

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!**
- 6. No person shall be permitted to speak at open forum more often than once per month.**

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.
- 2.2.6 In an effort to encourage wider participation in open forum so that the Council can hear a wide array of citizen comment, no person shall be permitted to speak at open forum more often than once per month. However, this limitation has no effect on the public comment rules concerning items on the Council's current 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, as specified in Rules 5.3 and 5.4.

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, including but not limited to demonstrations, banners, applause, profanity, vulgar language, or personal insults 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, SEPTEMBER 12, 2016

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 BREEAN BEGGS

COUNCIL MEMBER LORI KINNEAR

COUNCIL MEMBER KAREN STRATTON

COUNCIL MEMBER MIKE FAGAN

COUNCIL MEMBER CANDACE MUMM

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. Blanket Order with Action Materials (Cheney, WA) for debris recycling and purchase of recycled materials to be used by both the Water and Wastewater Maintenance Departments on an as-needed basis—\$95,000 (incl. tax).
Dan Kegley | Approve | OPR 2016-0688
BID 4264-16 |
| 2. Low Bid of Cameron Reilly LLC (Spokane, WA) for 2015 Traffic Calming Projects—\$562,443. An administrative reserve of \$56,244.30, which is 10% of the contract price, will be set aside. (Various Neighborhood)
Dan Buller | Approve | PRO 2016-0032
ENG 2015088
ENG 2015089
ENG 2015090 |
| 3. Interlocal Agreement with the City of Chewelah for Hearing Examiner services—\$125 per hour.
Brian McGinn | Approve | OPR 2016-0689 |
| 4. Interlocal Agreement with the Spokane Regional Health District to provide design, bid and construction administration services for the Garland Walk Bike Bus project—\$15,000 Revenue. (Garland Neighborhood)
Kevin Picanco | Approve | OPR 2016-0690
ENG 2016152 |

5. Consultant Agreement with FCS Group Approve OPR 2016-0691
(Redmond, WA) to secure a consultant with the requisite expertise necessary to conduct a thorough, comprehensive and complete Procurement & Contracting Organizational Assessment for the City—\$127,000. (Relates to Emergency Ordinance C35434)
Sally Stopher
6. Overpass Agreement with Burlington Northern Santa Fe for work related to construction of the proposed University District Pedestrian/Bicycle Bridge Project—estimated cost \$468,960. (East Central Neighborhood) PRO 2016-0033
ENG 2012119
Dave Steele
7. Report of the Mayor of pending: Approve & Authorize Payments CPR 2016-0002
- a. Claims and payments of previously approved obligations, including those of Parks and Library, through _____, 2016, total \$_____, with Parks and Library claims approved by their respective boards. Warrants excluding Parks and Library total \$_____.
- b. Payroll claims of previously approved obligations through _____, 2016: \$_____. CPR 2016-0003
8. City Council Meeting Minutes: _____, 2016. Approve All CPR 2016-0013

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 Human Rights Commission: Four Appointments	Confirm	CPR 1991-0068
Design Review Board: Two Appointments	Confirm	CPR 1993-0069

ADMINISTRATIVE 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.

Note: No person shall be permitted to speak at Open Forum more often than once per month (Council Rule 2.2.6).

LEGISLATIVE AGENDA

EMERGENCY BUDGET ORDINANCE(Require Five Affirmative, Recorded Roll Call Votes)

Ordinances amending Ordinance No. C35322 passed by the City Council November 23, 2015, and entitled, "An Ordinance adopting the Annual Budget of the City of Spokane for 2016, making appropriations to the various funds, departments and programs of the City of Spokane government for the fiscal year ending December 31, 2016, and providing it shall take effect immediately upon passage, and declaring an emergency and appropriating funds in:

ORD C35431**Sewer Fund****FROM: Reserve for Budget Adjustment, \$39,139;****TO: Various Accounts, same amount.****and****Parks and Recreation Fund****FROM: Reserve for Total Cost of Compensation, \$4,868;****TO: Various Accounts, same amount.****and****Solid Waste Disposal Fund****FROM: Unappropriated Reserves, \$9,400;****TO: Various Accounts, same amount.**

(This action implements salary grade adjustments in accordance with approved union agreements and City policy, and as approved by management. These changes impact the classifications of Wastewater Supervisor, Wastewater Treatment Plant Assistant Plant Manager, Craft Specialist, and Landfill/Transfer Station Foreperson.)

Chris Cavanaugh**ORD C35434****General Fund****FROM: Unappropriated Reserves, \$127,000;****TO: Surveys/Studies, \$127,000.**

(This action provides for an assessment of the City's procurement and contracting processes.) (Relates to Consent Agenda Item No. 5)

Tim Dunivant**NO EMERGENCY ORDINANCES****NO RESOLUTIONS**

FINAL READING ORDINANCES(Require Four Affirmative, Recorded Roll Call Votes)

- ORD C35358 Vacating the alley between Boone Avenue and Gardner Avenue from the east line of Ash Street to the west line of Maple Street as requested by Paul Matthews Architects. (West Central Neighborhood) (First Reading held February 1, 2016)
Eldon Brown
- ORD C35428 Relating to the process for City Council approval of Mayoral appointments; amending sections 2.005.010 and 3.01A.100 of the Spokane Municipal Code.
Council Member Stratton
- ORD C35429 Relating to City Council confirmation of Mayoral appointments; amending SMC sections 2.005.010, 3.01A.100, and 3.01A.195.
Council Member Fagan

FIRST READING ORDINANCES

(No Public Testimony Will Be Taken)

- ORD C35432 (To be considered under Hearings Item H1.b.)
- ORD C35433 (To be considered under Hearings Item H2.b.)

NO SPECIAL CONSIDERATIONS**HEARINGS**

(If there are items listed you wish to speak on, please sign your name on the sign-up sheets in the Chase Gallery.)

RECOMMENDATION

- | | | | |
|-----|--|-------------------------------------|------------|
| H1. | a. Vacation of Sharp Avenue from the east line of Cedar Street to the west line of Jefferson Street as requested by Spokane Transit Authority. (Garfield Neighborhood) | Approve
Subject to
Conditions | |
| | b. First Reading Ordinance C35432 vacating Sharp Avenue from the east line of Cedar Street to the west line of Jefferson Street. | Further
Action
Deferred | ORD C35432 |
| | Eldon Brown | | |
| H2. | a. Vacation of those portions of Oakland Boulevard, Columbia Avenue and the alley in Block 10. All in the plat of Cascade Park Addition east of Cedar Road except for the west 50 feet as requested by Gary Chantry. (Latah/Hangman Valley Neighborhood Council) | Approve
Subject to
Conditions | |

- b. First Reading Ordinance C35433 vacating that portion of the right-of-way of Oakland Boulevard between the east right-of-way line of Cedar Road and the east line of Block 9 of the plat of Cascade Park Addition, except for the west 50 feet; together with that portion of the alley, in Block 10 of the Plat of Cascade Park Addition, from the east line of Cedar Road to the east line of Block 10 of the said plat, except for the west 50 feet; together with that portion of the right-of-way of Columbia Avenue between the east right-of-way line of Cedar Road and the east line of Block 10 of the plat of Cascade Park Addition, except the west 50 feet, located in the Northeast Quarter of Section 01, Township 24 North, Range 42 East Willamette Meridian.

Further
Action
Deferred

ORD C35433

Eldon Brown

Motion to Approve Advance Agenda for September 12, 2016
(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.

Note: No person shall be permitted to speak at Open Forum more often than once per month (Council Rule 2.2.6).

ADJOURNMENT

The September 12, 2016, Regular Legislative Session of the City Council is adjourned to September 19, 2016.

NOTES



Agenda Sheet for City Council Meeting of: 09/12/2016

Date Rec'd	8/23/2016
Clerk's File #	OPR 2016-0688
Renews #	
Cross Ref #	
Project #	
Bid #	4264-16
Requisition #	BLANKET ORDER

Submitting Dept	WATER & HYDROELECTRIC SERVICES
Contact Name/Phone	DAN KEGLEY X7821
Contact E-Mail	DKEGLEY@SPOKANECITY.ORG
Agenda Item Type	Purchase w/o Contract
Agenda Item Name	4100/4310 BLANKET ORDER FOR DEBRIS RECYCLING & PURCHASE OF RECYCLED M'TERLS

Agenda Wording

A blanket order for debris recycling and purchase of recycled materials with Action Materials (Cheney, WA) valued at \$95,000 including applicable taxes, to be used by both the Water and Wastewater Maintenance Departments on an as-needed basis.

Summary (Background)

Request for Bids #4264-16 for recycling of dirt, rock, concrete, and asphalt debris as well as purchase of recycled dirt, rock, concrete, and asphalt in compliance with WA DOT Specifications was issued July 15, 2016. Three (3) bid responses were opened on August 8, 2016. Action Materials was determined to be the lowest responsive bid. This value blanket will be valid for a one-year term with the option of four annual renewals upon mutual agreement.

<u>Fiscal Impact</u>		<u>Budget Account</u>	
Expense	\$ 65,000.00	#	4100-42420-34145-54809-99999
Expense	\$ 30,000.00	#	4310-43100-35145-54850-99999
Select	\$	#	
Select	\$	#	
<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	SAKAMOTO, JAMES	<u>Study Session</u>	PWC 8/22/2016
<u>Division Director</u>	FEIST, MARLENE	<u>Other</u>	
<u>Finance</u>	KECK, KATHLEEN	<u>Distribution List</u>	
<u>Legal</u>	WHALEY, HUNT	DKEGLEY@SPOKANECITY.ORG	
<u>For the Mayor</u>	WHITNEY, TYLER	TPRINCE@SPOKANECITY.ORG	
<u>Additional Approvals</u>		GKAESEMEYER@SPOKANECITY.ORG	
<u>Purchasing</u>	PRINCE, THEA	LSEARL@SPOKANECITY.ORG	
		MLOWDON@SPOKANECITY.ORG	
		SJOHNSON@SPOKANECITY.ORG	

BRIEFING PAPER
Public Works Committee
Water & Wastewater Maintenance Departments
August 22, 2016

Subject

A blanket order for debris recycling and purchase of recycled materials with Action Materials (Cheney, WA) valued at \$95,000 including applicable taxes. This blanket order will be used by both the Water and Wastewater Maintenance Departments on an as-needed basis.

Background

A Request for Bids (#4264-16) for recycling of dirt, rock, concrete, and asphalt debris as well as purchase of recycled dirt, rock, concrete, and asphalt in compliance with WA DOT Specifications was issued July 15, 2016. Three (3) bid responses were opened on August 8, 2016. Action Materials was determined to be the lowest responsive bid.

This value blanket will be valid for a one-year term with the option of four annual renewals upon mutual agreement.

Impact

This order will support the timely processing of materials generated and required by City Water and Wastewater projects in an environmentally friendly manner, while also maximizing cost savings. Furthermore, it will support upcoming potential changes to WA DOT Specifications which may include increased requirements for the use of recycled materials.

Action

Recommend approval.

Funding

All funding for this purchase will be from the Water and Wastewater Maintenance Department budgets respectively, according to usage.

4264-16			Central Pre Mix		Action Materials		Pro-Recycle LLC	
RECYCLYING OF DIRT, ROCK, CONCRETE, ASPHALT DEBRIS			5111 E Broadway Ave		10710 S Cheney-Spokane Rd		5516 N Star	
AND PURCHASE OF THE SAME			Spokane WA 99212		Cheney WA 99224		Newman Lake WA 99025	
			Bruce Buck		Casey Lynch		Wes Blore	
			bbuck@oldcastlematerials.com		casey@actionmaterials.net		wes@prorecyclellc.com	
			(509) 534-6221		(509) 448-9386		(509) 226-1483	
ITEM	QTY/TONS	DESCRIPTION	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
		PURCHASE						
1	5800	RECYCLED PRODUCT - 5/8 SPEC TOP/COURSE CONCRETE	\$ 7.00	\$ 40,600.00	\$ 6.00	\$ 34,800.00	\$ 9.30	\$ 53,940.00
2	2000	RECYCLED PRODUCT - 5/8 TOP COURSE SPEC ROCK	\$ 7.00	\$ 14,000.00	\$ 7.00	\$ 14,000.00	\$ 9.80	\$ 19,600.00
3	300	RECYCLED PRODUCT - 3/4 MINUS STRUCTURAL FILL	\$ 7.00	\$ 2,100.00	\$ 4.00	\$ 1,200.00	\$ 6.20	\$ 1,860.00
4	10	RECYCLED PRODUCT - BEDDING C SAND	\$ -	\$ -	\$ 3.50	\$ 35.00	\$ 8.00	\$ 80.00
SUB TOTAL				\$ 56,700.00		\$ 50,035.00		\$ 75,480.00
Wash State Sales Tax				\$ 6,466.71		\$ 4,353.05		\$ 6,566.76
TOTAL				\$ 63,166.71		\$ 54,388.05		\$ 82,046.76
ITEM	QTY/YARDS	DESCRIPTION	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
		RECYCLING						
1	5500	DIRT/ROCK RECYCLING	\$ 4.75	\$ 26,125.00	\$ 3.00	\$ 16,500.00	\$ 10.30	\$ 56,650.00
2	1000	ASPHALT RECYCLING	\$ 4.75	\$ 4,750.00	\$ 3.00	\$ 3,000.00	\$ 10.30	\$ 10,300.00
3	125	CONCRETE RECYCLING	\$ 4.75	\$ 593.75	\$ 9.00	\$ 1,125.00	\$ 10.30	\$ 1,287.50
SUB TOTAL				\$ 31,468.75		\$ 20,625.00		\$ 68,237.50
TOTAL OF PURCHASE & RECYCLING (LINE 17 + 23)				\$ 94,635.46		\$ 75,013.05		\$ 150,284.26
Discount offered on standard products/services not already listed in Bid			0%		n/a		0%	
Will Vendor accept Credit Card as form of payment			Yes		Yes		Yes	
Delivery: Yes or No			Yes		Yes		Yes	
Delivery - if Yes, how long for delivery & at what additional charge			1 day - \$129 per hour Port to Port		3 days - +7.50/tn		3 days + \$10.00/tn	
Drop Off Location for Recycling Services/miles from City Hall - \$0.54 per mile			8510 N Crestline (7.7 miles)/1100 W Sprague Avenue (9.5 miles)		9518 S Grove Rd, Spokane WA 99224 (8 .8 miles)		300 N Park Road Spokane Valley (7.2 miles)	
Pickup Location for Purchase of Recyled Products/miles from City Hall - \$0.54 per mile			1900 N Sullivan (12.6 miles) /11800 W Sprague Avenue (9.5 miles)		9518 S Grove Rd, Spokane WA 99224 (8.8 miles)		501 North Haven until full (4.2 miles) then above address (7.2 miles)	
ADDITIONAL PURCHASES				yes		yes		Yes
References:			Mike Schmimels - (509) 993-2249		Hayden Homes - Travis Trippett (509) 319-5164		City of Spokane Water Dept	



Agenda Sheet for City Council Meeting of:
09/12/2016

Date Rec'd	8/30/2016
Clerk's File #	PRO 2016-0032
Renews #	
Cross Ref #	
Project #	2015088-89-90
Bid #	
Requisition #	

Submitting Dept	ENGINEERING SERVICES
Contact Name/Phone	DAN BULLER 625-6391
Contact E-Mail	DBULLER@SPOKANECITY.ORG
Agenda Item Type	Contract Item
Agenda Item Name	0370 – LOW BID AWARD - CAMERON REILLY LLC

Agenda Wording

Low Bid of Cameron Reilly LLC (Spokane, WA) for 2015 Traffic Calming Projects - \$562,443.00. An administrative reserve of \$56,244.30, which is 10% of the contract price, will be set aside. (Various Neighborhood Councils)

Summary (Background)

On August 22, 2016 bids were opened for the above project. The low bid was from Cameron Reilly LLC in the amount of \$562,443.00, which is \$26,908.50 or 5.02% over the Engineer's Estimate; three other bids were received as follows: Bacon Concrete, Inc. - \$640,536.90; William Winkler Company - \$698,720.10; and T. LaRiviere - \$717,723.60.

<u>Fiscal Impact</u>		<u>Budget Account</u>	
Expense	\$ 98,678.93	#	138024101953005650121005
Expense	\$ 56,106.42	#	138024102953005650121005
Expense	\$ 440,208.03	#	138024103953005650121005
Expense	\$ 23,693.92	#	434043354940005650121005
<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 9/12/16
<u>Finance</u>	KECK, KATHLEEN	<u>Distribution List</u>	
<u>Legal</u>	WHALEY, HUNT	Engineering Admin	
<u>For the Mayor</u>	WHITNEY, TYLER	kgoodman@spokanecity.org	
<u>Additional Approvals</u>		mhughes@spokanecity.org	
<u>Purchasing</u>		kkeck@spokanecity.org	
		jahensley@spokanecity.org	
		htrautman@spokanecity.org	
		kbustos@spokanecity.org	

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

Project Number: 2015088

Project Description 2015 Traffic Calming

Funding Source Local

Preparer Inga Note

Original Date 6/3/2016 10:20:46 AM

Update Date 8/22/2016 2:21:52 PM

Addendum

Project Number: 2015088			Engineer's Estimate		Cameron-Reilly		Bacon Concrete Inc		William Winkler 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 Common - Addendum #2

Sales tax shall be included in unit prices

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	*****	800.00	*****	500.00	*****	500.00	*****	960.00
103	CLASSIFICATION AND PROTECTION OF SURVEY MONUMENTS	1 LS	*****	1,500.00	*****	3,000.00	*****	3,000.00	*****	4,000.00
104	ARCHAEOLOGICAL AND HISTORICAL SALVAGE	1 EST	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00
105	MOBILIZATION	1 LS	*****	38,000.00	*****	39,000.00	*****	64,000.00	*****	71,000.00
106	TEMPORARY TRAFFIC CONTROL	1 LS	*****	37,435.00	*****	31,200.00	*****	45,000.00	*****	13,000.00
107	SEQUENTIAL ARROW SIGN	208 HR	8.00	1,664.00	6.00	1,248.00	2.50	520.00	3.00	624.00
108	PORTABLE CHANGEABLE MESSAGE SIGN	240 HR	10.00	2,400.00	6.00	1,440.00	5.00	1,200.00	5.50	1,320.00
109	TYPE III BARRICADE	16 EA	115.00	1,840.00	75.00	1,200.00	38.50	616.00	50.50	808.00
110	CLEARING AND GRUBBING	1 LS	*****	7,000.00	*****	7,500.00	*****	10,000.00	*****	9,100.00
111	MATERIAL ON HAND, TREE PROTECTION	1 LS	*****	1,000.00	*****	600.00	*****	2,600.00	*****	3,000.00
112	TRENCH SAFETY SYSTEM	1 LS	*****	1,000.00	*****	450.00	*****	500.00	*****	1.50
113	TEMPORARY ADJACENT UTILITY SUPPORT	1 LS	*****	2,000.00	*****	600.00	*****	700.00	*****	3,500.00
114	ESC LEAD	1 LS	*****	1,200.00	*****	1,000.00	*****	1,500.00	*****	1,560.00

<i>Project Number:</i> 2015088			<i>Engineer's Estimate</i>		Cameron-Reilly		Bacon Concrete Inc		William Winkler 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> Common - Addendum #2					Sales tax shall be included in unit prices					
115	REMOVE AND REPLACE EXISTING SPRINKLER HEADS AND LINES	1 LS	*****	4,000.00	*****	5,000.00	*****	4,600.00	*****	6,000.00
<i>Schedule Totals</i>				100,840.00		93,739.00		135,737.00		115,874.50

<i>Project Number:</i> 2015088			<i>Engineer's Estimate</i>		Cameron-Reilly		Bacon Concrete Inc		William Winkler 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 02</i> District 1 - 2015088 - Addendum #2					Sales tax shall be included in unit prices					
201	REFERENCE AND REESTABLISH SURVEY MONUMENT	4 EA	500.00	2,000.00	300.00	1,200.00	400.00	1,600.00	600.00	2,400.00
202	AIR OR HYDRO EVACUATION	2 EA	800.00	1,600.00	600.00	1,200.00	570.00	1,140.00	1,100.00	2,200.00
204	REMOVE TREE, CLASS I	2 EA	310.00	620.00	1,000.00	2,000.00	400.00	800.00	2,100.00	4,200.00
207	TREE PRUNING	2 EA	400.00	800.00	350.00	700.00	200.00	400.00	2,090.00	4,180.00
208	REMOVE EXISTING CURB	406 LF	7.00	2,842.00	10.00	4,060.00	10.00	4,060.00	10.00	4,060.00
209	REMOVE CEMENT CONCRETE SIDEWALK AND DRIVEWAY	131 SY	16.00	2,096.00	13.00	1,703.00	15.00	1,965.00	29.00	3,799.00
210	SAWCUTTING CURB	28 EA	35.00	980.00	40.00	1,120.00	50.00	1,400.00	26.00	728.00
211	SAWCUTTING RIGID PAVEMENT	60 LFI	1.50	90.00	1.00	60.00	2.50	150.00	4.75	285.00
212	SAWCUTTING FLEXIBLE PAVEMENT	240 LFI	0.75	180.00	1.00	240.00	2.00	480.00	1.30	312.00
214	CSTC FOR SIDEWALK AND DRIVEWAYS	45 CY	65.00	2,925.00	70.00	3,150.00	70.00	3,150.00	160.00	7,200.00
215	HMA FOR PAVEMENT REPAIR CL. 1/2 IN. PG 64-28, 3 INCH THICK	16 SY	45.00	720.00	90.00	1,440.00	250.00	4,000.00	140.00	2,240.00
216	PAVEMENT REPAIR EXCAVATION INCL. HAUL	16 SY	30.00	480.00	48.00	768.00	35.00	560.00	30.00	480.00
217	CEMENT CONCRETE CURB WALL	32 LF	47.00	1,504.00	70.00	2,240.00	50.00	1,600.00	67.00	2,144.00
219	ADJUST EXISTING MANHOLE, CATCH BASIN, DRYWELL, OR INLET IN ASPHALT	1 EA	485.00	485.00	600.00	600.00	600.00	600.00	450.00	450.00
220	INLET PROTECTION	8 EA	91.00	728.00	100.00	800.00	75.00	600.00	114.00	912.00
222	SOD INSTALLATION	64 SY	11.00	704.00	15.00	960.00	18.00	1,152.00	15.50	992.00
223	CEMENT CONCRETE CURB	498 LF	20.00	9,960.00	22.00	10,956.00	26.00	12,948.00	27.50	13,695.00
224	CEMENT CONCRETE DRIVEWAY	158 SY	48.00	7,584.00	60.00	9,480.00	65.00	10,270.00	76.50	12,087.00

<i>Project Number:</i> 2015088			<i>Engineer's Estimate</i>		Cameron-Reilly		Bacon Concrete Inc		William Winkler 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 02</i> District 1 - 2015088 - Addendum #2					Sales tax shall be included in unit prices					
225	CEMENT CONCRETE DRIVEWAY TRANSITION	15 SY	42.00	630.00	60.00	900.00	45.00	675.00	144.00	2,160.00
227	MODIFY FENCING	50 LF	80.00	4,000.00	60.00	3,000.00	20.00	1,000.00	51.50	2,575.00
228	CEMENT CONC. SIDEWALK	395 SY	40.00	15,800.00	50.00	19,750.00	45.00	17,775.00	52.50	20,737.50
229	RAMP DETECTABLE WARNING	57 SF	25.00	1,425.00	20.00	1,140.00	21.00	1,197.00	23.50	1,339.50
230	SIGNING, PERMANENT	1 LS	*****	4,092.00	*****	4,500.00	*****	4,500.00	*****	5,200.00
232	PAVEMENT MARKING - DURABLE HEAT APPLIED	186 SF	12.00	2,232.00	15.00	2,790.00	12.50	2,325.00	15.00	2,790.00
<i>Schedule Totals</i>				64,477.00		74,757.00		74,347.00		97,166.00

<i>Project Number:</i> 2015088			<i>Engineer's Estimate</i>		Cameron-Reilly		Bacon Concrete Inc		William Winkler 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 03</i> District 2 - 2015089 - Addendum #2					Sales tax shall be included in unit prices					
301	TREE PRUNING	1 EA	400.00	400.00	350.00	350.00	200.00	200.00	2,100.00	2,100.00
302	REMOVE EXISTING CURB	100 LF	7.00	700.00	12.00	1,200.00	10.00	1,000.00	9.50	950.00
303	REMOVE CEMENT CONCRETE SIDEWALK AND DRIVEWAY	18 SY	16.00	288.00	30.00	540.00	15.00	270.00	29.50	531.00
304	SAWCUTTING CURB	8 EA	35.00	280.00	30.00	240.00	50.00	400.00	26.00	208.00
305	SAWCUTTING RIGID PAVEMENT	40 LFI	1.50	60.00	10.00	400.00	2.50	100.00	4.75	190.00
306	CSTC FOR SIDEWALK AND DRIVEWAYS	12 CY	65.00	780.00	75.00	900.00	70.00	840.00	158.00	1,896.00
307	INLET PROTECTION	1 EA	91.00	91.00	100.00	100.00	100.00	100.00	92.50	92.50
308	SOD INSTALLATION	23 SY	11.00	253.00	15.00	345.00	18.00	414.00	15.50	356.50
309	CEMENT CONCRETE CURB	110 LF	20.00	2,200.00	25.00	2,750.00	26.00	2,860.00	27.50	3,025.00
310	CEMENT CONCRETE DRIVEWAY	40 SY	48.00	1,920.00	60.00	2,400.00	65.00	2,600.00	71.00	2,840.00
311	CEMENT CONCRETE DRIVEWAY TRANSITION	8 SY	42.00	336.00	60.00	480.00	45.00	360.00	144.00	1,152.00
312	CEMENT CONC. SIDEWALK	115 SY	40.00	4,600.00	55.00	6,325.00	45.00	5,175.00	52.50	6,037.50
313	RAMP DETECTABLE WARNING	17 SF	25.00	425.00	20.00	340.00	21.00	357.00	23.50	399.50
314	DRIVER FEEDBACK SIGNS - ROCKWOOD	1 LS	*****	28,000.00	*****	21,395.00	*****	28,500.00	*****	26,250.00
315	SIGNING, PERMANENT	1 LS	*****	2,418.00	*****	2,500.00	*****	2,500.00	*****	2,898.00
316	PAVEMENT MARKING - DURABLE HEAT APPLIED	160 SF	12.00	1,920.00	14.00	2,240.00	12.50	2,000.00	14.50	2,320.00
<i>Schedule Totals</i>				44,671.00		42,505.00		47,676.00		51,246.00

Project Number: 2015088			Engineer's Estimate		Cameron-Reilly		Bacon Concrete Inc		William Winkler 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 04

District 3 - 2015090 - Addendum #2

Sales tax shall be included in unit prices

401	REFERENCE AND REESTABLISH SURVEY MONUMENT	5 EA	500.00	2,500.00	300.00	1,500.00	400.00	2,000.00	522.00	2,610.00
402	AIR OR HYDRO EVACUATION	1 EA	800.00	800.00	600.00	600.00	570.00	570.00	1,136.00	1,136.00
404	REMOVE TREE, CLASS I	1 EA	310.00	310.00	1,000.00	1,000.00	470.00	470.00	2,100.00	2,100.00
405	REMOVE TREE, CLASS II	2 EA	725.00	1,450.00	1,200.00	2,400.00	850.00	1,700.00	2,800.00	5,600.00
406	TREE PRUNING	3 EA	400.00	1,200.00	350.00	1,050.00	300.00	900.00	700.00	2,100.00
407	REMOVE EXISTING CURB	944 LF	7.00	6,608.00	10.00	9,440.00	10.00	9,440.00	9.25	8,732.00
408	REMOVE EXISTING CURB AND GUTTER	50 LF	9.50	475.00	12.00	600.00	15.00	750.00	9.50	475.00
409	REMOVE CEMENT CONCRETE SIDEWALK AND DRIVEWAY	378 SY	16.00	6,048.00	12.00	4,536.00	15.00	5,670.00	29.00	10,962.00
410	REMOVE MANHOLE, CATCH BASIN OR DRYWELL	1 EA	420.00	420.00	850.00	850.00	600.00	600.00	1,375.00	1,375.00
411	SAWCUTTING CURB	37 EA	35.00	1,295.00	30.00	1,110.00	50.00	1,850.00	26.00	962.00
412	SAWCUTTING FLEXIBLE PAVEMENT	3842 LFI	0.75	2,881.50	1.00	3,842.00	1.20	4,610.40	1.30	4,994.60
417	CRUSHED SURFACING BASE COURSE	54 CY	41.00	2,214.00	70.00	3,780.00	70.00	3,780.00	160.00	8,640.00
418	CSTC FOR SIDEWALK AND DRIVEWAYS	143 CY	65.00	9,295.00	60.00	8,580.00	70.00	10,010.00	160.00	22,880.00
421	HMA FOR PAVEMENT REPAIR CL. 1/2 IN. PG 64-28, 3 INCH THICK	171 SY	45.00	7,695.00	65.00	11,115.00	115.00	19,665.00	91.00	15,561.00
422	HMA FOR PAVEMENT REPAIR CL. 1/2 IN. PG 70-28, 6 INCH THICK	370 SY	85.00	31,450.00	80.00	29,600.00	82.00	30,340.00	108.00	39,960.00
423	PAVEMENT REPAIR EXCAVATION INCL. HAUL	818 SY	30.00	24,540.00	30.00	24,540.00	35.00	28,630.00	15.50	12,679.00
424	CEMENT CONCRETE CURB WALL	92 LF	47.00	4,324.00	45.00	4,140.00	60.00	5,520.00	66.75	6,141.00
426	DUCTILE IRON STORM SEWER PIPE 8 IN. DIAM., INCL. STRUCTURAL EXCAVATION CLASS B	163 LF	65.00	10,595.00	65.00	10,595.00	58.00	9,454.00	75.00	12,225.00

<i>Project Number:</i> 2015088			<i>Engineer's Estimate</i>		Cameron-Reilly		Bacon Concrete Inc		William Winkler 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 04</i> District 3 - 2015090 - Addendum #2					Sales tax shall be included in unit prices					
430	ADJUST EXISTING MANHOLE, CATCH BASIN, DRYWELL, OR INLET IN ASPHALT	1 EA	485.00	485.00	600.00	600.00	600.00	600.00	450.00	450.00
431	ADJUST EXISTING MANHOLE, CATCH BASIN, DRYWELL, OR INLET IN CONCRETE	4 EA	500.00	2,000.00	600.00	2,400.00	600.00	2,400.00	370.00	1,480.00
432	CATCH BASIN TYPE 1	4 EA	2,100.00	8,400.00	2,600.00	10,400.00	2,400.00	9,600.00	3,277.00	13,108.00
433	CONNECT 8 IN. DIAMETER PIPE TO EXISTING CATCH BASIN, DRYWELL, OR MANHOLE	3 EA	450.00	1,350.00	750.00	2,250.00	450.00	1,350.00	1,257.00	3,771.00
434	RETROFIT CURB & SURFACE INLET FRAME & GRATE WITH HOOD, FRAME AND BI-DIRECTIONAL VANED GRATE	1 EA	900.00	900.00	1,200.00	1,200.00	650.00	650.00	650.00	650.00
437	CLEANING EXISTING DRAINAGE STRUCTURE	3 EA	400.00	1,200.00	250.00	750.00	500.00	1,500.00	400.00	1,200.00
438	INLET PROTECTION	16 EA	91.00	1,456.00	100.00	1,600.00	100.00	1,600.00	92.50	1,480.00
440	TOPSOIL TYPE A, 12 INCH THICK	86 SY	25.00	2,150.00	25.00	2,150.00	35.00	3,010.00	27.50	2,365.00
442	PSIPE 2 INCH CALIPER SHADE TREE	5 EA	450.00	2,250.00	600.00	3,000.00	450.00	2,250.00	621.00	3,105.00
443	SOD INSTALLATION	110 SY	11.00	1,210.00	15.00	1,650.00	18.00	1,980.00	15.50	1,705.00
456	LANDSCAPING: NW BLVD CROSSWALK ISLAND	1 LS	*****	3,384.00	*****	5,000.00	*****	25,000.00	*****	5,500.00
458	IRRIGATION: NW BLVD CROSSWALK ISLAND	1 LS	*****	5,500.00	*****	4,000.00	*****	6,000.00	*****	4,600.00
459	4_ IN. PVC IRRIGATION SLEEVE	96 LF	12.00	1,152.00	15.00	1,440.00	12.00	1,152.00	15.50	1,488.00
460	CEMENT CONCRETE CURB	1118 LF	20.00	22,360.00	22.00	24,596.00	26.00	29,068.00	27.50	30,745.00
461	CEMENT CONC. CURB AND GUTTER	50 LF	22.00	1,100.00	30.00	1,500.00	30.00	1,500.00	30.00	1,500.00
462	TRAFFIC CIRCLE CEMENT CONCRETE CURB	280 LF	25.00	7,000.00	20.00	5,600.00	30.00	8,400.00	37.25	10,430.00
463	CEMENT CONCRETE DRIVEWAY	157 SY	48.00	7,536.00	60.00	9,420.00	65.00	10,205.00	88.00	13,816.00

<i>Project Number:</i> 2015088			<i>Engineer's Estimate</i>		Cameron-Reilly		Bacon Concrete Inc		William Winkler 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>

Schedule Description

Tax Classification

Schedule 04

District 3 - 2015090 - Addendum #2

Sales tax shall be included in unit prices

464	CEMENT CONCRETE DRIVEWAY TRANSITION	8 SY	42.00	336.00	60.00	480.00	45.00	360.00	144.00	1,152.00
465	RAISED PAVEMENT MARKER TYPE 2	2 100	250.00	500.00	1,700.00	3,400.00	2.00	4.00	1,975.00	3,950.00
466	CHANNELIZING DEVICES	5 EA	170.00	850.00	250.00	1,250.00	227.00	1,135.00	271.00	1,355.00
467	MODIFY FENCING	20 LF	80.00	1,600.00	40.00	800.00	60.00	1,200.00	130.00	2,600.00
468	CEMENT CONC. SIDEWALK	916 SY	40.00	36,640.00	50.00	45,800.00	45.00	41,220.00	52.50	48,090.00
469	RAMP DETECTABLE WARNING	189 SF	25.00	4,725.00	20.00	3,780.00	21.00	3,969.00	23.50	4,441.50
470	INTERLOCKING PERMEABLE CONCRETE PAVERS	168 SY	100.00	16,800.00	108.00	18,144.00	112.00	18,816.00	114.00	19,152.00
471	DRIVER FEEDBACK SIGN - MAPLE	1 LS	*****	13,000.00	*****	10,350.00	*****	14,575.00	*****	14,250.00
472	SIGNING, PERMANENT	1 LS	*****	19,998.00	*****	19,750.00	*****	20,000.00	*****	23,500.00
473	REMOVAL OF EXISTING PAVEMENT MARKINGS	187 SF	8.00	1,496.00	15.00	2,805.00	13.00	2,431.00	15.00	2,805.00
474	PAVEMENT MARKING - DURABLE HEAT APPLIED	397 SF	12.00	4,764.00	15.00	5,955.00	12.50	4,962.50	14.50	5,756.50
475	CEMENT CONCRETE STEPS	1 CY	2,200.00	2,200.00	1,500.00	1,500.00	450.00	450.00	1,625.00	1,625.00
476	TRAFFIC ISLAND CONCRETE	12 SY	62.00	744.00	60.00	720.00	65.00	780.00	146.25	1,755.00
477	COLORED STAMPED TRAFFIC ISLAND CONCRETE	174 SY	140.00	24,360.00	126.00	21,924.00	75.00	13,050.00	120.00	20,880.00

Schedule Totals

311,546.50

333,492.00

365,176.90

407,837.60

<i>Project Number:</i> 2015088			<i>Engineer's Estimate</i>		Cameron-Reilly		Bacon Concrete Inc		William Winkler 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 05</i> Stormwater - Maxwell/Mission & Cedar - Addendum #2					Sales tax shall be included in unit prices					
501	REMOVE MANHOLE, CATCH BASIN OR DRYWELL	5 EA	420.00	2,100.00	850.00	4,250.00	600.00	3,000.00	1,374.00	6,870.00
504	CATCH BASIN TYPE 1	3 EA	2,100.00	6,300.00	2,500.00	7,500.00	2,400.00	7,200.00	3,500.00	10,500.00
505	CATCH BASIN TYPE 2	2 EA	2,400.00	4,800.00	2,800.00	5,600.00	3,200.00	6,400.00	4,300.00	8,600.00
506	CLEANING EXISTING DRAINAGE STRUCTURE	2 EA	400.00	800.00	300.00	600.00	500.00	1,000.00	313.00	626.00
<i>Schedule Totals</i>				14,000.00		17,950.00		17,600.00		26,596.00

<i>Project Number:</i> 2015088			<i>Engineer's Estimate</i>		T LaRiviere Equipment & Excavation Inc					
<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> Common - Addendum #2					Sales tax shall be included in unit prices					
101	REIMBURSEMENT FOR THIRD PARTY DAMAGE	1 EST	1.00	1.00	1.00	1.00	0.00	0.00	0.00	0.00
102	SPCC PLAN	1 LS	*****	800.00	*****	1,000.00	*****	0.00	*****	0.00
103	CLASSIFICATION AND PROTECTION OF SURVEY MONUMENTS	1 LS	*****	1,500.00	*****	400.00	*****	0.00	*****	0.00
104	ARCHAEOLOGICAL AND HISTORICAL SALVAGE	1 EST	1,000.00	1,000.00	1,000.00	1,000.00	0.00	0.00	0.00	0.00
105	MOBILIZATION	1 LS	*****	38,000.00	*****	90,410.00	*****	0.00	*****	0.00
106	TEMPORARY TRAFFIC CONTROL	1 LS	*****	37,435.00	*****	9,900.00	*****	0.00	*****	0.00
107	SEQUENTIAL ARROW SIGN	208 HR	8.00	1,664.00	2.20	457.60	0.00	0.00	0.00	0.00
108	PORTABLE CHANGEABLE MESSAGE SIGN	240 HR	10.00	2,400.00	4.15	996.00	0.00	0.00	0.00	0.00
109	TYPE III BARRICADE	16 EA	115.00	1,840.00	38.50	616.00	0.00	0.00	0.00	0.00
110	CLEARING AND GRUBBING	1 LS	*****	7,000.00	*****	50,000.00	*****	0.00	*****	0.00
111	MATERIAL ON HAND, TREE PROTECTION	1 LS	*****	1,000.00	*****	800.00	*****	0.00	*****	0.00
112	TRENCH SAFETY SYSTEM	1 LS	*****	1,000.00	*****	1,000.00	*****	0.00	*****	0.00
113	TEMPORARY ADJACENT UTILITY SUPPORT	1 LS	*****	2,000.00	*****	1,000.00	*****	0.00	*****	0.00
114	ESC LEAD	1 LS	*****	1,200.00	*****	500.00	*****	0.00	*****	0.00
115	REMOVE AND REPLACE EXISTING SPRINKLER HEADS AND LINES	1 LS	*****	4,000.00	*****	8,850.00	*****	0.00	*****	0.00
<i>Schedule Totals</i>				100,840.00		166,930.60		0.00		0.00

<i>Project Number:</i> 2015088			<i>Engineer's Estimate</i>		T LaRiviere Equipment & Excavation Inc					
<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 02</i> District 1 - 2015088 - Addendum #2					Sales tax shall be included in unit prices					
201	REFERENCE AND REESTABLISH SURVEY MONUMENT	4 EA	500.00	2,000.00	400.00	1,600.00	0.00	0.00	0.00	0.00
202	AIR OR HYDRO EVACUATION	2 EA	800.00	1,600.00	125.00	250.00	0.00	0.00	0.00	0.00
204	REMOVE TREE, CLASS I	2 EA	310.00	620.00	200.00	400.00	0.00	0.00	0.00	0.00
207	TREE PRUNING	2 EA	400.00	800.00	500.00	1,000.00	0.00	0.00	0.00	0.00
208	REMOVE EXISTING CURB	406 LF	7.00	2,842.00	8.00	3,248.00	0.00	0.00	0.00	0.00
209	REMOVE CEMENT CONCRETE SIDEWALK AND DRIVEWAY	131 SY	16.00	2,096.00	10.00	1,310.00	0.00	0.00	0.00	0.00
210	SAWCUTTING CURB	28 EA	35.00	980.00	25.00	700.00	0.00	0.00	0.00	0.00
211	SAWCUTTING RIGID PAVEMENT	60 LFI	1.50	90.00	3.00	180.00	0.00	0.00	0.00	0.00
212	SAWCUTTING FLEXIBLE PAVEMENT	240 LFI	0.75	180.00	2.00	480.00	0.00	0.00	0.00	0.00
214	CSTC FOR SIDEWALK AND DRIVEWAYS	45 CY	65.00	2,925.00	50.00	2,250.00	0.00	0.00	0.00	0.00
215	HMA FOR PAVEMENT REPAIR CL. 1/2 IN. PG 64-28, 3 INCH THICK	16 SY	45.00	720.00	90.00	1,440.00	0.00	0.00	0.00	0.00
216	PAVEMENT REPAIR EXCAVATION INCL. HAUL	16 SY	30.00	480.00	26.00	416.00	0.00	0.00	0.00	0.00
217	CEMENT CONCRETE CURB WALL	32 LF	47.00	1,504.00	51.00	1,632.00	0.00	0.00	0.00	0.00
219	ADJUST EXISTING MANHOLE, CATCH BASIN, DRYWELL, OR INLET IN ASPHALT	1 EA	485.00	485.00	500.00	500.00	0.00	0.00	0.00	0.00
220	INLET PROTECTION	8 EA	91.00	728.00	120.00	960.00	0.00	0.00	0.00	0.00
222	SOD INSTALLATION	64 SY	11.00	704.00	16.50	1,056.00	0.00	0.00	0.00	0.00
223	CEMENT CONCRETE CURB	498 LF	20.00	9,960.00	21.00	10,458.00	0.00	0.00	0.00	0.00
224	CEMENT CONCRETE DRIVEWAY	158 SY	48.00	7,584.00	64.00	10,112.00	0.00	0.00	0.00	0.00

<i>Project Number:</i> 2015088			<i>Engineer's Estimate</i>		T LaRiviere Equipment & Excavation Inc					
<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 02</i> District 1 - 2015088 - Addendum #2					Sales tax shall be included in unit prices					
225	CEMENT CONCRETE DRIVEWAY TRANSITION	15 SY	42.00	630.00	46.00	690.00	0.00	0.00	0.00	0.00
227	MODIFY FENCING	50 LF	80.00	4,000.00	30.00	1,500.00	0.00	0.00	0.00	0.00
228	CEMENT CONC. SIDEWALK	395 SY	40.00	15,800.00	43.00	16,985.00	0.00	0.00	0.00	0.00
229	RAMP DETECTABLE WARNING	57 SF	25.00	1,425.00	22.50	1,282.50	0.00	0.00	0.00	0.00
230	SIGNING, PERMANENT	1 LS	*****	4,092.00	*****	4,450.00	*****	0.00	*****	0.00
232	PAVEMENT MARKING - DURABLE HEAT APPLIED	186 SF	12.00	2,232.00	12.60	2,343.60	0.00	0.00	0.00	0.00
<i>Schedule Totals</i>				64,477.00		65,243.10		0.00		0.00

<i>Project Number:</i> 2015088			<i>Engineer's Estimate</i>		T LaRiviere Equipment & Excavation Inc					
<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 03</i> District 2 - 2015089 - Addendum #2					Sales tax shall be included in unit prices					
301	TREE PRUNING	1 EA	400.00	400.00	500.00	500.00	0.00	0.00	0.00	0.00
302	REMOVE EXISTING CURB	100 LF	7.00	700.00	8.00	800.00	0.00	0.00	0.00	0.00
303	REMOVE CEMENT CONCRETE SIDEWALK AND DRIVEWAY	18 SY	16.00	288.00	10.00	180.00	0.00	0.00	0.00	0.00
304	SAWCUTTING CURB	8 EA	35.00	280.00	25.00	200.00	0.00	0.00	0.00	0.00
305	SAWCUTTING RIGID PAVEMENT	40 LFI	1.50	60.00	3.00	120.00	0.00	0.00	0.00	0.00
306	CSTC FOR SIDEWALK AND DRIVEWAYS	12 CY	65.00	780.00	50.00	600.00	0.00	0.00	0.00	0.00
307	INLET PROTECTION	1 EA	91.00	91.00	120.00	120.00	0.00	0.00	0.00	0.00
308	SOD INSTALLATION	23 SY	11.00	253.00	16.50	379.50	0.00	0.00	0.00	0.00
309	CEMENT CONCRETE CURB	110 LF	20.00	2,200.00	21.00	2,310.00	0.00	0.00	0.00	0.00
310	CEMENT CONCRETE DRIVEWAY	40 SY	48.00	1,920.00	64.00	2,560.00	0.00	0.00	0.00	0.00
311	CEMENT CONCRETE DRIVEWAY TRANSITION	8 SY	42.00	336.00	46.00	368.00	0.00	0.00	0.00	0.00
312	CEMENT CONC. SIDEWALK	115 SY	40.00	4,600.00	43.00	4,945.00	0.00	0.00	0.00	0.00
313	RAMP DETECTABLE WARNING	17 SF	25.00	425.00	22.50	382.50	0.00	0.00	0.00	0.00
314	DRIVER FEEDBACK SIGNS - ROCKWOOD	1 LS	*****	28,000.00	*****	40,000.00	*****	0.00	*****	0.00
315	SIGNING, PERMANENT	1 LS	*****	2,418.00	*****	2,490.00	*****	0.00	*****	0.00
316	PAVEMENT MARKING - DURABLE HEAT APPLIED	160 SF	12.00	1,920.00	12.60	2,016.00	0.00	0.00	0.00	0.00
<i>Schedule Totals</i>				44,671.00		57,971.00		0.00		0.00

<i>Project Number:</i> 2015088			<i>Engineer's Estimate</i>		T LaRiviere Equipment & Excavation Inc					
<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 04</i> District 3 - 2015090 - Addendum #2					Sales tax shall be included in unit prices					
401	REFERENCE AND REESTABLISH SURVEY MONUMENT	5 EA	500.00	2,500.00	400.00	2,000.00	0.00	0.00	0.00	0.00
402	AIR OR HYDRO EVACUATION	1 EA	800.00	800.00	125.00	125.00	0.00	0.00	0.00	0.00
404	REMOVE TREE, CLASS I	1 EA	310.00	310.00	200.00	200.00	0.00	0.00	0.00	0.00
405	REMOVE TREE, CLASS II	2 EA	725.00	1,450.00	350.00	700.00	0.00	0.00	0.00	0.00
406	TREE PRUNING	3 EA	400.00	1,200.00	500.00	1,500.00	0.00	0.00	0.00	0.00
407	REMOVE EXISTING CURB	944 LF	7.00	6,608.00	8.00	7,552.00	0.00	0.00	0.00	0.00
408	REMOVE EXISTING CURB AND GUTTER	50 LF	9.50	475.00	10.00	500.00	0.00	0.00	0.00	0.00
409	REMOVE CEMENT CONCRETE SIDEWALK AND DRIVEWAY	378 SY	16.00	6,048.00	10.00	3,780.00	0.00	0.00	0.00	0.00
410	REMOVE MANHOLE, CATCH BASIN OR DRYWELL	1 EA	420.00	420.00	500.00	500.00	0.00	0.00	0.00	0.00
411	SAWCUTTING CURB	37 EA	35.00	1,295.00	25.00	925.00	0.00	0.00	0.00	0.00
412	SAWCUTTING FLEXIBLE PAVEMENT	3842 LFI	0.75	2,881.50	2.00	7,684.00	0.00	0.00	0.00	0.00
417	CRUSHED SURFACING BASE COURSE	54 CY	41.00	2,214.00	28.00	1,512.00	0.00	0.00	0.00	0.00
418	CSTC FOR SIDEWALK AND DRIVEWAYS	143 CY	65.00	9,295.00	50.00	7,150.00	0.00	0.00	0.00	0.00
421	HMA FOR PAVEMENT REPAIR CL. 1/2 IN. PG 64-28, 3 INCH THICK	171 SY	45.00	7,695.00	63.00	10,773.00	0.00	0.00	0.00	0.00
422	HMA FOR PAVEMENT REPAIR CL. 1/2 IN. PG 70-28, 6 INCH THICK	370 SY	85.00	31,450.00	78.00	28,860.00	0.00	0.00	0.00	0.00
423	PAVEMENT REPAIR EXCAVATION INCL. HAUL	818 SY	30.00	24,540.00	45.00	36,810.00	0.00	0.00	0.00	0.00
424	CEMENT CONCRETE CURB WALL	92 LF	47.00	4,324.00	51.00	4,692.00	0.00	0.00	0.00	0.00
426	DUCTILE IRON STORM SEWER PIPE 8 IN. DIAM., INCL. STRUCTURAL EXCAVATION CLASS B	163 LF	65.00	10,595.00	500.00	81,500.00	0.00	0.00	0.00	0.00

Project Number: 2015088			Engineer's Estimate		T LaRiviere Equipment & Excavation Inc					
Item No	Bid Item Description	Estimated Quantity	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
Schedule Description					Tax Classification					
Schedule 04		District 3 - 2015090 - Addendum #2				Sales tax shall be included in unit prices				
430	ADJUST EXISTING MANHOLE, CATCH BASIN, DRYWELL, OR INLET IN ASPHALT	1 EA	485.00	485.00	300.00	300.00	0.00	0.00	0.00	0.00
431	ADJUST EXISTING MANHOLE, CATCH BASIN, DRYWELL, OR INLET IN CONCRETE	4 EA	500.00	2,000.00	600.00	2,400.00	0.00	0.00	0.00	0.00
432	CATCH BASIN TYPE 1	4 EA	2,100.00	8,400.00	2,100.00	8,400.00	0.00	0.00	0.00	0.00
433	CONNECT 8 IN. DIAMETER PIPE TO EXISTING CATCH BASIN, DRYWELL, OR MANHOLE	3 EA	450.00	1,350.00	400.00	1,200.00	0.00	0.00	0.00	0.00
434	RETROFIT CURB & SURFACE INLET FRAME & GRATE WITH HOOD, FRAME AND BI-DIRECTIONAL VANED GRATE	1 EA	900.00	900.00	450.00	450.00	0.00	0.00	0.00	0.00
437	CLEANING EXISTING DRAINAGE STRUCTURE	3 EA	400.00	1,200.00	200.00	600.00	0.00	0.00	0.00	0.00
438	INLET PROTECTION	16 EA	91.00	1,456.00	120.00	1,920.00	0.00	0.00	0.00	0.00
440	TOPSOIL TYPE A, 12 INCH THICK	86 SY	25.00	2,150.00	27.50	2,365.00	0.00	0.00	0.00	0.00
442	PSIPE 2 INCH CALIPER SHADE TREE	5 EA	450.00	2,250.00	440.00	2,200.00	0.00	0.00	0.00	0.00
443	SOD INSTALLATION	110 SY	11.00	1,210.00	16.50	1,815.00	0.00	0.00	0.00	0.00
456	LANDSCAPING: NW BLVD CROSSWALK ISLAND	1 LS	*****	3,384.00	*****	9,450.00	*****	0.00	*****	0.00
458	IRRIGATION: NW BLVD CROSSWALK ISLAND	1 LS	*****	5,500.00	*****	5,450.00	*****	0.00	*****	0.00
459	4_ IN. PVC IRRIGATION SLEEVE	96 LF	12.00	1,152.00	11.20	1,075.20	0.00	0.00	0.00	0.00
460	CEMENT CONCRETE CURB	1118 LF	20.00	22,360.00	21.00	23,478.00	0.00	0.00	0.00	0.00
461	CEMENT CONC. CURB AND GUTTER	50 LF	22.00	1,100.00	23.00	1,150.00	0.00	0.00	0.00	0.00
462	TRAFFIC CIRCLE CEMENT CONCRETE CURB	280 LF	25.00	7,000.00	31.00	8,680.00	0.00	0.00	0.00	0.00
463	CEMENT CONCRETE DRIVEWAY	157 SY	48.00	7,536.00	64.00	10,048.00	0.00	0.00	0.00	0.00

<i>Project Number:</i> 2015088			<i>Engineer's Estimate</i>		T LaRiviere Equipment & Excavation Inc					
<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 04</i> District 3 - 2015090 - Addendum #2					Sales tax shall be included in unit prices					
464	CEMENT CONCRETE DRIVEWAY TRANSITION	8 SY	42.00	336.00	47.00	376.00	0.00	0.00	0.00	0.00
465	RAISED PAVEMENT MARKER TYPE 2	2 100	250.00	500.00	1,000.00	2,000.00	0.00	0.00	0.00	0.00
466	CHANNELIZING DEVICES	5 EA	170.00	850.00	232.00	1,160.00	0.00	0.00	0.00	0.00
467	MODIFY FENCING	20 LF	80.00	1,600.00	30.00	600.00	0.00	0.00	0.00	0.00
468	CEMENT CONC. SIDEWALK	916 SY	40.00	36,640.00	43.00	39,388.00	0.00	0.00	0.00	0.00
469	RAMP DETECTABLE WARNING	189 SF	25.00	4,725.00	22.50	4,252.50	0.00	0.00	0.00	0.00
470	INTERLOCKING PERMEABLE CONCRETE PAVERS	168 SY	100.00	16,800.00	140.00	23,520.00	0.00	0.00	0.00	0.00
471	DRIVER FEEDBACK SIGN - MAPLE	1 LS	*****	13,000.00	*****	20,000.00	*****	0.00	*****	0.00
472	SIGNING, PERMANENT	1 LS	*****	19,998.00	*****	20,015.00	*****	0.00	*****	0.00
473	REMOVAL OF EXISTING PAVEMENT MARKINGS	187 SF	8.00	1,496.00	13.00	2,431.00	0.00	0.00	0.00	0.00
474	PAVEMENT MARKING - DURABLE HEAT APPLIED	397 SF	12.00	4,764.00	12.60	5,002.20	0.00	0.00	0.00	0.00
475	CEMENT CONCRETE STEPS	1 CY	2,200.00	2,200.00	1,770.00	1,770.00	0.00	0.00	0.00	0.00
476	TRAFFIC ISLAND CONCRETE	12 SY	62.00	744.00	71.00	852.00	0.00	0.00	0.00	0.00
477	COLORED STAMPED TRAFFIC ISLAND CONCRETE	174 SY	140.00	24,360.00	82.00	14,268.00	0.00	0.00	0.00	0.00
<i>Schedule Totals</i>				311,546.50		413,378.90		0.00		0.00

<i>Project Number:</i> 2015088			<i>Engineer's Estimate</i>		T LaRiviere Equipment & Excavation Inc					
<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 05</i>		Stormwater - Maxwell/Mission & Cedar - Addendum #2				Sales tax shall be included in unit prices				
501	REMOVE MANHOLE, CATCH BASIN OR DRYWELL	5 EA	420.00	2,100.00	500.00	2,500.00	0.00	0.00	0.00	0.00
504	CATCH BASIN TYPE 1	3 EA	2,100.00	6,300.00	2,100.00	6,300.00	0.00	0.00	0.00	0.00
505	CATCH BASIN TYPE 2	2 EA	2,400.00	4,800.00	2,500.00	5,000.00	0.00	0.00	0.00	0.00
506	CLEANING EXISTING DRAINAGE STRUCTURE	2 EA	400.00	800.00	200.00	400.00	0.00	0.00	0.00	0.00
<i>Schedule Totals</i>				14,000.00		14,200.00		0.00		0.00

Project Number *2015088* *2015 Traffic Calming*

	<i>SCHEDULE SUMMARY</i>								
	<i>Sched 1</i>	<i>Sched 2</i>	<i>Sched 3</i>	<i>Sched 4</i>	<i>Sched 5</i>	<i>Sched 6</i>	<i>Sched 7</i>	<i>Sched 8</i>	<i>Total</i>
<i>Engineer's Est</i>	100,840.00	64,477.00	44,671.00	311,546.50	14,000.00	0.00	0.00	0.00	535,534.50
Cameron-Reilly	93,739.00	74,757.00	42,505.00	333,492.00	17,950.00	0.00	0.00	0.00	562,443.00
Bacon Concrete Inc	135,737.00	74,347.00	47,676.00	365,176.90	17,600.00	0.00	0.00	0.00	640,536.90
William Winkler Compa	115,874.50	97,166.00	51,246.00	407,837.60	26,596.00	0.00	0.00	0.00	698,720.10
T LaRiviere Equipment	166,930.60	65,243.10	57,971.00	413,378.90	14,200.00	0.00	0.00	0.00	717,723.60

Low Bid Contractor: Cameron-Reilly

	<i>Contractor's Bid</i>	<i>Engineer's Estimate</i>	<i>% Variance</i>	
<i>Schedule 01</i>	\$93,739.00	\$100,840.00	7.04	% Under Estimate
<i>Schedule 02</i>	\$74,757.00	\$64,477.00	15.94	% Over Estimate
<i>Schedule 03</i>	\$42,505.00	\$44,671.00	4.85	% Under Estimate
<i>Schedule 04</i>	\$333,492.00	\$311,546.50	7.04	% Over Estimate
<i>Schedule 05</i>	\$17,950.00	\$14,000.00	28.21	% Over Estimate
<i>Bid Totals</i>	\$562,443.00	\$535,534.50	5.02	% Over Estimate

BRIEFING PAPER
Public Works Committee
Engineering Services
September 12, 2016

Subject:

2015 Traffic Calming Projects (2015088, 2015089, 2015090)

Background:

These projects were selected through the 2015 traffic calming application process. There are five District 1 projects, two District 2 projects and nine District 3 projects. The projects include sidewalk infill, installation of new marked crosswalks with ramps, speed indicators, traffic circles, median islands, a trail extension, and curb extensions.

Public Impact:

Projects will generally be constructed with single lane or shoulder closures.

Action:

Information is provided for Council consideration. The engineers estimate for this project is approximately \$1M. Bid opening occurred on August 22, 2016. We will be forwarding a recommendation to award to council on September 12, 2016.

Funding

This project is paid with red light camera funds.



Agenda Sheet for City Council Meeting of:
09/12/2016

Date Rec'd	12/16/2014
Clerk's File #	OPR 2016-0689
Renews #	

Submitting Dept	HEARING EXAMINER	Cross Ref #	
Contact Name/Phone	BRIAN MCGINN 6010	Project #	
Contact E-Mail	BMCGINN@SPOKANECITY.ORG	Bid #	
Agenda Item Type	Contract Item	Requisition #	
Agenda Item Name	0570, INTERLOCAL WITH CITY OF CHEWELAH FOR HEARING EXAMINER SVCS.		

Agenda Wording

Interlocal cooperation Agreement between the City of Chewelah and the City of Spokane for Hearing Examiner services.

Summary (Background)

The City of Chewelah at this time does not have a Hearing Examiner and has requested the City of Spokane's Hearing Examiner to conduct administrative and quasi-judicial hearings. The Hearing Examiner believes that he can hold hearings for the City of Chewelah without interfering with his Spokane work load. The City of Chewelah agrees to pay for such services at the rate of \$125.00 per hour plus reimbursement for travel in accordance with the City's current mileage rate.

<u>Fiscal Impact</u>		<u>Budget Account</u>	
Revenue	\$ 125.00 hr	#	0570-51500-99999-33810
Select	\$	#	
Select	\$	#	
Select	\$	#	
<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	DALTON, PAT	<u>Study Session</u>	
<u>Division Director</u>		<u>Other</u>	
<u>Finance</u>	KECK, KATHLEEN	<u>Distribution List</u>	
<u>Legal</u>	DALTON, PAT	areid@spokanecity.org	
<u>For the Mayor</u>	WHITNEY, TYLER	MFrizzell@cityofchewelah.org	
<u>Additional Approvals</u>		State Auditor	
<u>Purchasing</u>		Mail original to: Mike Frizzell	
		City of Chewelah	
		P.O. Box 258	
		Chewelah, WA 99109	

**Return to: Office of the City Clerk
808 West Spokane Falls Blvd.
Spokane, Washington 99201**

**INTERLOCAL COOPERATION AGREEMENT BETWEEN
CITY OF SPOKANE AND THE CITY OF CHEWELAH
FOR HEARING EXAMINER SERVICES**

This Agreement is between the CITY OF CHEWELAH, a Washington State municipal corporation, as "Chewelah", and the CITY OF SPOKANE, a Washington State municipal corporation, as "City", jointly referred to hereinafter as the "Parties".

WHEREAS, pursuant to RCW 39.34.080, governmental entities may contract with each other to perform any governmental service which each may legally perform; and

WHEREAS, Chewelah at this time does not have a hearing examiner to conduct hearings on various administrative appeals or quasi-judicial hearings on land use matters involving Chewelah government; and

WHEREAS, the City has adopted an ordinance that authorizes its Hearing Examiner to act as a hearing examiner pro-tem for another government entity to perform the duties of the hearing examiner when such hearing examiner is absent, has a conflict of interest or other reason; and

WHEREAS, the Hearing Examiner is a City employee and serves the City of Spokane in that capacity; and is a duly admitted member of the Washington State Bar Association and is knowledgeable on land use and other local government matters; --
Now, Therefore,

The Parties agree as follows:

1. PURPOSE. This Agreement is to provide a mechanism whereby the City's Hearing Examiner can act as the hearing examiner pro-tem to Chewelah to conduct administrative and quasi-judicial hearings.
2. COMPENSATION. Chewelah agrees to pay the City for hearing examiner services at the rate of ONE HUNDRED TWENTY FIVE AND NO/100 DOLLARS (\$125.00) per hour, plus reimbursement for travel, in accordance with the City's current mileage rate. The Hearing Examiner shall keep a log of the number of hours worked and nature of work performed for each hearing item. The Parties understand and

acknowledge that the Hearing Examiner shall not be considered an employee of Chewelah when performing services pursuant to this Agreement.

3. PAYMENT. Chewelah shall submit payment, within thirty (30) days of receipt of invoice for services rendered, payable to the City of Spokane, Office of the Hearing Examiner, Sixth Floor, City Hall, 808 West Spokane Falls Boulevard, Spokane, Washington 99201.

4. AUTHORIZATION FOR SERVICES. The City Administrator of the City of Chewelah shall be responsible for the administration of this Agreement and the requesting of services from the Hearing Examiner.

5. AGREEMENT NOT EXCLUSIVE. The City of Spokane's Hearing Examiner is hereby appointed as a hearing examiner pro-tem for Chewelah. This Agreement is not exclusive and Chewelah may designate other hearing examiners pro-tem to hear similar matters as authorized by local ordinance or resolution.

6. DURATION. This Agreement is effective upon signature by both parties and filing as required by law and shall run until terminated. Either party may terminate this Agreement upon sixty (60) days written notice to the other party. The Parties acknowledge that the availability of the Hearing Examiner is contingent upon the amount of work and the number of hearings that must be held by the Hearing Examiner. Chewelah understands and acknowledges that the City cannot guarantee that its Hearing Examiner will be available at all times that may be requested.

7. DECISIONS. The hearing examiner pro-tem shall comply with the requirements of federal, state and local law, relating to the matter being considered by the examiner, including the ordinances and resolutions of Chewelah. If there is no applicable time period under statute or local ordinance or resolution for issuance of the Hearing Examiner's decision, the Hearing Examiner shall exercise his best efforts to render a written decision with findings and conclusions within thirty (30) calendar days of concluding the hearing. If the Hearing Examiner's written decision is appealed, the Hearing Examiner shall review and certify the record from the hearing to the appropriate body after preparation of the record by Chewelah.

8. ADMINISTRATIVE SUPPORT. Chewelah shall supply all necessary administrative support services for the Hearing Examiner, such as hearing room, recording equipment, clerk, secretarial support, notifications and copies of applicable regulations, policies, and reports. If the Hearing Examiner uses his own secretary, for secretarial support, secretarial support time will be billed to Chewelah at a rate of THIRTY AND NO/100 DOLLARS (\$30.00) per hour.

9. AGREEMENT ADMINISTRATION. No new or separate legal entity or administrative entity is formed by this Agreement. No property will be acquired, held or disposed of pursuant to this Agreement.

10. LEGAL RELATIONS AND INDEMNIFICATION. Chewelah shall indemnify, defend and hold harmless the City, its officers, employees including the Hearing Examiner, and agents from any action, claim or proceedings instituted by any third

party, arising out of the performance, purported performance or failure of performance of professional services rendered in good faith by the City's Hearing Examiner pursuant to this Agreement. Other than as provided above, the City shall indemnify, defend and hold harmless Chewelah, its officers, employees and agents from any action, claim or proceedings arising from the negligence of the City, its officers, employees including the Hearing Examiner, and agents, except to the extent of the concurrent negligence of Chewelah.

11. TERMINATION. If the Agreement is terminated, Chewelah shall reimburse the City for any services performed pursuant to this Agreement that have not at the time of termination been paid for and which the Parties have previously agreed is compensable work.

12. VENUE. This Agreement has and shall be construed as having been made and delivered in the State of Washington and the laws of the State of Washington shall be applicable to its construction and enforcement. Any action at law, suit in equity or judicial proceedings for the enforcement of this Agreement or any provision hereto shall be instituted only in the courts of competent jurisdiction within Spokane County, Washington.

13. ALL WRITING AS CONTAINED HEREIN. This Agreement contains all of the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties.

14. RECORDING. This Agreement shall be recorded with the Spokane County Auditor after its approval by both Parties.

15. CHAPTER 39.34 RCW REQUIRED CLAUSES.

A. Purpose. See Section 1 above.

B. Duration. See Section 6 above.

C. Organization of Separate Entity and Its Powers. See Section 9 above.

D. Responsibilities of the Parties. See provisions above.

E. Agreement to be filed. See Section 14 above.

F. Financing. See Section 2 above.

G. Termination. See Section 11 above.

H. Property upon Termination. No property acquisitions expected.

IN WITNESS WHEREOF, the parties hereby execute the above Agreement:

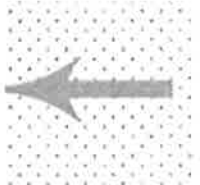
Dated this _____ day of _____

CITY OF CHEWELAH, WASHINGTON

(Name)

(Name)

(Name)



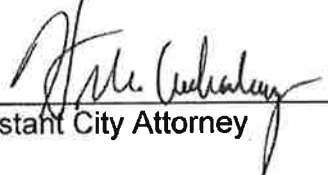
Dated this _____ day of _____

CITY OF SPOKANE, WASHINGTON

By _____
City Administrator

Attest: _____
City Clerk

Approved as to form:

By  _____
Assistant City Attorney

16-147

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

09/12/2016

Date Rec'd

8/30/2016

Clerk's File #

OPR 2016-0690

Renews #**Submitting Dept**INTEGRATED CAPITAL
MANAGEMENT**Cross Ref #****Contact Name/Phone**

KEVIN PICANCO 625-6088

Project #

2016152

Contact E-Mail

KPICANCO@SPOKANECITY.ORG

Bid #**Agenda Item Type**

Contract Item

Requisition #**Agenda Item Name**

4250 - INTERLOCAL AGREEMENT - SPOKANE REGIONAL HEALTH DISTRICT

Agenda Wording

Authorization to enter into an Interlocal Agreement with the Spokane Regional Health District (SRHD) to provide design, bid and construction administration services for SRHD's Garland Walk Bike Bus project. (Garland Neighborhood Council)

Summary (Background)

SRHD received a Federal Congestion Mitigation and Air Quality (CMAQ) grant for the Garland Walk Bike Bus project which is aimed at promoting alternative modes of transportation. A bike shelter, bike racks and kiosk will be installed as part of the program and the SRHD has requested the City's assistance in administering the design, bidding and installation of the improvements.

Fiscal Impact

Revenue \$ 15,000.00

Select \$

Select \$

Select \$

Budget Account

3200 95100 99999 33320 86021

#

#

#

Approvals**Dept Head**

MILLER, KATHERINE E

Division Director

SIMMONS, SCOTT M.

Finance

KECK, KATHLEEN

Legal**For the Mayor**

WHITNEY, TYLER

Council Notifications**Study Session****Other**

PW 8/22/16

Distribution List

Engineering Admin

kpicanco@spokanecity.org

mhughes@spokanecity.org

jahensley@spokanecity.org

jlargent@spokanecity.org

htrautman@spokanecity.org

Additional Approvals**Purchasing**

INTERLOCAL AGREEMENT

This INTERLOCAL AGREEMENT is between the CITY OF SPOKANE, a Washington State municipal corporation, as "City", and the SPOKANE REGIONAL HEALTH DISTRICT, whose address is 1101 West College Avenue, Spokane, Washington 99201, as "SRHD". Hereafter referenced together as the "parties", and individually a "party".

WHEREAS, representatives from the City and SRHD have met and collaborated on the location and layout of a proposed bike shelter and kiosk within City right-of-way on Lincoln Street north of Garland Avenue, and have had on-going discussions regarding administration of the design, bidding and construction of the project with SRHD to confer on the City's participation in the SRHD Garland Walk Bike Bus Kiosk and Bike Shelter Project, funded in-part by a Congestion Mitigation and Air Quality Management (CMAQ) Grant; and

WHEREAS, SRHD would like to enter into an Interlocal Agreement authorized by RCW 39.34's Interlocal Cooperation Act with the City to provide lead design and construction management in the procurement and installation of a bike shelter, bike racks and informational kiosk on Lincoln Street near Garland Avenue; and

WHEREAS, SRHD will provide input on the general design layout and appearance of the kiosk and bike shelter and Agreement support, including coordination with WSDOT regarding grant reimbursement matters; -- Now, Therefore,

The parties agree to the following:

1. PURPOSE. The purpose of this Agreement is to set forth the parties' understanding of the terms and conditions under which the SRHD will provide funding to the City for providing lead design and construction management in the procurement and installation of a bike shelter, bike racks and informational kiosk on Lincoln Street near Garland Avenue for the Walk Bike Bus Kiosk and Bike Shelter Project ("Project").
2. PERFORMANCE. The City shall perform the list of tasks for the GARLAND WALK BIKE BUS KIOSK AND BIKE SHELTER PROJECT as listed in the attached Scope of Services.
3. TERM. The term of this Agreement shall begin upon signatures by both parties and will remain in effect for a reasonable time to carry out the arranged services for this Project, until further terminated in writing by either party, or completion of all Project requirements.

4. COMPENSATION. SRHD shall pay the City an amount not to exceed FIFTEEN THOUSAND AND NO/100 DOLLARS (\$15,000.00) as full compensation for the services provided under this Agreement. This is the maximum amount to be paid under this Agreement for the work described in Section 2 above, and shall not be exceeded without the prior written authorization of SRHD in the form of an executed amendment to this Agreement.

5. PAYMENT. The City shall submit monthly applications for payment to the SRHD. Payment will be made within thirty (30) days after receipt of the City's application except as provided by state law. If SRHD objects to all or any portion of the invoice, it shall notify the City and reserves the right to only pay that portion of the invoice not in dispute. In that event, the parties shall immediately make every effort to settle the disputed amount.

6. MAINTENANCE OF STANDING STRUCTURE. Upon final completion of all elements of construction necessary for the Project, the City will assume ownership and be responsible for maintenance of the completed standing structure ("Premises"), until and unless an alternative party agrees to undertake this maintenance obligation. The SRHD will not be financially responsible for the maintenance of the Premises. Upon transfer or assignment of this maintenance obligation, a formal document memorializing this new arrangement shall be signed and filed with the City Clerk's Office, and placed in the files in connection with this Interlocal Agreement, and the Project. Original documents, drawings, designs, reports, or any other records developed or created for this Project shall belong to and become the property of the City.

7. RELATIONSHIP OF THE PARTIES: The parties intend that no employee - employer relationship is created by this Agreement, and that only an independent contractor relationship is established. No agent, employee, servant or representative of the City shall be deemed to be an employee, agent, servant or representative of the SRHD for any purpose. Likewise, no agent, employee, servant or representative of the SRHD shall be deemed to be an employee, agent, servant or representative of the City for any purpose.

8. LIABILITY. Each party shall defend, indemnify and hold harmless the other party, its officers and employees, from and against all claims for damages, liability, cost and expense arising out of the negligent conduct of the indemnifying party's performance of this Agreement, except to the extent of those claims arising from the negligence of the non-indemnifying party, its officers and employees.

9. INSURANCE. During the term of the Agreement, the City shall maintain in force at its own expense, each insurance noted below:

- a. Worker's Compensation Insurance in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers and Employer's Liability or Stop Gap Insurance in the amount of \$1,000,000;
- b. General Liability Insurance on an occurrence basis, with a combined single limit of not less than \$1,500,000 each occurrence for bodily injury and property

damage. It shall provide that the SRHD, its officers and employees are additional insureds but only with respect to the City'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 \$2,000,000 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 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 thirty (30) days written notice from the City or its insurer(s) to the SRHD.

10. NOTICES. All notices or other communications given under this Agreement shall be deemed given on: (i) the day the notices or other communications are received when sent by personal delivery; or (ii) the third day following the day on which the same have been mailed by certified mail delivery, receipt requested and postage prepaid addressed to parties at the address set forth below, or at such other address as the parties shall from time-to-time designate by notice in writing to the other parties:

CITY: Mayor or designee
City of Spokane
Fifth Floor, City Hall
808 West Spokane Falls Boulevard
Spokane, Washington 99201

SRHD: Administrator
1101 West College Avenue
Spokane, Washington 99201-2095

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

12. NONDISCRIMINATION. No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Contract because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation including gender expression or gender identity, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. SRHD and the City agree to comply with, and to

require that all subcontractors comply with, federal, state and local nondiscrimination laws, including but not limited to: the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Age Discrimination in Employment Act, and the American's With Disabilities Act, to the extent those laws are applicable.

13. COMPLIANCE WITH LAWS. The parties shall observe all federal, state and local laws, ordinances and regulations, to the extent that they may be applicable to the terms and subject matter of this Agreement.

14. VENUE STIPULATION. This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is mutually understood and agreed by each party that this Agreement shall be governed by the laws of the State of Washington both as to interpretation and performance. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement, or any provision hereto, shall be instituted only in courts of competent jurisdiction within Spokane County, Washington.

15. GRANT REQUIREMENTS. The parties shall both comply with all applicable requirements of the Congestion Mitigation and Air Quality (CMAQ) Grant for this Project.

16. MISCELLANEOUS.

- A. NON-WAIVER: No waiver by any party of any of the terms of this Agreement shall be construed as a waiver of the same or other rights of that party in the future.
- B. ENTIRE AGREEMENT: This Agreement contains terms and conditions agreed upon by the parties. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Agreement. No changes or additions to this Agreement shall be valid or binding upon the parties unless the change or addition is in writing, executed by the parties.
- C. MODIFICATION: No modification or amendment to this Agreement shall be valid until put in writing and signed with the same formalities as this Agreement.
- D. HEADINGS: The section headings appearing in this Agreement have been inserted solely for the purpose of convenience and ready reference. In no way do they purport to, and shall not be deemed to define, limit or extend the scope or intent of the sections to which they pertain.
- E. COUNTERPARTS: This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same.
- F. SEVERABILITY: If any parts, terms or provisions of this Agreement are held by the courts to be illegal, the validity of the remaining portions or provisions shall not be affected and the rights and obligations of the Parties shall not be affected in regard to the remainder of the Agreement. If it should appear that any part, term or

provision of this Agreement is in conflict with any statutory provision of the State of Washington, then the part, term or provision thereof that may be in conflict shall be deemed inoperative and null and void insofar as it may be in conflict therewith and this Agreement shall be deemed to modify to conform to such statutory provision.

- G. ASSIGNMENT. This Agreement shall be binding upon the parties, their successors and assigns. No party may assign, in whole or in part, its interest in this Agreement without the approval of the other party.
- 17. RCW 39.34 REQUIRED CLAUSES.
 - A. PURPOSE: See Section No. 1 above.
 - B. DURATION: See Section No. 3 above.
 - C. ORGANIZATION OF SEPARATE ENTITY AND ITS POWERS: No new or separate legal or administrative entity is created to administer the provisions of this Agreement.
 - D. RESPONSIBILITIES OF THE PARTIES: See provisions above.
 - E. AGREEMENT TO BE FILED: The City shall file this Agreement with its City Clerk and place it on its web site or other electronically retrievable public source. The SRHD shall file this Agreement with the Spokane County Auditor or place it on its web site or other electronically retrievable public source.
 - F. FINANCING: Each party shall be responsible for the financing of its contractual obligations under its normal budgetary process.
 - G. TERMINATION: See Section No. 3 above.
 - H. PROPERTY UPON TERMINATION: Title to all property acquired by any party in the performance of this Agreement shall remain with the acquiring party upon termination of the Agreement. Jointly acquired property shall be divided in proportion to the percentage share of each party contributing to its acquisition.

Dated: _____

CITY OF SPOKANE

By: _____

Title: _____

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Dated: _____

SPOKANE REGIONAL HEALTH
DISTRICT

E-Mail address, if available:

By: _____

Title: _____

Attachment which is a part of this Agreement:

Scope of Services

16-502b

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

09/12/2016

Date Rec'd

8/30/2016

Clerk's File #

OPR 2016-0691

Renews #Submitting Dept

GRANTS & CONTRACT MGMT

Cross Ref #Contact Name/Phone

SALLY STOPHER X6032

Project #Contact E-Mail

SSTOPHER@SPOKANECITY.ORG

Bid #Agenda Item Type

Contract Item

Requisition #Agenda Item Name

0430 - PROCUREMENT & CONTRACTING ORGANIZATIONAL ASSESSMENT

Agenda Wording

The purpose of this agreement is for the City to secure a Consultant with the requisite expertise necessary to conduct a thorough, comprehensive and complete Procurement & Contracting Organizational Assessment for the City of Spokane.

Summary (Background)

A contract with FCS Group to conduct a thorough, comprehensive and complete Procurement and Contracting Organizational Assessment for the City of Spokane as per the Scope of Work.

Fiscal ImpactBudget Account

Expense \$ 127,000.00

0020881001320054203

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

STOPHER, SALLY

Study SessionDivision Director

DUNIVANT, TIMOTHY

OtherFinance Committee
7/11/2016Finance

KECK, KATHLEEN

Distribution ListLegal

WHALEY, HUNT

For the Mayor

WHITNEY, TYLER

Additional ApprovalsPurchasing



City of Spokane

CONSULTANT AGREEMENT

Title: **Procurement and Contracting Organizational Assessment**

This Agreement is made and entered into by and between the City of Spokane as ("City"), a Washington municipal corporation, and **FCS GROUP**, whose address is 7525 166th Avenue NE, Suite D-215, Redmond, Washington, 98052 as ("Consultant").

WHEREAS, the purpose of this Agreement is for the City to secure a Consultant with the requisite expertise necessary to conduct a thorough, comprehensive and complete Procurement and Contracting Organizational Assessment for the City of Spokane; and

WHEREAS, the Consultant was selected from a City solicitation entitled Request for Proposals Procurement and Contracting Organizational Assessment (RFP # 4238-16).

-- 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 August 15, 2016, and ends upon completion of the Consultant's Assessment, 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") on the beginning date, above. 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 General Scope of Work for this Agreement is described in Exhibit A – which is attached to and made a part of this Agreement, as well as Consultant's August 15, 2016 Proposal submitted to the City. Additionally incorporated by reference, and considered a part of this Agreement is the City's Request for Proposals entitled Procurement and Contracting Organizational Assessment (RFP # 4238-16), and the Consultant's Letter of Submittal dated April 11, 2016.

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.

Total compensation for Consultant's services under this Agreement shall be for a maximum amount not to exceed **ONE HUNDRED TWENTY SIX THOUSAND FIVE HUNDRED EIGHTY FIVE AND NO/100 DOLLARS (\$126,585.00)**, unless modified by a written amendment to this Agreement. Compensation shall be based on a Time & Materials arrangement for services rendered per details attached hereto as City's Exhibit B.

5. REIMBURSABLES

The reimbursables under this Agreement are to be included, and considered part of the maximum amount not to exceed (above), and require the Consultant's submittal of appropriate documentation and actual itemized receipts, the following limitations apply.

- 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 General Services Administration (GSA) 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 for 2016 is 54 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:
CITY OF SPOKANE GMFA DEPARTMENT 6th Floor – City Hall 808 West Spokane Falls Boulevard Spokane, WA 99201
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• GMFA DEPARTMENT• Project Coordinator: Sally Stopher (Please do not put name in the address portion of the invoice)• Department Contract No. OPR # _____ Contract Title: Procurement and Contracting Organizational Assessment• Period covered by the invoice• Time & Materials Payments for Services shall be in accordance with Exhibit B – Payment Method• Employee's name and classification• Employee's all-inclusive hourly rate excluding fixed fee and # of hours worked• Total labor costs per Project• Itemization of direct, non-salary costs (per Project, 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 Project and for the total Agreement

7. TAXES, FEES AND LICENSES.

- A. Consultant shall pay and maintain in current status, all necessary licenses, fees, assessments, permit charges, etc. necessary to conduct the work included under this Agreement. It is the 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.
- D. The cost of any permits, licenses, fees, etc. arising as a result of the projects included in this Agreement shall be included in the project budgets.

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:
GFMA DEPARTMENT City of Spokane 6 th Floor – City Hall 808 West Spokane Falls Boulevard Spokane, Washington 99201	Consultant Contact Name: Scott Bash President - FCS Group 7525 166 th Avenue NE, Suite D-215 Redmond, Washington, 98052

10. SOCIAL EQUITY REQUIREMENTS.

- A. No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Agreement because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation including gender expression or gender identity, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. 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. Consultant shall seek inclusion of woman and minority business for subcontracting. A woman or minority business is one that self-identifies to be at least 51% owned by a woman and/or minority. Such firms do not have to be certified by the State of Washington.

11. INDEMNIFICATION.

The Consultant shall indemnify and hold the City and the State and their officers and employees harmless from all claims, demands, or suits at law or equity, including but not limited to attorney's fees and litigation costs asserted by third parties for bodily injury (including death) and/or property damage which arise from the Consultant's negligence or willful misconduct under this Agreement; provided that nothing herein shall require a Consultant to indemnify the City against and hold harmless the City from claims, demands or suits based solely upon the conduct of the City, 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 City, its agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence, (2) the costs to the City 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. The Consultant specifically assumes potential liability for actions brought by the Consultant's own employees against the City and, solely for the purpose of this indemnification and defense, the

Consultant specifically waives any immunity under the state industrial insurance law, or Title 51 RCW. 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.

The parties agree that the City is fully responsible for its own negligence, including negligent plant operations controlled by the City, and for its material breaches of this Contract. It is not the intent of this Section to limit this understanding.

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.

The Contractor represents that it and its employees, agents and subcontractors, in connection with the Contract, are protected against the risk of loss by the insurance coverages required in the contract documents. The policies shall be issued by companies that meet with the approval of the City Risk Manager. The policies shall not be canceled without at least minimum required written notice to the City as Additional Insured.

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 upon reasonable notice of a request by the City, including up to three (3) years after final payment or release of withheld amounts. Such inspection and audit shall occur in Spokane County, Washington, or other reasonable locations mutually agreed to by the parties. The Consultant shall permit the City to copy such books and records at its own expense. The Consultant shall ensure that inspection, audit and copying rights of the City 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 not 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, nor shall those key persons, or employees of Consultant identified as to be involved in the Project Work be replaced, removed or withdrawn from 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.

17. 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) and 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 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 a City employee 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.

18. 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.

19. 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 in the delivery of a final work product. The standard of care applicable to Consultant's services will be the degree of skill and diligence normally employed by professional engineers or Consultants performing the same or similar services at the time said services are performed. The Final Work Product is defined as a stamped, signed work product. 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.

20. 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, and the City releases the Consultant from liability for any unauthorized reuse of such documents.

21. 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.

22. 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 mediation, arbitration and/or 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. Waiver of any of these rights is not deemed a future waiver of any such right or remedy available at law, contract or equity.

23. TERMINATION.

- A. For Cause: The City or Consultant may terminate the Agreement if the other party is in material breach of this Agreement, and such breach has not been corrected to the other party's reasonable satisfaction in a timely manner. Notice of termination under this Section shall be given by the party terminating this Agreement to the other, not fewer than thirty (30) business days prior to the effective date of termination.
- B. For Reasons Beyond Control of Parties: Either party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control, such as, but not limited to, an act of nature, war or warlike operation, civil commotion, riot, labor dispute including strike, walkout or lockout, except labor disputes involving the Consultant's own employees, sabotage, or superior governmental regulation or control. Notice of termination under this Section shall be given by the party terminating this Agreement to the other, not fewer than thirty (30) business days prior to the effective date of termination.

- C. For City's Convenience: The City may terminate this Agreement without cause and including the City's convenience, upon written notice to the Consultant. Notice of termination under this Section shall be given by the party terminating this Agreement to the other, not fewer than ninety (90) business days prior to the effective date of termination.
- D. Actions upon Termination: if termination occurs not the fault of the Consultant, the Consultant shall be paid for the services properly performed prior to the actual termination date, with any reimbursable expenses then due, but such compensation shall not exceed the maximum compensation to be paid under the Agreement. The Consultant agrees this payment shall fully and adequately compensate the Consultant and all subconsultants for all profits, costs, expenses, losses, liabilities, damages, taxes and charges of any kind (whether foreseen or unforeseen) attributable to the termination of this Agreement.
- E. Upon termination, the Consultant shall provide the City with the most current design documents, contract documents, writings and other products the Consultant has produced to termination, along with copies of all project-related correspondence and similar items. The City shall have the same rights to use these materials as if termination had not occurred; provided however, that the City shall indemnify and hold the Consultant harmless from any claims, losses, or damages to the extent caused by modifications made by the City to the Consultant's work product.

24. 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.

25. 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 or 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. Additional Provisions: This Agreement may be modified by additional terms and conditions ("Special Conditions") which shall be attached to this Agreement as Exhibit D. The parties agree that the Special Conditions shall supplement the terms and conditions of the Agreement, and in the event of ambiguity or conflict with the terms and conditions of the Agreement, these Special Conditions shall govern.
- K. 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. 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 contract to afford the City the maximum benefits.
- L. 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.
- M. 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

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Attachments: Exhibit A – Consultant’s Scope of Work, also incorporated by reference – Consultant’s Letter of Submittal dated April 11, 2016 and accompanying Proposal submitted to the City in response to the Request for Proposals entitled Procurement and Contracting Organizational Assessment (RFP # 4238-16)

Exhibit B – City’s Time & Materials Payment Methodology

16-607a

EXHIBIT A

CONSULTANT'S SCOPE OF WORK

FOR THE CITY OF SPOKANE'S CONTRACTING AND PROCUREMENT ASSESSEMENT

Consultant:	FCS Group
Agreement Number:	RFP # 4238-16
Contract Title:	Procurement and Contracting Organizational Assessment
PROJECT BACKGROUND STATEMENT:	
The purpose of this scope of work is to evaluate the current procurement and contracting processes and determine opportunities to improve existing processes in meeting customer needs at the most sustainable service costs. The contractor will work directly with staff to solicit feedback from internal and external stakeholders on: 1) procurement challenges and opportunities under existing city policies and procedures, 2) the effectiveness of the City's processes in meeting customer needs, mitigating the risk related to the use of public funds, and maximizing affordable, efficient and transparent purchasing, and 3) the effectiveness of current City processes to ensure compliance with both internal and external procurement and contracting requirements.	

A. Task Deliverable Schedule

Task #	Description	Start Date	Completion Date
100	Project Management	9/12/2016	
210	Goals of the Procurement Process	9/13/2016	9/16/2016
220	"As-Is" Business Process	9/19/2016	10/7/2016
230	Workload Assessment	10/03/2016	10/21/2016
310	Process Benchmarking	9/19/2016	12/02/2016
320	"Should-Be" Process	11/07/2016	12/02/2016
330	Recommendation Development	11/28/2016	12/30/2016
410	Recommendation Report	1/2/2016	1/13/2016
420	Implementation Plan	1/2/2016	1/13/2016
430	Final Presentation	1/16/2016	1/20/2017

B. Tasks

TASK 100:	Project Management
TASK DESCRIPTION:	

TASK 100:	Project Management
The project management task will be used to initiate and administer the contract and provide guidance to project team (FCS GROUP and the City). The consultant project manager will be the primary interface with the City for all task in this scope of work.	
TASK ASSUMPTIONS:	
<ul style="list-style-type: none"> • Prepare and maintain a project management plan as the foundation for the project that includes the following sections: Risk Management Plan, Scope of Work, QA/QC Plan, Project Team, and Communication Plan. • Maintain project schedules and share with the project team (Consultant and the City). • Provide biweekly updates and enact project recovery plans should any unforeseen events occur. 	
MATERIALS TO BE PROVIDED BY THE CITY:	
<ul style="list-style-type: none"> • Meeting rooms and scheduling resources • City will help Consultant form two teams within the Project Team Structure. These teams include: <p>User's Advisory Team – Staff with front line experience to provide insight into the existing business processes, assessment of customers and staff and in selecting recommended improvements.</p> <p>Executive Steering Team – Leadership to guide the Advisory Team and project staff towards meeting strategic goals of the assessment. This includes agreeing upon the vision, goals, and deliverables that will become integral to the overall project.</p> 	
TASK DELIVERABLES:	
<ul style="list-style-type: none"> • Project Management Plan • Project Schedule Updates 	

TASK 200:	"As-Is" Business Process Review
TASK DESCRIPTION:	
Develop goals and levels of service for the procurement and contracting process with an initial assessment of the "As-Is" (current) business process(es).	
TASK ASSUMPTIONS:	

TASK 200:	“As-Is” Business Process Review
<p>210 – Goals of the Procurement Process</p> <ul style="list-style-type: none"> • Facilitate a 2 ½ hour meeting to discuss the goals of the procurement and contracting process in quantifiable terms that relate back to overall strategic objectives of the City. • Identify the procurement challenges and opportunities under existing City policies and procedures. • Solicit feedback from stakeholders, departmental customers, and internal staff through small meetings and one-on-one interviews over a 2 day period. <p>220 – Assess “As-Is” Business Process</p> <ul style="list-style-type: none"> • Document the “As-Is” procurement and contracting business process(es). • Facilitate four 3 ½ -hour business process workshops to determine the effectiveness of the City’s processes in meeting customer needs, mitigating the risk related to the use of public funds, and maximizing affordable, efficient and transparent purchasing. <ul style="list-style-type: none"> ○ Determine the effectiveness of current City processes to ensure compliance with both internal and external procurement and contracting requirements. ○ Assess the relationship between City contract preparation, compliance review and the purchasing process ○ Assess the procurement process for clarity and consistency including communication methods to departmental customers and internal staff that support the procurement process. ○ Assess the “life-cycle” of the purchasing process from pre-procurement planning to vendor payment to identify possible improvements. <p>230 –Workload Assessment</p> <ul style="list-style-type: none"> • Meet with staff over a 3-day period to assess the strengths and weaknesses of the “As-Is” and current work functions as they relate to the goals defined in subtask 210. This will include, but is not limited to: <ul style="list-style-type: none"> ○ Assess the City’s procurement and contracting operational organization, staffing levels, and capability, both technically and logistically, to meet customer requirements within operational, business-driven timeframes. ○ Evaluation of the timeliness of the delivery of services ○ Review of the quality and consistency of products and services ○ Identification of the strengths and impediments of the “As-Is” process ○ Identify the challenges to following the “As-Is” procedures ○ Assess workloads of key customers and procurement and contracting staff ○ Identify gaps in training, policy, and staff availability. 	
MATERIALS TO BE PROVIDED BY THE CITY:	
<ul style="list-style-type: none"> • Meeting rooms and scheduling resources • The City will assist with access to state (RCW and Washington Administrative Codes (WACs)) relating to procurement requirements and compliance issues, federal guidelines for 	

TASK 200:	“As-Is” Business Process Review
<p>purchases made with federal funds, and the City’s current internal written policies and procedures relating to procurement and contracting.</p> <ul style="list-style-type: none"> • The Executive Steering Team will provide the initial insight in developing the goals and levels of service. • City will participate in the business process workshops and interviews and provide information on organizational structure, policies and business objectives. 	
TASK DELIVERABLES:	
<ul style="list-style-type: none"> • List of Strategic Objectives • “As-Is” Business Process Map • Summary of “As-Is” Review 	
TASK 300:	“Should-Be” Process Improvements
TASK DESCRIPTION:	
<p>The purpose of this task is compare the City of Spokane’s procurement and contracting processes to other cities in Washington and identify the “Should-Be” process(es). This will include the use of “best practices”, standard methods, and opportunities for process improvement that work within the City’s culture and business rules.</p>	
TASK ASSUMPTIONS:	
<p>310 – Process Benchmarking</p> <ul style="list-style-type: none"> • Facilitate a 2-hour workshop with the Executive Steering Team to determine the benchmarking objectives and to determine the relevancy of industry best practices to the City. • Develop key elements of the procurement and contracting process to benchmark against industry best practices with a set number of Washington cities (expected to be five). • Compare the City’s procurement processes, procedures, thresholds, and staffing levels with five other Washington cities. • Gather a collection of policies and documentation for contracting and procurement from other cities that can be shared with the Executive Steering team. • Investigate various methods for purchasing that support affordable, accountable, and aligned purchasing, as well as efficient and transparent purchasing. <p>310 – “Should-Be” Process</p> <ul style="list-style-type: none"> • Facilitate four 3 ½-hour workshops with the Users Advisory Team to develop the “Should-Be” processes as a detailed business process workflow diagram and process description. • Identify any organizational impacts between the “As-Is” and the “Should-Be” process transition. • Assess departmental staff’s ability to understand, navigate and own the procurement processes, procedures and thresholds involved with the procurement types. • Assess the opportunity to involve key departmental employees in being fully invested in the chain of processes from procurement through contract signature and ultimately delivery of a final end-product or service. • Assess the capacity of the various City Departments involved in providing the necessary 	

TASK 200:	“As-Is” Business Process Review
procurement, solicitation and contract support to customers. <ul style="list-style-type: none"> Develop the final “Should-Be” process and test for consensus with the Executive Steering Team during a 2 ½-hour workshop. 	
320 – Recommendation Development <ul style="list-style-type: none"> Assess the gaps in procurement and contracting processes. Develop categorize every recommendation based on the type of change involved, including: <ul style="list-style-type: none"> Process changes. Specific written procurement and contracting procedures. Training requirements. Facilitate a 3-hour Business Case Evaluation (BCE) workshop to assess cost impacts and benefits of various competing alternatives. 	
MATERIALS TO BE PROVIDED BY THE CITY:	
<ul style="list-style-type: none"> Meeting rooms and scheduling resources City will participate in the business process workshops and meetings. 	
TASK DELIVERABLES:	
<ul style="list-style-type: none"> Benchmarking Analysis Results Report Summary of the Business Case Draft List of Improvement Recommendations “Should be” Business Process Diagrams 	

TASK 400:	Recommendation Report and Implementation Plan
TASK DESCRIPTION:	
The Recommendation Report will identify specific changes to the City’s procurement and contracting procedures and include an implementation plan for improving and streamlining the procurement process to ensure the City’s purchasing processes are affordable, accountable, and aligned with customer level of service expectations.	
TASK ASSUMPTIONS:	
410 – Recommendation Report <ul style="list-style-type: none"> Prepare a written report for the Executive Steering Team that include recommendations for process improvement, policy improvement, organizational or structural improvements related to the procurement and contracting process. Document the “Should-Be” business process for procurement and contracting 	

TASK 400:	Recommendation Report and Implementation Plan
420 –Implementation Plan	
<ul style="list-style-type: none"> • Develop an action plan (series of tasks) with estimated timelines and implementation costs to migrate the City’s procurement function from its current state to the recommended state. • Recommend possible departmental staff ownership and responsibilities concerning key aspects of procurement business process. • Prepare a communication and involvement strategy to make sure all staff feel sufficient ownership with the process enhancements and understand their responsibilities to make it work. • Recommendations will include suggestions on relevant key performance indicators (KPI) for tracking efficiencies and improvements as well as documenting those successful accomplishments. • Determine data gaps and make recommendations on short and long-term solutions to ensure maximum tracking of KPIs. 	
430 – Final Presentation	
<ul style="list-style-type: none"> • Provide a final presentation to the Executive Steering Team summarizing findings of the Procurement and Contracting Organizational Assessment. 	
MATERIALS TO BE PROVIDED BY THE CITY:	
<ul style="list-style-type: none"> • Meeting rooms and scheduling resources. 	
TASK DELIVERABLES:	
<ul style="list-style-type: none"> • Recommendation Report • Implementation Plan • Key performance indicator (KPI) Recommendations • Final Presentation 	

EXHIBIT B
(TIME & MATERIALS - T & M)

Under this T & M Agreement, the Consultant shall perform the agreed upon scope of work up to a maximum allowed cost as previously presented and negotiated. This maximum allowable cost shall be for a maximum amount not to exceed as stated in Section 4 of the above Agreement. The Consultant shall deliver the agreed upon Scope Of Work (SOW) referenced above in Section 3 (and attached hereto) within this allotted budget.

Definitions for the purposes of Time-and-Materials Contracts:

“Direct materials” means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

“Hourly rate” means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are—

- (1) Performed by the contractor;
- (2) Performed by the subcontractors; or
- (3) Transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.

“Materials” means—

- (1) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the contractor under a common control;
- (2) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;
- (3) Other direct costs (e.g., incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.); and
- (4) Applicable indirect costs.

(b) Description. A time-and-materials contract provides for acquiring supplies or services on the basis of—

- (1) Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and
- (2) Actual cost for materials



Agenda Sheet for City Council Meeting of:
09/12/2016

Date Rec'd	9/1/2016
Clerk's File #	PRO 2016-0033
Renews #	
Cross Ref #	
Project #	2012119
Bid #	
Requisition #	BT

Submitting Dept	ASSET MANAGEMENT
Contact Name/Phone	DAVE STEELE 625-6064
Contact E-Mail	DSTEELE@SPOKANECITY.ORG
Agenda Item Type	Contract Item
Agenda Item Name	5900 - BNSF OVERPASS & EASEMENT AGREEMENT

Agenda Wording

Burlington Northern Santa Fe (BNSF) owns and operates a line of railroad in and through the City where the City desires to construct the University District Pedestrian/Bicycle Bridge. (East Central Neighborhood Council)

Summary (Background)

In order to construct the University District Bridge over BNSF tracks, the City needs a Construction and Maintenance (C&M) Agreement. The agreement controls work on the bridge within the BNSF right-of-way. The agreement also requires the City to reimburse BNSF for actual flagging costs associated with construction. Flagging costs are estimated at up to \$372,216.00 in the C&M Agreement.

<u>Fiscal Impact</u>		<u>Budget Account</u>	
Expense	\$ 468,960.00	#	3200 95023 95300 56101 99999
Select	\$	#	
Select	\$	#	
Select	\$	#	
<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	DUNIVANT, TIMOTHY	<u>Study Session</u>	
<u>Division Director</u>	DUNIVANT, TIMOTHY	<u>Other</u>	PW 9/12/16
<u>Finance</u>	KECK, KATHLEEN	<u>Distribution List</u>	
<u>Legal</u>	WHALEY, HUNT	Engineering Admin	
<u>For the Mayor</u>	WHITNEY, TYLER	rlukas@spokanecity.org	
<u>Additional Approvals</u>		dsteele@spokanecity.org	
<u>Purchasing</u>		tdunivant@spokanecity.org	
		jahensley@spokanecity.org	
		mhughes@spokanecity.org	
		kkeck@spokanecity.org	

OVERPASS AGREEMENT

BNSF File No. BF10006107
University Pedestrian and Bicycle Overpass
U.S. D.O.T. No. 967620L
LS 045
MP071
Spokane Subdivision

This Agreement ("**Agreement**"), is executed to be effective as of _____ ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**BNSF**"), and the City of Spokane WA, a political subdivision of the State of Washington ("**Agency**").

RECITALS:

WHEREAS, BNSF owns and operates a line of railroad in and through the City of Spokane WA, State of Washington; and

WHEREAS, Agency desires to construct a new crossing at separated grades to be known as the Pedestrian and Bicycle Overpass, D.O.T. No. 967620L.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I) SCOPE OF WORK

1. The term "**Project**" as used herein includes any and all work related to the construction of the proposed Pedestrian and Bicycle Overpass (hereinafter referred to as the "**Structure**"), more particularly described on the Exhibit A attached hereto and incorporated herein, including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation.

ARTICLE II) BNSF OBLIGATIONS

In consideration of the covenants of Agency set forth herein and the faithful performance thereof, BNSF agrees as follows:

1. Upon Agency's payment to BNSF of an administrative fee in the sum of Two Thousand and No/100 Dollars (\$2,000), together with the Temporary Construction License Fee in the sum of \$eleven thousand, nine hundred and four and 48/100 Dollars (\$11,904.48), BNSF hereby grants to Agency, its successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, a temporary non-exclusive license (hereinafter called, "Temporary Construction License") to construct the Structure across or upon the portion of BNSF's right-of-way described further on Exhibit A-1, excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:

- (a) Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said right-of-way;
- (b) Construct, operate, maintain, renew and/or relocate upon said right-of-way, without limitation, such facilities as the BNSF may from time to time deem appropriate, provided such facilities do not materially interfere with the Agency's use of the Structure;
- (c) Otherwise use or operate the right-of-way as BNSF may from time to time deem appropriate, provided such use or operations does not materially interfere with the Agency's use of the Structure; and
- (d) Require the Agency or its contractor to execute a Temporary Construction Crossing Agreement, for any temporary crossing requested to aid in the construction of this Project.

The term of the Temporary Construction License begins on the Effective Date and ends on the earlier of (i) substantial completion of the Structure, or (ii) eighteen (18) months following the Effective Date. The Temporary Construction License and related rights given by BNSF to Agency in this provision are without warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words herein contained. The Temporary Construction License is for construction of the Structure only and shall not be used by Agency for any other purpose. Agency acknowledges and agrees that Agency shall not have the right, under the Temporary Construction License, to use the Structure for any other purpose than construction. In the event Agency is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to Agency for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to Agency herein.

Upon Agency's payment to BNSF of the additional sum of \$twelve thousand, nine hundred and forty three and No/100 Dollars (\$12,943.00), such payment to be made within thirty (30) days of issuing the Notice to Proceed pursuant to Article III, Section 17 of this Agreement, and provided further that Agency is in compliance with the term and conditions of this Agreement, BNSF will grant to Agency, its successors and assigns, an easement (hereinafter called, the "Easement") to enter upon and use that portion of BNSF's right-of-way as is necessary to use and maintain the Structure, substantially in the form of Exhibit B attached to this Agreement. If Agency fails to pay BNSF within the thirty day time period set forth in the preceding sentence, BNSF may stop construction of the Project until full payment is received by BNSF.

2. BNSF will furnish all labor, materials, tools, and equipment for railroad work required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the Project has not commenced within six (6) months following the Effective Date, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this Agreement upon written approval of Agency, which approval will not be unreasonably withheld. Construction of the Project must include the following railroad work by BNSF:

- (a) Procurement of materials, equipment and supplies necessary for the railroad work;
- (b) Preliminary engineering, design, and contract preparation;
- (c) Furnishing of flagging services during construction of the Project as required and set forth in further detail on Exhibit C;
- (d) Furnishing engineering and inspection as required in connection with the construction of the Project;
- (e) Providing a contract project coordinator, at Agency's expense, to serve as a project manager for the Project;
- (f) Intentionally left blank.
- (g) Intentionally left blank.

3. BNSF will do all railroad work set forth in Article II, Section 2 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.

4. Agency agrees to reimburse BNSF for work of an emergency nature caused by Agency or Agency's contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of Agency and Agency agrees to fully reimburse BNSF for all such emergency work.

5. BNSF may charge Agency for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.

6. During the construction of the Project, BNSF will send Agency progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. Agency must reimburse BNSF for completed force-account work within thirty (30) days of the date of the invoice for such work. Upon completion of the Project, BNSF will send Agency a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section and Article IV, Section 7 herein, Agency must pay the final invoice within ninety (90) days of the date of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Agency under this section.

ARTICLE III) AGENCY OBLIGATIONS

In consideration of the covenants of BNSF set forth herein and the faithful performance thereof, Agency agrees as follows:

1. Agency must furnish to BNSF plans and specifications for the Project. Four sets of said plans (reduced size 11" x 17"), together with two copies of calculations, and two copies of specifications in **English Units**, must be submitted to BNSF for approval prior to commencement of any construction. BNSF will give Agency final written approval of the plans and specifications substantially in the form of Exhibit E, attached to this Agreement and made a part hereof. Upon BNSF's final written approval of the plans and specifications, said plans and specifications will become part of this Agreement and are hereby incorporated herein. Any approval of the plans and specifications by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction. Any approval by BNSF shall mean only that the plans and

specifications meet the subjective standards of BNSF, and such approval by BNSF shall not be deemed to mean that the plans and specifications or construction is structurally sound and appropriate or that such plans and specifications meet applicable regulations, laws, statutes or local ordinances and/or building codes.

2. Agency must make any required application and obtain all required permits and approvals for the construction of the Project.

3. Agency must provide for and maintain minimum vertical and horizontal clearances, as required in Exhibit C and as approved by BNSF as part of the plans and specifications for the Project.

4. Agency must acquire all rights of way necessary for the construction of the Project.

5. Agency must make any and all arrangements, in compliance with BNSF's Utility Accommodation Manual (<http://www.bnsf.com/communities/faqs/pdf/utility.pdf>), for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project..

6. Agency must construct the Project as shown on the attached Exhibit A and do all work ("Agency's Work") provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. Agency must furnish all labor, materials, tools and equipment for the performance of Agency's Work. The principal elements of Agency's Work are as follows:

- (a) Construction of the Structure;
- (b) All necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
- (c) Provide suitable drainage, both temporary and permanent;
- (d) Intentionally left blank;
- (e) Intentionally left blank;
- (f) Intentionally left blank;
- (g) Provide appropriate trespassing control during construction;
- (h) Intentionally left blank.
- (i) Installation and maintenance of an 8-ft. high fence and/or concrete combination (throw fence) on the outside barrier of the Structure;

(j) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;

(k) Intentionally left blank,

7. Agency must apply and maintain said D.O.T. Crossing number Blank in a conspicuous location on the Structure.

8. Agency's Work must be performed by Agency or Agency's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.

9. For any future inspection or maintenance, either routine or otherwise, performed by subcontractors on behalf of the Agency, Agency shall require the subcontractors to comply with the provisions of the attached Exhibit C and execute the agreement attached hereto as Exhibit C-1. Prior to performing any future maintenance with its own personnel, Agency shall: comply with all of BNSF's applicable safety rules and regulations; require any Agency employee performing maintenance to complete the safety training program at the BNSF's Internet Website " <http://bnsfcontractor.com/>; notify BNSF when, pursuant to the requirements of Exhibit C, a flagger is required to be present; procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance.

10. Agency must require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman in accordance with the requirements of Exhibit C attached hereto. Additionally, Agency must require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property or near BNSF tracks.

11. Agency or its contractor(s) must submit a digital copy of any plans (including two sets of calculations in **English Units**) for proposed shoring, falsework or cribbing to be used over, under, or adjacent to BNSF's tracks to BNSF's Manager of Public Projects for approval. The shoring, falsework or cribbing used by Agency's contractor shall comply with the BNSF Bridge Requirements set forth on Exhibit F and all applicable requirements promulgated by state and federal agencies, departments, commissions and other legislative bodies.

12. Agency must include the following provisions in any contract with its contractor(s) performing work on said Project:

(a) The Provider is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by

various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies. The Provider will be responsible for contacting BNSF's Engineering Representative – Bruce Sparling, BNSF's Signal Representative – Kevin Smithson and the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The Provider must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The Provider must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.

- (b) The Provider will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The Provider must cooperate fully with any telecommunications company (ies) in performing such rearrangements.
- (c) Failure to mark or identify these Lines will be sufficient cause for BNSF's engineering representative (Bruce Sparling, 206.625.6655) to stop construction at no cost to the Agency or BNSF until these items are completed.
- (d) In addition to the liability terms contained elsewhere in this Agreement, the Provider hereby indemnifies, defends and holds harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Provider, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Provider, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's right-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). **THE LIABILITY ASSUMED BY PROVIDER WILL APPLY ONLY TO THE EXTENT OF THE NEGLIGENCE OF PROVIDER, ITS AGENTS OR EMPLOYEES, AND WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE,**

DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR SOLE NEGLIGENCE OF BNSF.

It is mutually negotiated between the parties that the indemnification obligation shall include all claims brought by Provider's employees against BNSF, its agents, servants, employees or otherwise, and Provider expressly waives its immunity under the industrial insurance act (RCW Title 51) and assumes potential liability for all actions brought by its employees.

13. Agency must require compliance with the obligations set forth in this agreement, including Exhibit C and Exhibit C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefor (i) the provisions set forth in Article III and IV; and (ii) the provisions set forth in Exhibit C, Exhibit C-1, and Exhibit F attached hereto and by reference made a part hereof.

14. Except as otherwise provided below in this Section 13, all construction work performed hereunder by Agency for the Project will be pursuant to a contract or contracts to be let by Agency, and all such contracts must include the following:

- (a) All work performed under such contract or contracts within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
- (b) Changes or modifications during construction that affect safety or BNSF operations must be subject to BNSF's approval;
- (c) No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work must have (i) executed and delivered to BNSF an agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and
- (d) To facilitate scheduling for the Project, Agency shall have its contractor give BNSF's representative Bruce Sparling four (4) weeks advance notice of the proposed times and dates for work windows. BNSF and Agency's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work

windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.

- (e) The plans and specifications for the Project must be in compliance with the Bridge Requirements set forth on Exhibit F, attached to this Agreement and incorporated herein.

15. Agency must advise the appropriate BNSF Manager of Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion date. Additionally, Agency must notify BNSF's Manager of Public Projects, in writing, of the date on which Agency and/or its Contractor will meet with BNSF for the purpose of making final inspection of the Project.

16. **TO THE FULLEST EXTENT PERMITTED BY THE LAWS OF THE STATE OF WASHINGTON, AGENCY HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY THE AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) AGENCY'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT GRANTED TO AGENCY PURSUANT TO ARTICLE II OF THIS AGREEMENT, (V) ANY RIGHTS OR INTERESTS GRANTED TO AGENCY PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VI) AGENCY'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE STRUCTURE BY AGENCY, OR (VII) AN ACT OR OMISSION OF AGENCY OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER. THE LIABILITY ASSUMED BY AGENCY WILL APPLY ONLY TO THE EXTENT OF THE NEGLIGENCE OF AGENCY, ITS AGENTS OR EMPLOYEES, AND THIS WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT,**

THAT THE DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR SOLE NEGLIGENCE OF BNSF.

It is mutually negotiated between the parties that the indemnification obligation shall include all claims brought by Agency's employees against BNSF, its agents, servants, employees or otherwise, and Agency expressly waives its immunity under the industrial insurance act (RCW Title 51) and assumes potential liability for all actions brought by its employees.

17. Agency must give BNSF's Manager of Public Projects written notice to proceed ("**Notice to Proceed**") with the railroad work after receipt of necessary funds for the Project. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written notice to proceed is received from Agency.

18. Intentionally left blank.

19. Intentionally left blank.

ARTICLE IV) JOINT OBLIGATIONS

IN CONSIDERATION of the premises, the parties hereto mutually agree to the following:

1. All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's written approval prior to the commencement of any such changes or modifications from the Taylor Smith.

2. The work hereunder must be done in accordance with the Bridge Requirements set forth on Exhibit F and the detailed plans and specifications approved by BNSF.

3. Agency must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The parties hereto mutually agree that BNSF's failure to complete the railroad work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for the immediate restoration of railroad operations of

either BNSF or its related railroads, or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.

4. BNSF will have the right to stop construction work on the Project if any of the following events take place: (i) Agency (or any of its contractors) performs the Project work in a manner contrary to the plans and specifications approved by BNSF; (ii) Agency (or any of its contractors), in BNSF's opinion, prosecutes the Project work in a manner that is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Agency fails to pay BNSF for the Temporary Construction License or the Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by Agency or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until proof of additional insurance has been delivered to and accepted by BNSF. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, BNSF may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:

Ken Brown
1423 N. Normandie St.
Spokane, WA 99201
Phone: 509-625-7722
Fax: 509.625.7705

5. Agency must supervise and inspect the operations of all Agency contractors to ensure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of BNSF. If BNSF determines that proper supervision and inspection are not being performed by Agency personnel at any time during construction of the Project, BNSF has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the Project will not proceed until Agency corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify

Ken Brown
1423 N. Normandie St.
Spokane, WA 99201
Phone: 509-625-7722
Fax: 509.625.7705

for appropriate corrective action.

6. Intentionally left blank.

7. Pursuant to this section and Article II, Section 6 herein, Agency must reimburse BNSF in full for the actual costs of all work performed by BNSF under this Agreement (including taxes, such as applicable sales and use taxes, business and occupation taxes, and similar taxes), less BNSF's Share as set forth in Article IV, Section 6 herein. BNSF's Share must be paid upon completion of the Project.

8. All expenses detailed in statements sent to Agency pursuant to Article II, Section 6 herein will comply with the terms and provisions of the Title 23 U.S. Code, Title 23 Code of Federal Regulations, and the Federal-Aid Policy Guide, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this Agreement by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement.

9. The parties mutually agree that neither construction activities for the Project, nor future maintenance of the Structure once completed, will be permitted during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: 800 832-5452). The parties hereto mutually understand and agree that trains cannot be subjected to delay during this time period.

10. Subject to the restrictions imposed by Article IV, Section 9 above, the construction of the Project will not commence until Agency gives BNSF's Manager of Public Projects thirty (30) days prior written notice of such commencement. The commencement notice will reference D.O.T. Crossing No. 967620L and must state the time that construction activities will begin.

11. In addition to the terms and conditions set forth elsewhere in this Agreement, including, but not limited to, the terms and conditions stated in Exhibit F, BNSF and Agency agree to the following terms upon completion of construction of the Project:

- (a) Agency will own and maintain, at its sole cost and expense, the Structure, the highway approaches, and appurtenances thereto, lighting, drainage

and any access roadways to BNSF gates installed pursuant to this Agreement. BNSF may, at its option, perform maintenance on the Structure in order to avoid conflicts with train operations. BNSF will notify Agency prior to performing any such maintenance on the Structure. In the event such maintenance involves emergency repairs, BNSF will notify Agency at its earliest opportunity. Agency must fully reimburse BNSF for the costs of maintenance performed by BNSF pursuant to this subsection (b).

- (b) Agency must, at Agency's sole cost and expense, keep the Structure painted and free from graffiti.
- (c) Agency must provide BNSF with any and all necessary permits and maintain roadway traffic controls, at no cost to BNSF, whenever requested by BNSF to allow BNSF to inspect the Structure or to make emergency repairs thereto.
- (d) It is expressly understood by Agency and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto.
- (e) Agency must keep the Structure and surrounding areas clean and free from birds, pigeons, scavengers, vermin, creatures and other animals.
- (f) If Agency (including its contractors and agents) or BNSF, on behalf of Agency, performs (i) alterations or modifications to the Structure, or (ii) any maintenance or other work on the Structure with heavy tools, equipment or machinery at ground surface level horizontally within 25'-0" of the centerline of the nearest track, or (iii) any maintenance or other work outside the limits of the deck of the Structure vertically above the top of the rail, then Agency or its contractors and/or agents must procure and maintain the following insurance coverage, which may be changed from time to time:

Railroad Protective Liability insurance naming only **BNSF** as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to **BNSF** prior to performing any work or services under this Agreement

- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

As used in this paragraph, "**BNSF**" means "Burlington Northern Santa Fe, LLC", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

In lieu of providing a Railroad Protective Liability Policy, Agency may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy if available to Agency or its contractors. The limits of coverage are the same as above.

12. Agency hereby grants to BNSF, at no cost or expense to BNSF, a permanent right of access from Agency property to BNSF tracks for maintenance purposes.

13. Agency must provide one set of as built plans (prepared in **English Units**) to BNSF, as well as one set of computer diskettes containing as built CAD drawings of the Structure and identifying the software used for the CAD drawings. The "as built plans" must comply with the Bridge Requirements set forth on Exhibit F and depict all information in BNSF engineering stationing and mile post pluses. The "as built plans" must also include plan and profile, structural bridge drawings and specifications, and drainage plans. All improvements and facilities must be shown.

14. Subject to the restrictions imposed by Article IV, Section 9 above and in accordance with the requirements of Article II, Section 9 above, Agency must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's right-of-way for **INSPECTION OR MAINTENANCE** purposes, and the BNSF Manager of Public Projects will determine if flagging is required. If the construction work hereunder is contracted, Agency must require its prime contractor(s) to comply with the obligations set forth in Exhibit C and Exhibit C-1, as the same may be revised from time to time. Agency will be responsible for its contractor(s) compliance with such obligations.

15. In the event that BNSF shall deem it necessary or desirable in the future, in the performance of its duty as a common carrier, to raise or lower the grade or change the alignment of its tracks or to lay additional track or tracks or to build other facilities in connection with the operation of its railroad, BNSF shall, at its expense, have full right to make such changes or additions, provided such changes or additions do not change or alter the Structure herein proposed to be constructed and provided further, however, that should it become necessary or desirable in the future to change, alter, widen or reconstruct the Structure to accommodate railroad projects, the cost of such work,

including any cost incidental to alteration of railroad or highway facilities made necessary by the alteration of the Structure shall be the sole responsibility of Agency.

16. Agency may, at Agency's sole expense, alter or reconstruct the highway components of the Structure if necessary or desirable, due to traffic conditions or pedestrian or other recreational traffic, provided, however, that any such alteration or reconstruction must receive BNSF's prior written approval as evidenced by either a supplement to this Agreement, or execution of a new agreement that provides for the termination of this Agreement. Furthermore, any alteration or reconstruction of the highway components of the Structure will be covered by a Commission Order.

17. Any books, papers, records and accounts of the parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized representatives of the parties hereto, as well as the State of Washington and the Federal Highway Administration, for a period of three (3) years from the date of final BNSF invoice under this Agreement".

18. The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.

19. In the event construction of the Project does not commence within 24 months [2 years] of the Effective Date, this Agreement will become null and void.

20. Neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

21. To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.

22. This Agreement (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete agreement between BNSF and Agency with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.

23. Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

BNSF Railway Company:

Richard W Wagner
BNSF Railway Mgr Public Projects for WA, ID & BC
2454 Occidental Avenue So Ste 2D
Seattle, WA 98134
O – 206.625.6152
F – 206.625.6356

Agency:

Ken Brown
1423 N. Normandie St.
Spokane, WA 99201
Phone: 509-625-7722
Fax: 509.625.7705

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

BNSF RAILWAY COMPANY

By: _____

Printed Name: French Thompson III

Title: Director, Public Projects

WITNESS:

AGENCY

CITY OF SPOKANE, WASHINGTON

By: _____

Printed Name: _____

Title: _____

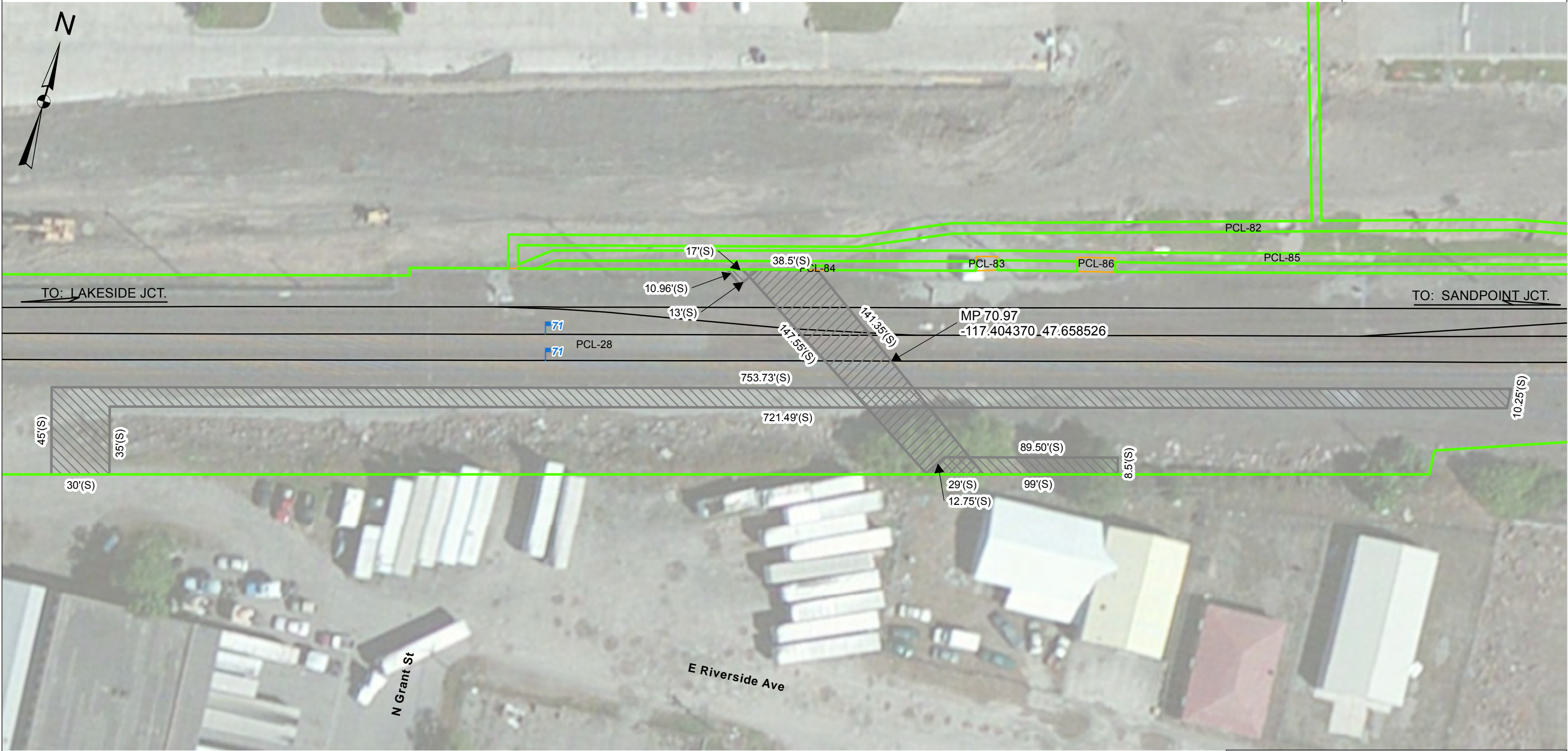
WITNESS:

Exhibit A

SCALE: 1"= 50'+/-

JLL TI #: -
BW Proj. No.: 12196.003
MAP REFERENCE:
STA. = s62153
R/W = N/A

This map used by BNSF RAILWAY COMPANY in the ordinary course of business, but it is subject to audit and should be used only with the expressed understanding the BNSF make no representations whatsoever about the quality, accuracy, errors or omissions relating to this map.



TO: CITY OF SPOKANE
AT: SPOKANE
SPOKANE COUNTY,
WA

- LEGEND:**
- PERMANENT AERIAL EASEMENT
 - TEMPORARY CONSTRUCTION EASEMENT
 - RIGHT OF WAY LINE
 - PARCEL LINES
 - TRACK



MEASUREMENTS BASED ON PROVIDED SURVEYS
(S) MEASUREMENTS TAKEN OFF SURVEY
(M) MEASUREMENT

NORTHWEST DIVISION
SPOKANE SUBDIVISION - L.S. 0045-4
VAL.SEC. 51012
NP RY WA-01B, MAP S-02A
SEC. 17, T25N, R43E WILLM
AUGUST 16, 2016
MP 70.97

EASEMENT AGREEMENT

FOR _____
(Overpass Agreement)

THIS EASEMENT AGREEMENT FOR _____ ("**Easement Agreement**") is made and entered into as of the ____ day of _____ 20____ ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**Grantor**"), and _____, a _____ ("**Grantee**").

A. Grantor owns or controls certain real property situated at or near the vicinity of _____, County of _____, State of _____, at Mile Post _____, [Project # _____], as described or depicted on **Exhibit "A-1"** attached hereto and made a part hereof (the "**Premises**").

B. Grantor and Grantee have entered into that certain Overpass Agreement dated as of _____ concerning improvements on or near the Premises (the "**Overpass Agreement**").

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement Agreement.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1 **Granting of Easement.**

1.1 **Easement Purpose.** The "**Easement Purpose**" shall be for the purposes set forth in the OVERPASS Agreement. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "**Improvements**" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the OVERPASS Agreement.

1.2 **Grant.** Grantor does hereby grant unto Grantee a non-exclusive easement ("**Easement**") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all

restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, "**Laws**"). Grantor may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the OVERPASS Agreement.

1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "**Lines**") upon, over, under or across the Premises;
- (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and
- (c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

Section 2 Term of Easement. The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual. **[If this is a temporary easement replace the preceding sentence with the following:** The term of this Easement, unless sooner terminated under provisions of this Easement Agreement, shall expire on the date that is _____ after the Effective Date.]

Section 3 No Warranty of Any Conditions of the Premises. Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE

QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

Section 4 Nature of Grantor's Interest in the Premises. GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

Section 5 Improvements. Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Improvements shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "**Other Improvements**"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain

the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises, said work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.

Section 6 Taxes and Recording Fees. Grantee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

Section 7 Environmental.

7.1 Compliance with Environmental Laws. Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "**Environmental Laws**"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

7.2 Notice of Release. Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

7.3 Remediation of Release. In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises. If during the construction or subsequent maintenance of the Improvements, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.

7.4 Preventative Measures. Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

7.5 Evidence of Compliance. Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this **Section 7**. Should Grantee not comply fully with the above-stated obligations of this **Section 7**, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice of termination upon Grantee. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in **Section 9**.

Section 8 Default and Termination.

8.1 Grantor's Performance Rights. If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

8.2 Abandonment. Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate

this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

8.3 Effect of Termination or Expiration. Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by **Section 9**.

8.4 Non-exclusive Remedies. The remedies set forth in this **Section 8** shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the OVERPASS Agreement, at law or in equity.

Section 9 Surrender of Premises.

9.1 Removal of Improvements and Restoration. Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform **the following**:

- (a) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;
- (c) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (d) leave the Premises in the condition which existed as of the Effective Date.

9.2 Limited License for Entry. If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee

hereunder shall continue in effect until the Premises are surrendered.

Section 10 Liens. Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to **Section 6**. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this **Section 10** or any other section of this Easement Agreement.

Section 11 Tax Exchange. Grantor may assign its rights (but not its obligations) under this Easement Agreement to Goldfinch Exchange Company LLC, an exchange intermediary, in order for Grantor to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Grantor shall provide Grantee with a Notice of Assignment, attached as Exhibit C, and Grantee shall execute an acknowledgement of receipt of such notice.

Section 12 Notices. Any notice required or permitted to be given hereunder by one party to the other shall be delivered in the manner set forth in the OVERPASS Agreement. Notices to Grantor under this Easement shall be delivered to the following address: BNSF Railway Company, Real Estate Department, 2500 Lou Menk Drive, Ft. Worth, TX 76131, Attn: Permits, or such other address as Grantor may from time to time direct by notice to Grantee.

Section 13 Recordation. It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as Exhibit "B-1" (the "**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. [IF LEGAL DESCRIPTION IS NOT AVAILABLE USE THE FOLLOWING IN PLACE OF THE PRIOR SENTENCE: As of the Effective Date, a legal description of the Premises is not available. Grantee and Grantor shall work together in good faith to establish the legal description for the Premises. Once Grantor and Grantee have approved the legal description, Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as Exhibit "B-1" (the "**Memorandum of Easement**").] The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within ____ days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

Section 14 Miscellaneous.

14.1 All questions concerning the interpretation or application of provisions of

this Easement Agreement shall be decided according to the substantive Laws of the State of **[Texas]** without regard to conflicts of law provisions.

14.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

14.3 If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

14.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

14.5 This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

14.6 Time is of the essence for the performance of this Easement Agreement.

Section 15 Administrative Fee.

15.1 Grantee acknowledges that a material consideration for this agreement, without which it would not be made, is the agreement between Grantee and Grantor, that the Grantee shall pay upon return of this Agreement signed by Grantee to Grantor's Broker a processing fee in the amount of **\$2,000.00** over and above the agreed upon Acquisition Price. Said fee shall be made payable to BNSF Railway Company by a separate check.

[Signature page follows]

Witness the execution of this Easement Agreement as of the date first set forth above.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware
corporation

By: _____
Name: _____
Title: _____

GRANTEE:

_____,
a

—

By: _____
Name: _____
Title: _____

EXHIBIT "A-1"

Premises

EXHIBIT "B-1"

Memorandum of Easement

THIS MEMORANDUM OF EASEMENT is hereby executed this ____ day of ____, 20__, by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**Grantor**"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and _____, a _____ ("**Grantee**"), whose address for purposes of this instrument is _____, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

WITNESSETH:

WHEREAS, Grantor owns or controls certain real property situated in _____ County, _____ as described on **Exhibit "A-1"** attached hereto and incorporated herein by reference (the "**Premises**");

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated _____ (the "**Easement Agreement**") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "**Easement**"); and

WHEREAS, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual. Provisions regulating the use and purposes to which the Easement shall be limited, are set forth in detail in the Easement Agreement and Grantor and Grantee agree to abide by the terms of the Easement Agreement.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

[Signature page follows]

Exhibit "B-1"



IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

GRANTEE:

_____,

By: _____
Name: _____
Title: _____

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20__, by _____ (name) as _____ (title) of BNSF RAILWAY COMPANY, a Delaware corporation.

Notary Public

(Seal)

My appointment expires: _____

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20__, by _____ (name) as _____ (title) of _____, a _____.



Notary Public

(Seal)

My appointment expires:_____

Exhibit "B-1"

EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1.01 General:

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "**Railway**" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of City of Spokane, University Pedestrian/Bicycle Overpass.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to **Rosa Martinez** at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for



damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

Ken Brown
1423 N. Normandie St.
Spokane, WA 99201
Phone: 509-625-7722
Fax: 509.625.7705

- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- **1.01.06** The Contractor must notify **(Agency)** at _____ and Railway's Manager Public Projects, telephone number (_____) _____ at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file _____.
- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and

calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.

- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site <http://bnsfcontractor.com/>. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division Engineer _____ at (_____) _____ and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.

- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15'-0" Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
 - 25' Horizontally from centerline of nearest track
 - 23' 6" Vertically above top of rail
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the **(Agency)** and must not be undertaken until approved in writing by the Railway, and until the **(Agency)** has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by **(Agency)** for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the



expense of the Contractor.

- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the **Railway's Resource Operations Center at 1(800) 832-5452**, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan:

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site <http://bnsfcontractor.com/>, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.
- **1.04.02** Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion **a)** to be on Railroad's property, or **b)** that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.



The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at <http://www.e-railsafe.com>, in addition to any other applicable regulatory requirements.

Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.

Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to deny entry onto its premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.

Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's **Roadmaster (telephone _____)** a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:

- **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.
- **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
- **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
- **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
- **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
 - **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
 - **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
 - **1.05.03c** The cost of flagger services provided by the Railway will be borne by (Agency). The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**

- **1.05.03d** The average train traffic on this route is 62 freight trains per 24-hour period at a timetable speed 25 MPH and 4 passenger trains at a timetable speed of 25 MPH.

1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to

the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.

- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, <http://bnsfcontractor.com/>, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09 THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.**
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum

clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation:

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Field Engineering Representative (_____)**. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting:

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.



NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

☐ Passenger on train (C)

☐ Non-employee (N)
(i.e., emp of another railroad, or, non-BNSF emp involved in vehicle accident, including company vehicles)

☐ Contractor/safety sensitive (F)

☐ Contractor/non-safety sensitive (G)

☐ Volunteer/safety sensitive (H)

☐ Volunteer/other non-safety sensitive (I)

☐ Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates

☐ Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates

☐ Non-trespasser (J) - Off railroad property

If train involved, Train ID:

Transmit attached information to Accident/Incident Reporting Center by:

Fax 1-817-352-7595

or by Phone 1-800-697-6736

or email to: Accident-Reporting.Center@BNSF.com

Officer Providing Information:

(Name)

(Employee No.)

(Phone #)

**REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM
DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490**

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IT IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

I. Accident City/St:	_____	2. Date:	_____	Time:	_____
County:	_____	3. Temperature:	_____	4. Weather:	_____
(if non BNSF location)					
Mile Post / Line Segment:	_____				
5. Driver's License No (and state) or other ID:	SSN (required): _____				
6. Name (last, first, mi):	_____				
7. Address:	_____	City:	_____	St:	_____
				Zip:	_____
8. Date of Birth:	_____	and/or Age:	_____	Gender:	_____
		(if available)			
Phone Number:	_____	Employer:	_____		
9. Injury:	_____	10. Body Part:	_____		
	(i.e., Laceration, etc.)		(i.e., Hand, etc.)		
11. Description of Accident (To include location, action, result, etc.):					

12. Treatment:					
<input type="checkbox"/>	First Aid Only	_____			
<input type="checkbox"/>	Required Medical Treatment	_____			
<input type="checkbox"/>	Other Medical Treatment	_____			

13. Dr. Name:	_____	Date:	_____		
14. Dr. Address:	_____				
Street:	_____	City:	_____	St:	_____
				Zip:	_____
15. Hospital Name:	_____				
16. Hospital Address:	_____				
Street:	_____	City:	_____	St:	_____
				Zip:	_____
17. Diagnosis:	_____				

REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS
AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490

EXHIBIT "C-1"

Agreement Between BNSF RAILWAY COMPANY and the CONTRACTOR

Railway File: _____

Agency Project: _____

<%Contractor.LegalName%> [Insert contractor's legal name here](hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated _____, 201_, *****Drafter's Note: insert the date of the contract between the Agency and the Contractor here]** with City of Spokane, WA for the performance of certain work in connection with the following project: _____ Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for City of Spokane, WA (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Agreement, has agreed and does hereby agree with Railway as follows:

1) RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and

Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENSIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.** This obligation shall not include such claims, costs, damages, or expenses which may be caused by the sole negligence of Railway or its contractors, agents or employees; Provided, that if the claims or damages are caused by or result from the concurrent negligence or other acts or omissions of (a) Railway, its contractors, agents or employees and (b) Contractor, its subcontractors, agents or employees, this provision shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, agents or employees.

It is mutually negotiated between the parties that the indemnification obligation shall include all claims brought by Contractor's employees against Railway, its agents, servants, employees or otherwise, and Contractor expressly waives its immunity under the industrial insurance act (RCW Title 51) and assumes potential liability for all actions brought by its employees.

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against

all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law.

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

2) TERM

This Agreement is effective from the date of the Agreement until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

3) INSURANCE

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to Railway.

- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to **Railway** employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability insurance naming only the **Railway** as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railway** prior to performing any work or services under this Agreement
- ◆ Definition of “Physical Damage to Property” shall be endorsed to read: “means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured’ care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway’s Blanket Railroad Protective Liability Insurance Policy.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

Contractor agrees to waive its right of recovery against **Railway** for all claims and suits against **Railway**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railway** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railway** for loss of its owned or leased property or property under Contractor’s care, custody or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Contractor is not allowed to self-insure without the prior written consent of **Railway**. If granted by **Railway**, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all **Railway** liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor’s insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing services, Contractor shall furnish to **Railway** an acceptable certificate(s) of insurance from an authorized representative evidencing the

required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

Contractor shall notify **Railway** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

Any insurance policy shall be written by a reputable insurance company acceptable to **Railway** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.

Not more frequently than once every five years, **Railway** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming **Railway** as an additional insured, and shall require that the subcontractor shall release, defend and indemnify **Railway** to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify **Railway** herein.

Failure to provide evidence as required by this section shall entitle, but not require, **Railway** to terminate this Agreement immediately. Acceptance of a

certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by **Railway** shall not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving **Railway** arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

For purposes of this section, **Railway** shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

4) SALES AND OTHER TAXES

In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Contractor to Railway ("Sales Taxes"), Railway shall be responsible for paying only the Sales Taxes that Contractor separately states on the invoice or other billing documents provided to Railway; *provided, however*, that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Contractor bills Railway, (ii) Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Contractor and its subcontractors use or consume in the performance of this Agreement, (iii) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) that Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Contractor fails to issue separate invoices for each state in which Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.

Upon request, Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Contractor is responsible to pay under this Agreement have been paid. If a written claim is made against Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway's own name, any Sales Taxes paid by Railway to Contractor or for which Railway might otherwise be responsible for under this Agreement; provided, however, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Contractor shall, if requested by Railway at Railway's sole cost and expense, contest in Contractor's own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.

Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Contractor is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Contractor agrees to furnish to Railway a properly completed exemption form prescribed by such jurisdiction. Contractor shall be responsible for any taxes, interest or penalties assessed against Railway with respect to withholding taxes that Railway does not withhold from payments to Contractor.

5) EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit "C" attached to the Agreement and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site. Contractor shall execute a Temporary Construction Crossing Agreement or Private Crossing Agreement (<http://www.bnsf.com/communities/fags/permits-real-estate/>), for any temporary crossing requested to aid in the construction of this Project, if approved by BNSF.

6) TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer

service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.

Contractor and its subcontractors must give Railway's representative () weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer the day and year first above written.

<%Contractor.LegalName%>

BNSF Railway Company

By: _____

By: _____

Printed Name: _____

Name: Richard Wagner
Mgr Public Projects NW Division

Title: _____

Accepted and effective 2016.

Contact Person: _____

Address: _____

City: _____

State: _____ Zip: _____

Fax: _____

Phone: _____

E-mail: _____

EXHIBIT D

AUTHORITY FOR EXPENDITURE

LOCATION : ERIE TO SPOKANE ST	LINE SEGMENT : 45	AFE NUMBER :
PLANITEM NUMBER : 229503001	MILEPOST : 70.5 TO 71.0	RFA NUMBER : 5935316
PROPERTY OF : BNSF RAILWAY COMPANY	DIVISION : NW	CPAR NUMBER : CB960016
OPERATED BY : BNSF RAILWAY COMPANY	SUBDIVISION : SPOKANE	BUDGET YEAR : 2016
JOINT FACILITY : CITY OF SPOKANE	TRACK TYPE : S	BUDGET CLASS : 6
% BILLABLE (+/-) : 100.0	TAX STATE : WA	REPORTING OFFICE : 716
	SPONSOR : VP ENGINEERING	CENTER/ROLLUP : 28956

PURPOSE, JUSTIFICATION AND DESCRIPTION

PIP INSPECTOR COORDINATOR NWE DIV SPOKANE SUB LS 45 MP 70.50 TO 71.00 - 100% BILLABLE TO CITY OF SPOKANE - INSPECTOR
COORDINATOR FOR SPOKANE, WA - 229503- PP--0045-0071.00-- UNIVERSITY DISTRICT PEDESTRIAN BICYCLE BRIDGE
PRIMARY FUNDING SOURCE IS CITY FUNDS

PLAN ITEM	LINE SEG	BEG MP	END MP	TRK NBR	BEGIN STATION	END STATION	PROJECT TYPE	BUD YEAR
229503001	45	70.5	71.0	S	ERIE	SPOKANE ST	INSPECTOR / COORDINATOR	2016

	CASH CAPITAL	NONCASH CAPITAL	OPERATING EXP	REMOVAL COSTS	BILLABLE	TOTALS
LABOR COSTS	0	0	0	0	0	0
MATERIAL COSTS	0	0	0	0	0	0
OTHER COSTS	0	0	0	0	96,960	96,960
TOTALS	0	0	0	0	96,960	96,960

SYSTEM MAINTENANCE AND PLANNING

ESTIMATE REF. NUMBER: 5935316

COSTING DATE: 07/26/2016

PRINTED ON: 07/26/2016

ESTIMATED BY: Elkins

PRINTED BY: Elkins

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
CITY OF SPOKANE

LOCATION ERIE TO SPOKANE ST

DETAILS OF ESTIMATE

PLAN ITEM : 229503001

VERSION : 2

PURPOSE, JUSTIFICATION AND DESCRIPTION

PIP INSPECTOR COORDINATOR NWE DIV SPOKANE SUB LS 45 MP 70.50 TO 71.00 - 100% BILLABLE TO CITY OF SPOKANE

INSPECTOR COORDINATOR FOR SPOKANE, WA - 229503- PP--0045-0071.00-- UNIVERSITY DISTRICT PEDESTRIAN BICYCLE BRIDGE

REQUESTOR: BRUCE SPARLING 07/25/16

REVISED PER BRUCE SPARLING 07/26/16

PRIMARY FUNDING SOURCE IS CITY FUNDS

DESCRIPTION	QUANTITY U/M	COST	TOTAL \$
***** LABOR *****			
TOTAL LABOR COST		0	0
***** MATERIAL *****			
TOTAL MATERIAL COST		0	0
***** OTHER *****			
PUBLIC PROJECTS INSPECTOR COORDINATOR	80.0 DAY	80,000	
TOTAL OTHER ITEMS COST		80,000	80,000
PROJECT SUBTOTAL			80,000
CONTINGENCIES			16,000
BILL PREPARATION FEE			960
GROSS PROJECT COST			96,960
LESS COST PAID BY BNSF			0
TOTAL BILLABLE COST			96,960

AUTHORITY FOR EXPENDITURE

LOCATION : ERIE TO SPOKANE ST	LINE SEGMENT : 45	AFE NUMBER :
PLANITEM NUMBER : 229503000	MILEPOST : 70.5 TO 71.0	RFA NUMBER : 5935216
PROPERTY OF : BNSF RAILWAY COMPANY	DIVISION : NW	CPAR NUMBER : CB960016
OPERATED BY : BNSF RAILWAY COMPANY	SUBDIVISION : SPOKANE	BUDGET YEAR : 2016
JOINT FACILITY : CITY OF SPOKANE	TRACK TYPE : S	BUDGET CLASS : 6
% BILLABLE (+/-) : 100.0	TAX STATE : WA	REPORTING OFFICE : 716
	SPONSOR : VP ENGINEERING	CENTER/ROLLUP : 28956

PURPOSE, JUSTIFICATION AND DESCRIPTION

PIP FLAGGING NWE DIV SPOKANE SUB LS 45 MP 70.50 TO 71.00 - 100% BILLABLE TO CITY OF SPOKANE - FLAGGING FOR SPOKANE, WA - 229503- PP--0045-0071.00-- UNIVERSITY DISTRICT PEDESTRIAN BICYCLE BRIDGE

PRIMARY FUNDING SOURCE IS CITY FUNDS

PLAN ITEM	LINE SEG	BEG MP	END MP	TRK NBR	BEGIN STATION	END STATION	PROJECT TYPE	BUD YEAR
229503000	45	70.5	71.0	S	ERIE	SPOKANE ST	FLAGGING	2016

	CASH CAPITAL	NONCASH CAPITAL	OPERATING EXP	REMOVAL COSTS	BILLABLE	TOTALS
LABOR COSTS	0	0	0	0	281,109	281,109
MATERIAL COSTS	0	0	0	0	0	0
OTHER COSTS	0	0	0	0	91,107	91,107
TOTALS	0	0	0	0	372,216	372,216

SYSTEM MAINTENANCE AND PLANNING

ESTIMATE REF. NUMBER: 5935216

COSTING DATE: 07/26/2016

PRINTED ON: 07/26/2016

ESTIMATED BY: Elkins

PRINTED BY: Elkins

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
CITY OF SPOKANE

LOCATION ERIE TO SPOKANE ST

DETAILS OF ESTIMATE

PLAN ITEM : 229503000

VERSION : 2

PURPOSE, JUSTIFICATION AND DESCRIPTION

PIP FLAGGING NWE DIV SPOKANE SUB LS 45 MP 70.50 TO 71.00 - 100% BILLABLE TO CITY OF SPOKANE

FLAGGING FOR SPOKANE, WA - 229503- PP--0045-0071.00-- UNIVERSITY DISTRICT PEDESTRIAN BICYCLE BRIDGE

REQUESTOR: BRUCE SPARLING 07/25/16

REVISED PER BRUCE SPARLING 07/26/16

PRIMARY FUNDING SOURCE IS CITY FUNDS

DESCRIPTION	QUANTITY U/M	COST	TOTAL \$

LABOR			

FLAGGING - GRADING - CAP	3120.0 MH	96,133	
PAYROLL ASSOCIATED COSTS		57,881	
DA OVERHEADS		87,980	
EQUIPMENT EXPENSES		22,975	
INSURANCE EXPENSES		16,140	
TOTAL LABOR COST		281,109	281,109

MATERIAL			

TOTAL MATERIAL COST		0	0

OTHER			

RENTAL VEHICLE	260.0 DAY	26,000	
TOTAL OTHER ITEMS COST		26,000	26,000
PROJECT SUBTOTAL			307,109
CONTINGENCIES			61,421
BILL PREPARATION FEE			3,686
GROSS PROJECT COST			372,216
LESS COST PAID BY BNSF			0
TOTAL BILLABLE COST			372,216

Exhibit E

[Public Projects Manager's letterhead]

Date: _____

Mr./Ms. _____

_____[Name of Agency Here]

_____[Address for Agency]

Re: Final Approval of Plans and Specifications dated _____, 20__, drafted by _____ **[insert name of architecture or engineering firm here]** (hereinafter called, the "Plans and Specifications")

Dear _____:

This letter serves as BNSF RAILWAY COMPANY's ("BNSF") final written approval of the Plans and Specifications covering the construction of _____ **[insert description of the project here]**. This final written approval is given to _____ **[insert name of Agency here]** ("Agency") pursuant to Article III, Section 1 of that certain Underpass Agreement between BNSF and Agency, dated _____, 20__, which this Exhibit E is attached to and made a part thereof.

If the Plans and Specifications are revised by Agency subsequent to the date set forth above, this letter shall no longer serve as final written approval of the Plans and Specifications and Agency must resubmit said Plans and Specifications to BNSF for final written approval.

It is understood that the approvals contained in this letter do not cover, the approvals of plans and specifications for any falsework, shoring, and demolition that may be subsequently submitted to BNSF by CITY or its contractor for approval.

BNSF has not reviewed the design details or calculations for structural integrity or engineering accuracy. BNSF accepts no responsibility for errors or omissions in the design of the project.

Regards,

[Public Projects Manager's Name]

Exhibit F

BNSF Bridge Requirements

BRIDGE DESIGN, PLANS & SPECIFICATIONS:

Except for the design of temporary falsework and shoring, BNSF review of the Structure plans will be limited to the vertical and horizontal clearances, sight distance for existing train signals, foundation dimensions and drainage characteristics as they relate to existing and future tracks. BNSF will not review structural design calculations for the permanent Structure unless a member or members are influenced by railroad live loads.

Temporary falsework and shoring plans and calculations must be reviewed and approved by BNSF prior to beginning construction. The Agency shall perform an independent review of the design calculations for temporary falsework and shoring prior to submitting them to BNSF for approval. Temporary construction clearances must be no less than 15 feet measured horizontally from the centerline of the nearest track and 21 feet-6 inches measured vertically from the top of rail of the most elevated track to the bottom of lowest temporary falsework member. State regulatory agencies may have more restrictive requirements for temporary railroad clearances.

For the permanent Structure, the Agency will submit plans showing the least horizontal distance from the centerline of existing and future tracks to the face of the nearest member of the proposed Structure. The location of the least horizontal distance must be accurately described such that BNSF can determine where it will occur in both the horizontal and vertical plane. If the permanent member is within 25 feet of the nearest track (or future track), collision walls shall be incorporated into the permanent Structure design according to American Railway Engineering and Maintenance Association Manual of Recommended Practice - Chapter 8 - Article 2.1.5.

For the permanent Structure, the Agency will submit plans showing the least vertical clearance from top of the most elevated rail of existing and future tracks to the lowest point of the proposed Structure. A profile of the existing top of rail elevation shall be plotted on the bridge plans. The profile shall extend for 500 feet in each direction of the proposed overpass and a separate profile shall be plotted for each track. If the existing top of rail profile(s) is not uniform such that a sag exists in the vicinity of the proposed Structure, the permanent Structure vertical clearance shall be increased sufficiently to accommodate a raise in the track profile to remove the sag. Prior to beginning construction of the permanent Structure, the top of rail elevations should be checked and verified that they have not changed from the assumed elevations utilized for the design of the bridge.

Prior to issuing any invitation to bid on construction of the Structure, the Agency should conduct a pre-bid meeting where prospective Providers have the opportunity to communicate with BNSF personnel regarding site specific train speeds, train density, and general safety requirements for men and equipment working near live tracks. Any invitation to bid and

specifications for the Structure must be submitted to BNSF for review and approval prior to letting of bids for the Project.

BRIDGE CONSTRUCTION:

After awarding the bid, but prior to the Provider entering BNSF's right-of-way or property, the Agency should conduct a pre-construction meeting with BNSF personnel in attendance to reiterate the safety requirements of construction activity adjacent to live tracks.

During construction, BNSF may require an independent engineering inspector to be present during certain critical activities of the Project, including but not limited to: driving foundation piles, erecting falsework, construction of shoring and retaining walls, placing concrete, placing soil backfill and compaction processes. The Agency shall reimburse BNSF for all costs of supplemental inspection services.

Within 90 days of the conclusion of the Project and final acceptance by BNSF, the Agency will provide BNSF with a complete electronic set of the bridge plans labeled "As Built". Those plans will reflect any and all deviations from the original plans that occurred during construction. The "As Built" plans will be submitted in Micro Station *.dgn electronic format (preferred) or AutoCAD *.dwg format. Electronic plans are to be submitted in the original format used for CAD plan preparation and not converted to another format prior to submission. Actual measured "as constructed" clearances shall be shown as well as depth, size and location of all foundation components. The plans shall show dimensioned locations of existing and relocated utilities.

BRIDGE MAINTENANCE:

The Agency will be responsible for maintenance and repair of the Structure including the earth retention components, embankment slopes, erosion control, surface drainage, fencing, deck drains, landscaping, paint, walkways, handrails, lighting, and other improvements associated with the Project.

Fencing and other pedestrian access controls within BNSF's right-of-way and incorporated into the Project shall be designed and maintained by the Agency. Trespasser control shall be the responsibility of the Agency. Graffiti removal will be the responsibility of the Agency.

BRIDGE INSPECTION:

The Agency will conduct annual routine structural inspections. In the event of an earthquake, fire, flood, damage from vehicular impacts or other emergent situations, the Agency will provide an immediate inspection by qualified personnel and notify BNSF of damage that may affect safe passage of trains. If necessary the Agency will embargo weights or provide lane closures or

other such measures to protect the structural integrity of the Structure such that there can be continuous safe passage of trains until repairs are made.

BRIDGE ALTERATIONS:

Except as provided otherwise by this Agreement, there will be no alterations made to the Structure that will alter the railroad vertical or horizontal clearances provided by the original design. Pipelines will be not be added or attached to the Structure without first submitting plans and calculations to BNSF for review and approval.

Exhibit G

University Pedestrian/Bike Overpass Project
Estimated Total Project Cost



Agenda Sheet for City Council Meeting of:
09/12/2016

Date Rec'd	8/31/2016
Clerk's File #	CPR 1991-0068
Renews #	
Cross Ref #	
Project #	
Bid #	
Requisition #	
Submitting Dept	MAYOR
Contact Name/Phone	BRANDY COTE 625-6774
Contact E-Mail	BCOTE@SPOKANECITY.ORG
Agenda Item Type	Boards and Commissions Appointments
Agenda Item Name	0520 FOUR APPOINTMENTS TO THE SPOKANE HUMAN RIGHTS COMMISSION

Agenda Wording

Appointment of Ashley Torres (District 1), Nicole Bishop (District 3), Aaron Riley (At-large), and Amina Fields (At-Large) for three year terms, expiring 9/12/19, to the Human Rights Commission.

Summary (Background)

Appointment of Ashley Torres (District 1), Nicole Bishop (District 3), Aaron Riley (At-large), and Amina Fields (At-Large) for three year terms, expiring 9/12/19, to the Human Rights Commission.

<u>Fiscal Impact</u>		<u>Budget Account</u>	
Select	\$	#	
Select	\$	#	
Select	\$	#	
Select	\$	#	
<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	COTE, BRANDY	<u>Study Session</u>	
<u>Division Director</u>		<u>Other</u>	
<u>Finance</u>		<u>Distribution List</u>	
<u>Legal</u>		bcote@spokanecity.org	
<u>For the Mayor</u>	WHITNEY, TYLER	aayars@spokanecity.org	
<u>Additional Approvals</u>			
<u>Purchasing</u>			



Agenda Sheet for City Council Meeting of:
09/12/2016

Date Rec'd	8/31/2016
Clerk's File #	CPR 1993-0069
Renews #	
Cross Ref #	
Project #	
Bid #	
Requisition #	
Submitting Dept	MAYOR
Contact Name/Phone	BRANDY COTE 625-6774
Contact E-Mail	BCOTE@SPOKANECITY.ORG
Agenda Item Type	Boards and Commissions Appointments
Agenda Item Name	0520 TWO APPOINTMENTS TO THE DESIGN REVIEW BOARD

Agenda Wording

Appointments to the Design Review Board of Ryan Leong to the Real Estate Developer position with a term expiring 12/31/18, and Charlene Kay to the Engineer position with a term expiring on 12/31/19.

Summary (Background)

Appointments to the Design Review Board of Ryan Leong to the Real Estate Developer position with a term expiring 12/31/18, and Charlene Kay to the Engineer position with a term expiring on 12/31/19.

<u>Fiscal Impact</u>		<u>Budget Account</u>	
Select	\$	#	
Select	\$	#	
Select	\$	#	
Select	\$	#	
<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	COTE, BRANDY	<u>Study Session</u>	
<u>Division Director</u>		<u>Other</u>	
<u>Finance</u>		<u>Distribution List</u>	
<u>Legal</u>		bcote@spokanecity.org	
<u>For the Mayor</u>	WHITNEY, TYLER	jneff@spokanecity.org	
<u>Additional Approvals</u>			
<u>Purchasing</u>			



Agenda Sheet for City Council Meeting of:
09/12/2016

Date Rec'd	8/30/2016
Clerk's File #	ORD C35431
Renews #	
Cross Ref #	
Project #	
Bid #	
Requisition #	

Submitting Dept	HUMAN RESOURCES
Contact Name/Phone	CHRIS CAVANAUGH 625-6383
Contact E-Mail	CCAVALAUGH@SPOKANECITY.ORG
Agenda Item Type	Emergency Budget Ordinance
Agenda Item Name	0620 - EBO RE: SALARY GRADE CHANGES

Agenda Wording

Amending Ordinance No. C-35322 and appropriating funds in the Sewer Fund, Parks and Recreation Fund, and Solid Waste Disposal Fund, FROM: Various Accounts, \$53,407; TO: Various Accounts, same amount.

Summary (Background)

This ordinance implements salary grade adjustments in accordance with approved union agreements and City Policy, and as approved by management. These changes impact the classifications of Wastewater Supervisor, Wastewater Treatment Plant Assistant Plant Manager, Craft Specialist, and Landfill/Transfer Station Foreperson.

<u>Fiscal Impact</u>		<u>Budget Account</u>	
Expense	\$ 53,407	# Various Accounts - See Ordinance	
Select	\$	#	
Select	\$	#	
Select	\$	#	
<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	CAVALAUGH, CHRISTINE	<u>Study Session</u>	
<u>Division Director</u>	CAVALAUGH, CHRISTINE	<u>Other</u>	Finance Committee 07/11/16
<u>Finance</u>	KECK, KATHLEEN	<u>Distribution List</u>	
<u>Legal</u>	DALTON, PAT	ccavanaugh@spokanecity.org	
<u>For the Mayor</u>	WHITNEY, TYLER	tdunivant@spokanecity.org	
<u>Additional Approvals</u>		acline@spokanecity.org	
<u>Purchasing</u>		lwilliams@spokanecity.org	
		cmarchand@spokanecity.org	

ORDINANCE NO C35431

An ordinance amending Ordinance No. C-35322, passed the City Council November 23, 2015, and entitled, "An ordinance adopting the Annual Budget of the City of Spokane for 2016, making appropriations to the various funds, departments, and programs of the City of Spokane government for the fiscal year ending December 31, 2016, and providing it shall take effect immediately upon passage", and declaring an emergency.

WHEREAS, subsequent to the adoption of the 2016 budget Ordinance No. C-35322, as above entitled, and which passed the City Council November 23, 2015, it is necessary to make changes in the appropriations of the Sewer Fund, Parks and Recreation Fund, and Solid Waste Disposal 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 Sewer Fund, and the budget annexed thereto with reference to the Sewer Fund, the following changes be made:

FROM:	4310-43354	Sewer Fund	
	35148-59951	Reserve for Budget Adjustment	<u>\$ 39,139</u>
TO:	4310-43100	Sewer Fund	
	35145-05430	WW Supervisor	15,536
		(Grade 41 to Grade 45 – 2 positions)	
	35145-52110	FICA/Medicare	1,189
	35145-52210	Retirement	1,282
	4310-43354	Sewer Fund	
	35145-05430	WW Supervisor	15,536
		(Grade 41 to Grade 45 – 2 positions)	
	35145-52110	FICA/Medicare	1,189
	35145-52210	Retirement	1,282
	4320-30210	Sewer Fund	
	35141-06590	WWTP Asst Plant Manager	2,700
		(Grade 54 to 56 – 1 position)	
	35141-52110	FICA/Medicare	200
	35141-52210	Retirement	225
			<u>\$ 39,139</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:	1400-30210	Parks and Recreation Fund	
	76100-59954	Reserve for Total Cost of Compensation	<u>\$ 4,868</u>
TO:	1400-54500	Parks and Recreation Fund	
	76810-06110	Craft Specialist	4,200
		(Grade 35 to Grade 37 – 1 position)	
	76810-52110	FICA/Medicare	321
	76810-52210	Retirement	347
			<u>\$ 4,868</u>

Section 3. That in the budget of the Solid Waste Disposal Fund, and the budget annexed thereto with reference to the Solid Waste Disposal Fund, the following changes be made:

FROM:	4490-99999	Solid Waste Disposal Fund	
	99999	Unappropriated Reserves	<u>\$ 9,400</u>
TO:	4490-44100	Solid Waste Disposal Fund	
	37148-05510	Landfill / Transfer Station Foreperson	8,100
		(Grade 40 to Grade 45 – 3 positions)	
	37148-52110	FICA/Medicare	600
	37148-52210	Retirement	700
			<u>\$ 9,400</u>

Section 4. 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 for salary grade adjustments as determined by HR, and agreed upon by management and applicable bargaining units; 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:
09/12/2016

Date Rec'd	8/31/2016
Clerk's File #	ORD C35434
Renews #	
Cross Ref #	
Project #	
Bid #	
Requisition #	
Submitting Dept	FINANCE & ADMIN
Contact Name/Phone	TIM DUNIVANT 625-6845
Contact E-Mail	TDUNIVANT@SPOKANECITY.ORG
Agenda Item Type	Emergency Budget Ordinance
Agenda Item Name	0410 - EBO RE: CONTRACTING AND PROCUREMENT REVIEW

Agenda Wording

Amending Ordinance No. C-35322 and appropriating funds in the General Fund, FROM: Unappropriated Reserves, \$127,000; TO: Surveys & Studies, same amount.

Summary (Background)

This ordinance will provide funding for a contracting and procurement organizational and process assessment. The City issued an RFP to solicit proposals to conduct this operational/process assessment and received back a total of eight responses. The top two responders then participated in an interview process which resulted in the selection

Fiscal Impact

Budget Account

Expense	\$ 127,000	# 0020-88100-13200-54203
Select	\$	#
Select	\$	#
Select	\$	#

Approvals

Council Notifications

<u>Dept Head</u>	DUNIVANT, TIMOTHY	<u>Study Session</u>	
<u>Division Director</u>	DUNIVANT, TIMOTHY	<u>Other</u>	Finance Committee 07/11/16
<u>Finance</u>	KECK, KATHLEEN	<u>Distribution List</u>	
<u>Legal</u>	WHALEY, HUNT		tdunivant@spokanecity.org
<u>For the Mayor</u>	WHITNEY, TYLER		sstopher@spokanecity.org
<u>Additional Approvals</u>			kbustos@spokanecity.org
<u>Purchasing</u>			hwhaley@spokanecity.org

ORDINANCE NO C35434

An ordinance amending Ordinance No. C-35322, passed the City Council November 23, 2015, and entitled, "An ordinance adopting the Annual Budget of the City of Spokane for 2016, making appropriations to the various funds, departments, and programs of the City of Spokane government for the fiscal year ending December 31, 2016, and providing it shall take effect immediately upon passage", and declaring an emergency.

WHEREAS, subsequent to the adoption of the 2016 budget Ordinance No. C-35322, as above entitled, and which passed the City Council November 23, 2015, it is necessary to make changes in the appropriations of the General 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>\$ 127,000</u>
TO:	0020-88100	General Fund	
	13200-54203	Surveys/Studies	<u>\$ 127,000</u>

Section 2. It is, therefore, by the City Council declared that an urgency and emergency exists for making the changes set forth herein, such urgency and emergency arising from the need to perform an assessment of the City's procurement and contracting processes; 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: 09/12/2016

<u>Date Rec'd</u>	8/23/2016
<u>Clerk's File #</u>	ORD C35358
<u>Renews #</u>	

<u>Submitting Dept</u>	DEVELOPER SERVICES CENTER	<u>Cross Ref #</u>	
<u>Contact Name/Phone</u>	ELDON BROWN 6258-6305	<u>Project #</u>	
<u>Contact E-Mail</u>	EBROWN@SPOKANECITY.ORG	<u>Bid #</u>	
<u>Agenda Item Type</u>	Final Reading Ordinance	<u>Requisition #</u>	
<u>Agenda Item Name</u>	4700 - FINAL READING ORDINANCE - VACATING ALLEY BETWEEN BOONE AND ASH		

Agenda Wording

Vacation of the alley between Boone Avenue and Gardner Avenue from the east line of Ash Street to the west line of Maple Street. (West Central Neighborhood)

Summary (Background)

On February 1, 2016 City Council approved this vacation subject to conditions. Since that time the conditions have been met.

<u>Fiscal Impact</u>	<u>Budget Account</u>
Neutral \$	#
Select \$	#
Select \$	#
Select \$	#

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	BECKER, KRIS	<u>Study Session</u>	
<u>Division Director</u>	MALLAHAN, JONATHAN	<u>Other</u>	PCED 10/19/15
<u>Finance</u>	KECK, KATHLEEN	<u>Distribution List</u>	
<u>Legal</u>	RICHMAN, JAMES	Engineering Admin	
<u>For the Mayor</u>	WHITNEY, TYLER	ebrown@spokanecity.org	
<u>Additional Approvals</u>		edjohnson@spokanecity.org	
<u>Purchasing</u>		sbishop@spokanecity.org	
		htrautman@spokanecity.org	

City of Spokane
Department of Engineering Services
808 West Spokane Falls Blvd.
Spokane, WA 99201-3343
(509) 625-6700

ORDINANCE NO. C35358

An ordinance vacating the alley between Boone Avenue and Gardner Avenue, from the east line of Ash Street to the west line of Maple Street,

WHEREAS, a petition for the vacation of the alley between Boone Avenue and Gardner Avenue, from the east line of Ash Street to the west line of Maple Street has been filed with the City Clerk representing 100% of the abutting property owners, and a hearing has been held on this petition before the City Council as provided by RCW 35.79; and

WHEREAS, the City Council has found that the public use, benefit and welfare will best be served by the vacation of said public way; -- NOW, THEREFORE,

The City of Spokane does ordain:

Section 1. That the alley between Boone Avenue and Gardner Avenue, from the east line of Ash Street to the west line of Maple Street, in the northeast quarter of Section 13, Township 25 North, Range 42 East, W.M., in the City of Spokane, is hereby vacated. Parcel number not assigned.

Section 2. An easement is reserved and retained over and through the entire vacated area for the utility services of Avista Utilities, CenturyLink, Comcast and the City of Spokane to protect existing and future utilities.

Section 3. That this ordinance shall not become effective until the owners of property abutting upon the area to be vacated shall have compensated the City of Spokane in an amount equal to the full assessed value of the area herein vacated.

Passed the City Council _____

Council President

Attest: _____
City Clerk

Approved as to Form:

Assistant City Attorney

Mayor

Date: _____

Effective Date: _____



**CITY OF SPOKANE
PLANNING & DEVELOPMENT**

808 West Spokane Falls Blvd, Spokane WA 99201-3343
(509) 625-6300 FAX (509) 625-6822

**STREET VACATION REPORT
December 17, 2015**

LOCATION: Boone-Gardner-Ash-alley

PROPONENT: Paul Matthews Architects

PURPOSE: Site Development

HEARING: January 18, 2016

REPORTS:

AVISTA UTILITIES – Avista has reviewed the vacation and would request an easement be reserved for our electric and gas facilities in the area.

COMCAST – Comcast has reviewed the vacation request. Comcast cant approve this vacation, we have a Coax and Fiber run going through this Alley. If the owner would like of us to move, it would be at their cost

CENTURYLINK – The alley has a 200 pair cable that feeds the south side of Boone and the north side of Gardner. I can see no way we would want to vacate this alley.

ASSET MANAGEMENT - CAPITAL PROGRAMS – Existing sewer pipe will need an easement. No planned capital facilities in the vicinity.

FIRE DEPARTMENT - No Comments

NEIGHBORHOOD SERVICES - No Comments

PARKS DEPARTMENT - No Comments

PLANNING & DEVELOPMENT – DEVELOPER SERVICES – Existing 8” Sewer in the ROW of the proposed vacation. Any vacation we would require the entire width of the alley to be a no build easement for sewer.

PLANNING & DEVELOPMENT – TRAFFIC DESIGN – No Comments

PLANNING & DEVELOPMENT – PLANNING – Maintain access to neighbor's garage.

POLICE DEPARTMENT - No Comments

SOLID WASTE MANAGEMENT - No Comments

STREET DEPARTMENT - No Comments

WASTEWATER MANAGEMENT – There is a sewer main in the alley. We will require a no build easement be maintained over the sewer main. The easement should be at least 30' across centered on the main. Additionally all onsite runoff must be maintained and treated onsite.

WATER DEPARTMENT - No Comments

BICYCLE ADVISORY BOARD - No Comments

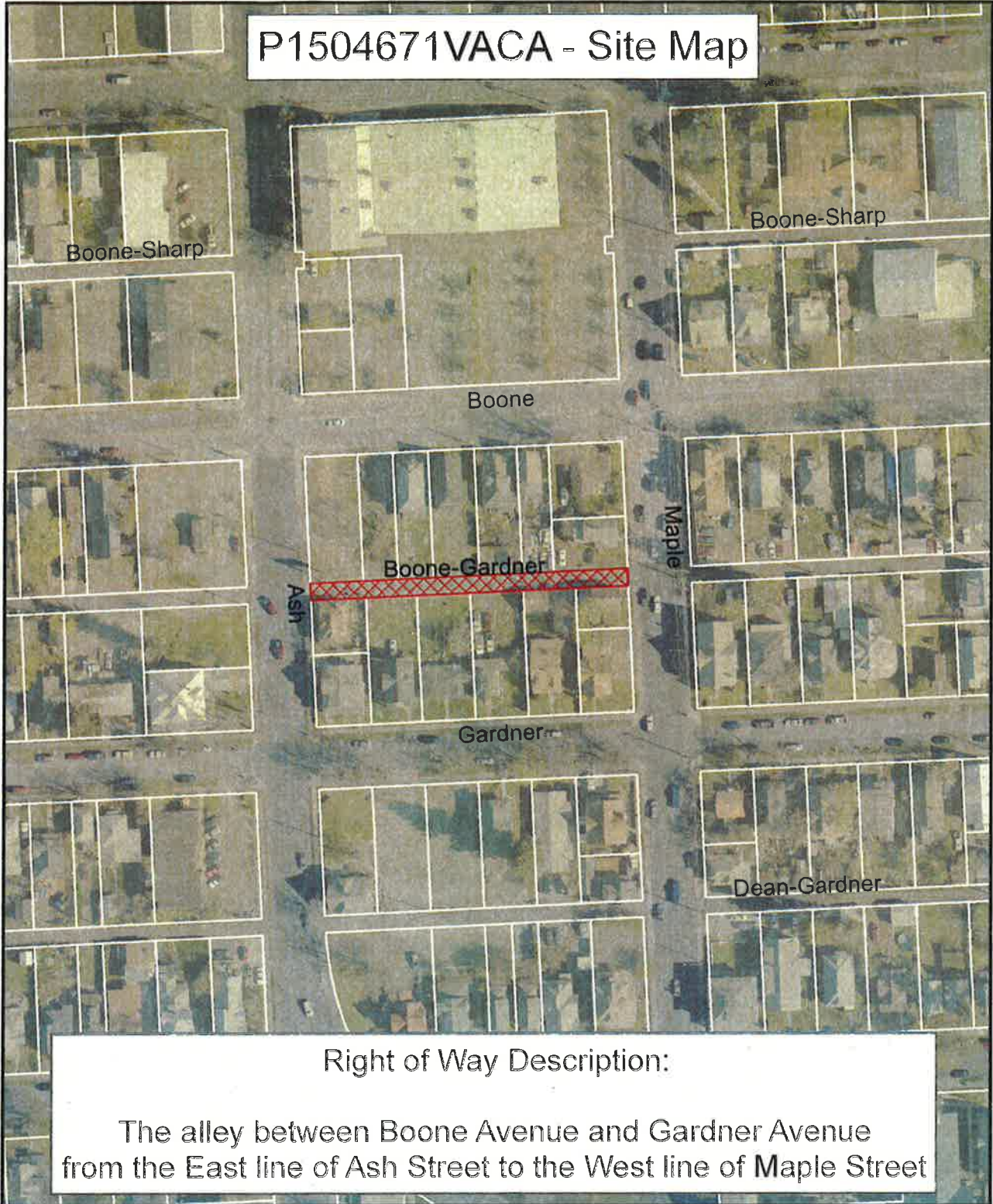
RECOMMENDATION: That the petition be granted and a vacating ordinance be prepared subject to the following conditions:

1. Unless the utilities are moved by the proponent at their expense, an easement as requested by Century Link, Avista Utilities, Comcast be reserved.
2. Proponent must work with the City of Spokane Wastewater Department to adequately protect the sewer main to the satisfaction of the Wastewater Department.
3. An easement be reserved over and through the entire vacated area for the City of Spokane.
4. Adequate access for emergency and solid waste vehicles shall be maintained to existing and future buildings.
5. The proponent shall pay to the City of Spokane the assessed valuation for the vacated land as defined by the latest information from the County Assessor's Office. This is calculated to be \$18,806.23 and is to be deposited to Budget Account #3200 49199 99999 39510.
6. That the final reading of the vacation be held in abeyance until all of the above conditions are met and that the above conditions are met by **December 01, 2016**.



Eldon Brown, P.E.
Principal Engineer – Developer Services

P1504671VACA - Site Map



Right of Way Description:

The alley between Boone Avenue and Gardner Avenue
from the East line of Ash Street to the West line of Maple Street

Disclaimer: This is not a legal document. The information shown on this map is compiled from various sources and is subject to revision. This map should not be used to determine the location of facilities in relationship to property lines, sections lines, streets, etc.
Not suitable for design purposes.



AREA

COSGIS
City of Spokane GIS



TRANSMITTAL OF FIRST READING ORDINANCE

DATE: February 8, 2016

TO: Erik Johnson
Engineering Services

Clerk's File No.
ORD C35358

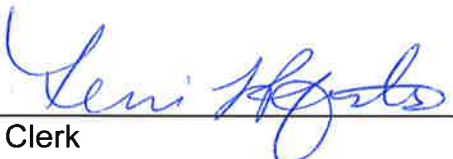
FROM: Terri Pfister, City Clerk

RE: Vacation of alley between Boone Avenue and Gardner Avenue from the east line of Ash Street to the west line of Maple Street.

Attached is a copy of Ordinance C35358 for the vacation of:

Vacation of alley between Boone Avenue and Gardner Avenue from the east line of Ash Street to the west line of Maple Street.

This ordinance was read for the first time on February 1, 2016, and will be read for the final time when the necessary conditions have been met and this transmittal, signed and dated by the Engineering Services Director, is returned to the City Clerk's Office.



City Clerk

2/8/16

Date

Precedent conditions have been met and Ordinance C35358 is hereby returned for Final Reading.



Principal Engineer – Developer Services

Dated: 2/23/16



Agenda Sheet for City Council Meeting of:
08/29/2016

Date Rec'd	8/17/2016
Clerk's File #	ORD C35428
Renews #	
Cross Ref #	
Project #	
Bid #	
Requisition #	

Submitting Dept	CITY COUNCIL
Contact Name/Phone	KAREN STRATTON 5096256712
Contact E-Mail	ROBERST@SPOKANECITY.ORG
Agenda Item Type	First Reading Ordinance
Agenda Item Name	0320 AN ORDINANCE RELATING TO CITY COUNCIL APPROVAL OF MAYORAL APPOINTEES

Agenda Wording

An ordinance relating to the process for City Council approval of Mayoral appointments; amending sections 02.005.010 and 03.01A.100 of the Spokane Municipal Code.

Summary (Background)

Section 24 of the City Charter requires that the City Council approve, by Resolution, each of the Mayor's appointments for the positions of department head and assistant department head. However, the Charter leaves gaps in terms of the process and timelines for the Council's consideration of approval of mayoral appointees. This ordinance improves clarity and efficiency in City government by defining the time period within which the Mayor's appointees must be submitted to Council for approval.

<u>Fiscal Impact</u>		<u>Budget Account</u>	
Neutral	\$	#	
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>	CHE Committee 8/22/16
<u>Finance</u>	DAVIS, LEONARD	<u>Distribution List</u>	
<u>Legal</u>	PICCOLO, MIKE		
<u>For the Mayor</u>	WHITNEY, TYLER		
<u>Additional Approvals</u>			
<u>Purchasing</u>			

ORDINANCE NO. C35428

An ordinance relating to the process for City Council approval of Mayoral appointments; amending sections 02.005.010 and 03.01A.100 of the Spokane Municipal Code.

WHEREAS, under section 24 of the City Charter, the Mayor's appointment of "the administrative heads and assistant administrative heads in each department of the city government," is subject to the City Council's approval; and

WHEREAS, the Charter is silent regarding when appointees are considered for Council approval; and

WHEREAS, the Charter also makes no distinction between permanent, interim, or acting department heads; and

WHEREAS, unreasonable delay in the Mayor's presentation of appointees for City Council approval can stall the work of the City; undermine the public's trust and confidence in local government; create an unfair situation for the appointee, the appointee's department and staff, and the public; and create or prolong a sense of uncertainty and instability in the administration of City affairs; and

WHEREAS, the City Council intends to improve clarity and efficiency in the administration of City government by defining the time period within which the Mayor's appointees to department heads and assistant department heads, whether described as permanent, interim, or acting department head, must be considered by the City Council for its consideration for approval.

NOW THEREFORE, the City of Spokane does ordain:

Section 1. That section 02.005.010 of the Spokane Municipal Code is amended to read as follows:

Section 02.005.010 Council President and City Council

- A. As provided in the City Charter a City Council President and six City Council Members constitute the City Council, which is the legislative body of the City. The City Council President and City Council Members have no administrative authority over personnel matters except the Council President and the Council Members:
1. Appoint, evaluate and discharge the Hearing Examiner;
 2. appoint, evaluate, and discharge the City Council's Senior Research and Policy Analyst;
 3. appoint, evaluate, and discharge the City Council's Policy Advisor;

4. ~~((confirm))~~approve the appointment by the Mayor of the City Attorney, the City Clerk, and the permanent, acting, or interim administrative head in each department and division; provided:
 - a. ~~any-permanent~~ appointee, whether permanent, acting, or interim, for which city council approval is required pursuant to section 24 of the Charter and this section shall be placed on the agenda of the next available council meeting following the mayor's appointment of the appointee city council agenda by the mayor within 30 days of the appointment;
 - b. ~~the city council shall consider for approval those persons who are appointed by the mayor as interim or acting department heads no later than shall serve as such for up to 30 180 days after the start of that person's service as interim or acting department head city council's approval, which period can be extended for up to an additional 180 days by city council resolution;~~
 - c. ~~no interim or acting department head shall serve in such capacity for longer than 180 days after the city council's approval as such, which period can be extended for an additional 180 days by city council resolution receive the pay or benefits of the department head job position until the city council has approved the appointment.~~
5. appoint nominees of the Mayor to boards, commissions, and other official City agencies, unless otherwise provided;
6. hire, supervise, evaluate, and discharge their own administrative staff;
7. hire, supervise, evaluate, and discharge their individual legislative assistants.
- B. The Council President reviews the preparation of the agenda for City Council meetings, briefings, and study session meetings and presides at meetings of the City Council. The Council President also serves as the Mayor Pro Tem. The Council President shall serve as the primary signatory on all Council budgetary, expenditure, and appropriation matters as related to the Council Office budget; consistent with City procedures and policies.
- C. City Council agenda items shall be submitted and processed consistent with the City Council Rules of Procedure and administrative policies and procedures.
- D. The City Council shall establish committees to assist in the performance of its assigned duties.
 1. The standing committees shall have a minimum of three members, one from each of the three City Council districts.
 2. The council president may chair two of the standing committees as determined in his or her sole discretion.
 3. All other committees, including ad hoc committees, shall select their own chair.
 4. At no time shall a member of the City Council chair more than two standing committees at the same time.
 5. Ad hoc committees shall be composed with a minimum of three members appointed by the majority of the City Council.

6. Standing committee membership shall be determined by the second legislative session of the City Council of each calendar year and memorialized by resolution of the City Council. Membership on each of the standing committees will be determined from those expressing an interest to serve on the committee.
- E. Any City Council committee with more than three Council Members as committee members shall be considered a committee of the whole City Council. All meetings of such a committee shall be considered a special Council meeting with the appropriate public meeting notice. No legislative action may be taken at any standing or ad hoc committee unless the committee meeting was noticed as a special meeting in compliance with the Washington Open Public Meetings Act (OPMA) and Rule 4.2 of the City Council Rules of Procedure.
- F. All standing committee meetings shall be open to the public except when the committee adjourns into executive session. No public testimony will be taken during standing committee meetings. Participation in a standing committee meeting shall be limited to standing committee members, appropriate staff, and other individuals recognized by the committee. Participation by Council Members, including deliberation and voting, shall be open to all Council Members when the standing committee is meeting as a committee of the whole and as a special Council meeting. Participation by Council Members in a standing committee that is not a committee of the whole shall be limited to just the appointed Council Members.

Section 2. That section 03.01A.100 of the Spokane Municipal Code is amended to read as follows:

Section 03.01A.100 Mayor

- A. As provided in the City Charter, the mayor is the chief executive and administrative officer of the City with final authority over the employment, termination and assignment of all employees of the City, not including the elected officers, except that:
 1. the appointment of the city attorney, the city clerk and the administrative heads and acting or interim head of each department requires approval of the city council; provided:
 - a. any permanent appointee, whether permanent, acting, or interim, for which city council approval is required pursuant to section 24 of the Charter and this section shall be placed on the agenda of the next available council meeting following the mayor's appointment of the appointee city council agenda by the mayor within 30 days of the appointment;
 - b. the city council shall consider for approval those persons who are appointed by the mayor as interim or acting department heads no later than shall serve as such for up to 30 180 days after the start of that person's service as interim or acting department head city

council's approval, which period can be extended for up to an additional 180 days by city council resolution;

- c. no interim or acting department head shall serve in such capacity for longer than 180 days after the city council's approval as such, which period can be extended for an additional 180 days by city council resolution receive the pay or benefits of the department head job position until the city council has approved the appointment.
 - 2. the appointment of the head of the department of parks and recreation requires the concurrence of the park board;
 - 3. the appointment of the head and assistant head of the retirement department requires the concurrence of the retirement board;
 - 4. the appointment of persons to positions within the classified service, and their discharge, must follow the procedures of the civil service system;
 - 5. the number of positions in the City government is determined in the annual budget;
 - 6. some individuals, such as the director of Spokane area workforce development council administration, the library director, chief examiner, and the clerk of the municipal court, are appointed or directed by a board or agency by charter, statute or intergovernmental contract;
 - 7. state law may impose a requirement, such as a license, for the performance of a particular function.
- B. The mayor may appoint such assistants, who are variously referred to as city administrator, division director, department director, or assistant director, as deemed necessary for the efficient operation of City government, subject always to city council approval of positions and salaries through the budget process.
- C. Subject to the provisions of the City Charter and the ordinances by which administrative departments are established and discontinued, the mayor determines the allocation of functions and duties among the several departments and positions and establishes the organizational structure and reporting relationships of the executive branch of the City government.
- D. As provided in SMC 1.02.130, the mayor may delegate to assistants specific functions, authority and responsibility, including the signing of documents.
- E. As provided in SMC 1.02.130, the mayor may delegate specific functions, authority and responsibility, including the signing of documents.
- F. The mayor exercises direct supervision of the departments of communications and public affairs, retirement, and equal employment opportunity and contract compliance.
- G. The mayor is chair of the Sister Cities Association of Spokane, the nonprofit corporation that oversees the Sister Cities program by contract with the City.

Section 3. That all appointed department heads, whether interim, acting, or permanent, who have not received council approval as of the effective date of this ordinance shall be deemed to have been appointed on the effective date of this ordinance.

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:
08/29/2016

Date Rec'd	8/17/2016
Clerk's File #	ORD C35429
Renews #	
Cross Ref #	
Project #	
Bid #	
Requisition #	

Submitting Dept	CITY COUNCIL
Contact Name/Phone	MIKE FAGAN 509 625-6257
Contact E-Mail	MFAGAN@SPOKANECITY.ORG
Agenda Item Type	First Reading Ordinance
Agenda Item Name	ORDINANCE RELATING TO COUNCIL CONFIRMATION OF MAYORAL APPOINTMENTS

Agenda Wording

An ordinance relating to City Council confirmation of Mayoral appointments; amending SMC sections 2.005.010, 3.01A.100, and 3.01A.195.

Summary (Background)

<u>Fiscal Impact</u>		<u>Budget Account</u>	
Select	\$		#
Select	\$		#
Select	\$		#
Select	\$		#
<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	MCCLATCHEY, BRIAN	<u>Study Session</u>	
<u>Division Director</u>		<u>Other</u>	
<u>Finance</u>	BUSTOS, KIM	<u>Distribution List</u>	
<u>Legal</u>	PICCOLO, MIKE		
<u>For the Mayor</u>	WHITNEY, TYLER		
<u>Additional Approvals</u>			
<u>Purchasing</u>			

ORDINANCE NO. C35429

An ordinance relating to City Council confirmation of Mayoral appointments; amending SMC sections 2.005.010, 3.01A.100, and 3.01A.195.

WHEREAS, in 1999, the people of the City of Spokane elected for themselves a new, strong-mayor form of government; and

WHEREAS, Sections 4 of the Spokane City Charter establishes that Spokane is a strong-mayor form of government; and

WHEREAS, Section 5 of the Spokane City Charter establishes that the Mayor is the chief executive officer of the City; and

WHEREAS, the Mayor has final authority over the employment, termination and assignment of all employees of the City pursuant to SMC 03.01A.100(A); and

WHEREAS, the public deserves to have a qualified, professional City workforce; and

WHEREAS, a person's qualifications to serve in public employment should not be contingent on the political composition of the City Council considering his or her appointment; and

WHEREAS, political sycophancy should be neither a prerequisite for public employment nor a substitute for substantive professional qualification; - - Now, Therefore,

The City of Spokane does ordain:

Section 1. That SMC 2.005.010 is amended to read as follows:

2.005.010 Council President and City Council

A. As provided in the City Charter a City Council President and six City Council Members constitute the City Council, which is the legislative body of the City. The City Council President and City Council Members have no administrative authority over personnel matters except the Council President and the Council Members:

1. Appoint, evaluate and discharge the Hearing Examiner;
2. appoint, evaluate, and discharge the City Council's Senior Research and Policy Analyst;

3. appoint, evaluate, and discharge the City Council's Policy Advisor;
 4. confirm the appointment by the Mayor of the City Attorney, the City Clerk, and the administrative head in each department and division, considering only the appointments' qualifications for service;
 5. appoint nominees of the Mayor to boards, commissions, and other official City agencies, considering only the nominees' qualifications for service, unless otherwise provided;
 6. hire, supervise, evaluate, and discharge their own administrative staff;
 7. hire, supervise, evaluate, and discharge their individual legislative assistants.
- B. The Council President reviews the preparation of the agenda for City Council meetings, briefings, and study session meetings and presides at meetings of the City Council. The Council President also serves as the Mayor Pro Tem. The Council President shall serve as the primary signatory on all Council budgetary, expenditure, and appropriation matters as related to the Council Office budget; consistent with City procedures and policies.
- C. City Council agenda items shall be submitted and processed consistent with the City Council Rules of Procedure and administrative policies and procedures.
- D. The City Council shall establish committees to assist in the performance of its assigned duties.
1. The standing committees shall have a minimum of three members, one from each of the three City Council districts.
 2. The council president may chair two of the standing committees as determined in his or her sole discretion.
 3. All other committees, including ad hoc committees, shall select their own chair.
 4. At no time shall a member of the City Council chair more than two standing committees at the same time.

5. Ad hoc committees shall be composed with a minimum of three members appointed by the majority of the City Council.
 6. Standing committee membership shall be determined by the second legislative session of the City Council of each calendar year and memorialized by resolution of the City Council. Membership on each of the standing committees will be determined from those expressing an interest to serve on the committee.
- E. Any City Council committee with more than three Council Members as committee members shall be considered a committee of the whole City Council. All meetings of such a committee shall be considered a special Council meeting with the appropriate public meeting notice. No legislative action may be taken at any standing or ad hoc committee unless the committee meeting was noticed as a special meeting in compliance with the Washington Open Public Meetings Act (OPMA) and Rule 4.2 of the City Council Rules of Procedure.
- F. All standing committee meetings shall be open to the public except when the committee adjourns into executive session. No public testimony will be taken during standing committee meetings. Participation in a standing committee meeting shall be limited to standing committee members, appropriate staff, and other individuals recognized by the committee. Participation by Council Members, including deliberation and voting, shall be open to all Council Members when the standing committee is meeting as a committee of the whole and as a special Council meeting. Participation by Council Members in a standing committee that is not a committee of the whole shall be limited to just the appointed Council Members.

Section 2. That SMC 3.01A.100 is amended to read as follows:

3.01A.100 Mayor

- A. As provided in the City Charter, the mayor is the chief executive and administrative officer of the City with final authority over the employment, termination and assignment of all employees of the City, not including the elected officers, except that:
1. the appointment of the city attorney, the city clerk and the administrative heads of each department requires approval of the appointment's qualifications for service by the city council;

2. the appointment of the head of the department of parks and recreation requires the concurrence of the park board;
 3. the appointment of the head and assistant head of the retirement department requires the concurrence of the retirement board;
 4. the appointment of persons to positions within the classified service, and their discharge, must follow the procedures of the civil service system;
 5. the number of positions in the City government is determined in the annual budget;
 6. some individuals, such as the director of Spokane area workforce development council administration, the library director, chief examiner, and the clerk of the municipal court, are appointed or directed by a board or agency by charter, statute or intergovernmental contract;
 7. state law may impose a requirement, such as a license, for the performance of a particular function.
- B. The mayor may appoint such assistants, who are variously referred to as city administrator, division director, department director, or assistant director, as deemed necessary for the efficient operation of City government, subject always to city council approval of positions and salaries through the budget process.
- C. Subject to the provisions of the City Charter and the ordinances by which administrative departments are established and discontinued, the mayor determines the allocation of functions and duties among the several departments and positions and establishes the organizational structure and reporting relationships of the executive branch of the City government.
- D. As provided in SMC 1.02.130, the mayor may delegate to assistants specific functions, authority and responsibility, including the signing of documents.
- E. As provided in SMC 1.02.130, the mayor may delegate specific functions, authority and responsibility, including the signing of documents.

- F. The mayor exercises direct supervision of the departments of communications and public affairs, retirement, and equal employment opportunity and contract compliance.
- G. The mayor is chair of the Sister Cities Association of Spokane, the nonprofit corporation that oversees the Sister Cities program by contract with the City.

Section 3. That SMC 3.01A.195 is amended to read as follows:

3.01A.195 Department Head Approval Process

- A. The City Attorney, the City Clerk, and the administrative head of each department shall not perform the duties of the position or be compensated directly or indirectly by the City of Spokane until approved by the City Council. In considering a Mayoral appointment for these positions, the City Council may take into consideration only the appointee's qualifications for service based on his or her education, experience, professional background, and other similar expertise that is relevant to the position.
- B. The appointment of the head of the Parks and Recreation department shall not perform the duties of the position or be compensated directly or indirectly by the City of Spokane until the appointment has been concurred with by the Park Board and approved by the City Council. In considering a Mayoral appointment for this position, the City Council may take into consideration only the appointee's qualifications for service based on his or her education, experience, professional background, and other similar expertise that is relevant to the position.
- C. The appointment of the head of the Retirement Department shall not perform the duties of the position or be compensated directly or indirectly by the City of Spokane until the appointment has been concurred with by the Retirement Board and approved by the City Council. In considering a Mayoral appointment for this position, the City Council may take into consideration only the appointee's qualifications for service based on his or her education, experience, professional background, and other similar expertise that is relevant to the position.
- D. Pursuant to section 24 of the Charter, each department may have no more than two employees who are exempt from civil service: the department director and an assistant department director.

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:
09/12/2016

Date Rec'd	8/25/2016
Clerk's File #	ORD C35432
Renews #	

Submitting Dept	DEVELOPER SERVICES CENTER	Cross Ref #	
Contact Name/Phone	ELDON BROWN 625-6305	Project #	
Contact E-Mail	EBROWN@SPOKANECITY.ORG	Bid #	
Agenda Item Type	Hearings	Requisition #	
Agenda Item Name	4700 - STREET VACATION HEARING - SHARP AVENUE		

Agenda Wording

Vacation of Sharp Avenue from the east line of Cedar Street to the west line of Jefferson Street. (Garfield Neighborhood Council)

Summary (Background)

At its legislative session held on August 8, 2016, the City Council set a hearing on the above vacation for September 12, 2016. Staff has solicited responses from all concerned parties.

<u>Fiscal Impact</u>	<u>Budget Account</u>
Neutral \$	#
Select \$	#
Select \$	#
Select \$	#

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	BECKER, KRIS	<u>Study Session</u>	
<u>Division Director</u>	MALLAHAN, JONATHAN	<u>Other</u>	PCED 5/16/16
<u>Finance</u>	KECK, KATHLEEN	<u>Distribution List</u>	
<u>Legal</u>	RICHMAN, JAMES	Engineering Admin	
<u>For the Mayor</u>	WHITNEY, TYLER	ebrown@spokanecity.org	
<u>Additional Approvals</u>		edjohnson@spokanecity.org	
<u>Purchasing</u>		sbishop@spokanecity.org	
		htrautman@spokanecity.org	

City of Spokane
Department of Engineering Services
808 West Spokane Falls Blvd.
Spokane, WA 99201-3343
(509) 625-6700

ORDINANCE NO. C35432

An ordinance vacating Sharp Avenue from the east line of Cedar Street to the west line of Jefferson Street,

WHEREAS, a petition for the vacation of Sharp Avenue from the east line of Cedar Street to the west line of Jefferson Street has been filed with the City Clerk representing 100 of the abutting property owners, and a hearing has been held on this petition before the City Council as provided by RCW 35.79; and

WHEREAS, the City Council has found that the public use, benefit and welfare will best be served by the vacation of said public way; -- NOW, THEREFORE,

The City of Spokane does ordain:

Section 1. That Sharp Avenue from the east line of Cedar Street to the west line of Jefferson Street, in the NW $\frac{1}{4}$ of Section 18, Township 25N, Range 43, E.W.M. is hereby vacated. Parcel number not assigned.

Section 2. An easement is reserved and retained over and through the entire vacated area for the utility services of CenturyLink and the City of Spokane to protect existing and future utilities.

Passed the City Council _____

Council President

Attest: _____
City Clerk

Approved as to Form:

Assistant City Attorney

Mayor

Date: _____

Effective Date: _____

stvac\ Sharp Ave doc



**CITY OF SPOKANE
PLANNING & DEVELOPMENT**

808 West Spokane Falls Blvd, Spokane WA 99201-3343
(509) 625-6300 FAX (509) 625-6822

STREET VACATION REPORT
July 20, 2016

LOCATION: Sharp Ave. from the east line of Cedar St. to the west line of Jefferson St.

PROPONENT: Spokane Transit Authority

PURPOSE: Site Development

HEARING: September 12, 2016

REPORTS:

AVISTA UTILITIES – Avista has no comment or issue with the vacation.

COMCAST – Comcast has reviewed the vacation request and have no problems with the vacation.

CENTURYLINK – We have a major north/south path through the area the city would like to vacate. There are 10-4” conduits, one has an 1800 pair copper cable in it and the rest are smaller copper cables along with several fiber optic cables. There is also an aerial portion that runs north and south. They are a 300 and 400 pair copper cables. Centurylink does not want to lose any access to these cables so we would be against the vacation of Sharp between Cedar and Jefferson.

(2nd set of comments – “We would like to retain a ROW where N. Adams would go across W. Sharp”)

INTEGRATED CAPITAL MANAGEMENT – Maintain Sewer/Water Easements.

FIRE DEPARTMENT – No comments

LEVEL 3 COMMUNICATIONS – Level 3 has no facilities in the area to be vacated.

NEIGHBORHOOD SERVICES - No comments

PARKS DEPARTMENT – No comments

XO COMMUNICATIONS – XO Communications has aerial fiber on the east side of Cedar at Sharp but nothing east of there to Jefferson.

INTEGRA – Integra has no facilities in the area marked.

PLANNING & DEVELOPMENT – DEVELOPER SERVICES – Sewer pipe in the proposed vacation area (continues so can't be privatized). There is a 6" water main in the vacation area. There is one parcel that will be land locked. The vacation would cause a dead end on Adams St. This will require a cul-de-sac or a hammerhead. We cannot support this vacation.

PLANNING & DEVELOPMENT – TRAFFIC DESIGN – No comments

PLANNING & DEVELOPMENT – PLANNING – Would rather see this vacation request come in for the Master Plan or show a phased approach, not piecemealed.

POLICE DEPARTMENT - No comments

SOLID WASTE MANAGEMENT - No comments

STREET DEPARTMENT - No comments

WASTEWATER MANAGEMENT – Wastewater Management has no objection provided the following:

- a) The City will maintain a 30 foot no-build easement with 24hr emergency access over the sewer main running east to west in the proposed vacation area. This easement should be offset 10 feet on one side and 20 feet on the other of the sewer main to provide necessary access.
- b) The west most storm catch basin on the northwest corner of Jefferson and Sharp be removed and the pipe plugged to remove it from the city system.
- c) Two catch basins and one drywell and associated pipes on the west side of Cedar at Sharp be removed. Alternatively these could be privatized if the future property owner wishes to take ownership of them since they do not currently hook to the city system.
- d) All other on site runoff be maintained and treated onsite.

WATER DEPARTMENT - No comments

BICYCLE ADVISORY BOARD - No comments

RECOMMENDATION: That the petition be granted and a vacating ordinance be prepared subject to the following conditions:

1. The ordinance will provide that the City of Spokane retain an easement as requested by Century Link and the City of Spokane shall be retained to protect existing and future utilities.
2. Adequate emergency vehicle access shall be maintained to existing and future buildings.
3. The plans for termination and closure must be submitted and accepted by Planning and Development, prior to construction, and the improvements must be satisfactorily constructed before final vacation approval. As part of these plans/improvements a public turn-around or a hammerhead on Adams St. must be installed. Public storm facilities will also need to be removed or privatized and disconnected from the City of Spokane system.
4. The proponent shall pay to the City of Spokane the assessed valuation for the vacated land as defined by the latest information from the County Assessor's Office. This is calculated to be \$256,851.73 and is to be deposited to Budget Account #3200 49199 99999 39510.
5. That the final reading of the vacation be held in abeyance until all of the above conditions are met and that the above conditions are met by **December 31, 2017**



Eldon Brown, P.E.
Principal Engineer – Developer Services

MEMORANDUM



TRAFFIC OPERATIONS SECTION
STREET DEPARTMENT
901 N. NELSON ST.
SPOKANE, WASHINGTON 99202-3769
(509) 232-8800
FAX (509) 232-8831

DATE: August 22, 2016

TO: Terry L Pfister, City Clerk

FROM: Bob Turner, P.E., Traffic Operations Engineer-Street Department.

SUBJECT: Vacation of Sharp Avenue, from the east line of Cedar Street to the west line of Jefferson Street.

The City of Spokane Street Department has received a request for the vacation of street right of way, as described above.

The City of Spokane Street Department does not have any objection of Sharp Avenue as described above.

rbt

P1505287VACA - Site Map



Disclaimer: This is not a legal document: The information shown on this map is compiled from various sources and is subject to revision. This map should not be used to determine the location of facilities in relationship to property lines, sections lines, streets, etc.
Not suitable for design purposes.

170 85 0 170 340 Feet



Area

COSGIS
City of Spokane GIS





Agenda Sheet for City Council Meeting of:
09/12/2016

Date Rec'd	8/25/2016
Clerk's File #	ORD C35433
Renews #	
Cross Ref #	
Project #	
Bid #	
Requisition #	
Submitting Dept	DEVELOPER SERVICES CENTER
Contact Name/Phone	ELDON BROWN 625-6305
Contact E-Mail	EBROWN@SPOKANECITY.ORG
Agenda Item Type	Hearings
Agenda Item Name	4700 - STREET VACATION HEARING - OAKLAND BLVD. & COLUMBIA AVE.

Agenda Wording

Vacation of those portions of Oakland Boulevard, Columbia Avenue and the alley in Block 10. All in the plat of Cascade Park Addition east of Cedar Road except for the west 50 feet. (Latah/Hangman Valley Neighborhood Council)

Summary (Background)

At its legislative session held August 8, 2016, the City Council set a hearing on the above vacation for September 12, 2016. Since that time, staff has solicited responses from all concerned parties.

Fiscal Impact

Budget Account

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

Approvals

Council Notifications

<u>Dept Head</u>	BECKER, KRIS	<u>Study Session</u>	
<u>Division Director</u>	MALLAHAN, JONATHAN	<u>Other</u>	PCED 7/18/16
<u>Finance</u>	KECK, KATHLEEN	<u>Distribution List</u>	
<u>Legal</u>	RICHMAN, JAMES	Engineering Admin	
<u>For the Mayor</u>	WHITNEY, TYLER	ebrown@spokanecity.org	
<u>Additional Approvals</u>		edjohnson@spokanecity.org	
<u>Purchasing</u>		sbishop@spokanecity.org	
		htrautman@spokanecity.org	

City of Spokane
Department of Engineering Services
808 West Spokane Falls Blvd.
Spokane, WA 99201-3343
(509) 625-6700

ORDINANCE NO. C35433

An ordinance vacating that portion of the right-of-way of Oakland Boulevard between the east right-of-way line of Cedar Road and the east line of Block 9 of the plat of Cascade Park Addition, except for the west 50 feet; together with that portion of the alley, in Block 10 of the Plat of Cascade Park Addition, from the east line of Cedar Road to the east line of Block 10 of the said plat, except for the west 50 feet; together with that portion of the right-of-way of Columbia Avenue between the east right-of-way line of Cedar Road and the east line of Block 10 of the plat of Cascade Park Addition, except the west 50 feet, located in the Northeast Quarter of Section 01, Township 24 North, Range 42 East Willamette Meridian,

WHEREAS, a petition for the vacation of that portion of the right-of-way of Oakland Boulevard between the east right-of-way line of Cedar Road and the east line of Block 9 of the plat of Cascade Park Addition, except for the west 50 feet; together with that portion of the alley, in Block 10 of the Plat of Cascade Park Addition, from the east line of Cedar Road to the east line of Block 10 of the said plat, except for the west 50 feet; together with that portion of the right-of-way of Columbia Avenue between the east right-of-way line of Cedar Road and the east line of Block 10 of the plat of Cascade Park Addition, except the west 50 feet has been filed with the City Clerk representing of the abutting property owners, and a hearing has been held on this petition before the City Council as provided by RCW 35.79; and

WHEREAS, the City Council has found that the public use, benefit and welfare will best be served by the vacation of said public way; -- NOW, THEREFORE,

The City of Spokane does ordain:

Section 1. that portion of the right-of-way of Oakland Boulevard between the east right-of-way line of Cedar Road and the east line of Block 9 of the plat of Cascade Park Addition, except for the west 50 feet; together with that portion of the alley, in Block 10 of the Plat of Cascade Park Addition, from the east line of Cedar Road to the east line of Block 10 of the said plat, except for the west 50 feet; together with that portion of the right-of-way of Columbia Avenue between the east right-of-way line of Cedar Road and the east line of Block 10 of the plat of Cascade Park Addition, except

the west 50 feet, located in the Northeast Quarter of Section 01, Township 24 North, Range 42 East Willamette Meridian, is hereby vacated. Parcel number not assigned.

Passed the City Council _____

Council President

Attest: _____
City Clerk

Approved as to Form:

Assistant City Attorney

Mayor

Date: _____

Effective Date: _____



**CITY OF SPOKANE
PLANNING & DEVELOPMENT**

808 West Spokane Falls Blvd, Spokane WA 99201-3343
(509) 625-6300 FAX (509) 625-6822

**STREET VACATION REPORT
07/19/2016**

LOCATION: A portion of unused right-of-ways southeast of the intersection of Cedar Rd. and Cheney-Spokane Rd.

PROPONENT: Gary Chantry

PURPOSE: Site Development

HEARING: September 12, 2016

REPORTS:

AVISTA UTILITIES – We do have a transmission line on the west side of Cedar but nothing else near the subject property. Avista has no need for an easement in this area.

COMCAST – Comcast has reviewed the vacation request and we have no problem with the vacation.

CENTURYLINK – We do not have any facilities within the red highlighted areas on the map. We do, however, have a cable in the road.

ASSET MANAGEMENT - CAPITAL PROGRAMS – No comments

FIRE DEPARTMENT – No objection

NEIGHBORHOOD SERVICES - No comments

PARKS DEPARTMENT – No comments

XO COMMUNICATIONS – XO Communications has no problem with vacating this right of way.

INTEGRA – Integra does not have any infrastructure near the vacation area.

PLANNING & DEVELOPMENT – DEVELOPER SERVICES – This vacation cuts off most of the access to the platted north/south right-of-way on the east boundary of Cascade Park Addition. (There is still some access). No objection. Sewer and water not currently available to the lots.

PLANNING & DEVELOPMENT – TRAFFIC DESIGN – No comments

PLANNING & DEVELOPMENT – PLANNING – No concerns, just make sure no land locked parcels are created.

POLICE DEPARTMENT - No comments

SOLID WASTE MANAGEMENT - No comments

STREET DEPARTMENT – Streets agrees with the vacation with the following provision: All driveways, existing and proposed shall meet AASHTO sight distance standards.

WASTEWATER MANAGEMENT – No objections provided onsite runoff be maintained and treated onsite.

WATER DEPARTMENT - No comments

BICYCLE ADVISORY BOARD - No comments

RECOMMENDATION: That the petition be granted and a vacating ordinance be prepared subject to the following conditions:

1. Adequate emergency vehicle access shall be maintained to existing and future buildings.
2. Parcels must be aggregated as to still meet the minimum allowable street frontage length of 40 feet.
3. All driveways, existing and proposed shall meet AASHTO sight distance standards.
4. All on-site stormwater runoff generated outside existing roadway must be collected and treated on the site
5. A previous version of a non-user statute (Laws of 1889, Chapter 19, Section 32, p. 603, adopted by the legislature in 1889, provided:

Any county road, or part thereof, which has heretofore been or may hereafter be authorized, which remains unopened for public use for the space of five years after the order is made or authority granted for opening the same, shall be and the same is hereby vacated, and the authority for building the same barred by lapse of time.

This statute was in place until amended in 1909 that it no longer applied to platted streets and alleys.

These right-of-ways were dedicated in 1892 as part of the plat of Cascade Park Addition to Spokane, Washington, which the plat was located in the unincorporated Spokane County.

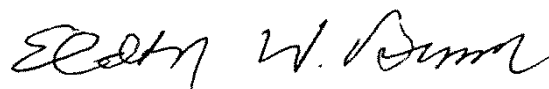
To the best of the City's knowledge and understanding, these right-of-ways have never been improved as public streets and opened for public use between 1892 thru 1897.

These right-of-ways and the areas surrounding it were annexed into the City of Spokane in 1981.

Based on this the City Staff's recommendation is as follows:

That no compensation, for the assessed value of the right-of-ways vacated, be required by virtue of the previous version of the non-user statute (RCW 36.87.090) which vacated these right-of-ways by operation of law many years ago.

Eldon Brown, P.E.
Principal Engineer – Planning & Development

A handwritten signature in black ink, appearing to read "Eldon W. Brown". The signature is written in a cursive, flowing style.

MEMORANDUM



TRAFFIC OPERATIONS SECTION
STREET DEPARTMENT
901 N. NELSON ST.
SPOKANE, WASHINGTON 99202-3769
(509) 232-8800
FAX (509) 232-8831

DATE: August 22, 2016

TO: Terry L Pfister, City Clerk

FROM: Bob Turner, P.E., Traffic Operations Engineer-Street Department.

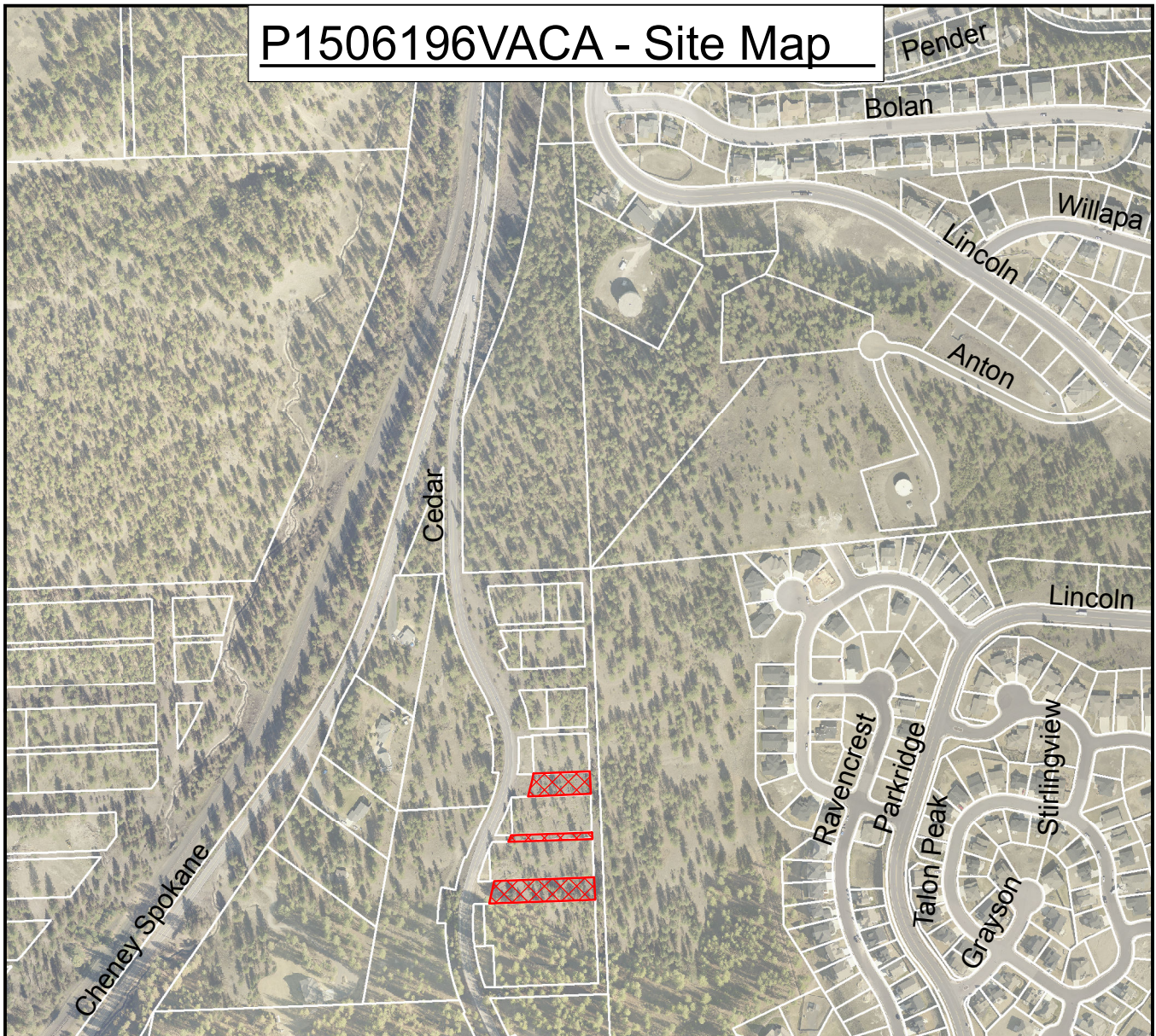
SUBJECT: Vacation of portions of Oakland Boulevard, Columbia Avenue, and the alley in Block 10, all in the plat of Cascade Park Addition and east of Cedar Road, except for the west 50 feet.

The City of Spokane Street Department has received a request for the vacation of street right of way, as described above.

The City of Spokane Street Department has some concern for vehicles which may back onto Cedar Road.

rbt

P1506196VACA - Site Map



Right of Way Description:

That portion of the undeveloped right-of-way of Oakland Blvd between the east right-of-way line of Cedar Rd and the east line of Block 9 of the plat of Cascade Park Addition except for the west 50 feet, and;

That portion of the alley, that is in Block 10 of the Plat of Cascade Park Addition, from the east line of Cedar Rd to the east line of Block 10 of said plat, except for the west 50 feet, and;

That portion of the undeveloped right-of-way of Columbia Ave between the east right-of-way line of Cedar Rd. and the east line of Block 10 of the plat of Cascade Park Addition, except the west 50 feet.

Disclaimer: This is not a legal document: The information shown on this map is compiled from various sources and is subject to revision. This map should not be used to determine the location of facilities in relationship to property lines, sections lines, streets, etc.
Not suitable for design purposes.

290 145 0 290 580 Feet



COSGIS
City of Spokane GIS



Vacation Area