (80% AMI) | 36,150 | 41,300 | 46,450 | 51,600 | 55,750 | 59,900 | 64,000 | 68,150 | 72,250 |
| VERY LOW-INCOME (50% AMI) | 22,600 | 25,800 | 29,050 | 32,250 | 34,850 | 37,450 | 40,000 | 42,600 | 45,150 |
| EXTREMELY LOW-INCOME*(30% AMI) | 13,550 | 15,500 | 17,450 | 19,350 | 20,900 | 22,450 | 24,000 | 25,550 | 27,100 |

ATTACHMENT 2

2015 HOME PROGRAM RENTS

| SRO* | EFFICIENCY | 1 BEDROOM | 2 BEDROOM | 3 BEDROOM | 4 BEDROOM | 5 BEDROOM | 6 BEDROOM |
|------------------------|------------|-----------|-----------|-----------|-----------|-----------|-----------|
| FAIR MARKET RENT (FMR) | 350 | 571 | 773 | 1,105 | 1,254 | 1,442 | 1,630 |
| 30 OF 50 RENT | ♦467 | ♦571 | 726 | 838 | 936 | 1,032 | 1,128 |
| 30 OF 30 RENT | 339 | 362 | 436 | 503 | 561 | 620 | 677 |

AMI – Area Median Income

[▲]Calculate AMI for >9-person household by adding 8% for each member over 4-person AMI and round to nearest \$50 (i.e., 10-person is 148% of 4-person AMI)

*These incomes exclude the less restrictive poverty guidelines of the 2014 Appropriations Act that are not adopted by the Multifamily Housing Program.

^xHOME rent for an SRO is 75% of the Efficiency Fair Market Rent.

♦HOME regulation requires that HOME rent cannot exceed FMR. Therefore, this rent is capped at FMR.



Federal Labor Standards Provisions**U.S. Department of Housing
and Urban Development
Office of Labor Relations****Applicability**

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, utters or publishes any statement knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

ATTACHMENT 4

TIMETABLE

| Category | Milestone/Task | Deadline Month Yr/Status |
|----------------|--|--|
| Site control | Close on property. | Completed. |
| Financing | Funding allocations of City and WA State Housing Finance Commission. | Completed. |
| | Selection of construction lender and investor. | Completed. |
| | Funding documented by all lenders | June 2015. |
| Design/Permits | Approval of zoning, site plan, construction plans. | June 2015. |
| | Building permits issued. | June 2015. |
| Construction | Begin construction. | June 2015. |
| | Complete construction. | December 2016. |
| Occupancy | Units occupied. | Within 60 days from Certificate of Occupancy |

ATTACHMENT 5

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. The undersigned (i.e., signatory for the Borrower) 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.

Where the undersigned is unable to certify to any of the statements in this contract, it shall attach an explanation to this contract.

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, unless authorized by the City.
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. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this exhibit, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. The undersigned may contact the City for assistance in obtaining a copy of these regulations.
5. I understand that a false statement of this certification may be grounds for termination of the contract.

| | |
|--|---|
| <u>Volunteers LIHTC LLC</u> Name of Borrower (Type or Print) | <u>VOA 2nd Avenue</u> Program Title (Type or Print) |
| <u>Marilee K. Roloff</u> Name of Certifying Official (Type or Print) | _____ Signature |
| <u>President/CEO of Volunteers of America of Eastern Washington and Northern Idaho, sole member of Volunteers MM LLC, its managing member</u> Title of Certifying Official (Type or Print): | _____ Date (Type or Print) |

**CITY OF SPOKANE
VOLUNTEERS LIHTC LLC**

VOA 2ND AVENUE

PROMISSORY NOTE

OPR #2015-_____

Borrower: Volunteers LIHTC LLC
c/o Volunteers of America of Eastern Washington and Northern Idaho
525 W. Second Avenue
Spokane, WA 99201

Lender: City of Spokane
Community, Housing and Human Services Department
808 W. Spokane Falls Blvd., Room 650
Spokane, WA 99201

Principal: \$1,100,000.00

Date: June __, 2015

1. **PROMISE TO REPAY:** FOR VALUE RECEIVED, the undersigned Volunteers LIHTC LLC, a Washington limited liability company, hereinafter referred to as "Borrower", promises to repay to the order of the City of Spokane, a Washington state municipal corporation, or its successors and assigns (hereinafter called "Lender") the maximum principal sum of ONE MILLION ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,100,000) or so much of said sum or sums as may now or hereafter be loaned or disbursed to the Borrower by the Lender, for the purpose of providing a portion of the financing for the Borrower's VOA 2nd Avenue project, to be constructed at 217 East 2nd Avenue in Spokane, WA (the "Project"). This Promissory Note (the "Note") is part of a transaction further reflected in a HOME Program Loan Agreement ("Loan Agreement") and HOME Program Loan Covenant Agreement ("Covenant Agreement") of even date herewith. Lender's disbursements under the Loan Agreement and the Note are further secured by a Deed of Trust of even date herewith ("Deed of Trust"). The terms of said documents are incorporated herein as if fully set forth herein, and together shall be referenced as the "Related Documents". The capitalized terms in said Related Documents shall have the same meaning in this Note unless the context clearly suggests otherwise. In the event of conflict or ambiguity in the terms of any of these documents, the terms most favorable to Lender shall apply.

2. **INTEREST:** In addition to repayment of principal sums loaned, Borrower agrees to pay interest, compounded annually, commencing on the date the money is first disbursed under the Loan Agreement, at the rate of three percent (3%) per annum. If rents for any HOME-assisted unit of the Project are raised above the level of the

Affordability Requirement defined in the Loan Agreement, or any other provisions, covenants, terms, conditions or restrictions of the Loan Agreement are not adhered to, then the rate on the outstanding balance shall be increased to the prevailing prime lending rate as published in The Wall Street Journal, plus three percent (3%), compounded annually, for the period of noncompliance, as determined by the Director of Community, Housing and Human Services for the City of Spokane (the "Director"); provided, however, prior to increasing the interest rate pursuant to this Section 2, the City will provide the Borrower and Tax Credit Investor (as defined in the Loan Agreement) with notice of such default and provide the Borrower and the Tax Credit Investor with the cure rights specified in Section XIV of the Loan Agreement.

3. **REPAYMENT; MATURITY:**

A. Deferral Period: Payment of principal and interest shall be deferred for 37 years from the date of this Note, so long as Borrower and the Project are in compliance with the Affordability Requirements per the terms of the Loan Agreement and Covenant Agreement together with all other provisions of this Note and Related Documents.

B. Maturity: Principal and accrued interest on this Note shall be due on June 1, 2052. During the Affordability Period, Borrower shall notify the City in writing if, for any reason, Borrower and/or the Project will not comply with the Affordability Requirements, at which time any remaining balance would become immediately due and payable. Such payment shall not extinguish the requirement of the Related Documents.

C. Prepayment: The Borrower may pay all or any portion of the outstanding principal of the Note at any time, without penalty. Repayment during the HOME Affordability Period, as described in the Loan Agreement, shall not extinguish the Affordability Requirements.

D. Application of Payments: Payments received will first be applied to late charges, then to interest, and finally to principal.

E. Place of Payment: Payments of principal, interest, and fees shall be made in lawful money of the United States of America in immediately available funds to the City of Spokane, at the Community, Housing and Human Services Department, 808 W. Spokane Falls Blvd., Room 650, Spokane, WA 99201, or at such other place as Lender may designate in writing.

4. THIS NOTE IS secured by the Deed of Trust of even date herewith, duly filed for record in the County of Spokane, Washington.

5. THIS LOAN IS made for the purpose of financing a portion of the costs of acquisition and construction of the VOA 2nd Avenue project on the property described in the Deed of Trust and Loan Agreement. As a condition of receiving this loan, Borrower agrees to abide by all of the terms and conditions of this Note, the Deed of

Trust, the Loan Agreement and associated Covenant Agreement, incorporated herein by reference as if fully set forth.

6. IF THE BORROWER SHALL default in the payment of any amount due under this Note, and such default is not cured within fifteen (15) days after such payment is due, or if any other Event of Default occurs under the Deed of Trust, the Loan Agreement or the Covenant Agreement and such default is not cured within the cure period, if any, applicable thereto, the entire unpaid principal amount of this Note, together with accrued interest, shall immediately become due and payable, at Lender's option, upon notice to the Borrower and the Tax Credit Investor, and providing the Tax Credit Investor with an opportunity to cure such default pursuant to the Loan Agreement. Failure of Lender to exercise such option shall not constitute a waiver of default. If Lender exercises its option to declare the entire amount of Borrower's loan immediately due and payable as provided above, Borrower agrees to pay Lender's cost and expenses of collection, including reasonable attorney's fees and court costs. If this Note is reduced to judgment, the judgment shall bear interest at the maximum rate permissible on judgments in the State of Washington.

7. IF THE BORROWER voluntarily sells, transfers, leases or otherwise conveys the Project or any portion thereof, to any person/persons or entity/entities (the "Transferee"), other than by leasing or renting for residential tenant use as contemplated by various provisions of the Loan Agreement, or for any other incidental use (to the extent permissible under all applicable federal and state laws and regulations), an Event of Default shall occur under the terms of this Note and the Related Documents unless the Borrower obtained prior written consent of the Director. The remedies provided for Default may be exercised at the discretion of the Director. An unauthorized transfer also occurs if Borrower grants a junior security interest without obtaining the prior written consent of the Director. Any sale, transfer, leasing or other disposition of the Project in violation of this Section 7 shall not relieve the Borrower of any obligation or obligations under this Note or any Related Document. The Borrower hereby agrees that upon any sale, transfer, lease or other disposition of the Project, the Borrower shall transfer all records, accounts, electronic data or other documents pertaining to the Project, including documents related to Borrower's compliance with this Note and any Related Document, to the Transferee or its designated agent. Failure by the City to exercise any of its rights and remedies under this Note or any Related Documents shall not be construed as a waiver of any kind. The Director's written consent may be conditioned upon the following, at the Director's sole discretion:

(a) reasonable evidence satisfactory to the Director that the Borrower is not then in default under any document related to this transaction beyond any applicable grace period or cure period;

(b) an opinion of counsel for the Transferee, delivered to the City, to the effect that the Transferee (i) has assumed in writing and in full, all duties and obligations of the Borrower under this Note, the Loan Agreement and the Covenant Agreement, and (ii) that this Note and the Related Documents constitute the legal, valid and binding obligations of the Transferee;

(c) a showing that written assumption of the Transferee and/or the written agreement of the Transferee complies with all provisions of local, state and federal laws, ordinances and regulations applicable to the Borrower under this Note and Related Documents;

(d) a showing that the Borrower or the Transferee is not in arrears on any payments due and owing to the City or is in default under this Note or any of the Related Documents, beyond any applicable grace period or cure period;

(e) a showing that the Borrower or the Transferee do not have a history of instances of non-compliance with any non-monetary provision of this Note or any of the Related Documents, which were not cured after notice thereof and within the applicable cure period or grace period; and/or,

(f) a showing that the Borrower or the Transferee do not have a documented history of instances of failure to make payments due and owing to the City which are not paid within a reasonable period after notice thereof.

Notwithstanding any other provision of this Note or the Related Documents, the Director's consent will not be required for any of the following transactions ("Permitted Transfers"):

A. The transfer by Wells Fargo Affordable Housing Community Development Corporation, a North Carolina corporation ("Tax Credit Investor"), as investor member of the Borrower as provided for in that certain Amended and Restated Operating Agreement of Borrower dated on or about the date hereof ("Borrower's Governing Agreement"), of its equity interests in Borrower to one or more Affiliates (as defined in Borrower's Governing Agreement) of Tax Credit Investor, subject to any and all requirements for such a transfer set forth in Borrower's Governing Agreement and so long as Tax Credit Investor or its Affiliate is not relieved of its obligation to make capital contributions to Borrower required under the terms of Borrower's Governing Agreement;

B. The transfer of interests within Tax Credit Investor;

C. The removal by Tax Credit Investor or its Affiliate of a managing member or manager of Borrower for cause in accordance with the terms of Borrower's Governing Agreement, and the replacement of such removed managing member or manager with an Affiliate, with the special limited member designated in the Borrower's Governing Agreement, or with an individual or entity, not an Affiliate, who or which is reasonably acceptable to the City and meets the requirements of Paragraph XXIV of the Loan Agreement regarding suspension and debarment;

D. Execution and/or exercise of a purchase option and/or right of first refusal agreement by Borrower's managing member or manager and/or or its Affiliate to be exercised following expiration of the fifteen-year "compliance period" as defined in and determined in accordance with Section 42(i) of the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of succeeding law ("Section 42"); and

E. Recording of the Washington State Housing Finance Commission's ("WSHFC") Regulatory Agreement (Extended Use Agreement), as required by Section 42.

8. THIS NOTE IS not assignable or assumable without the express written consent of the Lender, except for the transfer of the Property to West 315 LLC or Community Frameworks, as provided for in Paragraph 7.

9. EACH MAKER AND endorser of this Note hereby waives demand and presentment for payment, notice of nonpayment, protest, notice of protest, notice of dishonor, bringing of suit, and diligence in taking action to collect any amounts called for hereunder and in the handling of properties, rights or collateral at any time existing in connection herewith. Each maker and endorser expressly agrees that this Note or any payment thereunder may be extended from time to time, and consent to the acceptance of further security for this Note, including other types of security, all without in any way affecting the liability of each maker and endorser hereof. The right to plead any statutes of limitation as a defense to any demand on this Note, or any guaranty thereof or to any agreement to pay the same or to any demand secured by the Deed of Trust or other security, securing the Note, or any and all obligations or liabilities arising out of or in connection with said Note or Deed of Trust by any parties hereto is expressly waived by each and every of the makers, endorsers, guarantors or sureties.

10. SEVERABILITY: If any provision, or a part thereof, of this Note is declared by a court of competent jurisdiction to be invalid, the invalid provision or part thereof shall be stricken, with the remainder of the provision and other provisions of this Note surviving with full force and effect.

11. BORROWER RATIFIES and reaffirms all information previously submitted in Borrower's loan application or financial statement, and by signing this Note, Borrower represents and warrants to Lender that the information provided is true and correct and that there has been no adverse change in Borrower's financial condition as disclosed to Lender in Borrower's most recent application or financial statement.

12. APPLICABLE LAW AND VENUE: This Note has been issued, executed and delivered in the State of Washington and shall be governed by and construed in accordance with the laws of the State of Washington, except to the extent that the laws of the United States of America may prevail. Venue to enforce any provision shall be in the Spokane County Superior Court.

13. NONRECOURSE. Notwithstanding anything to the contrary herein, Borrower, its partners, officers, directors, employees, agents and contractors shall have no personal liability for payment of the indebtedness evidenced by this Note or performance of the covenants set forth in the Loan Agreement and in the Related Documents, and the sole recourse of the City shall be confined to the exercise of its rights under the Loan Agreement and the Related Documents, provided that nothing

shall diminish Borrower's liability for damages or deficiencies resulting from theft, waste, fraud, material misrepresentation and misuse of rents.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, TO EXTEND CREDIT, TO MODIFY OR AMEND ANY AGREEMENT TERMS, TO RELEASE ANY GUARANTOR, TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT OR FORBEAR FROM EXERCISING ANY REMEDIES, OR TO MAKE ANY OTHER FINANCIAL ACCOMMODATION RELATED TO THIS NOTE ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

PRIOR TO SIGNING THIS NOTE, BORROWER HAS READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. BORROWER AGREES TO ALL TERMS AND CONDITIONS OF THIS NOTE AND ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS NOTE.

IN WITNESS WHEREOF, the Borrower executed this Promissory Note on the date first set forth above.

**VOLUNTEERS LIHTC LLC,
a Washington limited liability company**

By: Volunteers MM LLC, a Washington limited liability company
Its: Managing Member

By: Volunteers of America of Eastern Washington and Northern Idaho, a
Washington nonprofit corporation
Its: Sole member

By: _____

Name: Marilee K. Roloff

Title: President/CEO

Date: _____

AFTER RECORDING MAIL TO:

City of Spokane
Department of Community, Housing and Human Services
808 W. Spokane Falls Blvd., Room 650
Spokane, WA 99201

OPR #2015-_____

**CITY OF SPOKANE
VOLUNTEERS LIHTC LLC**

VOA 2ND AVENUE

DEED OF TRUST

Grantor: Volunteers LIHTC LLC, a Washington limited liability company

Beneficiary: City of Spokane, a Washington state municipal corporation

Assessor's Parcel No.: 35202.1917

Legal Description (abbreviated): 20-25-43 Ptns of NW ¼ daf

See Attachment 1 for full legal description.

THIS DEED OF TRUST, made as of the _____ day of June, 2015, by and between **Volunteers LIHTC LLC**, a Washington limited liability company, referred to herein as GRANTOR, whose address is c/o Volunteers of America of Eastern Washington and Northern Idaho, 525 W. Second Avenue, Spokane, WA 99201, **Inland Professional Title**, TRUSTEE, whose address is 501 S. Bernard, 1st Floor, Spokane, WA 99204 and the **City of Spokane**, Washington, a Washington state municipal corporation, BENEFICIARY, whose address is City of Spokane, c/o Community, Housing and Human Services Department, 808 W. Spokane Falls Blvd., Room 650, Spokane, WA 99201.

This Deed of Trust is part of a transaction further reflected in a HOME Program Loan Agreement ("Loan Agreement"), HOME Program Loan Covenant Agreement ("Covenant Agreement"), and Promissory Note, secured by this Deed of Trust. The terms of said agreements are incorporated into this Deed of Trust, and the capitalized terms in said agreements shall have the same meaning in this Deed of Trust unless the context clearly suggests otherwise. In the event of conflict in the terms of any of these documents, the terms most favorable to Beneficiary shall apply.

WITNESSETH: Grantor hereby irrevocably grants and conveys to Trustee in trust, with power of sale, the following described real property (the "Property") in Spokane County, Washington:

See Attachment 1

which real property is not used principally for agricultural or farming purposes, together with all the tenements, hereditaments, easements, fixtures and appurtenances now or hereafter thereunto belonging or in any way appertaining, and the rents, issues, and profits thereof.

This Deed of Trust is for the purpose of securing performance of each agreement of Grantor herein contained and as further contained in the Loan Agreement, Covenant Agreement, and Promissory Note, secured by this Deed of Trust, and for the purpose of securing payment of the sum of ONE MILLION ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,100,000.00) with interest, in accordance with the terms of a Promissory Note of even date herewith, payable to Beneficiary, and made by Grantor, and all renewals, modifications, and extensions thereof, and also such further sums as may be advanced or loaned by Beneficiary to Grantor, or any of his/her/their successors or assigns, together with interest thereon at such rate as shall be agreed upon. This Deed of Trust also secures to Beneficiary: (a) the payment of other sums, with interest, advanced to protect the security of this Deed of Trust; and (b) the performance of Grantor's covenants and agreements under this Deed of Trust and the Promissory Note, Covenant Agreement and Loan Agreement of even date herewith.

GRANTOR COVENANTS that Grantor is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property that the Property is unencumbered, except for encumbrances of record. Grantor warrants and will defend the title to the Property against all claims and demands, subject to any prior encumbrances of record and encumbrances listed in the Recording Priority and Subordination Agreement recorded of even date herewith.

COVENANTS: Grantor and Beneficiary covenant and agree as follows:

1. PAYMENT OF PRINCIPAL AND INTEREST; PREPAYMENT AND LATE CHARGES. Grantor shall promptly pay when due the principal of and interest on the debt evidenced by the Promissory Note and any late charges due under the Promissory Note.

2. APPLICATION OF PAYMENTS. Unless applicable law provides otherwise, all payments received by Beneficiary under Paragraph 1 shall be applied: first, to any late charges due under the Promissory Note; second, to interest; and third, to principal due under the Promissory Note.

3. CHARGES; LIENS. Grantor shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property, which may attain priority over this Deed of Trust, including utility charges, whether or not reflected in a recorded lien. Grantor shall pay these obligations on time directly to the person or entity owed payment.

Grantor shall promptly furnish to Beneficiary upon request copies of all notices of amounts to be paid under this Paragraph. If Grantor makes these payments directly, Grantor shall promptly furnish to Beneficiary upon request receipts evidencing the payments. Grantor shall promptly discharge any lien which has priority over this Deed of Trust unless: (a) Grantor agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Beneficiary; (b) Grantor contests in good faith the lien in legal proceedings, or defends against enforcement of the lien in legal proceedings, which, in the Beneficiary's opinion, operate to prevent the enforcement of the lien; or (c) Grantor secures from the holder of the lien an agreement satisfactory to Beneficiary subordinating the lien to this Deed of Trust, or (d) Beneficiary has executed an agreement subordinating its interest. If Beneficiary determines that any part of the Property is subject to a lien to which the Beneficiary has not provided its consent, which may attain priority over this Deed of Trust, Beneficiary may give Grantor a notice identifying the lien. Grantor shall satisfy the lien or take one or more of the actions set forth above within ten business (10) days of the giving of the notice. Should Grantor fail to pay when due any taxes, assessments, insurance premiums, recorded or unrecorded liens, encumbrances, or other charges against the Property, Beneficiary may pay the same, and the amount so paid, with interest at the rate set forth in the Promissory Note secured hereby, shall be added to and become a part of the debt secured in this Deed of Trust.

4. HAZARD OR PROPERTY INSURANCE. A. Grantor shall keep the improvements now existing or hereafter erected on the Property continuously insured against loss by fire, hazards included within the term "extended coverage", and any other hazards, including floods or flooding, for which the Beneficiary requires insurance. This insurance shall be maintained in the amounts and for the periods that Beneficiary requires in order to maintain adequate protection for the Property, but no act or omission by the Beneficiary shall relieve Grantor of the primary duty to procure adequate insurance. In no event shall such insurance be less than the full replacement cost of the Property (i.e., 100% of replacement cost). The insurance carrier providing the insurance shall be chosen by the Grantor subject to Beneficiary's approval. All policies shall be held by the Beneficiary, and have loss payable first to the Beneficiary, as its interest may appear, and then to the Grantor. If Grantor fails to maintain coverage as described above, Beneficiary may, at Beneficiary's option, obtain coverage to protect Beneficiary's rights in the Property in accordance with Paragraph 7.

B. All insurance policies and renewals shall be acceptable to Beneficiary and shall include a standard mortgage clause. If Beneficiary requires, Grantor shall promptly give to Beneficiary all receipts of paid premiums and renewal notices. In the event of loss, Grantor shall give prompt notice to the insurance carrier and to Beneficiary. Beneficiary may make proof of loss if not made promptly by Grantor.

C. Unless Beneficiary and Grantor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Beneficiary's security is not lessened thereby. If the restoration or repair is not economically feasible or if Beneficiary's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Deed

of Trust, whether or not then due, with any excess paid to Grantor. If Grantor abandons the Property or does not answer within thirty (30) days notice from the Beneficiary that the insurance carrier has offered to settle a claim, then Beneficiary may collect the insurance proceeds. Beneficiary may, in its sole discretion, use the proceeds to restore or repair the Property or to pay sums secured by this Deed of Trust, whether or not then due. The 30-day period will begin when the notice is given. Such application of proceeds by the Beneficiary shall not cause discontinuance of any proceedings to foreclose this Deed of Trust. In the event of foreclosure, all rights of the Grantor in insurance policies then in force shall pass to the purchaser at the foreclosure sale.

D. Unless Beneficiary and Grantor otherwise agree in writing, any application of insurance proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in Paragraph 1 or change the amount of the payments. If under Paragraph 20, the Property is acquired by Beneficiary, Grantor's right to any insurance policies or proceeds resulting from damage to the Property prior to the acquisition shall pass to Beneficiary to the extent of the sums secured by this Deed of Trust immediately prior to the acquisition.

5. FLOOD INSURANCE. If the Property is located in a one hundred year FEMA Flood Zone, Grantor shall maintain flood insurance throughout the term of the Loan in an amount not less than the total amount of the Loan or the maximum amount of coverage available through the National Flood Insurance Program, furnishing proof of same upon request by Beneficiary.

6. OCCUPANCY, PRESERVATION, MAINTENANCE AND PROTECTION OF THE PROPERTY; LOAN APPLICATION; LEASEHOLDS. Grantor shall cause the Property to be occupied, established, and used as decent, safe, sanitary and affordable housing for low-income families pursuant to the HOME Investment Partnerships Program (24 CFR part 92 et seq.) throughout the term of the loan as described in the Promissory Note and Covenant Agreement. Grantor covenants and agrees to keep the Property in good condition and repair, to permit no waste thereof, to complete any building, structure, or improvement being built now or hereafter thereon, to restore or replace promptly any building, structure, or improvement thereon which may be damaged or destroyed, and to comply with all laws, ordinances, regulations, covenants, conditions, and restrictions affecting the Property. Grantor shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Beneficiary's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Deed of Trust or Beneficiary's security interest. Grantor may cure such a default and reinstate, as provided in Paragraph 17 by causing the action or proceeding to be dismissed with a ruling that, in Beneficiary's good faith determination, precludes forfeiture of Grantor's interest in the Property or other material impairment of the lien created by this Deed of Trust or Beneficiary's security interest. Grantor shall also be in default if Grantor, during the loan application process, gave materially false or inaccurate information or statements to Beneficiary (or failed to provide Beneficiary with any material information) in connection with the loan evidenced by the Promissory Note. If this Deed of Trust is on a leasehold, Grantor shall comply with all the provisions of the lease. If Grantor acquires fee title

to the property, the leasehold and the fee title shall not merge unless Beneficiary agrees to the merger in writing.

7. PROTECTION OF BENEFICIARY'S RIGHTS IN THE PROPERTY. A. If Grantor fails to perform the covenants and agreements contained in this Deed of Trust, the Loan Agreement and/or the Covenant Agreement, or there is a legal proceeding which, in the Beneficiary's good faith judgment, may affect Beneficiary's rights in the Property (including but not limited to proceedings in bankruptcy, probate, for condemnation or forfeiture, or to enforce laws or regulations), then Beneficiary shall have the right to take whatever action it deems reasonably necessary and appropriate to protect the value of the Property and Beneficiary's rights in the Property. Although Beneficiary may take action under this Paragraph 7, Beneficiary is not obligated to do so.

B. Any amounts caused to be disbursed by Beneficiary under this Paragraph 7 shall become additional debt secured by this Deed of Trust. Unless Grantor and Beneficiary agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Promissory Note rate and shall be payable with interest upon notice from Beneficiary to Grantor requesting payment.

C. Grantor covenants and agrees to defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including the cost of title search and any and all attorney's fees actually incurred, in any such action or proceeding, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

D. Grantor further covenants and agrees to pay any and all costs, fees, and expenses in connection with this Deed of Trust, including the expenses of the Trustee incurred in enforcing the obligations secured hereby and Trustee's and attorney's fees actually incurred, as provided by statute.

8. INSPECTIONS. Beneficiary or its agent may make reasonable entries upon and inspections of the Property, subject to all applicable landlord/tenant laws. Beneficiary shall give Grantor notice at least 24 hours prior to an inspection; provided, however, such right to notice does not apply to Beneficiary when acting in its regulatory capacity or when exercising its police powers.

9. CONDEMNATION. A. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property or any part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Beneficiary. In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust and other liens as approved by the Beneficiary, whether or not then due, with any excess paid to Grantor. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Deed of Trust immediately before the taking, unless Grantor and Beneficiary otherwise agree in writing, the sums secured by this Deed of Trust shall be reduced by the amount of the proceeds multiplied by the following fraction: (i) the total amount of the sums secured immediately before the taking, divided by (ii) the fair

market value of the Property immediately before the taking. Any balance shall be paid to Grantor. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Grantor and Beneficiary otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Deed of Trust whether or not the sums are then due.

B. If the Property is abandoned by Grantor, or if, after notice by Beneficiary to Grantor that the condemnor offers to make an award or settle a claim for damages, and Grantor fails to respond to Beneficiary within thirty (30) days after the date the notice is given, Beneficiary is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust, whether or not then due.

C. Unless Beneficiary and Grantor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in Paragraph 1 or change the amount of such payments.

10. GRANTOR NOT RELEASED; FORBEARANCE BY BENEFICIARY NOT A WAIVER. Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Beneficiary to any successor in interest of Grantor shall not operate to release the liability of the original Grantor or of Grantor's successors in interest. Beneficiary shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Grantor or Grantor's successors in interest. Any forbearance by Beneficiary in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

11. SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; CO-SIGNERS. The covenants and agreements of this Deed of Trust shall bind and benefit the successors and assigns of Beneficiary and Grantor, except as otherwise provided for in this Deed of Trust. Grantor's covenants and agreements shall be joint and several.

12. LOAN CHARGES. If the loan secured by this Deed of Trust is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit, and; (ii) any sums already collected from Grantor which exceeded permitted limits will be refunded to Grantor. Beneficiary may choose to make this refund by reducing the principal owed under the Promissory Note or by making a direct payment to Grantor. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Promissory Note.

13. NOTICES. Grantor shall promptly give Beneficiary written notice of any and all Project defaults (regardless of whether the default is related to the financing provided by Beneficiary and the various agreements governing the terms of such financing, or whether the default is related to any of the various other parties or entities providing financing to the Project under their various agreements), investigations, claims, demands, lawsuits, licensing issues relating to the operation of the building or care facility, or other actions by any governmental or regulatory agency or private party involving the Property, and any hazardous substance or Environmental Law (as defined in Paragraph 19 of this Deed of Trust) of which Grantor has actual or constructive knowledge. Any notice provided for in this Deed of Trust shall be given pursuant to the procedures outlined in the Loan Agreement.

14. GOVERNING LAW; SEVERABILITY. This Deed of Trust shall be governed by federal law and the laws of the State of Washington. In the event that any provisions of this Deed of Trust or the Promissory Note conflict with applicable law, such conflict shall not affect other non-conflicting provisions of this Deed of Trust or the Promissory Note, which shall continue in full force and effect.

15. GRANTOR'S COPY. Grantor hereby acknowledges receipt of a conformed copy of the Loan Agreement, Covenant Agreement, Promissory Note, and of this Deed of Trust.

16. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN GRANTOR.

A. Except as provided in the Loan Agreement, if all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest of Grantor is sold or transferred and Grantor is not a natural person) without Beneficiary's prior written consent, or if any other default occurs under this Deed of Trust, the Promissory Note, the Loan Agreement or the Covenant Agreement, Beneficiary may, at its option, require immediate payment in full of all sums secured by this Deed of Trust. However, this option shall not be exercised by Beneficiary if exercise is prohibited by federal law as of the execution date of this Deed of Trust. By accepting payment of any sum secured by this Deed of Trust after payment is due, Beneficiary does not waive the right to require prompt payment when due of all other sums so secured or to declare default for failure to so pay.

B. If Beneficiary exercises the above option, Beneficiary shall give Grantor notice of acceleration. The notice shall provide a cure period of not less than thirty (30) days from the date the notice is delivered or mailed within which Grantor must pay all sums secured by this Deed of Trust. If Grantor fails to pay these sums prior to the expiration of this period, Beneficiary may invoke any and all remedies permitted by this Deed of Trust without further notice or demand on Grantor.

17. GRANTOR'S RIGHT TO REINSTATE FOLLOWING ACCELERATION. If Grantor meets the conditions outlined in this paragraph, Grantor shall have the right to have enforcement by acceleration of this Deed of Trust discontinued at any time prior to the earlier of: (i) 10 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Deed of Trust; or (ii) entry of a judgment enforcing this Deed of Trust. The conditions which Grantor must meet are that Grantor shall: pay Beneficiary all sums

which then would be due under this Deed of Trust and the Promissory Note as if no acceleration had occurred; cure any default of any other covenants or agreements; pay all expenses incurred in enforcing this Deed of Trust, including, but not limited to, reasonable attorneys' fees, and; take such action as Beneficiary may reasonably require to assure that the lien of this Deed of Trust, Beneficiary's rights in the Property, and Grantor's obligation to pay the sums secured by this Deed of Trust continue unchanged. Upon reinstatement by Grantor, this Deed of Trust and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration caused by Grantor's selling or transferring all or any part of the Property or any interest in it (or if a beneficial interest of Grantor is sold or transferred and Grantor is not a natural person) without Beneficiary's prior written consent.

18. NO FURTHER ENCUMBRANCES. A. For the purposes of protecting Beneficiary's security and keeping the Property free from junior and subordinate financing liens, Grantor agrees and understands that any sale, conveyance, further encumbrance (including the granting of easements and any and all other matters affecting title except for easements required for delivery of services or utilities to the Property or other transfer of title to the Property, or any interest therein (whether voluntary or by operation of law), without Beneficiary's prior written consent or except as permitted under the Loan Agreement or the Note, shall be an Event of Default under this Deed of Trust.

B. Notice is hereby given to all third parties that any mortgage or other Deed of Trust that they may receive against the Property without the prior written approval and acknowledgment of the Beneficiary of this Deed of Trust shall be null and void and without force or effect.

19. HAZARDOUS SUBSTANCES; REPRESENTATIONS AND WARRANTY. A. Grantor shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (as defined in this Paragraph 19) on or in the Property, except for the presence, use, storage and disposal of reasonable quantities of such Hazardous Substances as are generally used in the ordinary course of operating, maintaining or developing properties such as the Property, all of which Indemnitor represents, warrants and covenants shall be used, stored and disposed of in accordance with commercially reasonable practices and all applicable laws. Grantor shall not perform any act, nor allow, cause or permit the performance of any act, affecting the Property when such act constitutes a violation of any federal, state, or local Environmental Law, ordinance, or rule. As used in this Paragraph 19, "Environmental Law" means federal laws, state laws and local codes, laws, and/or ordinances of the jurisdiction where the Property is located that relate to health, safety, or environmental protection.

B. Grantor shall promptly give Beneficiary written notice of any investigation, claim, demand, lawsuit, or other action by any governmental or regulatory agency or private party involving the Property, and any hazardous substance or Environmental Law of which Grantor has actual knowledge. If Grantor learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any

hazardous substance affecting the Property is necessary, Grantor shall promptly take all necessary remedial actions in accordance with Environmental Law and shall bear all costs and expenses thereof.

C. The Grantor hereby represents and warrants that, to the best of the Grantor's knowledge and belief, and after reasonable investigation and inquiry, the Project has never been and is not being used to make, store, handle, treat, dispose of, generate, or transport Hazardous Substances in violation of any applicable law, which Hazardous Substances have not been or will not be abated according to all applicable law and regulations related thereto prior to tenant occupancy of the rehabilitated project. To the best of Grantor's knowledge and belief, and after reasonable investigation and inquiry, there has not been a release of Hazardous Substances on, from, or near the Property, which release has not been or will not be abated to levels acceptable under all applicable law and regulations related thereto prior to tenant occupancy of the rehabilitated project. The Grantor has never received any notification, citation, complaint, violation, or notice of any kind from any person relating or pertaining to the making, storing, handling, treating, disposing, generating, transporting, or release of Hazardous Substances, for which there has not been or will not be abatement to levels acceptable under all applicable law and regulations related thereto prior to tenant occupancy. Grantor represents and warrants that any asbestos and lead-based paint found within the Project will be abated to levels acceptable under applicable law prior to tenant occupancy of the rehabilitated project. "Hazardous Substances" means (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, et seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, et seq.), as amended from time to time, and regulations promulgated thereunder; (iii) "oil, petroleum products and their by-products" as defined under Washington law as amended from time to time, and regulations promulgated thereunder; (iv) any "hazardous substance" as defined under Washington law, as amended from time to time, and regulations promulgated thereunder; (v) any "asbestos material" as defined under Washington law, as amended from time to time, and regulations promulgated thereunder and/or as defined by 40 C.F.R. Section 61.141, as amended from time to time; (vi) any "radon gas" in excess of levels recommended in U. S. Environmental Protection Agency Guidance Documents, as modified from time to time, or lower levels as provided by any applicable law or regulation now or hereafter in effect; (vii) any "infectious waste" as defined under Washington law, as amended from time to time, and regulations promulgated thereunder; (viii) any substance the presence of which on any property attributable to the operations of the Grantor is prohibited, restricted or regulated by any law or regulation similar to those laws, regulations and/or documents set forth above, including without limitation, polychlorinated biphenyls ("PCBs") and lead-based paints; and (ix) any other substance which by law or regulation requires special handling in its collection, generation, storage, transportation, treatment or disposal.

20. ACCELERATION: REMEDIES. A. Beneficiary shall give notice to Grantor, prior to acceleration, following Grantor's breach of any covenant or agreement noted in this Deed of Trust, the Loan Agreement, or the Covenant Agreement. The notice shall

specify: (a) the nature of the default; (b) the action required to cure the default; (c) a date, not less than thirty (30) days from the date the notice is given to Grantor, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property at public auction to the highest bidder, in accordance with the Deed of Trust Act of the State of Washington (RCW 61.24 or as hereafter amended). The notice shall further inform Grantor of applicable rights to reinstate after acceleration, rights to bring a court action to assert the nonexistence of a default or any other defense Grantor wishes to assert prior to acceleration and sale, and of any other matters required by applicable law to be included in the notice. If the default is not cured on or before the date specified in the notice (or, if later, by the date specified in the Loan Agreement), Beneficiary, at its option, may require immediate payment in full of all sums secured by this Deed of Trust without further demand and may invoke the power of sale and any other remedies permitted under the Loan Agreement, the Covenant Agreement, the Promissory Note, this Deed of Trust or by applicable law. Beneficiary shall be entitled to collect from Grantor all expenses incurred in pursuing the remedies provided in this Paragraph 20, including, but not limited to, attorneys' fees and costs of title evidence.

B. If Beneficiary invokes the power of sale, Beneficiary shall give written notice to Trustee of the occurrence of an event of default. Upon instruction from the Beneficiary to do so, Trustee shall cause the trust Property to be sold, in accordance with the Deed of Trust Act of the State of Washington, at public auction to the highest bidder. Beneficiary or its designee may purchase the Property at any sale. Trustee and Beneficiary shall take such action regarding notice of sale and shall give such notices to Grantor and to other persons as applicable law may require.

C. Trustee shall deliver to the purchaser a Trustee's Deed conveying the Property without warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Deed of Trust; and (c) any excess to the person or persons legally entitled to it or to the clerk of the superior court of the county in which the sale took place.

D. The power of sale conferred by this Deed of Trust and by the Deed of Trust Act of the State of Washington is not an exclusive remedy. Beneficiary may cause this Deed of Trust to be foreclosed as a mortgage.

E. As long as Wells Fargo Affordable Housing Community Development Corporation, a North Carolina corporation ("Tax Credit Investor") or an affiliate thereof remains the investor member of Grantor, if a default occurs under the Loan Agreement, this Deed of Trust or any other related document, and Beneficiary intends to exercise any of its remedies on account of such default, then prior to the initiation of any remedy by Beneficiary on account of such default, then Beneficiary at the same time as it delivers notice to Grantor shall deliver written notice of such default to the Tax Credit Investor at the address

specified in the Loan Agreement. Beneficiary shall accept cure of the defaults by the Tax Credit Investor within the cure periods, if any, provided in the Loan Agreement, this Deed of Trust or any other related document, and in any event, shall not exercise any rights to foreclose this Deed of Trust until Tax Credit Investor has been given the notice (but not the obligation) to remedy any default forming the basis with respect to such remedy.

21. RECONVEYANCE. Upon payment of all sums secured by this Deed of Trust, Beneficiary shall request Trustee to reconvey the Property to the person entitled thereto and shall surrender this Deed of Trust and all Promissory Notes evidencing the debt secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs.

22. SUBSTITUTE TRUSTEE. In the event of the death, incapacity, disability, or resignation of Trustee, or at Beneficiary's reasonable discretion, Beneficiary may appoint in writing a successor trustee, and upon the recording of such appointment in the mortgage records of the county in which this Deed of Trust is recorded, the successor trustee shall be vested with all powers of the original trustee. The trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of an action or proceeding in which Grantor, Trustee, or Beneficiary shall be a party unless such action or proceeding is brought by the Trustee.

23. USE OF PROPERTY. The Property is not used principally for agricultural or farming purposes.

24. BINDING EFFECT. This Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but on his/her/their heirs, devisees, legatees, administrators, executors, and assigns. The term "Beneficiary" shall mean the holder and owner of the Promissory Note secured hereby, whether or not named as Beneficiary herein.

25. EXTENDED USE AGREEMENT. Beneficiary acknowledges that Grantor intends to enter into an extended use agreement, which constitutes the extended low-income housing commit described in Section 42(h)(6)(B) of the Internal Revenue Code, as amended (the "Code"). As of the date hereof Code Section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under Code Section 42 or a period of three (3) years after the date the building is acquired by foreclosure or by instrument in lieu of foreclosure. In the even the extended use agreement is recorded against the Property, the Beneficiary agrees to comply with the provisions set forth in Code Section 43(h)(6)(E)(ii).

26. NONRECOURSE PROVISION. Notwithstanding anything to the contrary herein, Borrower, its partners, officers, directors, employees, agents and contractors shall have no personal liability for payment of the indebtedness secured or evidenced hereby or performance of the covenants set forth in this Deed of Trust, the Loan Agreement,

the Covenant Agreement or the Promissory Note, and the sole recourse of the Beneficiary shall be confined to the exercise of its rights under this Deed of Trust, the Loan Agreement, the Covenant Agreement and the Promissory Note, provided that nothing shall diminish Borrower's liability for damages or deficiencies resulting from theft, waste, fraud, material misrepresentation and misuse of rents.

27. ORAL AGREEMENTS OR ORAL COMMITMENTS. ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, TO EXTEND CREDIT, TO MODIFY OR AMEND ANY AGREEMENT TERMS, TO RELEASE ANY GUARANTOR, TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT OR FORBEAR FROM EXERCISING ANY REMEDIES, OR TO MAKE ANY OTHER FINANCIAL ACCOMMODATION RELATED TO THIS INSTRUMENT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

BY SIGNING BELOW, Grantor accepts and agrees to the terms and covenants contained in this Deed of Trust and in any riders executed by Grantor and recorded with it.

IN WITNESS WHEREOF, the Parties have executed this Deed of Trust as of the day and year first written above.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.)

**GRANTOR - VOLUNTEERS LIHTC LLC,
A Washington limited liability company**

By: Volunteers MM LLC, a Washington limited liability company
Its: Managing Member

By: Volunteers of America of Eastern Washington and Northern Idaho, a Washington nonprofit corporation
Its: Sole member

By: _____
Name: Marilee K. Roloff
Title: President/CEO

Date: _____

STATE OF WASHINGTON)
) ss.
County of Spokane)

On this ____ day of _____, 2015, personally appeared before me **Marilee K. Roloff**, to me known to be the President/CEO of Volunteers of America of Eastern Washington and Northern Idaho, a Washington nonprofit corporation, which is the sole member of Volunteers MM LLC, a Washington limited liability company, which is the managing member of Volunteers LIHTC LLC, a Washington limited liability company, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the Grantor, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute the said instrument.

GIVEN under my hand and official seal the day and year in this certificate above written.

NOTARY PUBLIC, in and for the State of
Washington, residing at _____
My Commission expires _____

By: _____
David A. Condon, Mayor

ATTEST:

Date: _____

By: _____
Assistant City Attorney

On this ____ day of _____, 2015, personally appeared before me **David A. Condon** and **Terri L. Pfister**, to me known to be the **Mayor** and **City Clerk**, respectively, of and for the City of Spokane, Washington, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument.

GIVEN under my hand and official seal the day and year in this certificate above written.

NOTARY PUBLIC, in and for the State of
Washington, residing at _____
My Commission expires _____

ATTACHMENT 1

LEGAL DESCRIPTION

All that certain real property situate in the City of Spokane, County of Spokane, State of Washington, being a portion of Block 14, Saunders Addition, as per plat recorded in Volume "A" of Plats, Page 32, records of Spokane County, Washington and being described as follows:

BEGINNING at the Southwest corner of said Block 14, being hereinabove described; thence along the South line of said Block 14, South 89°59'39" East 136.38 feet to the TRUE POINT OF BEGINNING of this description; thence leaving said South line of Block 14, North 00°00'00" East 125.03 North line of a 12.5 foot wide vacated strip North of and adjacent to said Block 14, thence along said North line, South 89°59'55" East 38.60 feet to the Northerly prolongation of the East line of Lot 7 of said Block 14; thence along said line, South 00°00'00" East 39.97 feet to the North line of the South 85 feet of said Block 14; thence along said line South 89°59'04" East 124.98 feet to the East line of said Block 14; thence along said East line, South 00°00'00" East 85.04 feet to the Southeast corner of said Block 14; thence along the South line of said Block 14, North 89°59'39" West 163.58 feet to the said TRUE POINT OF BEGINNING of this description, containing 15,456 square feet of land, more or less.

Street address:

217 East 2nd Avenue, Spokane, Washington 99202

WHEN RECORDED RETURN TO:
CITY OF SPOKANE
COMMUNITY, HOUSING AND HUMAN SERVICES DEPARTMENT
808 W. SPOKANE FALLS BLVD., ROOM 650
SPOKANE, WASHINGTON 99201-3339

OPR #2015-_____

**CITY OF SPOKANE
VOLUNTEERS LIHTC LLC
VOA 2ND AVENUE**

HOME PROGRAM LOAN COVENANT AGREEMENT

Grantor/
Borrower: Volunteers LIHTC LLC, a Washington limited liability company

Beneficiary: City of Spokane, a Washington state municipal corporation

Assessor's Parcel No.: 35202.1917

Legal Description (abbreviated): 20-25-43 Ptns of NW ¼ daf

(See Attachment 1 for full legal description.)

This HOME Program Loan Covenant Agreement ("Covenant Agreement") is made this ____ day of June, 2015 ("Effective Date"), by and between the **City of Spokane**, Washington, a Washington municipal corporation (the "City"), whose address is City of Spokane, c/o Community, Housing and Human Services Department, 808 W. Spokane Falls Blvd., Room 650, Spokane, Washington 99201-3339 and **Volunteers LIHTC LLC**, a Washington limited liability company (the "Grantor" or "Borrower"), whose address is c/o Volunteers of America of Eastern Washington and Northern Idaho, 525 W. Second Avenue, Spokane, WA 99201.

I. STIPULATIONS

1. This Covenant Agreement is a condition of and part of the consideration for the financial assistance provided by the City to the Grantor for the Grantor's acquisition and construction of the VOA 2nd Avenue project, a 51-unit apartment building to be located at 217 East 2nd Avenue in Spokane, WA (the "Project"). Thirty-seven (37) of the fifty-one (51) units will be HOME-assisted.

2. This Covenant Agreement is part of a transaction further reflected in a Promissory Note ("Promissory Note") and a HOME Program Loan Agreement ("Loan Agreement") of even date herewith. The City's disbursements under the Loan Agreement are further secured by a Deed of Trust ("Deed of Trust"). The terms of said documents are incorporated herein as if fully set forth herein, and together shall be referenced as the "Related Documents." The capitalized terms in said agreements shall have the same meaning in this Covenant Agreement unless the context clearly suggests otherwise. In the event of conflict in the terms of any of these documents, the terms most favorable to the City shall apply.

3. The Project is situated in the City and County of Spokane, State of Washington, and is legally described as set forth in Attachment 1 hereto.

4. This Covenant Agreement shall be filed and recorded in the official public land records of Spokane County, Washington, and shall constitute a restriction upon the use of the property and Project described herein, subject to and in accordance with the terms of this Covenant Agreement during the Affordability Period described in Section IV herein below.

5. The covenants contained herein are to be taken and construed as **covenants running with the land** and shall pass to and be binding upon the Borrower, its successors in interest, assigns, heirs or lessees of the Project, beginning on the date this Covenant Agreement is executed. Each and every contract, deed or other instrument covering or conveying the property or Project, or any portion thereof, shall be conclusively held to have been executed, delivered and accepted subject to such covenants regardless of whether such covenants are set forth in such contract, deed or other instrument.

NOW, THEREFORE, it is hereby covenanted, that during the Affordability Period described in Section IV herein below, the Borrower agrees to the following covenants running with the land which shall bind the Borrower, its heirs, assigns, lessees and successors in interest through the Affordability Period.

II. COVENANTS

Borrower shall:

- A. Comply with the Affordability Requirements described in this Covenant Agreement and Related Documents.
- B. Maintain all required insurance, including without limitation the insurance required by the Deed of Trust.
- C. Maintain Project financial reports, Project financial records and provide all other information and documentation that the City may reasonably request.

- D. Make prompt payment of all taxes and financial liabilities.
- E. Not hypothecate or encumber Project assets in any way, except to the extent provided for under the Loan Agreement or as approved of by the Director of Community, Housing and Human Services of the City of Spokane (the "Director") in writing. The Director may withhold such approval at his/her reasonable discretion.
- F. Promptly provide (i) rent and tenant income information at initial tenant occupancy and (ii) rent, occupancy, and tenant income information annually throughout the term of the Loan Agreement, in accordance with the Loan Agreement, or as otherwise requested by the City. If the Project has floating HOME units, the Borrower must provide the City with information regarding the unit substitution and filling vacancies so that the Project remains in compliance with HOME rental occupancy requirements.
- G. Promptly provide, upon request by the City, such documentation as is necessary (including financial statements) to enable the City to determine the financial condition and continued financial viability of the Project.
- H. During the Affordability Period, prohibit occupancy of any HOME-assisted unit by Borrower (or officer, employee, agent, elected or appointed official, or consultant of the Borrower, or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of Borrower) whether private, for-profit or nonprofit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor).
- I. Comply with all applicable federal, state, and local regulations and requirements, including, but not limited to, Uniform Administrative Requirements, Federal Labor Standards, Davis-Bacon and Related Acts, Uniform Relocation Act requirements applicable as of the date of the execution of this Covenant Agreement, and the provisions of the Lead-Based Paint Poisoning Prevention Act. The Federal Labor Standards Provisions with which Borrower must comply are attached to the Loan Agreement as Attachment 2 and incorporated herein. The City's costs to administer Davis Bacon Federal Labor Standards, and Related Acts shall be borne by the Borrower. When Washington State prevailing wages apply, the Borrower shall comply with all State requirements under RCW 39.12 to the satisfaction of the State of Washington. When applicable, the higher of Washington State prevailing wages or Davis-Bacon wages shall apply.
- J. Comply with all HOME program project requirements pursuant to 24 CFR part 92 et seq.
- K. Maintain housing in compliance with the property standards of 24 CFR §92.251 and local code requirements throughout the term of the Loan Agreement .

- L. Upon Project completion, the Project shall obtain a final Certificate of Occupancy, meet all licensing requirements needed to operate the facility as proposed by Borrower in its various funding applications, and meet the property standards of 24 CFR §92.251, and all applicable federal, state and local codes and ordinances. New construction projects must also meet HUD, state, and local requirements relating to accessibility and disaster mitigation.
- M. Cause each of the thirty-seven (37) HOME-assisted units to have been occupied by income-eligible households within eighteen (18) months after the Project is completed. If any HOME-assisted units have not been occupied by eligible tenants within 6 months following the date of Project Completion, Borrower shall submit to the City current marketing information and, if the City requests it, an enhanced marketing plan for leasing the unoccupied units as quickly as possible, which information the City will provide to HUD as required by 24 CFR §92.252. If any HOME-assisted unit has not been rented to eligible tenants within eighteen (18) months after the date of Project Completion, Borrower shall repay the City \$29,729.73/unit for each such unit within thirty (30) days of the City's written request for repayment. This reflects the proportionate per unit share of HOME funds, i.e., \$1,100,000 HOME dollars/37 HOME units. The number of HOME-assisted units required hereunder shall be reduced in proportion to the amounts so repaid.

The Borrower shall cause this Covenant Agreement to be recorded as a covenant running with the land and the Project.

Borrower shall pay at loan closing all costs associated with the negotiation, documentation and closing of the loan, including without limitation title premiums escrow fees, recording fees, appraisal fees and City's attorneys' fees.

III. INCOME DETERMINATIONS

- A. For purposes of this Covenant Agreement, tenant "annual income" is defined pursuant to 24 CFR §92.203), and includes income from all persons in the household, less income adjustments pursuant to 24 CFR §5.611. An individual does not qualify as a low-income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR 5.612.
- B. Initial tenant annual income determinations shall be made by the Borrower pursuant to 24 CFR §92.203. Subsequent tenant income determinations shall be made by the Borrower pursuant to 24 CFR §92.203 and 24 CFR §92.252(h).
- C. Rent increases and annual income recertifications shall be governed by the terms outlined in the Affordability Requirements below.

IV. AFFORDABILITY REQUIREMENTS

- A. HOME Affordability Period. The HOME Affordability Period, established pursuant to 24 CFR §92.252, is twenty (20) years, beginning after Project Completion, as determined by the Director. "Project Completion" means that all necessary title transfer requirements and construction work have been performed; the Project complies with the requirements of 24 CFR §92, including the property standards under 24 CFR §92.251; the final drawdown of HOME funds has been disbursed for the Project; and the project completion information has been entered in the disbursement and information system established by HUD, except that with respect to rental housing project completion, for the purposes of 24 CFR §92.502(d), project completion occurs upon completion of construction and before occupancy. Repayment of the loan during the HOME Affordability Period will not extinguish the requirements of the Related Documents.
- B. City Affordability Period. The City Affordability Period is thirty-seven (37) years, from the date of the Loan Agreement. The HOME Affordability Period and City Affordability Period shall run concurrently. Collectively, the two periods are hereinafter referred to as the "Affordability Period." Upon expiration of the HOME Affordability Period, the City Affordability Period shall continue, but HUD will no longer monitor compliance with the Affordability Requirements. The requirements of the Affordability Period and other conditions of the Related Documents shall apply, as long as there are funds owing under the Note.
- C. Rent Limit. During the Affordability Period, rents (i.e., exclusive of rent paid through project-based subsidies) on the thirty-seven (37) HOME-assisted units shall not exceed thirty percent (30%) of the adjusted income of a family whose annual income equals thirty percent (30%) of Spokane area median income ("AMI"), as defined by HUD and adjusted for family size, unit size by number of bedrooms, tenant-paid utilities, and tenant-supplied appliances. These units shall include nineteen (19) studio units and eighteen (18) one-bedroom units. Should the HUD rents decline below the initial project rents, the Borrower's rents do not need to be reduced below the initial rents. A table of initial HUD rents for the Project is attached to the Loan Agreement as Attachment 2. The adjustment for tenant-paid utilities and tenant-supplied appliances is subject to 24 CFR §92.252, which previously used the Section 8 existing housing allowance for tenant-furnished utilities and other services as published annually by and issued by the Spokane Housing Authority or twelve (12) months of documented actual utility costs as acceptable to the City's Community, Housing & Human Services Department. New HUD requirements are being clarified and may include that the adjustment for tenant-paid utilities and tenant-supplied appliances be based on the HUD Utility Schedule Model, twelve (12) months of documented actual utility costs as acceptable to the City's CHHS Department, or other methods as determined by HUD. Currently, the HUD Utility Schedule Model can be found at: <http://huduser.org/portal/resources/utimodel.html>.

However, any HOME-assisted unit receiving federal or state project-based rental assistance, where the tenant pays not more than thirty percent (30%) of the

household's adjusted income as a contribution toward rent, shall be limited to the maximum rent allowed under the federal or state project-based rental assistance program.

The City will provide Borrower with information on updated HOME rent limits so that rents may be adjusted (not to exceed the maximum HOME rent limits) exclusive of rent paid through project-based subsidies) in accordance with this Covenant Agreement and 24 CFR §92.252(f)(2). Owners must annually provide the City with information on rents and occupancy of HOME-assisted units to demonstrate compliance with the Affordability Requirements of this Covenant Agreement. The City will review rents for compliance and approve or disapprove them every year.

- D. LIHTC Rent Clause. For tenants of low-income tax credit assisted units (if low-income housing tax credits are awarded to the Project or portions of the Project), any increases in rent associated with tenant income shall be governed solely by section 42 of the Internal Revenue Code of 1986, as amended from time to time.
- E. Upon completion of the HOME Affordability Period, if the maximum rent and income limits are exceeded, the loan will be subject to repayment at the higher interest rate as provided for in Paragraph 2 of the Promissory Note.
- F. Income Limit. At initial occupancy, tenants of the thirty-seven (37) HOME-assisted units shall have incomes not greater than thirty percent (30%) of AMI. If any of these tenants' incomes increases to a level exceeding fifty percent (50%) of AMI, then the next available HOME-assisted unit shall be made available to families at or below thirty percent (30%) of AMI. If the income of a tenant of a HOME-assisted unit increases and exceeds eighty percent (80%) of AMI, then the tenant's rent shall increase to the lesser of thirty percent (30%) of the tenant's adjusted monthly income or Fair Market Rent, subject to paragraph IV.D hereof.
- G. Adjustments if Project-based Rent Support Ends. The Project has a commitment for forty (40) project-based housing choice vouchers through the Spokane Housing Authority. These vouchers are expected to be available to the project for at least fifteen years. Should all or some of these vouchers end, the Project's income could be affected. If the project-based housing choice vouchers are reduced or eliminated, the Borrower must notify the City as soon as possible, but no less than 90 days before, the anticipated change in the number of vouchers and provide information on its anticipated impact on the Project's cash flow. If the number of project-based vouchers assigned to HOME-assisted units falls below thirty-seven, the City and Borrower may revise or amend the documentation to adjust the rent and income limits applicable to the HOME-assisted units; this will not change the total number of HOME-assisted units, nor the unit sizes, consisting of nineteen studio apartments and eighteen one-bedroom apartments. Whether or not rental assistance is available, at least eighteen (18) of the thirty-seven (37) HOME-assisted units will be occupied by

households with incomes upon their initial occupancy not greater than thirty percent (30%) of AMI occupying units with rents not to exceed thirty percent (30%) of adjusted income of a family whose annual income equals thirty percent (30%) of AMI.

For the remaining nineteen of the thirty-seven HOME-assisted units, the unit affordability may be modified for each HOME-assisted housing unit that loses its federal project-based rental assistance ("No-Assistance"). For the first (1st) through seventeenth (17th) No-Assistance units, the units shall be occupied by households with incomes upon their initial occupancy not greater than forty-percent (40%) of AMI and the rent shall not exceed thirty percent (30%) of adjusted income of a family whose annual income equals forty percent (40%) of AMI. For the eighteenth (18th) and nineteenth (19th) No-Assistance units, the units shall be occupied by households with incomes upon their initial occupancy not greater than fifty-percent (50%) of AMI and rent shall not exceed thirty percent (30%) of adjusted income of a family whose annual income equals fifty percent (50%) of AMI.

If any of these tenants' incomes increases to a level exceeding fifty percent (50%) of AMI, then the next available HOME-assisted unit shall be made available to families at or below the income level that returns the HOME units to the appropriate level. If the income of a tenant of a HOME-assisted unit increases and exceeds eighty percent (80%) of AMI, then the tenant's rent shall increase to the lesser of thirty percent (30%) of the tenant's adjusted monthly income or Fair Market Rent, subject to paragraph IV.D hereof.

- H. Income Certifications. All tenants' incomes shall be recertified annually by the Borrower. Any applicable rent increases will be effective upon the next lease renewal, and are subject to thirty (30) days' written notice.
- I. Additional Affordability Requirements. The Project must comply with the affordable housing requirements of 24 CFR §92.252.
- J. Relocation. Tenants in occupancy prior to the Project are subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended ("URA"), 42 USC 4601 et seq. and the regulations promulgated thereunder. All relocation payments and expenses shall be borne by the Borrower.
- K. Protection of Affordability Requirements – City Purchase Option. The Affordability Requirements may terminate upon foreclosure or transfer in lieu of foreclosure at the sole election of the Director. In the event of a pending or threatened foreclosure, once applicable notice and cure periods have expired, the City is hereby granted an option and a right of first refusal to purchase the Project before foreclosure or deed in lieu of foreclosure to preserve affordability. The City may exercise its right to purchase the Project in any reasonable manner following the City's receipt of written notice of pending or threatened foreclosure proceedings and/or a possible deed in lieu of foreclosure, which

notice Borrower hereby agrees to provide to City. The purchase price shall be the assessed value of the Project at the time of the City's exercise of its purchase rights, less any financial obligations assumed by the City at the time of the City's acquisition of the Project. Pursuant to 24 CFR §92.252(e)(3), the City further reserves the right to revive any affordability restrictions according to the original terms of the Loan Agreement if, during the HOME Affordability Period (as defined herein), the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Project or property.

V. DEFAULT

If a violation of any of the foregoing covenants occurs, the City may, after thirty (30) days written notice, the default meanwhile not having been cured, institute and prosecute any proceeding at law or in equity or as otherwise provided for in this Covenant Agreement, or Related Documents, to abate, prevent, or enjoin any such violation or to compel specific performance by the Borrower of its obligations hereunder, including, without limitation of other remedies, the exercise of the City's purchase rights described herein. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation hereof at any later time.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, TO EXTEND CREDIT, TO MODIFY OR AMEND ANY AGREEMENT TERMS, TO RELEASE ANY GUARANTOR, TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT OR FORBEAR FROM EXERCISING ANY REMEDIES, OR TO MAKE ANY OTHER FINANCIAL ACCOMMODATION RELATED TO THIS AGREEMENT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.)

By: _____
David A. Condon, Mayor

By: Terri L. Pfister, City Clerk

By: _____
Assistant City Attorney

STATE OF WASHINGTON)
) ss.
County of Spokane)

On this ____ day of _____, 2015, personally appeared before me **David A. Condon and Terri L. Pfister**, to me known to be the **Mayor** and **City Clerk**, respectively, of and for the **City of Spokane**, Washington, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument.

GIVEN under my hand and official seal the day and year in this certificate above written.

NOTARY PUBLIC, in and for the State of
Washington, residing at _____
My Commission expires _____

ATTACHMENT 1

LEGAL DESCRIPTION

All that certain real property situate in the City of Spokane, County of Spokane, State of Washington, being a portion of Block 14, Saunders Addition, as per plat recorded in Volume "A" of Plats, Page 32, records of Spokane County, Washington and being described as follows:

BEGINNING at the Southwest corner of said Block 14, being hereinabove described; thence along the South line of said Block 14, South 89°59'39" East 136.38 feet to the TRUE POINT OF BEGINNING of this description; thence leaving said South line of Block 14, North 00°00'00" East 125.03 North line of a 12.5 foot wide vacated strip North of and adjacent to said Block 14, thence along said North line, South 89°59'55" East 38.60 feet to the Northerly prolongation of the East line of Lot 7 of said Block 14; thence along said line, South 00°00'00" East 39.97 feet to the North line of the South 85 feet of said Block 14; thence along said line South 89°59'04" East 124.98 feet to the East line of said Block 14; thence along said East line, South 00°00'00" East 85.04 feet to the Southeast corner of said Block 14; thence along the South line of said Block 14, North 89°59'39" West 163.58 feet to the said TRUE POINT OF BEGINNING of this description, containing 15,456 square feet of land, more or less.

Situs Address: 217 East 2nd Avenue, Spokane, WA 99202

Attachment 2
Federal Labor Standards Provisions

DRAFT

Attachment 3
Initial HUD Rents

DRAFT

[City of Spokane letterhead]

June __, 2015

Ms. Marilee Roloff
Executive Director
Volunteers of America of Eastern Washington & Northern Idaho
525 West 2nd Avenue
Spokane, WA 99201

Dear Ms. Roloff:

On the date hereof, the City of Spokane (the “Lender”) made a loan in the amount of \$1,100,000 (the “Loan”) to Volunteers LIHTC LLC (“Borrower”) to partially finance the acquisition and construction of a 51-unit apartment to be located at 217 E. 2nd Avenue in Spokane, Washington (the “Project”). Volunteers of America of Eastern Washington & Northern Idaho (“VOA”) is the developer of the Project and the sole member of Volunteers MM LLC, a Washington limited liability company (the “Managing Member”), which is the managing member of the Borrower. Wells Fargo Affordable Housing Community Development Corporation is the investor member of the Borrower (the “Investor Member”).

The Lender acknowledges that VOA has assisted the Lender in Lender’s review and evaluation of the Loan. The Lender also acknowledges that, by means of that certain Right of First Refusal and Purchase Option Agreement dated June __, 2015 (the “Option Agreement”), the Borrower and the Investor Member have provided VOA with a right of first refusal and an option to acquire the Project and/or the investor member’s interest in the Borrower for the two-year period commencing on or about January 1, 2032.

As consideration for VOA’s assistance to the Lender, and other good and valuable consideration that is hereby acknowledged, the Lender agrees that subject to and conditioned on (i) VOA acquiring the Project and/or the Investor Member’s interest in the Borrower pursuant to the terms of the Option Agreement and (ii) the Project has been and remains in compliance, i.e., any prior defaults have been cured or waived in writing by the Lender, with all requirements set forth in the Loan Agreement dated June __, 2015 between the Lender and the Borrower (the “Loan Agreement”) and Related Documents (as defined in the Loan Agreement) including, without limitation, retention of the HOME-assisted units within the Project as rental units for households at or below 30% AMI for Spokane, WA, then Lender will: (1) allow VOA to assume the Loan and (2) forgive the Loan principal balance and any accrued interest outstanding at its stated maturity. For the avoidance of doubt, the foregoing sentence shall not apply at any time that the Investor Member is a member of the Borrower. The determination whether the foregoing conditions have been met is to be made by the Lender in its sole, reasonable discretion.

The parties intend that the foregoing assumption of the Loan by VOA and forgiveness of the Loan shall take effect without the need for future amendments to the Loan Agreement or the Related Documents. Notwithstanding the foregoing, the Lender and VOA each agree to amend the Loan Agreement and the Related Documents to include the Loan forgiveness language at such time that VOA either acquires the Property or acquires the Investor Member's interest in the Borrower, if either party hereto so requests.

Investor Member hereby represents that it has received an unqualified opinion from its tax counsel related to the contents of this letter agreement.

VOA and Investor Member ("Indemnifying Parties") and their successors and assigns hereby agree that (i) the Lender is released from any and all liabilities to the Indemnifying Parties arising from the terms of this letter agreement and the compliance of the Lender with the terms hereof, and (ii) the Indemnifying Parties and their successors and assigns shall at all times indemnify and hold harmless the Lender from and against any and all claims, actions and suits of others arising out of the terms of this letter agreement or the compliance of the Lender with the terms hereof, and from and against any and all liabilities, losses, damages, costs, charges, reasonable attorneys' fees and other reasonable expenses of every nature and character arising by reason of the same.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

VOA:

VOLUNTEERS OF AMERICA OF EASTERN
WASHINGTON & NORTHERN IDAHO

By: _____

Name: Marilee Roloff

Title: Executive Director

Lender:

CITY OF SPOKANE

By: _____

Name:

Title:

ATTEST:

APPROVED AS TO FORM:

By: _____

By: _____

Terri L. Pfister, City Clerk

Assistant City Attorney

CONSENT OF INVESTOR MEMBER AS TO
THE FINAL TWO PARAGRAPHS OF THIS
LETTER AGREEMENT:

Investor Member:

Wells Fargo Affordable Housing Community
Development Corporation

By: _____

Name:

Title:

-SIGNATURE PAGE-

DRAFT

RECORDED AT THE REQUEST OF
AND AFTER RECORDING RETURN TO:
Jeffrey C. Nave
Foster Pepper PLLC
422 West Riverside Ave., Suite 1310
Spokane, WA 99201

**PRIORITY AND SUBORDINATION AGREEMENT
(The Marilee)**

Grantors: (1) Volunteers LIHTC LLC;
(2) Volunteers of America of Eastern Washington and Northern Idaho
(3) City of Spokane, Washington;
(4) Wells Fargo Bank, National Association;
(5) Washington State Housing Finance Commission

Grantees: (1) Washington State Housing Finance Commission;
(2) Wells Fargo Bank, National Association;
(3) City of Spokane, Washington;
(4) Volunteers of America of Eastern Washington and Northern Idaho
(5) Volunteers LIHTC LLC

Abbrev. Legal Descr.: L7-12 B 14 Saunder's Addition & vacated Short Avenue adj
Additional legal description in Exhibit "A" of document.

Assessor's Tax Parcel 35202.1920

Reference Numbers: _____ (WSHFC Extended Use Agreement)
_____ (City Regulatory Agreement)
_____ (Bank Deed of Trust)
_____ (City Deed of Trust)
_____ (VOA Right of First Refusal)

**PRIORITY AND SUBORDINATION AGREEMENT
(The Marilee)**

This PRIORITY AND SUBORDINATION AGREEMENT (this “Agreement”) is dated as of June 1, 2015, by and among the following parties (collectively, the “Parties”): VOLUNTEERS LIHTC LLC, a Washington limited liability company (the “Company”); VOLUNTEERS OF AMERICA OF EASTERN WASHINGTON AND NORTHERN IDAHO, a Washington nonprofit corporation (“VOA”); CITY OF SPOKANE, WASHINGTON, a municipal corporation of the State of Washington (the “City”); WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association (the “Bank”); and the WASHINGTON STATE HOUSING FINANCE COMMISSION, a public body corporate and politic of the State of Washington (the “Commission”). Each of the Bank and the City is referred to as a “Lender.”

RECITALS

A. Company’s Interest as Fee Owner. The Company is the owner of a tract of land located in Spokane County, Washington, legally described on Exhibit A hereto (together with all improvements now or hereafter thereon and all appurtenances, the “Property”), which real property is to be developed using a combination of public and private funds from various sources. Depending upon the context, the term “Project” shall herein refer to (1) the construction of an apartment building consisting of 51 dwelling units (including one manager’s unit) on the Property, or (2) the apartment building so constructed.

B. Instruments to be Recorded Against the Property. Various parties providing loans, grants or other advances or contributions to assist in the financing of the Project have required as conditions that the Company execute and record against the Property certain instruments in the nature of covenants and agreements restricting the leasing, operation and/or management of the Property, and/or deeds of trust and other financing instruments securing the performance of certain monetary and other obligations.

C. Commission’s Interest. The Company has obtained financing for the Project through the use of Low Income Housing Tax Credits (“LIHTC”). In connection with the LIHTC, the Company has executed a Regulatory Agreement (Extended Use Agreement) with the Commission (the “Extended Use Agreement”), recorded under Spokane County recording number _____.

D. Bank’s Interest. The Bank and the Company have entered into a Bank Loan Agreement (the “Bank Loan Agreement”) which sets forth the terms and conditions under which the Bank has agreed to lend the Company up to \$_____ (the “Bank Loan”) to finance the Project. The Bank Loan is evidenced by a Promissory Note Secured by Security Instrument (the “Bank Note”), made by the Company to the order of the Bank. Repayment of the Bank Note is secured by, among other security documents, a Construction Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing in favor of Chicago Title Insurance Company, as trustee, and the Bank as beneficiary, recorded

under Spokane County recording no. _____ (the “Bank Deed of Trust”), encumbering the Company’s fee interest in the Property, and a UCC-1 Financing Statement, which shows the Company as debtor, and the Bank as secured party, filed with the Department of Licensing, Uniform Commercial Code Division of the State of Washington (the “Bank Financing Statement”). The Bank Loan Agreement, the Bank Deed of Trust, and the Bank Financing Statement, and all documents executed by the Company in connection therewith, are referred to collectively as the “Bank Documents.”

E. City’s Interest. The City and the Company have entered into a HOME Program Loan Agreement (the “City Loan Agreement”) which sets forth the terms and conditions under which the City has agreed to lend the Company up to \$1,100,000 (the “City Loan”) to finance the Project. The City Loan is evidenced by a Promissory Note (the “City Note”), made by the Company to the order of the City. Repayment of the City Note is secured by, among other security documents, a Deed of Trust in favor of Inland Professional Title, as trustee, and the City as beneficiary, recorded under Spokane County recording no. _____ (the “City Deed of Trust”), encumbering the Company’s fee interest in the Property. In addition, the City and the Company entered into a HOME Program Loan Covenant Agreement recorded under Spokane County recording number _____ (the “City Regulatory Agreement”). All documents identified in this paragraph, and any documents executed by the Company in connection therewith, are collectively referred to as the “City Documents.”

F. VOA’s Interest as Optionee. Pursuant to a Right of First Refusal and Purchase Option Agreement dated June __, 2015, among VOA, the Company and Wells Fargo Affordable Housing Community Development Corporation, VOA has been granted of a purchase option and right of first refusal to purchase the Company’s interest in the Property (together with any other rights of VOA to acquire the Company’s interest, under the Company’s operating agreement or otherwise, the “Option”). The Option is not recorded.

G. Purpose. The Parties desire to provide herein for the relative priority of the various covenants, deeds of trust, and other instruments to be recorded in connection with the Project, and to undertake certain covenants with respect to the subordination of the priority of their interests under recorded instruments in their favor to certain other instruments which may be put of record hereafter, as more particularly provided herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements and undertakings herein contained, the Parties agree as follows:

1. **Priorities**. Regardless of the time each Party’s interest in or lien on the Property was or shall be created or recorded, such interests and liens have and shall have the following priorities:

(a) First Priority. The Extended Use Agreement shall have first priority. The liens, rights and interests of the Lenders created under documents with a lesser priority as established in this Agreement are hereby made subordinate and subject to the rights and interests of Commission under the Extended Use Agreement. Subject to the terms of the Extended Use Agreement, the Extended Use Agreement shall survive foreclosure of any lien with a lesser priority as established in this Agreement and shall be binding upon any person that acquires the Property by means of such foreclosure or deed in lieu thereof or that is a successor to one who acquires the Property by such means, for so long as such person shall retain an interest in the Property.

(b) Second Priority. The City Regulatory Agreement shall have second priority. The liens, rights and interests of the Lenders created under documents with a lesser priority as established in this Agreement are hereby made subordinate and subject to the rights and interests of the City under the City Regulatory Agreement. The City Regulatory Agreement shall terminate upon foreclosure, the transfer of title to the Property by deed-in-lieu of foreclosure or the occurrence of any of the other events set forth in Section 15.i of the City Regulatory Agreement in accordance with the terms thereof.

(c) Third Priority. The Bank Deed of Trust shall be third in priority. The liens, rights and interests of the Lenders created under documents with a lesser priority as established in this Agreement are hereby made subordinate and subject to the lien, security interest, and all other rights granted to the Bank under the Bank Deed of Trust and other Bank Documents, including, without limitation, interest and all present and future advances made by the Bank thereunder, regardless of whether such advances are deemed to be mandatory or optional, and all subsequent amendments, modifications, extensions, renewals, and replacements of the Bank Documents.

(d) Fourth Priority. The City Deed of Trust shall be fourth in priority. The liens, rights and interests of the Lenders created under documents with a lesser priority as established in this Agreement are hereby made subordinate and subject to the rights and interests of the City under the City Deed of Trust.

For purposes of this Section, the lien or interest with “lesser priority” is the one with the higher numerical designation, so that, for example, “fourth priority” is a “lesser priority” than “third priority.”

Any right of VOA or any other party to acquire the Property or any part thereof pursuant to any option or right of first refusal, including the Option, in any of the Documents or otherwise, is hereby made subject and subordinate to each of the liens and interests described above in this Section.

The Parties agree that the Lenders do not have any obligation to each other to advance funds or to see to the application of their respective loan proceeds and that any application of such proceeds contrary to the terms of any loan documents shall not defeat the subordinations granted herein in whole or in part.

The Parties agree that except for such obligations as the Company may have to other Parties hereto pursuant to agreements with such Parties (i) the Parties do not have any obligations to each other to advance funds or to see to the application of their respective loan proceeds, (ii) any application of such proceeds contrary to the terms of any loan documents shall not defeat the subordinations granted herein in whole or in part, and (iii) nothing contained in this Agreement shall impair the right of any Party to pursue any right or remedy available to it in any of the agreements, covenants, regulatory agreements, deeds of trust or options referenced herein.

Notwithstanding any other provisions of this Agreement, the priorities established hereunder shall not apply to nor affect the security position of any security agreement or pledge of cash accounts or other property to which only one Party hereto has been granted a security interest.

2. Insurance or Condemnation Proceeds. Notwithstanding any provision of the City Documents to the contrary, so long as amounts under the Bank Documents remain unpaid, in the event of any damage to, destruction of, or taking or condemnation (including deed in lieu thereof) of the Property or any portion thereof, the application of any insurance or condemnation proceeds shall be governed by the terms of the Bank Deed of Trust. Any funds to be applied to repair or restoration shall be held and administered by the Bank in accordance with the Bank Documents, and the Bank shall be entitled to reasonable compensation for its services in connection with the administration of such funds, as set forth in the Bank Deed of Trust, provided that, if applicable law does not permit a lender to hold such proceeds, then the Bank shall have the right to designate an insurance trustee to administer the proceeds consistent with the Bank Deed of Trust subject to applicable law. For so long as amounts under the Bank Documents remain unpaid, the Bank shall have all approval, consent, and oversight rights in connection with any insurance claims relating to the Property and any decisions regarding the use of insurance or condemnation proceeds after a casualty loss or condemnation notwithstanding any rights of the City pursuant to the City Documents.

3. Cross-Defaults. A “Cross-Default” shall be deemed to occur (i) under the Bank Documents at the option of Bank upon the occurrence of any default under the City Documents, after notice of default has been given thereunder, that is not cured or waived within the applicable cure period set forth therein, and (ii) under the City Documents at the option of the City upon (A) the occurrence of any default under the Bank Documents, after notice of default has been given thereunder, that is not cured or waived within the applicable cure period set forth therein, and (B) the acceleration of the maturity of the Bank Loan by Bank, or the affirmative action by Bank to exercise its rights under the Bank Deed of Trust to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the Bank Deed of Trust. Unless and until there shall be a Cross-Default under this Section, each Lender agrees not to accelerate indebtedness of the Company or seek remedies under loan documents against the Company or the Property (other than the withholding of further disbursement of loan proceeds until such default or breach is cured) based solely upon a breach or default by the Company under another Lender’s documents described herein, other

than a default in the payment of money. The foregoing shall not constitute a waiver, defense, limitation or estoppel to any other breach or default under any Lender's documents. If at any time the Company cures any default that results in a Cross-Default to the satisfaction of the Lender under whose Documents such default originally occurred, any Cross-Default arising as a result thereof under the other Lender's Documents shall be deemed cured and such other Lender's loan shall be retroactively reinstated as if such Cross-Default had never occurred.

4. **Subordinate Lenders' Agreement to Standstill.** So long as amounts under the Bank Documents remain unpaid, the City agrees for the benefit of the Bank and its successors and assigns, that if a default occurs and is continuing under documents other than the Bank Documents, the City shall not, without the Bank's prior written consent (which consent shall not be unreasonably withheld), accelerate the City Loan, commence foreclosure proceedings with respect to the Property, collect rents, appoint (or seek the appointment of) a receiver or institute any other enforcement action with respect to the Property.

5. **Reliance.** It is understood by the Parties hereto that the Bank would not make the Bank Loan and would not enter into, or make disbursement under, the Bank Loan Agreement without this Agreement.

6. **Actions by the Bank; Certain Waivers.** The Bank, without the consent of or notice to any other Party, may release any or all parties liable for any obligation secured by the Bank Documents, or release any or all security for the obligations secured by the Bank Documents, all without affecting the subordinations under this Agreement. The City and the Company waive any right to require marshaling of assets or to require the Bank to proceed against or exhaust any specific security for the obligations secured by the Bank Documents, and waive any defense arising out of the loss or impairment of any right of subrogation to the lien of the Bank Documents. However, the Bank agrees not to voluntarily subordinate the lien of the Bank Deed of Trust or any portion thereof to any other liens or encumbrances on the Property without the written consent of the City which consent may consist of such Lender's subordination to the same lien or encumbrance.

7. **Rents.** The City understands that the Company has assigned all leases, income, rents, and profits of the Property in connection with the Bank Documents. The Parties agree that upon default under the Bank Documents, the Bank shall have the absolute right to collect all rents and profits from the Property as provided in the Bank Documents.

8. **Acknowledgements.** The City hereby agrees and acknowledges, solely for the benefit of the Bank, as follows:

(a) for purposes of this Agreement, it has been provided the opportunity to review the Bank Documents before executing this Agreement;

(b) the Bank, in making disbursements pursuant to the Bank Documents, is under no obligation or duty to insure, nor has the Bank represented that it will insure, the proper application of such proceeds by the person(s) to whom the Bank disburses such

proceeds, and any application or use of such proceeds for purposes other than as provided in any such agreement shall not defeat or render invalid, in whole or in part, the subordinations provided for in this Agreement;

(c) the Bank has not made any warranty or representation of any kind or nature whatsoever with respect to (i) the application of the proceeds of the Bank Loan upon the security of the Bank's Deed of Trust, (ii) the value of the Property or the improvements to be developed thereon pursuant to the Bank Documents, or the marketability or value thereof upon completion of such improvements, or (iii) the ability of the Company to honor its covenants and agreements with the Bank or other Parties;

(d) the Bank's release of any security for the Bank Loan, including, without limitation, the reconveyance of any portion(s) of the Project from the lien of the Bank Deed of Trust shall not constitute a waiver or relinquishment of the City's unconditional subordination of the liens or charges of the City Deed of Trust against the Project to the lien or charge of the Bank Deed of Trust;

(e) notwithstanding the terms of the City Regulatory Agreement or any other City Document to the contrary, if the Bank or its designee acquires the Property by foreclosure, deed-in-lieu of foreclosure or otherwise, the City Regulatory Agreement shall automatically terminate without requirement of any prior express or written agreement of the City, and none of the Bank, its designee, their respective successors or assigns or the Property shall be subject to the terms of the City Regulatory Agreement, including, without limitation, any liability for repayment of any City Loan funds or AHTF (2060) investment or funds (as referenced in Sections 3.A.i and 6.B.i of the City Regulatory Agreement), regardless of whether the Project meets the affordability requirements for the Affordability Period as required by the City Documents or not;

(f) notwithstanding the terms of the City Regulatory Agreement or any other City Document to the contrary, the transfer of the Property to the Bank or its designee pursuant to foreclosure or deed-in-lieu of foreclosure shall not require the prior written consent of the City or result in any liability of the Bank, its designee or their respective successors or assigns under the terms of the City Regulatory Agreement or any other City Documents;

(g) the Bank would not make the Bank Loan absent the execution of this Agreement by the Parties hereto; and

(h) the Bank shall provide notice to each other Lender of any written default issued to the Company pursuant to the Bank Documents, provided, however, that the failure of the Bank to provide any such notice shall not constitute a defense, waiver or limitation of any right or remedy of the Bank under the Bank Documents, nor shall it limit, release, waive or affect any duty, liability or obligation of the Company under the Bank Documents. Other than providing notice to each other Lender of any written default issued to the Company, the Bank has no duty or obligation under this Agreement to disclose any

information to any party. The Company hereby consents to the disclosure to each Lender of any written default issued by the Bank in connection with the Bank Documents.

Each Party hereto has made such independent legal and factual inquiries and examinations as such Party deems necessary or desirable and are not relying on any inquiries or examinations made by the Bank or on information from the Bank concerning the Company, the Property or the Project.

9. Miscellaneous.

(a) Entire Agreement. This Agreement constitutes the entire agreement among the Parties with respect to the priority of each Party's liens and interests in the Property described herein and all prior understandings and agreements on that subject are superseded hereby.

(b) Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

(c) Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when hand-delivered within normal business hours, when actually received by facsimile transmission during normal business hours, or two (2) business days after deposit in the U.S. mail, postage prepaid, (one (1) business day if sent by overnight courier) to the Parties hereto at the addresses set forth below, or to such other place as a Party may from time to time designate by notice to the other Parties. No transferee or successor of a Party hereto shall be entitled to notices or opportunity to cure defaults hereunder unless notice of the transfer is given in accordance with this subsection.

the Bank: Wells Fargo Bank, National Association
Community Lending & Investment
1300 S.W. Fifth Avenue, 12th floor
MAC #P6101-121
Portland, Oregon 97201
Loan No. 1013718
Attention: Tierney Chappell

With a copy to: Wells Fargo Bank, National Association
Minneapolis Loan Center (AU #07490)
608 Second Avenue South
MAC #N9303-110
Minneapolis, Minnesota 55402
Attention: Disbursement Analyst
Loan No. 1013718

Company: Volunteers LIHTC LLC
c/o Volunteers of America of Eastern Washington and Northern
Idaho
525 W. Second Avenue
Spokane Washington 99201
Attention: President and Chief Executive Officer

With a copy to: Wells Fargo Affordable Housing Community Development
Corporation
MAC D1053-170
301 South College Street
Charlotte, North Carolina 28288
Attention: Director of Tax Credit Asset Management

City: City of Spokane
Community, Housing and Human Services Department
808 W. Spokane Falls Blvd., Room 650
Spokane, Washington 99201

Commission: Washington State Housing Finance Commission
1000 Second Avenue, Suite 2700
Seattle, Washington 98104
Attention: Executive Director

(d) Successors; Assignment. This Agreement is for the benefit of the Lenders and their respective successors and assigns, and not for the benefit of the Company. Any provision hereof may be waived or modified by agreement of the Lenders (or by any two or more of them, if the other(s) are unaffected thereby) without the consent of the Company and without affecting the priority of the liens and interests of the Lenders. The heirs, administrators, assigns and successors-in-interest of the Parties shall be bound by this Agreement. This Agreement may be assigned by a Party only as a part of an assignment of such Party's loan documents described in this Agreement.

(e) Amendment. This Agreement may be amended only by a writing signed by the Parties hereto, but this clause shall not impair the validity of any further agreements among fewer than all of the Parties hereto as among themselves.

(f) Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and whether or not all Parties execute each counterpart.

(g) Completion of Recording Information. If this Agreement is signed without completion of certain recording information called for above, any title insurance company acting on the instructions of any Party is hereby authorized to insert such information prior to recording this Agreement.

(h) Consent to Other Parties' Documents. By executing this Agreement, each Party hereby acknowledges and consents to the execution of, and, where appropriate, the recording of, the Documents described in Paragraphs C through F of the Recitals herein.

[Signature Pages Follow.]

DRAFT

DRAFT

IN WITNESS WHEREOF, the parties hereto have entered into this Priority and Subordination Agreement as of the day and year first above written.

WASHINGTON STATE HOUSING FINANCE
COMMISSION, a public body of the State of
Washington

By: _____

Name: _____

Title: _____

COMMISSION ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the _____ of WASHINGTON STATE HOUSING FINANCE COMMISSION, a public body of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this _____ day of June, 2015.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington
residing at _____

My appointment expires _____

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first written above.

WELLS FARGO BANK, NATIONAL
ASSOCIATION

By: _____
Name: Kris Hollingshead
Title: Vice President

BANK ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that Kris Hollingshead is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as a Vice President of Wells Fargo Bank, National Association, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this _____ day of June, 2015.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of _____
residing at _____
My appointment expires _____

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first written above.

By: _____
Name: David A. Condon
Title: Mayor

By: _____
Name: James Richman
Title: Assistant City Attorney

[illegible]

GIVEN under my hand and official seal the day and year in this certificate above written.

Notary public in and for the State of Washington
residing at _____
My appointment expires _____

DRAFT

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first written above.

VOLUNTEERS OF AMERICA OF EASTERN
WASHINGTON AND NORTHERN IDAHO, a
Washington nonprofit corporation

Marilee K. Roloff
President and Chief Executive Officer

VOA ACKNOWLEDGEMENT

STATE OF WASHINGTON)
) ss.
COUNTY OF SPOKANE)

I certify that I know or have satisfactory evidence that Marilee K. Roloff is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the President and Chief Executive Officer of Volunteers of America of Eastern Washington and Northern Idaho, a Washington nonprofit corporation, to be the free and voluntary act and deed of such entity for the uses and purposes mentioned in the instrument.

Dated this _____ day of June, 2015.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington
residing at _____

My appointment expires _____

DRAFT

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first written above.

VOLUNTEERS LIHTC LLC, a Washington
limited liability company

By: Volunteers MM LLC, a Washington limited
liability company, its managing member

By: Volunteers of America of Eastern
Washington and Northern Idaho, a
Washington nonprofit corporation, its
manager

Marilee K. Roloff, President and Chief
Executive Officer

COMPANY ACKNOWLEDGEMENT

STATE OF WASHINGTON)
) ss.
COUNTY OF SPOKANE)

I certify that I know or have satisfactory evidence that Marilee K. Roloff is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the President and Chief Executive Officer of Volunteers of America of Eastern Washington and Northern Idaho, the Washington nonprofit corporation that is the manager of Volunteers MM LLC, the Washington limited liability company that is the managing member of VOLUNTEERS LIHTC LLC, a Washington limited liability company, to be the free and voluntary act and deed of such entity for the uses and purposes mentioned in the instrument.

Dated this _____ day of June, 2015.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington
residing at _____

My appointment expires _____

DRAFT

EXHIBIT A

LEGAL DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY, BEING A PORTION OF BLOCK 14, SAUNDERS ADDITION, ACCORDING TO PLAT THEREOF RECORDED IN VOLUME "A" OF PLATS, PAGE 32, AND BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID BLOCK 14, BEING HEREINABOVE DESCRIBED;

THENCE ALONG THE SOUTH LINE OF SAID BLOCK 14, SOUTH 89°59'39" EAST 136.38 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE LEAVING SAID SOUTH LINE OF BLOCK 14, NORTH 00°00'00" EAST 125.03 NORTH LINE OF A 12.5 FOOT WIDE VACATED STRIP NORTH OF AND ADJACENT TO SAID BLOCK 14;

THENCE ALONG SAID NORTH LINE, SOUTH 89°59'55" EAST 38.60 FEET TO THE NORTHERLY PROLONGATION OF THE EAST LINE OF LOT 7 OF SAID BLOCK 14;

THENCE ALONG SAID LINE, SOUTH 00°00'00" EAST 39.97 FEET TO THE NORTH LINE OF THE SOUTH 85 FEET OF SAID BLOCK 14;

THENCE ALONG SAID LINE SOUTH 89°59'04" EAST 124.98 FEET TO THE EAST LINE OF SAID BLOCK 14;

THENCE ALONG SAID EAST LINE, SOUTH 00°00'00" EAST 85.04 FEET TO THE SOUTHEAST CORNER OF SAID BLOCK 14;

THENCE ALONG THE SOUTH LINE OF SAID BLOCK 14, NORTH 89°59'39" WEST 163.58 FEET TO THE SAID TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

SITUATE IN THE CITY OF SPOKANE, COUNTY OF SPOKANE, STATE OF WASHINGTON.

PARCEL 2

TOGETHER WITH THE BENEFICIAL EASEMENTS GRANTED UNDER THE RECIPROCAL EASEMENT AGREEMENT, FILED JUNE ____, 2015, UNDER AUDITOR'S FILE NO. _____.

**Agenda Sheet for City Council Meeting of:**

06/29/2015

Date Rec'd

6/17/2015

Clerk's File #

OPR 2015-0561

Renews #Submitting Dept

UTILITIES

Cross Ref #Contact Name/Phone

RICK ROMERO 625-6361

Project #Contact E-Mail

RROMERO@SPOKANECITY.ORG

Bid #Agenda Item Type

Contract Item

Requisition #Agenda Item Name

INTERDEPARTMENTAL AGREEMENT FOR RIGHT OF WAY SYSTEM

Agenda Wording

Interdepartmental agreement between the City's Utilities, Finance, and Business & Developer Services divisions regarding the use of the right of way system for managing stormwater and accommodating water and wastewater utility infrastructure needs.

Summary (Background)

The City has embarked on a new "integrated" approach to manage its street right of way, prioritizing construction projects based on all uses of the street, including multiple mobility uses, stormwater management, and water and wastewater utility needs, among others. The citizens have embraced this new approach, approving a new 20-year levy with a nearly 78 percent "yes" vote to support construction of improved and integrated streets. Additionally, the City committed in its new Integrated Clean

Fiscal ImpactBudget Account

Select \$

#

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

ROMERO, RICK

Study SessionDivision Director

ROMERO, RICK

Other

PWC

Finance

SALSTROM, JOHN

Distribution ListLegal

SCHOEDEL, ELIZABETH

Elizabeth Schoedel

For the Mayor

SANDERS, THERESA

Marlene Feist

Additional Approvals

Scott Simmons

Purchasing

Mark Serbousek

Gavin Cooley

Sandra Mann

Barbara Patrick



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

Water Plan, which was submitted to regulators, and in its sale of \$200 million in "Green" bonds to manage stormwater on site when streets are rebuilt. To meet these commitments, this interdepartmental agreement allows for this shared use of the right of way for utility needs. Based on a comprehensive appraisal of the value of the right of way, the Utilities Division will pay \$5 million a year for 20 years to acquire the use of street and right of way systems for utility needs. This money will be placed in the arterial street fund and spent on integrated street improvement projects over the life of the agreement.

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List

| | |
|--|--|
| | |
| | |
| | |
| | |

CITY OF SPOKANE, WASHINGTON

**INTERDEPARTMENTAL AGREEMENT BETWEEN UTILITIES
DIVISION, FINANCE DIVISION, AND STREET DEPARTMENT
REGARDING USE OF RIGHT-OF-WAY SYSTEM FOR WATER,
STORMWATER AND WASTEWATER MANAGEMENT**

1. AGREEMENT.

This Tri-Party Interdepartmental Agreement Regarding use of Right-Of-Way System for Water, Stormwater and Wastewater Management (“Agreement”) is between the City of Spokane Utilities Division (“Utilities”), the City of Spokane Finance Division (“Finance”), and the City of Spokane Business and Development Services Division that includes the Street and Engineering Services Departments (“Streets”). Utilities, Finance, and Streets are each a “Party” and together they are the “Parties” to this Agreement. The Parties agree as follows.

2. RECITALS AND FINDINGS.

- 2.1 WHEREAS, the City of Spokane (“City”) owns and operates a Water-Wastewater Utility pursuant to chapter 35.67 RCW and other applicable laws. Utilities operates the Water-Wastewater Utility (“Utility”) as a separate system and enterprise; and
- 2.2 WHEREAS, the Water-Wastewater Utility operates and manages a large wastewater treatment plant—the Riverside Park Water Reclamation Facility (“RPWRF”), a system of combined sanitary and stormwater sewers that can overflow to the river (“CSO”), and a large separated stormwater sewer system (“MS4”). These facilities serve the City of Spokane and certain surrounding areas of Spokane County and
- 2.3 WHEREAS, regulatory requirements for these facilities are embodied in the Eastern Washington Phase II Municipal Stormwater Permit and the National Pollutant Discharge Elimination (NPDES) Permit No. WA-002447-3. The NPDES permit is issued by the Washington State Department of Ecology (“Ecology”); and
- 2.4 WHEREAS, these permits and other regulatory requirements demand the City reduce the flow of all pollutants to the Spokane River from the CSO and MS4 systems and improve the quality of the effluent from the RPWRF; and
- 2.5 WHEREAS, the City has developed an Integrated Clean Water Plan (“ICWP”) that details more than \$300 million in work to improve the health of the Spokane

River and commits to manage stormwater on site within its CSO and MS4 systems whenever it rebuilds a street; and

- 2.6 WHEREAS, Such stormwater improvements and maintenance to upstream facilities protect all properties and provide benefits that include improved environment, better access to roads during storm events and reduced flooding during abnormal years. Maintenance of the storm drainage system helps ensure the safety and reliability of the road system within the stormwater section's area; and
- 2.7 WHEREAS, RCW 90.03.500 allows for the use of City right-of-way for stormwater management as a effective and efficient means to address the City's responsibility under the Clean Water Act; and
- 2.8 WHEREAS, the City has identified appropriate financial resources to pay for these improvements, including the sale of \$200 million in "Green" utility revenue bonds designated for such work, the assessment of stormwater fees to all properties within the City, and a new 20-year street levy—approved by nearly 80 percent of voters—that anticipates using street right of way for stormwater management and other utility needs; and
- 2.9 WHEREAS, Utilities has identified the street system as a beneficial facility for management of all City utilities and as the primary housing of City infrastructure for stormwater management; and
- 2.10 WHEREAS, Utilities has determined there to be efficiencies of scale in use of the street and right of way systems for the management of utilities by acquiring rights to use the street and right of way systems in its integrated planning for management of flows from its CSO and MS4 systems; and
- 2.11
- 2.12 WHEREAS, the City's Finance and Asset Management Divisions contracted with P Barton DeLacy Consulting LLC, a commercial real estate appraiser, to conduct an analysis and valuation of the City's infrastructure and rights of way in order to determine an appropriate term and value for utilities to lease the usage of streets right of way for City owned Water, Sewer, and Stormwater infrastructure, attached as Attachment "A"; and
- 2.13 WHEREAS, the valuation analysis by DeLacy Consulting applies a modified ATF (across the fence) methodology at the neighborhood level for City owned rights of way. This is a cumulative value of over 11,000 acres of public right-of-way valued at approximately two billion seven hundred forty million dollars, (\$2,740,000,000). Based on the de minimus adverse impact to the utility of the Street asset, an appropriate lease payment by Utilities to the Arterial Street Fund would be five million dollars (\$5,000,000) per year for 20 years; and

- 2.14 WHEREAS, under the Local Government Accounting Act, RCW 43.09.200-.2851, the City is required to maintain separate accounts for each public service industry, such as the Utilities. RCW 43.09.220. And, all services rendered or property transferred among departments and public service industries are to be paid at true and fair value. RCW 43.09.210. Utilities and Streets determine this Agreement provides for the accounting and use of property among the Parties consistent with the Local Government Accounting Act; and
- 2.15 WHEREAS, Utilities is willing to acquire the right to use street and right-of-way systems as water, wastewater, and stormwater management and conveyance systems and Streets is willing to license the system of streets and right of way to Utilities, and to narrow the construction width and to maintain the street and right-of-way systems as required for the efficient management of stormwater, water and wastewater, as provided in this Agreement; and
3. REPRESENTATIVES OF PARTIES. The Parties understand they are all part of the same municipal corporation and though they may operate independent departments and divisions of the City, they desire to reflect their relationship for the use of the City's right-of-way system for water, stormwater and wastewater management most effectively through this Interdepartmental Agreement. The Utilities Division is represented by the Director of Utilities. The Finance Division is represented by the Chief Financial Officer. The Street Department is represented by Director of the Business and Development Services Division.
4. PURPOSE. The purpose of this Agreement is to establish the terms and conditions for:
- 4.1 The relationship between Streets and Utilities for the use and management of street infrastructure and right-of-ways;
- 4.2 The management and maintenance of stormwater, wastewater and water facilities as to the Parties;
- 4.3 The management and maintenance of street infrastructure and right-of-ways, as to the Parties; and
- 4.4 Manage stormwater on-site as part of all street reconstruction work, including narrowing street surfaces and constructing green infrastructure whenever possible.
5. DURATION. This Agreement shall be effective July 1, 2015, and shall remain in effect for a period of twenty (20) years, or until terminated by either party.
6. TERMS.
- 6.1 Streets authorizes and licenses to Utilities the use of all public City streets and right-of-way systems for Utilities' use in the conveyance, operations and management of water, wastewater and stormwater systems throughout the City.

- 6.2 After consultation with Utilities, Streets at its sole expense will maintain the street and right-of-way systems as needed for the efficient management of stormwater, water and wastewater systems and infrastructure, including narrowing City street surfaces within the City.
- 6.3 Streets shall support City and Utilities' efforts to provide for the narrowing of City street surface and right-of-ways within the City.
- 6.4 Streets shall support and incorporate integrated planning, to include low impact development in any construction, reconstruction or refurbishment of facilities and comply with the best management practices contained in Eastern Washington Stormwater Guidance Manual, Spokane Regional Stormwater Manual and any other applicable state, federal or local rule or regulation to include any binding court or administrative orders.
- 6.5 Streets hereby permits complete access to and use by Utilities for all infrastructure contained within or under the street or right-of-ways, as determined by Utilities.
- 6.6 Streets understands that any monies received under this Agreement Section 7 are a match to arterial street monies and are intended to be utilized for integrated street and utility construction projects.
- 6.7 Utilities shall maintain, operate and control the stormwater systems which are located in and on the public City streets and right-of-way.
- 6.8 Utilities shall maintain, operate and control all stormwater facilities and water and wastewater infrastructure, at its sole expense, in good repair, order and condition. Facilities and infrastructure are intended to be predominately underground and as such, will be constructed and maintained by Utilities.
- 6.9 After consultation with Utilities, Streets shall continue to maintain above-ground property consistent with its policies, to include maintenance of paving, striping, and repair, and shall follow recommended and best management practices as outlined in the Eastern Washington Stormwater Guidance Manual and the Spokane Regional Stormwater Manual.
- 6.10 Utilities shall maintain stormwater management features to ensure successful operations to meet Clean Water Act requirements.
- 6.11 All improvements, structures, alterations or additions constructed by Utilities shall conform in all respects to applicable federal, state and local laws, rules and regulations, to include any court orders.
- 6.12 The payment sum identified in Paragraph 7 below shall be specifically excluded from any utility tax assessment levied against Utilities by the City of Spokane's general fund.

7. PAYMENT. The parties agree the Utilities Department shall pay annually the sum of FIVE MILLION DOLLARS (\$5,000,000.00) to Streets for usage of the public City streets and right of way systems. This sum is fixed and all inclusive for a period of twenty (20) years.
8. PERMITS. Streets will not unreasonably withhold its consent to requests by Utilities for permits and documents for Utilities' zoning changes, use applications, variance, utility hook-ups, building permits, and other such applications as may be required by Utilities in order to develop, construct, and install any infrastructure or stormwater facilities. All costs for such applications will be borne solely by Utilities.
9. INDEMNIFICATION.
 - 9.1 Utilities shall indemnify and hold harmless Streets, its employees and agents for any loss, claim or action to which they may be put by reason of this Agreement, except to the extent Streets, its employees and agents are determined to have acted negligently.
 - 9.2 Streets shall indemnify and hold harmless Utilities, its employees and agents for any loss, claim or action to which they may be put by reason of this Agreement except to the extent Utilities, its employees and agents are determined to have acted negligently.
10. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the Parties, and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter of this Agreement. This Agreement supersedes any prior written or oral Agreement or arrangement between the parties.
11. AMENDMENT. This Agreement may only be modified or amended in writing, if the writing is signed by all parties, as approved by the City Council and Mayor.
12. SEVERABILITY. If any provision of this Agreement will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.
13. WAIVER OF CONTRACTUAL RIGHT. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
14. This Agreement has been approved by the City Council and Mayor on _____.

DATED: _____

CITY OF SPOKANE
UTILITIES DIVISION

Director

CITY OF SPOKANE
FINANCE DIVISION

Director

CITY OF SPOKANE
BUSINESS AND DEVELOPMENT SERVICES
For STREETS DEPARTMENT

Director

Attest: _____
City Clerk

Approved as to form:

Assistant City Attorney

**Agenda Sheet for City Council Meeting of:**

06/29/2015

| | |
|-----------------------|---------------|
| <u>Date Rec'd</u> | 6/17/2015 |
| <u>Clerk's File #</u> | OPR 2005-0440 |
| <u>Renews #</u> | |

| | | | |
|---------------------------|--|----------------------|--|
| <u>Submitting Dept</u> | ASSET MANAGEMENT | <u>Cross Ref #</u> | |
| <u>Contact Name/Phone</u> | DAVE STEELE 625-6064 | <u>Project #</u> | |
| <u>Contact E-Mail</u> | DSTEELE@SPOKANECITY.ORG | <u>Bid #</u> | |
| <u>Agenda Item Type</u> | Contract Item | <u>Requisition #</u> | |
| <u>Agenda Item Name</u> | 6500 - STA PARKING LOT LEASE AGREEMENT EXTENSION | | |

Agenda Wording

Lease renewal related to Spokane Transit Authority (STA) and the under I-90 parking currently used for the Eastern Washington Park and Ride.

Summary (Background)

The City of Spokane is the master lease holder for the parking areas under I-90. STA has been a long term tenant of the parking lots in the area of the Maple Street off ramp/on ramp. These lots have been utilized by STA as their park and ride for the bus routes serving Eastern Washington University. This lease extension coordinates the terms of the STA lease with the expiration of the City's master lease with WSDOT on May 10, 2021 and continues the existing rent escalator throughout the term.

| | | | |
|-----------------------------|-------------------|------------------------------|------------------------------|
| <u>Fiscal Impact</u> | | <u>Budget Account</u> | |
| Revenue | \$ various | # | 1450 22050 99999 36231 81036 |
| Select | \$ | # | |
| Select | \$ | # | |
| Select | \$ | # | |
| <u>Approvals</u> | | <u>Council Notifications</u> | |
| <u>Dept Head</u> | SIMMONS, SCOTT M. | <u>Study Session</u> | |
| <u>Division Director</u> | SIMMONS, SCOTT M. | <u>Other</u> | PCED 6/15/15 |
| <u>Finance</u> | SALSTROM, JOHN | <u>Distribution List</u> | |
| <u>Legal</u> | WHALEY, HUNT | lhattenburg@spokanecity.org | |
| <u>For the Mayor</u> | SANDERS, THERESA | dsteele@spokanecity.org | |
| <u>Additional Approvals</u> | | mhughes@spokanecity.org | |
| <u>Purchasing</u> | | jsalstrom@spokanecity.org | |
| | | jahensley@spokanecity.org | |
| | | | |
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Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

2015 1,978.08/month 2016 2,057.20/month 2017 2,139.49/month 2018 2,225.07/month 2019
2,314.07/month 2020 2,406.64/month 2021 2,502.90 /month

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List

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PARKING LOT LEASE AGREEMENT AMENDMENT

THIS PARKING LOT LEASE AGREEMENT AMENDMENT is between the CITY OF SPOKANE, a Washington State municipal corporation, as "City or Lessor", and SPOKANE TRANSIT AUTHORITY (STA), whose address is 1230 West Boone Avenue, Spokane, Washington 99210, as "Lessee".

WHEREAS, the parties entered into a Lease Agreement wherein the City agreed to lease the Lessee the areas located below Interstate 90, between Jefferson Street and Walnut Street, in the City of Spokane, State of Washington (also known as the Jefferson Parking Lot); and

WHEREAS, this original 2005 Parking Lot Lease Agreement called for an initial five (5) year term, ending in 2009, with the option of two (2) additional five year terms (upon mutual written agreement of the parties), morphing into a month-to-month tenancy in 2019, after expiration of the three (3) possible five (5) year terms; and

WHEREAS, the parties would like to amend the original 2005 Parking Lot Lease Agreement to a term commensurate and mirroring the City's fifty (50) year Under I-90 Freeway Lease Agreement (commencing May 10, 1971) for the Jefferson Parking Lot with the Washington State Department of Transportation (WSDOT); -- Now, Therefore, The parties agree as follows:

1. CONTRACT DOCUMENTS. The original 2005 SPOKANE TRANSIT AUTHORITY (STA) Lease Agreement (OPR 2005-0440) dated May 5, 2005 and May 19, 2005, 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. AMENDMENT. Section 2 TERM of the Parking Lot Lease Agreement documents is amended to read as follows:

The SPOKANE TRANSIT AUTHORITY (STA) Lease Agreement documents are hereby amended and shall run through May 10, 2021. This new term shall run concurrently with the City's fifty (50) year Under I-90 Freeway Lease Agreement (commencing May 10, 1971) of the Jefferson Parking Lot with the Washington State Department of Transportation (WSDOT). The SPOKANE TRANSIT AUTHORITY (STA) Lease Agreement for the Jefferson Parking Lot shall end on May 10, 2021, unless earlier terminated by either party providing the other party at least sixty (60) days written notice of termination.

3. COMPENSATION. The Lessee shall pay the City the accruing year-over-year

additional four (4%) percent (approximate) escalator, for everything furnished and done under this Parking Lot Lease Agreement Amendment as follows:

| | |
|------|-----------------|
| 2015 | 1,978.08/month |
| 2016 | 2,057.20/month |
| 2017 | 2,139.49/month |
| 2018 | 2,225.07/month |
| 2019 | 2,314.07/month |
| 2020 | 2,406.64/month |
| 2021 | 2,502.90 /month |

Dated: _____

CITY OF SPOKANE

By: _____
Title: _____

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Dated: _____

SPOKANE TRANSIT AUTHORITY
(STA)

E-Mail address, if available:

By: _____
Title: _____

BRIEFING PAPER
Asset Management Group
Tuesday, June 16, 2015

Subject:

Lease renewal related to STA and the under I-90 parking currently used for the Eastern Washington Park and Ride.

Background:

The City of Spokane is the master lease holder for the parking areas under I-90. STA has been a long term tenant of the parking lots in the area of the Maple Street off ramp / on ramp. These lots have been utilized by STA as their park and ride for the bus routes serving Eastern Washington University. This route is their most heavily used route in the transit system.

As a long term tenant, STA has maintained the space well, provides a significant benefit for the community, and has become the core of a trip reduction program for Eastern Washington University.

Impact:

STA has been a long term partner with the City with regards to this lot and has always maintained it at an outstanding level. Extending the lease ensures the continued partnership and reinforces the importance of the park and ride program with Eastern Washington University.

Action:

Approval of the Lease Agreement

**Agenda Sheet for City Council Meeting of:**

06/29/2015

Date Rec'd

6/16/2015

Clerk's File #

CPR 1981-0400

Renews #Submitting Dept

MAYOR

Cross Ref #Contact Name/Phone

KATIE ROSS 625.6716

Project #Contact E-Mail

KROSS@SPOKANECITY.ORG

Bid #Agenda Item Type

Boards and Commissions

Requisition #Agenda Item Name

0520 APPOINTMENT OF VICKIE WILLIAMS TO LIBRARY BOARD OF TRUSTEES

Agenda Wording

Appointment of Vickie Williams to the Spokane Public Library Board of Trustees for a term of June 29, 2015 to March 31, 2020.

Summary (Background)

Appointment of Vickie Williams to the Spokane Public Library Board of Trustees for a term of June 29, 2015 to March 31, 2020.

Fiscal ImpactBudget Account

Select \$

#

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

COTE, BRANDY

Study SessionDivision DirectorOtherFinanceDistribution ListLegal

bcote@spokanecity.org

For the Mayor

SANDERS, THERESA

achanse@spokanelibrary.org

Additional ApprovalsPurchasing

**Agenda Sheet for City Council Meeting of:**

06/29/2015

| | |
|-----------------------|------------|
| <u>Date Rec'd</u> | 6/17/2015 |
| <u>Clerk's File #</u> | ORD C35275 |
| <u>Renews #</u> | |

| | | | |
|---------------------------|---|----------------------|-----|
| <u>Submitting Dept</u> | CITY COUNCIL | <u>Cross Ref #</u> | |
| <u>Contact Name/Phone</u> | BEN STUCKART 625-6258 | <u>Project #</u> | |
| <u>Contact E-Mail</u> | BSTUCKART@SPOKANECITY.ORG | <u>Bid #</u> | |
| <u>Agenda Item Type</u> | Emergency Budget Ordinance | <u>Requisition #</u> | EBO |
| <u>Agenda Item Name</u> | 0320 - EBO RE: CORBIN ART CENTER GREENWAY | | |

Agenda Wording

Amending Ordinance No. C-35185 and appropriating funds in the General Fund and Park Fund, FROM: General Fund-Unappropriated Reserves, \$25,000; TO: Various Accounts, same amount.

Summary (Background)

This ordinance appropriates funding for a study of the area around Corbin Art Center to allow for a bike and pedestrian pathway that connects the central portion of the South Hill to Downtown.

| | | | |
|-----------------------------|------------------|------------------------------------|-------------------|
| <u>Fiscal Impact</u> | | <u>Budget Account</u> | |
| Expense | \$ 25,000 | # Various Accounts - See Ordinance | |
| Select | \$ | # | |
| Select | \$ | # | |
| Select | \$ | # | |
| <u>Approvals</u> | | <u>Council Notifications</u> | |
| <u>Dept Head</u> | STUCKART, BEN | <u>Study Session</u> | |
| <u>Division Director</u> | | <u>Other</u> | Finance Committee |
| <u>Finance</u> | SALSTROM, JOHN | <u>Distribution List</u> | |
| <u>Legal</u> | DALTON, PAT | bstuckart@spokanecity.org | |
| <u>For the Mayor</u> | SANDERS, THERESA | drobole@spokanecity.org | |
| <u>Additional Approvals</u> | | amcdaniel@spokanecity.org | |
| <u>Purchasing</u> | | leadie@spokanecity.org | |
| | | sluciano@spokanecity.org | |
| | | | |
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ORDINANCE NO C35275

An ordinance amending Ordinance No. C-35185, passed the City Council November 24, 2014, and entitled, "An ordinance adopting the Annual Budget of the City of Spokane for 2015, making appropriations to the various funds, departments, and programs of the City of Spokane government for the fiscal year ending December 31, 2015, and providing it shall take effect immediately upon passage", and declaring an emergency.

WHEREAS, subsequent to the adoption of the 2015 budget Ordinance No. C-35185, as above entitled, and which passed the City Council November 24, 2014, it is necessary to make changes in the appropriations of the General Fund and Parks and Recreation 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 General Fund, and the budget annexed thereto with reference to the General Fund, the following changes be made:

| | | | |
|-------|-------------|--------------------------------|------------------|
| FROM: | 0100-99999 | General Fund | |
| | 99999- | Unappropriated Reserves | <u>\$ 25,000</u> |
| TO: | 0980-89000 | General Fund | |
| | 97114-80101 | Transfer to Parks & Recreation | <u>\$ 25,000</u> |

Section 2. That in the budget of the Parks and Recreation Fund, and the budget annexed thereto with reference to the Parks and Recreation Fund, the following changes be made:

| | | | |
|-------|-------------|----------------------------|------------------|
| FROM: | 1400-54100 | Parks and Recreation Fund | |
| | 99999-39710 | Transfer from General Fund | <u>\$ 25,000</u> |
| TO: | 1400-54100 | Parks and Recreation Fund | |
| | 74210-54201 | Contractual Services | <u>\$ 25,000</u> |

Section 3. 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 need to provide funding for a study of the area around Corbin Art Center to allow for a bike and pedestrian pathway that connects the central portion of the South Hill to Downtown and vice versa, 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 the City Council _____

Council President

Attest: _____
City Clerk

Approved as to form: _____
Assistant City Attorney

Mayor

Date

Effective Date

**Agenda Sheet for City Council Meeting of:**

06/29/2015

| | |
|-----------------------|------------|
| <u>Date Rec'd</u> | 6/17/2015 |
| <u>Clerk's File #</u> | ORD C35276 |
| <u>Renews #</u> | |

| | | | |
|---------------------------|-------------------------------|----------------------|--|
| <u>Submitting Dept</u> | CITY COUNCIL | <u>Cross Ref #</u> | |
| <u>Contact Name/Phone</u> | BEN STUCKART 625-6258 | <u>Project #</u> | |
| <u>Contact E-Mail</u> | BSTUCKART@SPOKANECITY.ORG | <u>Bid #</u> | |
| <u>Agenda Item Type</u> | Emergency Budget Ordinance | <u>Requisition #</u> | |
| <u>Agenda Item Name</u> | 0320 - EBO RE: GOLF MARKETING | | |

Agenda Wording

Amending Ordinance No. C-35185 and appropriating funds in the General Fund and Golf Fund, FROM: General Fund-Unappropriated Reserves, \$25,000; TO: Various Accounts, same amount.

Summary (Background)

This ordinance provides for a one-time transfer from General Fund to the Golf Fund for marketing the City's golf courses/programs in an effort to increase rounds of play and introduce new people to golf.

| | | | |
|-----------------------------|------------------|------------------------------------|-------------------|
| <u>Fiscal Impact</u> | | <u>Budget Account</u> | |
| Expense | \$ 25,000 | # Various Accounts - See Ordinance | |
| Select | \$ | # | |
| Select | \$ | # | |
| Select | \$ | # | |
| <u>Approvals</u> | | <u>Council Notifications</u> | |
| <u>Dept Head</u> | STUCKART, BEN | <u>Study Session</u> | |
| <u>Division Director</u> | | <u>Other</u> | Finance Committee |
| <u>Finance</u> | SALSTROM, JOHN | <u>Distribution List</u> | |
| <u>Legal</u> | DALTON, PAT | bstuckart@spokanecity.org | |
| <u>For the Mayor</u> | SANDERS, THERESA | drobole@spokanecity.org | |
| <u>Additional Approvals</u> | | amcdaniel@spokanecity.org | |
| <u>Purchasing</u> | | leadie@spokanecity.org | |
| | | sluciano@spokanecity.org | |
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ORDINANCE NO C35276

An ordinance amending Ordinance No. C-35185, passed the City Council November 24, 2014, and entitled, "An ordinance adopting the Annual Budget of the City of Spokane for 2015, making appropriations to the various funds, departments, and programs of the City of Spokane government for the fiscal year ending December 31, 2015, and providing it shall take effect immediately upon passage", and declaring an emergency.

WHEREAS, subsequent to the adoption of the 2015 budget Ordinance No. C-35185, as above entitled, and which passed the City Council November 24, 2014, it is necessary to make changes in the appropriations of the General Fund and Golf Fund, which changes could not have been anticipated or known at the time of making such budget ordinance; and

WHEREAS, Golf is off nearly 64,000 rounds of golf per year since 2000, yet Golf only budgets 1/10 percent of its overall budget to marketing; 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 General Fund, and the budget annexed thereto with reference to the General Fund, the following changes be made:

| | | | |
|-------|-------------|-------------------------|------------------|
| FROM: | 0100-99999 | General Fund | |
| | 99999- | Unappropriated Reserves | <u>\$ 25,000</u> |
| TO: | 0980-89000 | General Fund | |
| | 97115-80101 | Transfer to Golf Fund | <u>\$ 25,000</u> |

Section 2. That in the budget of the Golf Fund, and the budget annexed thereto with reference to the Golf Fund, the following changes be made:

| | | | |
|-------|-------------|----------------------------|------------------|
| FROM: | 4600-30210 | Golf Fund | |
| | 99999-39710 | Transfer from General Fund | <u>\$ 25,000</u> |
| TO: | 4600-30210 | Golf Fund | |
| | 76611-54451 | Advertising | <u>\$ 25,000</u> |

Section 3. 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 need to provide a one-time only funding request for marketing the City's golf courses/programs to increase rounds of play and introduce new people to golf, 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 the City Council _____

Council President

Attest: _____
City Clerk

Approved as to form: _____
Assistant City Attorney

Mayor

Date

Effective Date

**Agenda Sheet for City Council Meeting of:**

06/29/2015

Date Rec'd

6/17/2015

Clerk's File #

ORD C35277

Renews #Submitting Dept

CITY COUNCIL

Cross Ref #Contact Name/Phone

BEN STUCKART 625-6258

Project #Contact E-Mail

BSTUCKART@SPOKANECITY.ORG

Bid #Agenda Item Type

Emergency Budget Ordinance

Requisition #Agenda Item Name

0320 - EBO RE: HILLYARD NS FWY MITIGATION

Agenda Wording

Amending Ordinance No. C-35185 and appropriating funds in the General Fund and Asset Management Fund,
FROM: General Fund-Unappropriated Reserves, \$45,000; TO: Various Accounts, same amount.

Summary (Background)

This action appropriates funds to help mitigate the impacts of the North/South Freeway by working with the Public Development Authority to purchase a lot in Hillyard via an intergovernmental arrangement.

Fiscal ImpactBudget Account

Expense \$ 45,000

Various Accounts - See Ordinance

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

STUCKART, BEN

Study SessionDivision DirectorOther

Finance Committee

Finance

SALSTROM, JOHN

Distribution ListLegal

DALTON, PAT

bstuckart@spokanecity.org

For the Mayor

SANDERS, THERESA

drobole@spokanecity.org

Additional Approvals

amcdaniel@spokanecity.org

Purchasing

smsimmons@spokanecity.org

mhughes@spokanecity.org

ORDINANCE NO C35277

An ordinance amending Ordinance No. C-35185, passed the City Council November 24, 2014, and entitled, "An ordinance adopting the Annual Budget of the City of Spokane for 2015, making appropriations to the various funds, departments, and programs of the City of Spokane government for the fiscal year ending December 31, 2015, and providing it shall take effect immediately upon passage", and declaring an emergency.

WHEREAS, subsequent to the adoption of the 2015 budget Ordinance No. C-35185, as above entitled, and which passed the City Council November 24, 2014, it is necessary to make changes in the appropriations of the General Fund and Asset Management 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 General Fund, and the budget annexed thereto with reference to the General Fund, the following changes be made:

| | | | |
|-------|-------------|------------------------------|------------------|
| FROM: | 0100-99999 | General Fund | |
| | 99999- | Unappropriated Reserves | <u>\$ 45,000</u> |
| TO: | 0980-89000 | General Fund | |
| | 97183-80101 | Transfer to Asset Management | <u>\$ 45,000</u> |

Section 2. That in the budget of the Asset Management Fund, and the budget annexed thereto with reference to the Asset Management Fund, the following changes be made:

| | | | |
|-------|-------------|----------------------------|------------------|
| FROM: | 5900-41520 | Asset Management Fund | |
| | 99999-39710 | Transfer from General Fund | <u>\$ 45,000</u> |
| TO: | 5900-41520 | Asset Management Fund | |
| | 94000-56101 | Land Acquisition | <u>\$ 45,000</u> |

Section 3. 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 need to mitigate the impacts of the N/S Freeway by working with the PDA to purchase a lot in Hillyard via an intergovernmental arrangement of government-to-government transfer, 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 the City Council _____

Council President

Attest: _____
City Clerk

Approved as to form: _____
Assistant City Attorney

Mayor

Date

Effective Date

**Agenda Sheet for City Council Meeting of:**

06/29/2015

Date Rec'd

6/15/2015

Clerk's File #

RES 2015-0062

Renews #Submitting Dept

ENGINEERING SERVICES

Cross Ref #Contact Name/Phone

DAN BULLER 625-6391

Project #

2011082

Contact E-Mail

DBULLER@SPOKANECITY.ORG

Bid #Agenda Item Type

Resolutions

Requisition #Agenda Item Name

0370 - ASSESSMENT SEGREGATION - 14TH & 15TH AVENUE

Agenda Wording

Assessment Segregation for 15th Avenue from Chestnut Street to Inland Empire Way; 14th Avenue from Chestnut Street to Inland Empire Way.

Summary (Background)

The attached Resolution provides for the segregation of County Assessor's Parcel Numbers 25251.0621 and 25251.0622 for the above project

Fiscal ImpactBudget Account

Revenue \$ 76.00

5600 76600 99999 35990 99999

Revenue \$ 76.00

0370 41530 99999 34581 99999

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

TWOHIG, KYLE

Study SessionDivision Director

SIMMONS, SCOTT M.

OtherFinance

SALSTROM, JOHN

Distribution ListLegal

WHALEY, HUNT

lhattenburg@spokanecity.org

For the Mayor

SANDERS, THERESA

kbustos@spokanecity.org

Additional Approvals

jsalstrom@spokanecity.org

Purchasing

htrautman@spokanecity.org

mmyers@spokanecity.org

creed@spokanecity.org

RESOLUTION 2015-0062

WHEREAS, in accordance with RCW 35.44.410, a local improvement assessment may be segregated only by resolution of the City Council; and

WHEREAS, said resolution must set forth certain information as required by law;

NOW, THEREFORE, be it resolved by the City Council of the City of Spokane:

1. The City Treasurer is hereby directed to amend the assessment roll of Local Improvement District No. 2011082, for the improvement of 15th Avenue from Chestnut Street to Inland Empire Way; 14th Avenue from Chestnut Street to Inland Empire Way and to segregate County Assessor's Parcel Numbers 25251.0621, in the amount of \$5,958.95 and 25251.0622, in the amount of \$6,213.13.

2. The original assessment was levied on the County Assessor's Parcel Number as follows:

| | |
|--|------------|
| Parcel 25251.0621 - Cannon Hill Addition, South 10 feet of Lot 8, together with all of Lot 9, Block 6 (See Exhibit 1) | \$5,958.95 |
|--|------------|

| | |
|--|-------------------|
| Parcel 25251.0622 - Cannon Hill Addition, North 35 feet of the west half of Lot 8, together with the west half of Lot 7, Block 6 (See Exhibit 1) | <u>\$6,213.13</u> |
| | \$12,172.08 |

3. The above described property shall be divided and the assessment segregated as follows:

| | |
|--|------------|
| Segregation 'A' (Parcel 'A' 25251.0624) | |
| Cannon Hill Addition, south 5 feet of the west half of Lot 8, together with the south 10 feet of the east half of Lot 8, and all of Lot 9, Block 6 (See Exhibit 2) | \$5,788.93 |

| | |
|---|-------------------|
| Segregation 'B' (Parcel 'B' 25251.0625) | |
| Cannon Hill Addition, north 40 feet of the west half of Lot 8, together the west half of Lot 7, Block 6 (See Exhibit 2) | <u>\$6,383.15</u> |
| | \$12,172.08 |

4. The City Council orders and approves this segregation and finds that such segregation will not jeopardize the security of the lien for such assessment.

5. In addition to the administrative fee charged for such segregation, the City Council orders that the person requesting the segregation be required to pay the reasonable engineering and clerical costs incurred by the City as a condition to the order of segregation.

Adopted by the City Council _____.

City Clerk

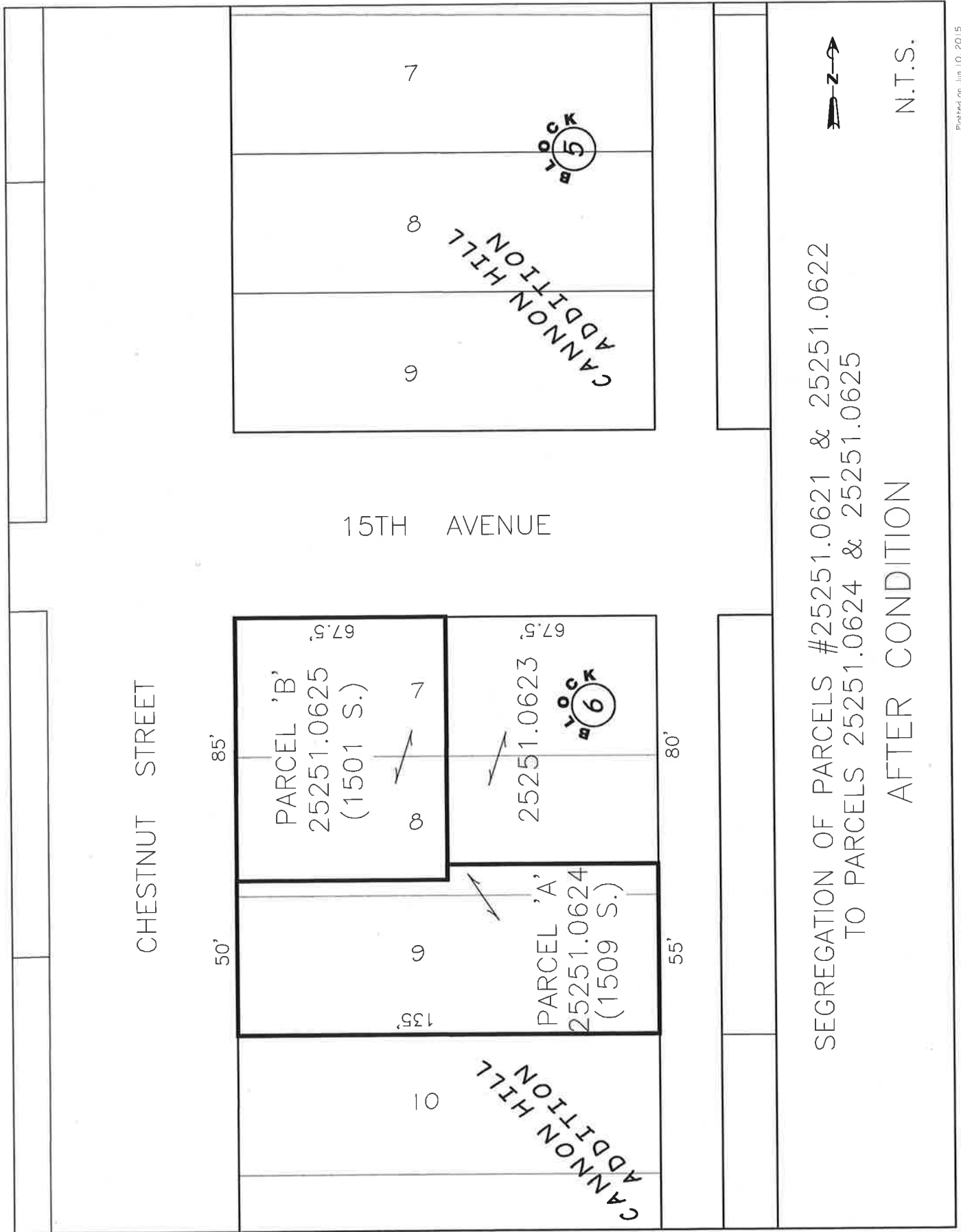
Approved as to form:

Assistant City Attorney

EXHIBIT 1



EXHIBIT 2





OFFICE OF THE CITY CLERK
808 W. SPOKANE FALLS BLVD.
SPOKANE, WASHINGTON 99201-3342
509.625.6350

June 18, 2015

City Clerk File No.:
ORD C35258

COUNCIL ACTION MEMORANDUM

RE: FINAL READING ORDINANCE C35258 RELATING TO INDECENT PUBLIC EXPOSURE, PUBLIC VISIBILITY, AND DISCLOSURE STANDARDS FOR ADULT-ORIENTED BUSINESSES

During the Spokane City Council's 6:00 p.m. Legislative Session held Monday, June 15, 2015, upon consideration of Final Reading Ordinance C35258, Council President Stuckart called for a motion to defer for two weeks. Council Member Fagan noted there are three council members (Allen, Fagan, and Mumm) working on the ordinance as it contains some legal ambiguity that needs to be addressed and clarified before moving forward. Subsequently, the following action was taken:

Motion by Council Member Fagan, seconded by Council Member Allen, **to defer** Final Reading Ordinance C35258—relating to indecent public exposure, public visibility, and disclosure standards for adult-oriented businesses—for two weeks and it can be appear (on the agenda) for final reading on June 29; **carried unanimously (Council Member Snyder absent).**

Terri L. Pfister, MMC
Spokane City Clerk



OFFICE OF THE CITY CLERK
808 W. SPOKANE FALLS BLVD.
SPOKANE, WASHINGTON 99201-3342
509.625.6350

June 8, 2015

City Clerk File No.:
ORD C35258

COUNCIL ACTION MEMORANDUM

RE: FINAL READING ORDINANCE C35258 RELATING TO INDECENT PUBLIC EXPOSURE, PUBLIC VISIBILITY, AND DISCLOSURE STANDARDS FOR ADULT-ORIENTED BUSINESSES

During the Spokane City Council's 6:00 p.m. Legislative Session held Monday, June 1, 2015, Council Member Allen requested a deferral of Final Reading Ordinance C35258 so that it can be placed on the PCED agenda. He thanked Councilwoman Mumm for pointing out something within our current laws that may impact the ordinance, and so it needs to be explored a little bit further before taking a vote on it. Subsequently, the following action was taken:

Motion by Council Member Allen, seconded by Council Member Mumm, **to defer** Final Reading Ordinance C35258—relating to indecent public exposure, public visibility, and disclosure standards for adult-oriented businesses—for two weeks (to June 15, 2015); **carried unanimously.**

Terri L. Pfister, MMC
Spokane City Clerk

**Agenda Sheet for City Council Meeting of:**

05/11/2015

Date Rec'd

4/29/2015

Clerk's File #

ORD C35258

Renews #Submitting Dept

CITY COUNCIL

Cross Ref #Contact Name/PhoneMIKE ALLEN & 625-6715
MIKE FAGANProject #Contact E-Mail

RBARDEN@SPOKANECITY.ORG

Bid #Agenda Item Type

Final Reading Ordinance

Requisition #Agenda Item Name

ORDINANCE RELATING TO INDECENT PUBLIC EXPOSURE

Agenda Wording

An ordinance relating to indecent public exposure, public visibility, and disclosure standards for adult-oriented businesses; adopting a new section 10.06.050 to chapter 10.06 of the Spokane Municipal Code.

Summary (Background)

The recent increase in the number of drive-through coffee stands at which the employees' standard work uniform may violate existing law concerning indecent exposure, and may create off-site impacts at locations such as schools, parks, libraries, churches, and playgrounds, calls for a clarification of the law concerning the practices at these facilities. This proposed ordinance creates an opportunity for drive-through coffee stands to take appropriate measures to screen their employees from publi

Fiscal ImpactBudget Account

Neutral \$

#

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

MCDANIEL, ADAM

Study SessionDivision DirectorOtherFinance

SALSTROM, JOHN

Distribution ListLegal

DALTON, PAT

For the Mayor

SANDERS, THERESA

Additional ApprovalsPurchasing

The recent increase in the number of drive-through coffee stands at which the employees' standard work uniform may violate existing law concerning indecent exposure, and may create off-site impacts at locations such as schools, parks, libraries, churches, and playgrounds, calls for a clarification of the law concerning the practices at these facilities. This proposed ordinance creates an opportunity for drive-through coffee stands to take appropriate measures to screen their employees from public view.

ORDINANCE NO. C35258

An ordinance relating to indecent public exposure, public visibility, and disclosure standards for adult-oriented businesses; adopting a new section 10.06.050 to chapter 10.06 of the Spokane Municipal Code.

The City of Spokane does ordain:

Section 1. That there is adopted a new section 10.06.050 to the Spokane Municipal Code to read as follows:

10.06.050 - Indecent public exposure and disclosure standards for Adult-Oriented Businesses.

A. Definitions

1. For purposes of this section, “public place” has the meaning stated in SMC 10.06.030(D)(2).
2. For purposes of this section, an “Adult-Oriented Business” is one in which the employee uniform consists of anything less than fully opaque covering of a male’s genitals or buttocks, or a female’s genitals, breast, or buttocks.

B. It is unlawful for any person to expose his or her genitalia while in a public place or while in a place which is visible from the public right of way, if the public place is open or available to persons of the opposite sex.

C. No Adult-Oriented Business may allow their employees, in the course of their employment, to be visible from any of the following preexisting uses, whether located inside or outside of the city of Spokane:

1. Public library.
2. Public playgrounds or park.
3. Public or private school and its grounds, from kindergarten to twelfth grade.
4. Nursery school, mini-daycare center or daycare center.
5. Church, convent, monastery, synagogue, or other place of religious worship.

D. All Adult-Oriented Businesses shall maintain and display city-approved signage which notifies the general public of the businesses’ employee uniform requirement.

E. Existing Adult-Oriented Businesses shall have ninety (90) days following the effective date of this section in which to come into compliance with this section.

F. Penalties

1. Violation of this section is a Class I civil infraction pursuant to SMC 1.02.950(C)(1).
2. Enforcement of this section is intended to be directed to business owners rather than employees engaged in the conduct of their employment.

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 Meeting of:
06/22/2015

| | |
|-----------------------|------------|
| Date Rec'd | 6/10/2015 |
| Clerk's File # | ORD C35274 |
| Renews # | |

| | | | |
|---------------------------|--|----------------------|--|
| Submitting Dept | CITY COUNCIL | Cross Ref # | |
| Contact Name/Phone | JON SNYDER 6254 | Project # | |
| Contact E-Mail | JSNYDER@SPOKANECITY.ORG | Bid # | |
| Agenda Item Type | First Reading Ordinance | Requisition # | |
| Agenda Item Name | 0320 ORD RE VACANCIES FOR POLICE OMBUDSMAN | | |

Agenda Wording

An ordinance relating to the process for filling vacancies in the position of police ombudsman; amending SMC section 04.32.080 and SMC section 04.32.090.

Summary (Background)

This ordinance amends SMC Section 04.32.080 and SMC Section 04.32.090 to require that the OPO Commission appoint an interim Police Ombudsman (for a term not to exceed six months) within forty-five days of notice regarding a vacancy in the position.

| Fiscal Impact | | Budget Account | |
|-----------------------------|------------------|------------------------------|---|
| Select | \$ | | # |
| Select | \$ | | # |
| Select | \$ | | # |
| Select | \$ | | # |
| Approvals | | Council Notifications | |
| Dept Head | STUCKART, BEN | Study Session | |
| Division Director | | Other | |
| Finance | DAVIS, LEONARD | Distribution List | |
| Legal | DALTON, PAT | | |
| For the Mayor | SANDERS, THERESA | | |
| Additional Approvals | | | |
| Purchasing | | | |
| | | | |
| | | | |
| | | | |



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

The ordinance also requests that the OPO Commission maintain a list of applicants for Police Ombudsman in case of future vacancies and the OPO Selection Committee forward a list of no more than five candidates for permanent Ombudsman no later than one hundred and twenty days after its formation. The OPO Commission would then select a qualified candidate from the list within sixty days of receiving the OPO Selection Committee recommendations.

Fiscal Impact

Select \$

Budget Account

#

Select \$

#

Distribution List

| | |
|--|--|
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| | |
| | |

ORDINANCE NO. C35274.

An ordinance relating to the process for filling vacancies in the position of police ombudsman; amending SMC section 04.32.080 and SMC section 04.32.090.

The City of Spokane does ordain:

Section 1. That section 04.32.080 of the Spokane Municipal Code to read as follows:

Section 04.32.080 Appointment

- A. Whenever there is a vacancy in the police ombudsman position due to expiration of term, resignation, sickness, death, retirement, conflict of interest, or any other reason, the commission shall, at the next regular meeting following its receipt of notice of the vacancy, form a ((A)) selection committee which shall consist of five members, and which shall forward to the commission its ~~((committee)) will be formed that will recommend~~ recommended list of no more than five (5) ~~((three))~~ candidates for the police ombudsman ~~((OPO))~~ position, one of which shall be selected. ~~((to the commission, one of which must be selected.))~~ The committee shall be composed of:
1. one member appointed by the Spokane Police Officers Guild,
 2. one member appointed by the Lieutenants and Captains Association,
 3. one member appointed by the city council,
 4. one member appointed by the mayor, and
 5. the fifth member selected by the other four members.
- B. ~~((The commission must appoint one of the three individuals recommended by the committee to the OPO position.))~~The five member selection committee will select the committee's chair.
- C. The commission shall, within forty-five (45) days of its receipt of notice of a vacancy in the police ombudsman position, appoint an interim police ombudsman for a term not to exceed six (6) months. Should a permanent ombudsman not be selected and hired within the term of the interim police ombudsman, the commission may, with the prior approval of the city council, extend the interim police ombudsman's term for three (3) months. If the commission fails to appoint an interim ombudsman, the city council shall appoint an interim ombudsman, to serve until the permanent police ombudsman is hired.
- D. In order to remain prepared for future vacancies, the commission should maintain a list of applicants for the positions of interim and permanent police ombudsman from which future interview pools can be drawn.
- E. Any period of service as interim police ombudsman, by itself, shall not disqualify the person holding that office from being considered for the permanent police ombudsman position.
- F. The selection committee shall, according to its own process and organizing principles, forward a list of no more than five (5) qualified candidates for the position of permanent police ombudsman to the commission no later than one hundred twenty (120) days from the committee's formation. For purposes of this

section, the “committee’s formation” occurs when the final member of the committee is seated.

- G. No later than sixty (60) days after receiving the selection committee’s list of qualified candidates for the position of permanent police ombudsman, the commission shall select one of the individuals on the list for appointment as permanent police ombudsman.

Section 2. That section 04.32.090 of the Spokane Municipal Code is amended to read as follows:

Section 04.32.090 Term

- A. The appointment of the police ombudsman shall be for an initial three-year term.
- B. A current police ombudsman may be reappointed for additional terms not to exceed three years upon reappointment by the commission. If commission does not approve the reappointment prior to the expiration of the appointment term, the appointment term shall expire at the end of the term.
- C. ~~((Should a vacancy in the position occur, due to expiration of term, resignation, sickness, death, retirement, conflict of interest, or any other reason, the commission appoints an interim police ombudsman for a term not to exceed four months, in compliance with the appointment process stipulated in SMC 4.32.080. The selection committee referenced in SMC 4.32.080 must meet within thirty days of notification by the commission of the need to appoint an interim police ombudsman.))~~

PASSED by the City Council on _____.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date