

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, APRIL 10, 2017

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 MIKE FAGAN

COUNCIL MEMBER LORI KINNEAR

COUNCIL MEMBER CANDACE MUMM

COUNCIL MEMBER KAREN STRATTON

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. | City Clerk Report on Initiative 2017-3 filed by Kristine Schuler regarding the public's right to speak at the Open Forum. | Council Decision | LGL 2017-0010 |
| 2. | Purchase of two Goodyear Conveyor Belts from Applied Industrial Technologies (Spokane, WA)—\$82,245.58 (incl. tax) (First of four one-year renewal options). | Approve | OPR 2015-0908
BID 4168-15 |
| 3. | Purchase of House Fabric Filter Tapered Bags from National Filter Media (Winchester, VA)—\$108,831.01 (incl. tax) (First of four one-year renewal options). | Approve | OPR 2015-0909
BID 4171-15 |
| 4. | Contract with Helfrich Brothers Boiler Works, Inc., (Lawrence, MA) for scheduled and unscheduled outages and related services for the Waste to Energy Facility from April 1, 2017 through March 31, 2018—\$600,000 plus a 10% administrative reserve of \$60,000 for a total of \$660,000 (excl. taxes). (Deferred from the March 27, 2017, Agenda) | Approve | OPR 2017-0210
RFB 4309-17 |

- | | | |
|--|---------|------------------------------|
| 5. Contract Extension with United States Electric Corporation of Washington (Olympia, WA) to provide electrical technical and maintenance support services for the Waste to Energy Facility from May 1, 2017 through April 30, 2018—\$99,000. | Approve | OPR 2015-0374
BID 4077-14 |
| 6. Contract with Nalco Company, (Spokane, WA) for chemical management program and water treatment for the Waste to Energy Facility from April 1, 2017 through March 31, 2019—\$28,772.50 plus a 10% administrative reserve of \$2,877.25 for a total of \$31,649.75 (excl. taxes). | Approve | OPR 2017-0256
RFP 4302-17 |
| 7. Contract with Knight Construction & Supply, Inc., (Deer Park, WA) for mechanical repairs at the Waste to Energy Facility from April 18, 2017 through April 17, 2018—\$1,200,000 plus a 10% administrative reserve of \$120,000 for a contract total of \$1,320,000 (excl. taxes). | Approve | OPR 2017-0257
RFB 4337-17 |
| 8. Contract with Dresser Rand Company to perform the overhaul of the Condensing Steam Turbine Generator at the Waste to Energy Facility under the terms of the Sole Source Resolution (RES 2015-0017) from May 1, 2017 through April 30, 2018—\$1,320,000. | Approve | OPR 2017-0258 |
| 9. Consultant Agreement with Journal Technologies for Pre-placement/Upgrade of the case management software platform used by Spokane Municipal Court, as well as prosecutors, probation and public defender offices—\$290,000. | Approve | OPR 2017-0259 |
| 10. Five-year Contract with Rule Steel Tanks, Inc. (Caldwell, ID) for supplying new metal refuse and recycling containers—annual estimated expenditure \$300,000 (incl. tax). | Approve | OPR 2017-0260
BID 4319-17 |
| 11. Contract for a public works safety program with Delta Business Training (Spokane, WA) for one year, with four optional renewals—not to exceed \$50,000 (incl. tax). | Approve | OPR 2017-0261
BID 4344-17 |
| 12. Contract Amendment with the firm of Keating, Bucklin & McCormack, Inc., P.S., for outside counsel services in the legal matter of Estate of Daniel Jones v. City of Spokane—\$201,660. Total Contract Amount: \$250,000. | Approve | OPR 2016-0156 |

13. Report of the Mayor of pending: Approve &
Authorize
Payments CPR 2017-0002
- a. Claims and payments of previously approved obligations, including those of Parks and Library, through _____, 2017, 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 _____, 2017: \$_____. CPR 2017-0003
14. City Council Meeting Minutes: _____, 2017. Approve
All CPR 2017-0013
-

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)

NO BOARDS AND COMMISSIONS APPOINTMENTS

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

SPECIAL BUDGET ORDINANCES

(Require Five Affirmative, Recorded Roll Call Votes)

Ordinance C35488 amending Ordinance No. C35457 passed by the City Council November 28, 2016, and entitled, "An Ordinance adopting the Annual Budget of the City of Spokane for 2017, making appropriations to the various funds, departments and programs of the City of Spokane government for the fiscal year ending December 31, 2017, and providing it shall take effect immediately upon passage," and declaring an emergency and appropriating funds in:

General Fund

FROM: Reserve for Budget Adjustment, \$27,935;

TO: Various Accounts, same amount.

and

Code Enforcement Fund

FROM: Contractual Services, \$1,625;

TO: Various Accounts, same amount.

and

Water Fund**FROM: Reserve for Budget Adjustment, \$3,940;****TO: Various Accounts, same amount.**

(These actions implement quarterly classification and pay adjustments in accordance with approved union agreements and City policies, and as approved by management.)

NO EMERGENCY ORDINANCES**RESOLUTIONS & FINAL READING ORDINANCES**

(Require Four Affirmative, Recorded Roll Call Votes)

- RES 2017-0022** Authorizing a parklet demonstration project for summer, 2017.
- RES 2017-0023** Establishing a decision matrix for construction projects within centers and corridors.
- ORD C35471** (To be considered under Hearings item H1.)
- ORD C35486** Relating to the asset forfeiture policy of the City of Spokane; enacting a new chapter 8.19 of the Spokane Municipal Code.
- ORD C35487** Relating to the creation of four new departments within the Innovation and Technology Services Division; amending SMC section 3.01A.340 & adopting new sections 3.01A.341, 3.01A.342, and 3.01A.344 to chapter 3.01A of the Spokane Municipal Code.

NO FIRST READING ORDINANCES

SPECIAL CONSIDERATIONS

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

RECOMMENDATION

- S1.** Letter which outlines the City Council's goals and objectives for the upcoming collective bargaining negotiations with the Police Guild. (Deferred from March 27, 2017, Agenda. Approval **OPR 2017-0211**)

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.	Relating to the process for amending the unified development code; amending section 17G.025.010 of the Spokane Municipal Code.	Pass Upon Roll Call Vote	ORD C35471
-----	--	--------------------------	------------

Motion to Approve Advance Agenda for April 10, 2017
(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 April 10, 2017, Regular Legislative Session of the City Council is adjourned to April 17, 2017.

NOTES

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

04/10/2017

Date Rec'd

3/30/2017

Clerk's File #

LGL 2017-0010

Renews #**Submitting Dept**

CITY CLERK

Cross Ref #**Contact Name/Phone**

TERRI PFISTER 625-6354

Project #**Contact E-Mail**

TPFISTER@SPOKANECITY.ORG

Bid #**Agenda Item Type**

Report Item

Requisition #**Agenda Item Name**

0260-SCHULER INITIATIVE NO. 2017-3 RE OPEN PUBLIC FORUM

Agenda Wording

City Clerk Report on Initiative No. 2017-3 filed by Kristine Schuler regarding public's right to speak at the Open Forum.

Summary (Background)

On March 28, 2017, Kristine Schuler filed a proposed initiative with the Office of the City Clerk. Pursuant to SMC 2.02.230, the City Attorney's Office reviewed the measure and no changes were made. Per SMC 2.02.040, upon receiving this report from the City Clerk, the City Council may pass the measure as proposed, reject the initiative measure and propose another one dealing with the same subject to be considered as

Fiscal Impact**Budget Account**

Select \$

#

Select \$

#

Select \$

#

Select \$

#

Approvals**Council Notifications****Dept Head**

PFISTER, TERRI

Study Session**Division Director****Other****Finance**

ORLOB, KIMBERLY

Distribution List**Legal**

PICCOLO, MIKE

mpiccolo@spokanecity.org

For the Mayor

SANDERS, THERESA

preschoolpolitics@yahoo.com

Additional Approvals**Purchasing**



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

council legislation, or submit the initiative measure to the voters on its own motion. If the city council does not pass the measure as proposed or submit the initiative measure to the voters, the initiative and the ballot title and summary of the measure shall be forwarded by the city clerk to the city hearing examiner who shall issue a formal written opinion as to the legal validity and effect of the proposed measure to the city council, city clerk, and initiative measure sponsor within fourteen days of receiving the initiative measure from the city clerk.

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List

WARNING

Every person who signs this petition with any other than his or her true name, knowingly signs more than one of these petitions, signs this petition when he or she is not a legal voter, or makes any false statement on this petition may be punished by fine or imprisonment.

INITIATIVE PETITION TO THE SPOKANE CITY COUNCIL

INITIATIVE NO. 2017 - 3

We, the undersigned citizens and legal voters of the City of Spokane, Washington, respectfully direct that this proposed ordinance, known as Initiative No. 2017 - 3, a full, true, and correct copy of which is printed herein, be submitted to the electors of the City of Spokane for their approval or rejection at the next available special or general municipal election. If submitted to election, the proposed ordinance shall appear as the following proposition:

BALLOT TITLE

INITIATIVE REGARDING PUBLIC'S RIGHT TO SPEAK AT THE OPEN FORUM

The Spokane Municipal Code provides that people may speak at the City Council open forum only once per month. This measure would amend the Code to allow people to speak during the open forum once a week and provide additional amendments regarding City Council meeting procedures. Shall the Spokane Municipal Code be amended to permit a person to speak once per week during the City Council's open forum and provide for other meeting procedural amendments?

_____ YES

_____ NO

Each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the City of Spokane; my residence address is correctly stated; and I have knowingly signed this petition only once.

(The full text of the proposed ordinance is printed on the reverse side of this page and continuing on the pages following.)

PETITIONER'S SIGNATURE (in dark ink and as shown on the signer's voter registration)	PRINTED NAME (legibly in dark ink)	ADDRESS WHERE REGISTERED TO VOTE (Street Address,
--	--	---

		City, State, Zip Code)
1.		
20.		

Kristine Schuler, 108 South State Street, Apt. 109, Spokane, WA. (509)294-8073

SUMMARY OF MEASURE

THE LAW AS IT CURRENTLY EXISTS:

The Spokane Municipal Code provides that people may speak at the City Council open forum only once per month. The Code provides other meeting procedures and allows the City Council to adopt applicable rules.

THE EFFECT OF THE PROPOSAL, IF APPROVED:

This measure would amend the Spokane Municipal Code to allow people to speak during the open forum once a week and provide additional amendments regarding City Council meeting procedures, including the allotment of time for the open forum.

DECLARATION OF SIGNATURE GATHERER

I, (print name legibly), swear or affirm under penalty of law that I circulated this sheet of the foregoing petition, and that, to the best of my knowledge, every person who signed this sheet of the foregoing petition knowingly and without any compensation or promise of compensation willingly signed his or her true name and that the information provided therewith is true and correct. I further acknowledge that under chapter 29A.84 RCW, forgery of signatures on this petition constitutes a class C felony, and that offering any consideration or gratuity to any person to induce them to sign a petition is a gross misdemeanor, such violations being punishable by fine or imprisonment or both.

_____ (Signature) _____ (Date)

|

ORDINANCE NO. C - _____

AN ORDINANCE relating to people's participation in the City Council open forum; amending SMC sections 2.01.030, 2.01.040 and 2.01.050.

WHEREAS, in order to encourage a wider participation in Spokane City Council Open Forum Sessions, and

WHEREAS, SMC 02.01.040 currently states that items of interest "may be discussed in front of and with City Council members by interested citizens" while the current City Council President routinely declares that the open forum session "IS NOT A DISCUSSION" causing the need for this legislation to clarify the parts of Spokane Municipal Code that are not being obeyed anyway, and

WHEREAS, Article 1 Section 1 of the Washington State Constitution declares: "All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights," thereby reaffirming the authority of the people to demand that open forum rules be returned to pre-2016 values; and

WHEREAS, the City Council should be committed to Spokane's history of listening to a person's open forum testimony on a weekly allotment, as it had for decades, until a January 4, 2016 Resolution to 'only once a month participation' changed that history; and

WHEREAS, one person is able to provide testimony on a wide array of topics, not only for themselves, but for the sake of others who seek a designated representative to speak for their community, issue, club, group, school or peers, and would need more than once a month to address multiple issues; and

WHEREAS, allowing people their previously long-held right to speak on a weekly basis at City Council open forum sessions is preferable for a dignified city than is contending with weekly protests in the public streets from people who seek to be heard; and

WHEREAS, in the past year numerous individuals have been using their limit of only once a month participation during open forum to request that open forums be returned to a weekly right, thereby causing them less opportunity to speak on other issues; and

WHEREAS, unnecessarily limiting participation in open forum is the opposite of increasing participation in open forum; and

WHEREAS, during 2016 there were forty-three Spokane City Council Legislative meetings held, and of those, thirty-one were less than two hours in length and only two of those forty-three meetings lasted more than four hours, thereby allowing plenty of time that could have been used for listening to the public.

WHEREAS, SMC 2.01.050 is an actual law that is binding and entitled "Rules of Procedure" and is regarding the Spokane City Council meetings, and it should not continue to suffer from confusion and conflict due to another document of rules entitled "City Council Rules Of Procedure" that is not an actual law or allowed to be decided by the people as our City's rules should be and legislation is needed to rectify that, and

NOW, THEREFORE, THE PEOPLE OF THE CITY OF SPOKANE HEREBY ORDAIN:

Section 1. That SMC section 2.01.030 is amended to read as follows:

Section 02.01.030 Right to Speak

All meetings of the City Council are open to the public except an executive session. Members of the public shall have the right to speak to an item on the City Council's legislative, special consideration, or hearing agendas that are not adjudicatory hearings. Members of the public may attend but do not have the right to speak when the City Council is meeting in briefing, study, or other workshop sessions, standing or ad hoc committee, or acting in an adjudicative capacity. It shall be the duty of the presiding officer to ~~((determine and allot whatever time is necessary due to the number of public participants and extent of the proposed participation))~~ monitor that the speaking times that are stated in Spokane Municipal Code are being obeyed.

Section 2. That SMC section 2.01.040 is amended to read as follows:

2.01.040 Open Forum Session

- A. In the course of each regular City Council meeting, prior to the City Council considering its legislative agenda, an allotment of time not less than thirty minutes shall be offered for public comment, at which time items of interest to the public that were not placed upon the current or advance agenda may be discussed in front of the City Council members by those individuals who have indicated their desire to address the City Council. When all matters on the agenda have been acted on, unless it is ten p.m. or later, ((there may be an allotment of meeting time that shall)) the open forum shall continue for a period of time not to exceed ((thirty)) sixty minutes, ((at which time items of interest to the citizens of the City that were not placed upon the current or advance agenda may be discussed in front of and with City Council members by interested citizens who have indicated their desire to address the City Council by such procedure as the City Council may prescribe)). If no one has signed up or is remaining to speak at the open forum session, the open forum session shall be concluded.
- B. Individuals providing open forum testimony for the first time in a calendar month may be allowed their allotted time during the first thirty minutes of the open forum session, while all other individuals participating in open forum shall defer their allotted time until after the agenda items have been acted on, providing the open forum session continues. Individuals shall be called forward to speak by the Chair in the order the individuals signed up to speak. The open forum session is a limited public forum and all matters discussed shall relate to the affairs of the City. No person shall be permitted to speak at open forum more often than once per ((month)) week and shall be limited to three minutes for each appearance.

Section 3. That SMC section 2.01.050 is amended to read as follows:

2.01.050 Rules of Procedure

The City Council may implement and specify this chapter and applicable state law by appropriate rules and practices, including all administrative policies and procedures related to the preparation and submission of the agenda, and the conduct of City Council meetings, which must be consistent with Spokane Municipal Code, and the Revised Code of Washington State. ~~((All administrative policies and procedures related to the conduct of City Council meetings, including the preparation and submission of the City Council agenda, shall conform to City Council Rules of Procedure and practices.))~~

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

04/10/2017

Date Rec'd

3/28/2017

Clerk's File #

OPR 2015-0908

Renews #**Submitting Dept**

SOLID WASTE DISPOSAL

Cross Ref #**Contact Name/Phone**

CHUCK 625-6524

Project #**Contact E-Mail**

CCONKLIN@SPOKANECITY.ORG

Bid #

BID #4168-15

Agenda Item Type

Purchase w/o Contract

Requisition #

RE# 18473

Agenda Item Name

4490 - PURCHASE OF GOODYEAR CONVEYOR BELTS

Agenda Wording

Purchase of two (2) Goodyear Conveyor Belts from Applied Industrial Technologies (Spokane, WA) - \$82,245.58 including tax

Summary (Background)

On 10/26/15 City Council approved the award of Bid #4168-15 to Applied Industrial Technologies as the low bidder. The waste to energy ash handling system utilizes a conveyor belt that is 72 inches wide by 370 feet long. If this belt fails, the ash system must be shut down, resulting in the waste to energy being shut down. To minimize the downtime, the City issued a request for bids to be able to purchase replacement belts while the current belt is still in place. Applied Industrial Technologies

Fiscal Impact**Budget Account**

Expense \$ 82,245.58

4490-44100-37148-54850

Select \$

#

Select \$

#

Select \$

#

Approvals**Council Notifications****Dept Head**

CONKLIN, CHUCK

Study Session

PWC 3/27/17

Division Director

CONKLIN, CHUCK

Other**Finance**

DOVAL, MATTHEW

Distribution List**Legal**

WHALEY, HUNT

ttauscher@spokanecity.org

For the Mayor

SANDERS, THERESA

jsalstrom@spokanecity.org

Additional Approvals

tprince@spokanecity.org

Purchasing

PRINCE, THEA



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

has agreed to renew the terms of the original bid and provide this belt to the WTE for an additional year. This is the first of four renewals.

Fiscal Impact		Budget Account	
Select	\$		#
Select	\$		#

Distribution List

BRIEFING PAPER
Public Works Committee
Solid Waste Disposal
March 27, 2017

Subject

Purchase of 2 Goodyear Conveyor Belts for the WTE from Applied Industrial Technologies, Spokane, WA. \$74,570.17 plus 10% administrative reserve of \$7,457.02 for a total of \$82,027.19 excluding taxes.

Background

The waste to energy ash handling system utilizes a conveyor belt that is 72 inches wide by 370 feet long. If this belt fails, the ash system must be shut down, resulting in the waste to energy being shut down. To minimize the downtime, the City issued a request for bids to be able to purchase replacement belts while the current belt is still in place.

There was only one response received to Request for Bids #4168-15. The bidder, Applied Industrial Technologies, provided the belt that is currently in use, and had previously provided belts to Wheelabrator. Applied Industrial Technologies also has local facilities to be able to store the belts until they need to be installed. Installation of the belt will be solicited under a separate Request for Proposals.

Applied Industrial Technologies has agreed to renew the terms of the original bid and provide this belt to the WTE for an additional year. This is the first of 4 renewals.

Impact

Having a belt available locally for a short delivery will minimize downtime at the WTE should the current belt fail..

Action

Recommend approval.

Funding

Funding for the belts is included in the 2017 repair and maintenance budget for the WTE.

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

04/10/2017

Date Rec'd

3/28/2017

Clerk's File #

OPR 2015-0909

Renews #**Submitting Dept**

SOLID WASTE DISPOSAL

Cross Ref #**Contact Name/Phone**

CHUCK 625-6524

Project #**Contact E-Mail**

CCONKLIN@SPOKANECITY.ORG

Bid #

BID #4171-15

Agenda Item Type

Purchase w/o Contract

Requisition #

RE #18472

Agenda Item Name

4490 - PURCHASE OF FABRIC FILTER TAPERED BAGS

Agenda Wording

Purchase of House Fabric Filter Tapered Bags from National Filter Media (Winchester, VA) - \$108,831.01 including taxes

Summary (Background)

On 10/26/15 City Council Approved the award of Bid #4171-15 to Midwesco Filter Resources (OPR #2015-0909). Midwesco Filter Resources has been acquired by National Filter Media. The bid contract between the City of Spokane and Midwesco Filter Resources has been assigned to National Filter Media, which has agreed to maintain the terms of the bid. The RFB allowed for 4 additional 1 year periods. This is the first of those periods. The waste to energy facility utilizes fabric filter bags to remove

Fiscal Impact**Budget Account**

Expense \$ 108,831.01

4490-44100-37148-54850

Select \$

#

Select \$

#

Select \$

#

Approvals**Council Notifications****Dept Head**

CONKLIN, CHUCK

Study Session**Division Director**

FEIST, MARLENE

Other

PWC 3/27/17

Finance

DOVAL, MATTHEW

Distribution List**Legal**

WHALEY, HUNT

ttauscher@spokanecity.org

For the Mayor

SANDERS, THERESA

jsalstrom@spokanecity.org

Additional Approvals

tprince@spokanecity.org

Purchasing

PRINCE, THEA



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

the fine particulate from the air before discharge. These bags must be replaced as they become worn or otherwise no longer to filter the air.

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

BRIEFING PAPER
Public Works Committee
Solid Waste Disposal
March 27, 2017

Subject

Purchase of bag House Fabric Filter Tapered Bags from National Filter Media, Winchester, VA, for \$90,935.00 plus 10% administrative reserve of \$9,093.50 for a total of \$100,028.50 excluding taxes.

Background

The waste to energy facility utilizes fabric filter bags to remove the fine particulate from the air before discharge. These bags must be replaced as they become worn or otherwise no longer able to filter the air. The City issued Request for Bids RFB #4171-15, and received 2 responses.

Midwesco Filter Resources, of Winchester, VA, and United Process Control, of Hillsborough, New Jersey. Midwesco was determined to be the lowest cost bidder.

Midweco Filter Resources has been acquired by National Filter Media. The bid contract between the City of Spokane and Midwesco Filter Resources has been assigned to National Filter Media, which has agreed to maintain the terms of the bid. The RFB allowed for 4 additional 1 year periods. This is the first of those periods.

Impact

Replacement of these bags will allow the wte to continue to maintain environmental compliance.

Action

Recommend approval.

Funding

Funding is included in the 2017 repair and maintenance budget for the WTE.

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

03/27/2017

Date Rec'd	3/15/2017
Clerk's File #	OPR 2017-0210
Renews #	
Cross Ref #	
Project #	
Bid #	RFB#4309-17
Requisition #	CR 17898

Submitting Dept	SOLID WASTE DISPOSAL
Contact Name/Phone	DAVID PAINE 625-6878
Contact E-Mail	DPAINE@SPOKANECITY.ORG
Agenda Item Type	Contract Item
Agenda Item Name	4490 CONTRACT FOR BOILERMAKER SERVICES FOR THE WTE

Agenda Wording

Contract with Helfrich Brothers Boiler Works, Inc., Lawrence, MA, for scheduled and unscheduled outages and related services for the WTE. April 1, 2017 through March 31, 2018. \$600,000.00, plus a 10% administrative reserve of \$60,000, excluding taxes

Summary (Background)

On February 22, 2017, responses to Request for Bid #4309-17 were received. Three companies responded. All 3 companies were determined to be responsible bidders. Helfrich Brothers Boiler Works, Inc., was the lowest cost bidder. Helfrich Brothers Boiler Works, Inc., of Lawrence, MA CH Murphy, Inc., of Portland, OR PSF Industries, Inc., of Seattle, WA This contract will allow for the needed maintenance of the WTE to be completed in a timely and cost effective manner.

Fiscal Impact		Budget Account	
Expense	\$ 660,000.00	#	4490-44100-37148-54201
Select	\$	#	
Select	\$	#	
Select	\$	#	
Approvals		Council Notifications	
<u>Dept Head</u>	CHILDS, BRANDON	<u>Study Session</u>	PWC 3/13/17
<u>Division Director</u>	SIMMONS, SCOTT M.	<u>Other</u>	
<u>Finance</u>	CLINE, ANGELA	<u>Distribution List</u>	
<u>Legal</u>	DALTON, PAT	ttauscher@spokanecity.org	
<u>For the Mayor</u>	SANDERS, THERESA	jsalstrom@spokanecity.org	
<u>Additional Approvals</u>		tprince@spokanecity.org	
<u>Purchasing</u>	PRINCE, THEA	mdoval@spokanecity.org	



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

The contract is for an initial one (1) year term, with an option of one (1) additional two-year renewal, for a total contract period of three (3) years. This is a time and materials contract with all labor being subject to WA State Prevailing Wage regulations

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List

BRIEFING PAPER
Public Works Committee
Solid Waste Disposal
March 13, 2017

Subject

Contract with Helfrich Brothers Boiler Works, Inc., Lawrence, MA, for scheduled and unscheduled outages and related boilermaker services for the WTE. April 1, 2017 through March 31, 2018. \$600,000.00, plus a 10% administrative reserve of \$60,000.00 for a total cost of \$660,000.00 excluding taxes.

Background

On February 22, 2017, responses to Request for Bid #4309-17 were received. Three companies responded. All 3 companies were determined to be responsible bidders. Helfrich Brothers Boiler Works, Inc., was the lowest cost bidder.

Helfrich Brothers Boiler Works, Inc., of Lawrence, MA
CH Murphy, Inc., of Portland, OR
PSF Industries, Inc., of Seattle, WA

The contract is for an initial one (1) year term, with an option of one (1) additional two-year renewal, for a total contract period of three (3) years. This is a time and materials contract with all labor being subject to WA State Prevailing Wage regulations.

Impact

This contract will allow for the needed maintenance of the WTE to be completed in a timely and cost effective manner.

Action

Recommend approval.

Funding

Funding is included in the 2017 operations and maintenance budget for the WTE.



City of Spokane

CONTRACT

Title: **BOILERMAKER SERVICES FOR
WASTE TO ENERGY FACILITY (WTE)**

THIS CONTRACT is between the **CITY OF SPOKANE**, a Washington State municipal corporation, as ("City"), and **HELFRICH BROTHERS BOILER WORKS, INC.**, whose address is 39 Merrimack Street, Lawrence, Massachusetts 01843, as ("Contractor"). Individually hereafter referenced as a "party", and together as the "parties".

The parties agree as follows:

1. **PERFORMANCE**. The Contractor will do all work, furnish all labor, materials, tools, construction equipment, transportation, supplies, supervision, organization and other items of work and costs necessary for the proper execution and completion of the work described in the specifications entitled **BOILERMAKER SERVICES FOR SCHEDULED OUTAGES AND EMERGENCY OUTAGES AT THE WASTE TO ENERGY (WTE) FACILITY FOR THE CITY OF SPOKANE SOLID WASTE DISPOSAL DEPARTMENT**.
2. **CONTRACT DOCUMENTS**. The contract documents are this Contract, the City's Request for Bids (RFB # 4309-17), entitled boilermaker services for scheduled outages and unscheduled outages at the Waste To Energy (WTE) Facility for the City of Spokane Solid Waste Disposal Department, the Contractor's completed bid proposal form, contract provisions, contract plans, standard specifications, standard plans, addenda, various certifications and affidavits, supplemental agreements, change orders, and subsurface boring logs (if any). Federal and state requirements and the terms of this Contract, respectively, supersede other inconsistent provisions. These contract documents are on file in the Waste to Energy Facility, 2900 South Geiger Boulevard, Spokane, and are incorporated into this Contract by reference, as if they were set forth at length.
3. **TIME OF PERFORMANCE**. The time of performance of the Contract shall be in accordance with the contract documents.
4. **LIQUIDATED DAMAGES**. Liquidated damages shall be in accordance with the contract documents. Liquidated damages shall apply up to the point of the City's completion and acceptance of a satisfactory hydrostatic test on the WTE boiler units.

5. TERMINATION. This Contract may be terminated in accordance with the contract documents.

6. COMPENSATION. The City shall pay a maximum of **SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$600,000.00)**, plus a ten percent (10%) Administrative Reserve unless modified by a written amendment to this Contract.

7. TAXES. Retail sales tax where applicable shall be added to the amounts due and the Contractor shall be responsible for making payment of the tax to Washington State. The City reserves the right to claim any exemption authorized by law. The City reserves the right to claim any exemption authorized by law.

8. PAYMENT. The Contractor will send its applications for payment to the Waste To Energy Facility, 2900 South Geiger Boulevard, Spokane, Washington 99224. Payment will be made within thirty (30) days after receipt of the Contractor's application except as provided in RCW 39.76. Five percent (5%) of the Contract price may be retained by the City, in accord with RCW 60.28 for a minimum of forty five (45) days after final acceptance, as a trust fund for the protection and payment of: the claims of any person arising under the Contract; and the State with respect to taxes imposed pursuant to Titles 50, 51 and 82 RCW which may be due from the Contractor.

Additional work or time will be billed at the rates quoted in Helfrich Brothers Boiler Works, Inc.'s Bid response to the City's Boilermaker Services - Request for Bids (RFB #4309-17).

9. INDEMNIFICATION.

A. The Contractor is an independent contractor and not the agent or employee of the City. No liability shall attach to the City for entering into this Contract or because of any act or omission of the Contractor except as expressly provided.

B. The Contractor agrees to defend, indemnify and hold the City and Engineers harmless from any and all claims, demands, losses and liabilities to or by third parties arising from, resulting from or connected with services performed or to be performed under this Contract by the Contractor, its agents or employees to the fullest extent permitted by law. The Contractor's duty to indemnify the City and Engineers shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City, its agents or employees. The Contractor's duty to indemnify the City and Engineers for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) the City or its agents or employees, and (b) the Contractor or its agents or employees, shall apply only to the extent of negligence of the Contractor or its agents or employees. Contractor's duty to defend, indemnify and hold the City and Engineers harmless shall include, as to all claims, demands, losses and liability to which it applies, the City's personnel-related costs, reasonable attorneys' fees, court costs and all other claim-related expenses.

C. **The Contractor waives immunity under Title 51 RCW to the extent necessary to protect the City's interests under this indemnification. This provision has been specifically negotiated.**

10. BONDS. The Contractor may not commence work until it obtains all insurance, permits and bonds required by the contract documents and applicable law. This includes the execution of a performance bond and a payment bond on the forms attached, each equal to one hundred percent (100%) of the contract price, and written by a corporate surety company licensed to do business in Washington State.

11. INSURANCE. 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.

12. CONTRACTOR'S WARRANTY. The Contractor's warranty for all work, labor and materials shall be in accordance with the contract documents.

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

14. STATEMENT OF INTENT TO PAY PREVAILING WAGES TO BE POSTED. The Contractor and each subcontractor required to pay the prevailing rate of wages shall post in a location readily visible at the job site: (1) a copy of a "Statement of Intent to Pay Prevailing Wages" approved by the industrial statistician of the State Department of Labor and Industries; and (2) the address and telephone number of the industrial statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.

15. FEES. Reimbursement for the fees paid by the Contractor for the approval of "Statements of Intent to Pay Prevailing Wages" and certification of "Affidavits of Wages Paid" by the industrial statistician of the State Department of Labor and Industries will be added to the actual submittal of the documents to the industrial statistician. In order to receive this reimbursement the Contractor will be required to submit to the City, prior to final acceptance of the work, a list of its subcontractors at all tiers and have their "Statements of Intent to Pay Prevailing Wages" on file with the City.

16. SUBCONTRACTOR RESPONSIBILITY. The Contractor must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that

hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350(1) and possesses an electrical contractor license, if required by chapter 19.28 RCW, or an elevator contractor license, if required by chapter 70.87 RCW. The responsibility criteria are listed in the request for bids document.

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

18. ASSIGNMENTS. The Contractor may not assign, transfer or sublet any part of the work under this Contract, or assign any monies due, without the written approval of the City, except as may be required by law. In the event of assignment of accounts or monies due under this Contract, the Contractor specifically agrees to give immediate written notice to the City Administrator, no later than five (5) business days after the assignment.

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

20. COMPLIANCE WITH LAWS. Each party shall comply with all applicable federal, state, and local laws and regulations that are incorporated herein by reference.

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

22. SEVERABILITY. In the event any provision of this Contract should become invalid, the rest of the Contract shall remain in full force and effect.

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

24. BUSINESS REGISTRATION REQUIREMENT. Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first

having obtained a valid annual business registration. The Contractor 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.

25. CONSTRUAL. The Contractor acknowledges receipt of a copy of the contract documents and agrees to comply with them. The silence or omission in the contract documents concerning any detail required for the proper execution and completion of the work means that only the best general practice is to prevail and that only material and workmanship of the best quality are to be used. This Contract shall be construed neither in favor of nor against either party.

Dated: _____

CITY OF SPOKANE

By: _____

Title: _____

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Dated: _____

HELFRICH BROTHERS BOILER
WORKS, INC.

By: _____

Title: _____

Email Address, if available: _____

Attachments that are a part of this Contract:

Payment Bond

Performance Bond

City's Request for Bids (RFB # 4309-17), entitled Boilermaker Services for Scheduled and Emergency Outages at the Waste To Energy (WTE) Facility for the City of Spokane Solid Waste Disposal Department

PAYMENT BOND

We, **HELFRICH BROTHERS BOILER WORKS, INC.**, as principal, and _____, as surety, are held and firmly bound to the City of Spokane, Washington, in the sum of SIX HUNDRED THOUSAND AND 00/100 DOLLARS (\$600,000.00), plus a ten percent (10%) administrative reserve, for the payment of which, we bind ourselves and our legal representatives and successors, jointly and severally by this document.

The principal has entered into a Contract with the City of Spokane, Washington, to do all work and furnish all materials for the BOILERMAKER SERVICES FOR SCHEDULED OUTAGES AND EMERGENCY OUTAGES AT THE WASTE TO ENERGY (WTE) FACILITY FOR THE CITY OF SPOKANE SOLID WASTE DISPOSAL DEPARTMENT project defined in the City's Request for Bids (RFB # 4309-17). If the principal shall:

- A. pay all laborers, mechanics, subcontractors, material suppliers and all person(s) who shall supply such person or subcontractors;
- B. pay all taxes and contributions, increases and penalties as authorized by law including payment of all taxes incurred on the Contract under title 50 and 51 Revised Code of Washington (RCW) and all taxes imposed on the principal under Title 82 RCW; and
- C. comply with all applicable federal, state and local laws and regulations;

then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The surety hereby waives notice of and consents to any contract alteration or extension of time made by the City. Any judgment obtained against the City, which relates to or is covered by the contract or this bond, shall be conclusive against the principal and the surety, as to the amount of damages, and their liability, if reasonable notice of the suit has been given.

SIGNED AND SEALED on _____.

HELFRICH BROTHERS BOILER
WORKS, INC., AS PRINCIPAL,

By: _____
Title: _____

A valid POWER OF ATTORNEY
for the surety's agent must
accompany this bond.

AS SURETY

By: _____
Its Attorney in Fact

STATE OF WASHINGTON)
) .ss
County of _____)

I certify that I know or have satisfactory evidence that _____
 _____ signed this document; on oath
 stated that he/she was authorized to sign the document and acknowledged it as the agent
 or representative of the named surety company which is authorized to do business in the
 State of Washington, for the uses and purposes mentioned in this document.

DATED on _____.

Signature of Notary

My appointment expires _____

Approved as to form:

Assistant City Attorney

PERFORMANCE BOND

We, **HELFRICH BROTHERS BOILER WORKS, INC.**, as principal, and _____, as surety, are held and firmly bound to the City of Spokane, Washington, in the sum of SIX HUNDRED THOUSAND AND 00/100 DOLLARS (\$600,000.00), plus a ten percent (10%) administrative reserve, for the payment of which, we bind ourselves and our legal representatives and successors, jointly and severally by this document.

The principal has entered into a Contract with the City of Spokane, Washington, to do all work and furnish all materials for the BOILERMAKER SERVICES FOR SCHEDULED OUTAGES AND EMERGENCY OUTAGES AT THE WASTE TO ENERGY (WTE) FACILITY FOR THE CITY OF SPOKANE SOLID WASTE DISPOSAL DEPARTMENT project defined in the City's Request for Bids (RFB # 4309-17). If the principal shall:

- A. promptly and faithfully perform the contract, and any contractual guaranty and indemnify and hold harmless the City from all loss, damage or claim which may result from any act or omission of the principal, its agents, employees, or subcontractors; and
- B. comply with all applicable federal, state and local laws and regulations;

then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The surety hereby waives notice of and consents to any contract alteration or extension of time made by the City. Any judgment obtained against the City, which relates to or is covered by the contract or this bond, shall be conclusive against the principal and the surety, not only as to the amount of damages, but also as to their liability, if reasonable notice of the suit has been given.

SIGNED AND SEALED on _____

HELFRICH BROTHERS BOILER
WORKS, INC., AS PRINCIPAL,

By: _____

Title: _____

_____,
AS SURETY

A valid POWER OF ATTORNEY
for the surety's agent must
accompany this bond.

By: _____
Its Attorney in Fact

STATE OF WASHINGTON)
) ss.
County of _____)

I certify that I know or have satisfactory evidence that _____
_____ signed this document; on oath
stated that he/she was authorized to sign the document and acknowledged it as the agent
or representative of the named surety company which is authorized to do business in the
State of Washington, for the uses and purposes mentioned in this document.

DATED on _____.

Signature of Notary

My appointment expires _____

Approved as to form:

Assistant City Attorney

	HELFRICH 2017 BID	PSF 2017 BID	CH Murphy 2017 BID
12			
Bid Comparison			
Mobilization	\$9,000.00	\$11,593.00	\$17,158.00
Demobilization	\$9,000.00	\$7,955.00	\$17,158.00
Per shift Price			
Tools & Equipment	\$1,175.00	\$9,053.00	\$5,315.83
Average Labor per 12 hr shift	\$7,760.00	\$16,618.00	\$35,530.00
Down or standby shift cost	\$1,120.00	\$2,713.00	\$2,500.00
Emergency work (2 Welders per 12hr shift)	\$3,258.00	\$5,178.00	\$3,800.00
Travel expense	\$3,600.00	\$0.00	\$0.00
Cost of a typical 12 shift outage			
Mob/Demob	\$18,000.00	\$19,548.00	\$34,316.00
Tools & Equipment	\$14,100.00	\$108,636.00	\$5,315.83
Average Labor per 12 hr shift	\$93,120.00	\$199,416.00	\$426,360.00
Down or standby shift cost	\$13,440.00	\$32,556.00	\$30,000.00
Emergency work (2 Welders per 12hr shift)	\$39,096.00	\$62,136.00	\$45,600.00
Travel expense	\$3,600.00	\$0.00	\$0.00
Subtotal	\$181,356.00	\$422,292.00	\$541,591.83
Sales Tax	\$15,777.97	\$36,739.40	\$47,118.49
12 Shifts, 2 Boiler Outage	\$197,133.97	\$459,031.40	\$588,710.32

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

04/10/2017

Date Rec'd	3/28/2017
Clerk's File #	OPR 2015-0374
Renews #	
Cross Ref #	
Project #	
Bid #	RFP# 4077-14
Requisition #	CR 17961

Submitting Dept	SOLID WASTE DISPOSAL
Contact Name/Phone	DAVID PAINE 625-6878
Contact E-Mail	DPAINE@SPOKANECITY.ORG
Agenda Item Type	Contract Item
Agenda Item Name	EXTENSION TO CONTRACT FOR ELECTRICAL TECHNICAL SERVICES FOR WTE

Agenda Wording

Extension of contract with United States Electric Corporation of Washington (Olympia, WA) to provide electrical technical and maintenance support services for the WTEF. May 1, 2017 to April 30, 2018.

Summary (Background)

Electrical technical and maintenance support services were solicited under RFP#4077-14. United States Electric Corporation was selected as the lowest cost of the 2 proposers. A contract was entered into with United States Electric Corporation of Washington in January 2015. In 2016 it was determined that the need for electrical technical and maintenance services would be reduced, so a small contract was issued with United States Electric Corporation.

Fiscal Impact		Budget Account	
Expense	\$ 99,000.00	#	4490-44100-37148-54201
Select	\$	#	
Select	\$	#	
Select	\$	#	
Approvals		Council Notifications	
<u>Dept Head</u>	CONKLIN, CHUCK	<u>Study Session</u>	PWC 3/27/17
<u>Division Director</u>	FEIST, MARLENE	<u>Other</u>	
<u>Finance</u>	DOVAL, MATTHEW	Distribution List	
<u>Legal</u>	WHALEY, HUNT	ttauscher@spokanecity.org	
<u>For the Mayor</u>	SANDERS, THERESA	jsalstrom@spokanecity.org	
<u>Additional Approvals</u>		tprince@spokanecity.org	
<u>Purchasing</u>	PRINCE, THEA	mdoval@spokanecity.org	



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

The contract cost is \$90,000.00 with a 10% administrative reserve for a total of \$99,000.00 excluding taxes.

Summary (Background)

Due to the work planned for the scheduled maintenance outages in 2017, this contract is being returned to the initial cost per the terms of the RFP. The contract term specified in the RFP allowed for 4 one-year extensions. This the 2nd of those extensions. This contract extension will allow for the needed electrical technical and maintenance work to be completed during the scheduled outages at the WTE.

Fiscal Impact		Budget Account
Select	\$	#
Select	\$	#

Distribution List

BRIEFING PAPER
Public Works Committee
Solid Waste Disposal
March 27, 2017

Subject

Extension of contract with United States Electric Corporation of Washington to provide electrical technical and maintenance support services for the WTEF. May 1, 2017 to April 30, 2018 for a cost of \$90,000.00 plus a 10% administrative reserve of \$9,000.00 for a total of \$99,000.00 excluding taxes.

Background

Electrical technical and maintenance support services were solicited under RFP#4077-14. United States Electric Corporation was selected as the lowest cost of the 2 proposers. A contract was entered into with United States Electric Corporation of Washington in January 2015. In 2016 it was determined that the need for electrical technical and maintenance services would be reduced, so a small contract was issued with United States Electric Corporation. Due to the work planned for the scheduled maintenance outages in 2017 the WTEF this contract is being returned to the initial cost per the terms of the RFP.

The contract term specified in the RFP allowed for 4 one-year extensions. This is the 2nd of those extensions.

Impact

This contract will allow for the needed electrical technical and maintenance work needed to be completed during the scheduled outages at the WTEF.

Action

Recommend approval.

Funding

Funding is included in the 2017 repair and maintenance budget for the WTEF.



City of Spokane

CONTRACT AMENDMENT / EXTENSION

Title: **ELECTRIC MAINTENANCE AND SUPPORT SERVICES
TO THE CITY'S WASTE TO ENERGY FACILITY (WTE)**

This Contract Amendment / Extension is made and entered into by and between the **City of Spokane** as ("City"), a Washington municipal corporation, and **United States Electric Corporation of Washington, Inc.**, whose address is PO Box 87, Olympia, Washington, 98507 as ("Contractor"). Individually hereafter referenced as a "party", and together as the "parties".

WHEREAS, the parties entered into a Contract wherein the Contractor agreed to provide for the City electrical technical and maintenance support services for the City's Waste To Energy Facility (WTE), in response to a formal City solicitation; and

WHEREAS, a change or revision of the Work has been requested, and the Contract time for performance needs to be extended, thus the original Contract needs to be formally Amended and Extended by this written document; and

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

1. CONTRACT DOCUMENTS.

The original Contract executed by the parties on May 5, 2015 and May 28, 2015, any previous amendments, addendums and / or extensions / renewals thereto, are incorporated by reference into this document as though written in full and shall remain in full force and effect except as provided herein.

2. EFFECTIVE DATE.

This Contract Amendment / Extension shall become effective upon signatures of the parties and end on April 30, 2018.

3. EXTENSION.

The Contract Amendment / Extension is hereby extended and shall run through April 30, 2018.

4. COMPENSATION.

The City shall pay an additional amount not to exceed **NINETY THOUSAND AND NO/100 DOLLARS (\$90,000.00)** for everything furnished and done under this Contract Amendment / Extension. This is the maximum amount to be paid under this Amendment / Extension, and shall not be exceeded without the prior written authorization of the City, memorialized with the same formality as the original Contract and this document.

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

**UNITED STATES ELECTRIC CORPORATION
OF WASHINGTON, INC.**

CITY OF SPOKANE

By _____
Signature Date

By _____
Signature Date

Type or Print Name

Type or Print Name

Title

Title

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Attachments that are part of this Agreement:

Additional Scope of Work document

17-033

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

04/10/2017

Date Rec'd

3/28/2017

Clerk's File #

OPR 2017-0256

Renews #**Submitting Dept**

SOLID WASTE DISPOSAL

Cross Ref #**Contact Name/Phone**

DAVID PAINE 625-6878

Project #**Contact E-Mail**

DPAINE@SPOKANECITY.ORG

Bid #

RFP #4302-17

Agenda Item Type

Contract Item

Requisition #

CR 17964

Agenda Item Name

CONTRACT FOR CHEMICAL MANAGEMENT AND WATER TREATMENT FOR THE

Agenda Wording

Contract with Nalco Company, Spokane, for chemical management program and water treatment for the WTE. April 1, 2017 to March 31, 2019. \$28,772.50 plus a 10% administrative reserve of \$2,877.25 for a total of \$31,649.75 excluding taxes.

Summary (Background)

The WTE boiler and component cooling water system requires chemical management and treatment for all water used to protect the boiler and components. RFP#4302-17 was issued to solicit a vendor to provide all testing, chemicals, tanks, feed pumps, and equipment to maintain reliable chemistry for boiler water. Four responses were received. Nalco was determined to be the most qualified proposer. The contract is for 2 years, with three 1-year extensions, for a total contract not to exceed 5 years.

Fiscal Impact**Budget Account**

Expense \$ 31,649.75

4490-44100-37148-53203

Select \$

#

Select \$

#

Select \$

#

Approvals**Council Notifications****Dept Head**

CONKLIN, CHUCK

Study Session

PWC 3/27/17

Division Director

CONKLIN, CHUCK

Other**Finance**

DOVAL, MATTHEW

Distribution List**Legal**

WHALEY, HUNT

ttauscher@spokanecity.org

For the Mayor

SANDERS, THERESA

jsalstrom@spokanecity.org

Additional Approvals

tprince@spokanecity.org

Purchasing

PRINCE, THEA

mdoval@spokanecity.org



City of Spokane

PERSONAL SERVICES AGREEMENT

Title: **Chemical Management and Water Treatment Services per RFP #4302-17**

This Agreement is made and entered into by and between the **CITY OF SPOKANE** as ("City"), a Washington municipal corporation, and **NALCO COMPANY**, whose address is 421 West Riverside Avenue, Suite 770, Spokane, Washington 99201 as ("Consultant").

Whereas, the Consultant was selected from a Request for Proposals #4302-17.

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

1. TERM OF AGREEMENT.

The term of this Agreement begins on April 1, 2017, and ends on March 31, 2019, unless amended by written agreement or terminated earlier under the provisions. Contract renewals or extensions shall be initiated at the discretion of the City and subject to mutual agreement. The contract may be extended for three (3) additional one-year contract periods with the total contract period not to exceed five (5) years.

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. In the event of a conflict or discrepancy in the Agreement documents, this City Consultant Agreement controls.

The Consultant shall provide the following services for the City:

Chemical Management Program and Treatment Chemicals to Protect the Boiler and Component Cooling Water System And Lab Reagents For All Water Testing For Water Treatment Testing And Control as well as Tank(s) and Feed Pump System at the Waste to Energy Facility per scope of work in RFP #4302-17.

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. COMPENSATION / PAYMENT.

Total compensation for Consultant's services under this Agreement shall be a maximum amount not to exceed **TWENTY EIGHT THOUSAND SEVEN HUNDRED SEVENTY TWO AND 50/100 DOLLARS (\$28,772.50)**, unless modified by a written amendment to this Agreement. This is the maximum amount to be paid under this Agreement for the work described in Section 3 above, and shall not be exceeded without the prior written authorization of the City in the form of an executed amendment to this Agreement.

The Company shall submit its applications for payment to Wastewater Maintenance Department, 909 East Sprague Avenue, Spokane, Washington 99202. **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt of the Company's application except as provided by state law. If the City objects to all or any portion of the invoice, it shall notify the Company and reserves the right to only pay that portion of the invoice not in dispute. In that event, the parties shall immediately make every effort to settle the disputed amount.

5. 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. 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.

6. 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.

7. REIMBURSABLES

If reimbursables under this Agreement are to be included, they are 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 Agreement 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 Agreement.

- 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 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.

8. SOCIAL EQUITY REQUIREMENTS / NON-DISCRIMINATION.

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

9. 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, and for its material breaches of this Agreement. It is not the intent of this Section to limit this understanding.

10. INSURANCE.

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

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

B. **General Liability Insurance** on an occurrence basis, with a combined single limit of not less than \$1,500,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this agreement. It shall provide that the City, its officers and employees are additional insureds but only with respect to the Consultant's services to be provided under this Agreement;

i. Acceptable **supplementary Umbrella insurance** coverage combined with Company's General Liability insurance policy must be a minimum of \$1,500,000, in order to meet the insurance coverage limits required in this Agreement; and

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

D. **Professional Liability Insurance** with a combined single limit of not less than \$1,000,000 each claim, incident or occurrence. This is to cover damages caused by the error, omission, or negligent acts related to the professional services to be provided under this

Agreement. The coverage must remain in effect for at least two (2) years after the Agreement is completed.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without sixty (60) days written notice from the Consultant or its insurer(s) to the City. As evidence of the insurance coverage(s) required by this Agreement, the Consultant shall furnish acceptable Certificates Of Insurance (COI) to the City at the time it returns this signed Agreement. The certificate shall specify the City of Spokane as "Additional Insured" specifically for Consultant's services under this Agreement, as well as 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.

11. AUDIT.

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

12. INDEPENDENT CONSULTANT.

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.

13. 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.

14. 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.

15. TERMINATION.

Either party may terminate this Agreement, with or without cause, by ten (10) days written notice to the other party. In the event of such termination, the City shall pay the Consultant for all work previously authorized and performed prior to the termination date.

16. STANDARD OF PERFORMANCE.

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

17. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS.

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

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

18. ANTI KICK-BACK.

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

19. MISCELLANEOUS PROVISIONS.

- A. **Amendments/Modifications:** This Agreement may be modified by the City in writing when necessary, and no modification or Amendment of this Agreement shall be effective unless signed by an authorized representative of each of the parties hereto.
- B. The 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.
- C. This Agreement shall be construed and interpreted under the laws of Washington. The venue of any action brought shall be in a court of competent jurisdiction, located in Spokane County, Washington.
- D. **Captions:** The titles of sections or subsections are for convenience only and do not define or limit the contents.
- E. **Severability:** If any term or provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.
- F. **Waiver:** No covenant, term or condition or the breach shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed a waiver of any preceding or succeeding breach of the same or any other covenant, term of condition. Nei-

ther 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.

- G. **Entire Agreement:** This document along with any exhibits and all attachments, and subsequently issued addenda, comprises the entire agreement between the City and the Consultant. If conflict occurs between Agreement documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this Agreement to afford the City the maximum benefits.
- H. **No personal liability:** No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made or in any connection with this Agreement.

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

NALCO COMPANY

CITY OF SPOKANE

By _____
Signature Date

By _____
Signature Date

Type or Print Name

Type or Print Name

Title

Title

Consultant's UBI #

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Attachments that are part of this Agreement:

Exhibit A – Consultant's Proposal dated January 24, 2017 regarding 4302-17 Chemical Management Program

U2017-130

BRIEFING PAPER
Public Works Committee
Solid Waste Disposal
March 27, 2017

Subject

Contract with Nalco Company for chemical management program and water treatment for the WTE. April 1, 2017 to March 31, 2019. \$28,772.50 plus a 10% administrative reserve of \$2,877.25 for a total of \$31,649.75 excluding taxes.

Background

The WTE boiler and component cooling water system requires chemical management and treatment for all water required to protect the boiler and components.

RFP#4302-17 was issued to solicit a vendor to provide all testing, chemicals, tanks, feed pumps, and equipment as required to maintain reliable chemistry for boiler water.

Four responses were received. Nalco was determined to be the most qualified proposer.

The contract is for 2 years, with three 1-year extensions, for a total contract not to exceed 5 years.

Impact

Maintaining proper chemistry in the boiler feed water and component cooling water system will protect the systems, helping keep the WTE in good operating order.

Action

Recommend approval.

Funding

Funding is included in the 2017 operations budget for the WTE.

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

04/10/2017

Date Rec'd

3/29/2017

Clerk's File #

OPR 2017-0257

Renews #**Submitting Dept**

SOLID WASTE DISPOSAL

Cross Ref #**Contact Name/Phone**

DAVID PAINE 625-6878

Project #**Contact E-Mail**

DPAINE@SPOKANECITY.ORG

Bid #

RFB #4337-17

Agenda Item Type

Contract Item

Requisition #

CR 17969

Agenda Item Name

4490 CONTRACT FOR MECHANICAL REPAIRS AT THE WTE

Agenda Wording

Contract with Knight Construction & Supply, Inc., Deer Park, for mechanical repairs at the WTE. April 18, 2017 through April 17, 2018. \$1,200,000 plus a 10% administrative reserve of \$120,000 for a contract total of \$1,320,000 excluding taxes.

Summary (Background)

The necessary scheduled and emergency maintenance work at the WTE requires specialized millwright skills. In response to RFB #4337-17, on March 13, 2017, the City received bids from contractors qualified to perform grate module replacement and grate module inspections and repairs on Von Roll Type R-10046 grates in accordance with manufacturer's specifications. Knights Construction & Supply, Inc., was the only bidder.

Fiscal Impact**Budget Account**

Expense \$ 1,320,000.00

4490-44100-37148-54201

Select \$

#

Select \$

#

Select \$

#

Approvals**Council Notifications****Dept Head**

CONKLIN, CHUCK

Study Session

PWC 3/27/17

Division Director

FEIST, MARLENE

Other**Finance**

DOVAL, MATTHEW

Distribution List**Legal**

WHALEY, HUNT

ttauscher@spokanecity.org

For the Mayor

SANDERS, THERESA

jsalstrom@spokanecity.org

Additional Approvals

tprince@spokanecity.org

Purchasing

PRINCE, THEA

mdoval@spokanecity.org



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

After reviewing the bid, it was determined that Knight Construction & Supply, Inc., is a responsible bidder. The term of the contract is April 18, 2017 through April 17, 2018, with the option to extend the contract for 4 additional 1-year periods, for a total contract term not to exceed 5 years.

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List



City of Spokane

CONTRACT

**Title: MECHANICAL REPAIRS AT THE CITY'S
WASTE TO ENERGY FACILITY (WTE)**

THIS CONTRACT is between the **CITY OF SPOKANE**, a Washington State municipal corporation, as ("City"), and **KNIGHT CONSTRUCTION AND SUPPLY, INC.**, whose address is 28308 North Cedar Road, Deer Park, Washington 99006, as ("Contractor"). Individually hereafter referenced as a "party", and together as the "parties".

The parties agree as follows:

1. **PERFORMANCE.** The Contractor will do all work, furnish all labor, materials, tools, construction equipment, transportation, supplies, supervision, organization, and other items of work and costs necessary for the proper execution and completion of the work described in the City's Request For Bids (RFB # 4337-17) entitled MECHANICAL REPAIRS AT THE CITY'S WASTE TO ENERGY FACILITY (WTE), and in accordance with the attached Contractor's Bid Tabulation response from the City's RFB # 4337-17.
2. **CONTRACT DOCUMENTS.** This Contract, the Contractor's quote constitute the contract documents and are complementary. Federal and state requirements and the terms of this Contract, respectively, supersede other inconsistent provisions. These contract documents are on file with Solid Waste Disposal, 2900 South Geiger Boulevard, Spokane, Washington 99224, and are incorporated into this Contract by reference as if they were set forth at length.
3. **TIME OF PERFORMANCE.** The Contract shall begin on April 1, 2017 and run through March 31, 2018, with the possibility of four (4) one (1) year Extensions/Renewals, for a total Term of five (5) years, upon mutual agreement of the parties, or unless amended by written agreement or terminated earlier under the provisions.
4. **LIQUIDATED DAMAGES.** Liquidated damages shall be in accordance with the contract documents.
5. **TERMINATION.** Either party may terminate this Contract by ten (10) days written notice to the other party. In the event of such termination, the City shall pay the Contractor for all work previously authorized and performed prior to the termination date.
6. **COMPENSATION.** The City will pay a maximum amount not to exceed **ONE MILLION EIGHT HUNDRED THOUSAND AND NO/100 (\$1,800,000.00)**, including taxes as applicable, as full compensation for everything furnished and done under this Contract, subject to allowable additions and deductions as provided.
7. **TAXES.** Retail sales tax where applicable shall be added to the amounts due and the Contractor shall be responsible for making payment of the tax to Washington State. The City reserves the right to claim any exemption authorized by law.

8. PAYMENT. The Contractor will send its applications for payment to the Director of Solid Waste Disposal, 2900 South Geiger Boulevard, Spokane, Washington 99224. Payment will be made within thirty (30) days after receipt of the Contractor's application except as provided in RCW 39.76. **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt of the Company's application except as provided by state law. Five percent (5%) of the Contract price may be retained by the City, in accord with RCW 60.28 for a minimum of forty five (45) days after final acceptance, as a trust fund for the protection and payment of: the claims of any person arising under the Contract; and the State with respect to taxes imposed pursuant to Titles 50, 51 and 82 RCW which may be due from the Contractor.

9. INDEMNIFICATION.

- A. The Contractor is an independent contractor and not the agent or employee of the City. No liability shall attach to the City for entering into this Contract or because of any act or omission of the Contractor except as expressly provided.
- B. The Contractor agrees to defend, indemnify and hold the City harmless from any and all claims, demands, losses and liabilities to or by third parties arising from, resulting from or connected with services performed or to be performed under this Contract by the Contractor, its agents or employees to the fullest extent permitted by law. The Contractor's duty to indemnify the City shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City, its agents or employees. The Contractor's duty to indemnify the City for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) the City or its agents or employees, and (b) the Contractor or its agents or employees, shall apply only to the extent of negligence of the Contractor or its agents or employees. The Contractor's duty to defend, indemnify and hold the City harmless shall include, as to all claims, demands, losses and liability to which it applies, the City's personnel-related costs, reasonable attorneys' fees, court costs and all other claim-related expenses.
- C. **The Contractor waives immunity under Title 51 RCW to the extent necessary to protect the City's interests under this indemnification. This provision has been specifically negotiated.**

10. BONDS. The Contractor may not commence work until it obtains all insurance, permits and bonds required by the contract documents and applicable law. This includes the execution of a payment bond and performance bond on the forms attached, equal to one hundred percent (100%) of the contract price, and written by a corporate surety company licensed to do business in Washington State.

11. INSURANCE. During the term of the Contract, the Contractor shall maintain in force at its own expense, the following insurance coverages:

- 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;
- 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 include contractual liability coverage for the indemnity provided under this Contract. It shall provide that the City, its officers and employees are additional insureds but only with respect to the

Contractor's services to be provided under this Contract;

- C. Property insurance if materials and supplies are furnished by the contractor. The amount of the insurance coverage shall be the value of the materials and supplies of the completed value of improvement. Hazard or XCU (explosion, collapse, underground) insurance should be provided if any hazard exists; and
- D. Automobile Liability Insurance with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without sixty (60) days written notice from the Contractor or its insurer(s) to the City. As evidence of the insurance coverage(s) required by this Contract, the Contractor shall furnish acceptable Certificates of Insurance (COI) to the City at the time it returns this signed Contract. The certificate shall specify the City of Spokane as "Additional Insured" specifically for the Contractor's specific services under this Contract, as well as 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 Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

11. CONTRACTOR'S WARRANTY. The Contractor guarantees all work, labor and materials under this Contract for one (1) year following final acceptance. If any unsatisfactory condition or defect develops within that time, the Contractor will immediately place the work in a condition satisfactory to the City and repair all damage caused by the condition or defect. The Contractor will repair or restore to the City's satisfaction, in accordance with the contract documents and at its expense, all property damaged by its performance under this Contract. This warranty is in addition to any manufacturer's or other warranty in the contract documents.

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

13. STATEMENT OF INTENT TO PAY PREVAILING WAGES TO BE POSTED. The Contractor and each subcontractor required to pay the prevailing rate of wages shall post in a location readily visible at the job site: (1) a copy of a "Statement of Intent to Pay Prevailing Wages" approved by the industrial statistician of the State Department of Labor and Industries; and (2) the address and telephone number of the industrial statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.

14. FEES. Reimbursement for the fees paid by the Contractor for the approval of "Statements of Intent to Pay Prevailing Wages" and certification of "Affidavits of Wages Paid" by the industrial statistician of the State Department of Labor and Industries will be added to the amounts due the Contractor. The Contractor will remain responsible for the actual submittal of the documents to the industrial statistician. In order to receive this reimbursement the Contractor will be required to submit to the City, prior to final acceptance of the work, a list of its subcontractors at all tiers and have their "Statements of Intent to Pay Prevailing Wages" on file with the City.

15. SUBCONTRACTOR RESPONSIBILITY.

- A. The Contractor shall include the language of this section in each of its first tier subcontracts, and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. Upon request of the City, the Contractor shall promptly provide documentation to the City demonstrating that the subcontractor meets the subcontractor responsibility criteria below. The requirements of this section apply to all subcontractors regardless of tier.
- B. At the time of subcontract execution, the Contractor shall verify that each of its first tier subcontractors meets the following bidder responsibility criteria:
1. Have a current certificate of registration in compliance with chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;
 2. Have a current Washington Unified Business Identifier (UBI) number;
 3. If applicable, have:
 - a. Have Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW;
 - b. A Washington Employment Security Department number, as required in Title 50 RCW;
 - c. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
 - d. An electrical contractor license, if required by Chapter 19.28 RCW;
 - e. An elevator contractor license, if required by Chapter 70.87 RCW.
 4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

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

17. ASSIGNMENTS. The Contractor may not assign, transfer or sublet any part of the work under this Contract, or assign any monies due, without the written approval of the City, except as may be required by law. In the event of assignment of accounts or monies due under this Contract, the Contractor specifically agrees to give immediate written notice to the City Administrator, no later than five (5) business days after the assignment.

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

19. COMPLIANCE WITH LAWS. Each party shall comply with all applicable federal, state, and local laws and regulations applicable to the subject matter of this Contract, and are incorporated herein by reference.

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

21. SEVERABILITY. In the event any provision of this Contract should become invalid, the rest of the Contract shall remain in full force and effect.

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

23. BUSINESS REGISTRATION REQUIREMENT. Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid annual business registration. The Contractor 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.

24. CONSTRUAL. The Contractor acknowledges receipt of a copy of the contract documents and agrees to comply with them. The silence or omission in the contract documents concerning any detail required for the proper execution and completion of the work means that only the best general practice is to prevail and that only material and workmanship of the best quality are to be used. This Contract shall be construed neither in favor of nor against either party.

25. CONTRACTOR'S ACKNOWLEDGEMENT. The Contractor acknowledges that it has visited the site of the work, has examined it, and is qualified to perform the work required by this Contract.

26. MODIFICATIONS. The City may modify this Contract and order changes in the work whenever necessary or advisable. The Contractor will accept modifications when ordered in writing by the Director of Solid Waste Disposal and the Contract time and compensation will be adjusted accordingly.

28. INTEGRATION. This Contract, including any and all exhibits and schedules referred to herein or therein set forth the entire agreement and understanding between the parties pertaining to the subject matter and merges all prior agreements, negotiations and discussions between them on the same subject matter.

29. FORCE MAJEURE. Neither party shall be liable to the other for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, due to: (1) acts of God or public enemy, acts of government, riots, terrorism, fires, floods, strikes, lock outs, epidemics, act or failure to act by the other party, or unusually severe weather affecting City, Contractor or its subcontractors, or (2) causes beyond their reasonable control and which are not foreseeable (each a "Force Majeure Event"). In the event of any such Force Majeure Event, the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay.

Dated: _____

CITY OF SPOKANE

By: _____

Title: _____

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Dated: _____

KNIGHT CONSTRUCTION AND
SUPPLY, INC.

By: _____

Title: _____

Email Address, if available: _____

Attachment that is a part of this Contract:

Contractor's Bid Tabulation response from the City's RFB # 4337-17.
Payment Bond
Performance Bond

PAYMENT BOND

We, **KNIGHT CONSTRUCTION AND SUPPLY, INC.**, as principal, and, _____ as surety, are held and firmly bound to the City of Spokane, Washington, in the sum of **ONE MILLION NINE HUNDRED EIGHTY THOUSAND AND NO/100 (\$1,980,000.00)** for the payment of which, we bind ourselves and our legal representatives and successors, jointly and severally by this document.

The principal has entered into a Contract with the City of Spokane, Washington, to do all work and furnish all materials for the **MECHANICAL REPAIRS AT THE CITY'S WASTE TO ENERGY FACILITY (WTE)**. If the principal shall:

- A. pay all laborers, mechanics, subcontractors, material suppliers and all person(s) who shall supply such person or subcontractors;
- B. pay all taxes and contributions, increases and penalties as authorized by law including payment of all taxes incurred on the Contract under title 50 and 51 Revised Code of Washington (RCW) and all taxes imposed on the principal under Title 82 RCW; and
- C. comply with all applicable federal, state and local laws and regulations; then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, except as provided herein, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation. Any judgment obtained against the City, which relates to or is covered by the Contract or this bond, shall be conclusive against the principal and the Surety, as to the amount of damages, and their liability, if reasonable notice of the suit has been given.

SIGNED AND SEALED on _____.

**KNIGHT CONSTRUCTION
AND SUPPLY, INC.,
AS PRINCIPAL**

By: _____

Title: _____

A valid POWER OF ATTORNEY
for the Surety's agent must
accompany this bond.

AS SURETY

By: _____
Its Attorney in Fact

STATE OF WASHINGTON)
) .ss
County of _____)

I certify that I know or have satisfactory evidence that _____
_____ signed this document; on oath
stated that he/she was authorized to sign the document and acknowledged it as the agent or
representative of the named surety company which is authorized to do business in the State of
Washington, for the uses and purposes mentioned in this document.

DATED on _____.

Signature of Notary

My appointment expires _____

Approved as to form:

Assistant City Attorney

PERFORMANCE BOND

We, **KNIGHT CONSTRUCTION AND SUPPLY, INC.**, as principal, and, _____ as surety, are held and firmly bound to the City of Spokane, Washington, in the sum of **ONE MILLION NINE HUNDRED EIGHTY THOUSAND AND NO/100 (\$1,980,000.00)**, for the payment of which, we bind ourselves and our legal representatives and successors, jointly and severally by this document.

The principal has entered into a Contract with the City of Spokane, Washington, to do all work and furnish all materials for the **MECHANICAL REPAIRS AT THE CITY'S WASTE TO ENERGY FACILITY (WTE)**. If the principal shall:

- A. promptly and faithfully perform the Contract, and any contractual guaranty and indemnify and hold harmless the City from all loss, damage or claim which may result from any act or omission of the principal, its agents, employees, or subcontractors; and
- B. comply with all applicable federal, state and local laws and regulations; then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, except as provided herein, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation. Any judgment obtained against the City, which relates to or is covered by the Contract or this bond, shall be conclusive against the principal and the Surety, not only as to the amount of damages, but also as to their liability, if reasonable notice of the suit has been given.

SIGNED AND SEALED on _____

**KNIGHT CONSTRUCTION
AND SUPPLY, INC.**
AS PRINCIPAL

By: _____

Title: _____

A valid POWER OF ATTORNEY
for the Surety's agent must
accompany this bond.

AS SURETY

By: _____
Its Attorney in Fact

STATE OF WASHINGTON)
) .ss
County of _____)

I certify that I know or have satisfactory evidence that _____
_____ signed this document; on oath
stated that he/she was authorized to sign the document and acknowledged it as the agent or
representative of the named surety company which is authorized to do business in the State of
Washington, for the uses and purposes mentioned in this document.

DATED on _____.

Signature of Notary

My appointment expires _____

Approved as to form:

Assistant City Attorney

BRIEFING PAPER
Public Works Committee
Solid Waste Disposal
March 27, 2017

Subject

Contract with Knight Construction & Supply, Inc., Deer Park, for mechanical repairs at the WTE. April 18, 2017 through April 17, 2018. \$1,200,000.00 plus an administrative reserve of \$180,000.00 for a contract total of \$1,320,000.00 excluding taxes.

Background

The necessary scheduled and emergency maintenance work at the WTE requires specialized millwright skills. In response to RFB #4337-17, on March 13, 2017, the City received bids from contractors qualified to perform grate module replacement and grate module inspections and repairs on Von Roll Type R-10046 grates, and Combustion Engineering continuous ash discharge spreader stoker in accordance with manufacturers' specifications. Knight Construction & Supply, Inc., was the only bidder. After review of the bid it was determined that Knight Construction & Supply, Inc., is a responsible bidder.

The term of the contract is April 18, 2017 through April 17, 2019 with the option to extend the contract for 4 additional 1-year periods.

Impact

Knight Construction has performed this work for the WTE for a number of years and is very knowledgeable of the plant. Having a well-qualified contractor to complete the needed maintenance will help minimize the costs and downtime at the WTE.

Action

Recommend approval of this addendum.

Funding

Funding for this contract addendum is included in the 2017 operations and maintenance budget.

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

04/10/2017

Date Rec'd

3/28/2017

Clerk's File #

OPR 2017-0258

Renews #**Cross Ref #**

RES 2015-0017

Submitting Dept

SOLID WASTE DISPOSAL

Contact Name/Phone

DAVID PAINE 625-6878

Project #**Contact E-Mail**

DPAINE@SPOKANECITY.ORG

Bid #**Agenda Item Type**

Contract Item

Requisition #

CR 17966

Agenda Item Name

SOLE SOURCE CONTRACT FOR TURBINE OVERHAUL AT WTE

Agenda Wording

Authorization to contract with Dresser Rand Company to perform the overhaul of the Condensing Steam Turbine Generator at the WTE under the terms of the Sole Source Resolution RES 2015-0017. May 1, 2017 through April 30, 2018.

Summary (Background)

The Condensing Steam Turbine Generator uses the steam produced by the WTE to generate electricity, which is used to power the facility, with the remaining being sold. The revenue from the sale of electricity offsets the cost of operations of the WTE. To keep the turbine in good operating condition, it is necessary that it be overhauled periodically. Dresser Rand Company possesses the design, fabrication and manufacturing information to supply service for the turbine.

Fiscal Impact**Budget Account**

Expense \$ 1,320,000.00

4490-44100-94000-56401

Select \$

#

Select \$

#

Select \$

#

Approvals**Council Notifications****Dept Head**

CONKLIN, CHUCK

Study Session

PWC 3/27/17

Division Director

FEIST, MARLENE

Other**Finance**

DOVAL, MATTHEW

Distribution List**Legal**

WHALEY, HUNT

ttauscher@spokanecity.org

For the Mayor

SANDERS, THERESA

jsalstrom@spokanecity.org

Additional Approvals

tprince@spokanecity.org

Purchasing

mdoval@spokanecity.org



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Contract cost is \$1,200,000.00 with a 10% administrative reserve of \$120,000.00 for a total contract of \$1,320,000.00 excluding taxes.

Summary (Background)

On February 23, 2015, Council approved a sole source resolution declaring Dresser Rand Company the sole source for this service.

Fiscal Impact		Budget Account	
Select	\$		#
Select	\$		#

Distribution List

BRIEFING PAPER
Public Works Committee
Solid Waste Disposal
March 27, 2017

Subject

Authorization to contract with Dresser Rand Company to perform the overhaul of the Condensing Steam Turbine Generator at the WTE under the terms of the Sole Source Resolution RES 2015-0017. May 1, 2017 through April 30, 2018 for a cost of \$1,200,000.00 with a 10% administrative reserve of \$120,000.00 for a total contract of \$1,320,000.00 excluding taxes.

Background

The Condensing Steam Turbine Generator uses the steam produced by the WTE to generate electricity, which is used to power the facility, with the remaining being sold to Avista Utilities. The revenue from the sale of electricity offsets the cost of operations of the WTE. To keep the turbine in good operating condition, it is necessary that it be overhauled periodically.

Dresser Rand Company possesses the design, fabrication, and manufacturing information required to supply maintenance and service for the Turbine at the WTE, therefore on February 23, 2015, Council approved a sole source resolution declaring Dresser Rand Company the sole source for this service.

Impact

Maintaining the WTE in good operating condition will maximize the ability to produce electricity, and reduce the potential for unplanned generator outages, helping maintain the revenues used to offset the costs of operations.

Action

Recommend approval.

Funding

Funding for the condensing steam turbine generator overhaul is include in the 2017 capital budget for the WTE.

02/11/15
883



Agenda Sheet for City Council Meeting of:
02/23/2015

Date Rec'd	2/11/2015
Clerk's File #	RES 2015-0017
Renews #	

Submitting Dept	SOLID WASTE DISPOSAL	Cross Ref #	OPR2015-0017
Contact Name/Phone	CHUCK 625-6524	Project #	
Contact E-Mail	CCONKLIN@SPOKANECITY.ORG	Bid #	
Agenda Item Type	Resolutions	Requisition #	
Agenda Item Name	4490 SOLE SOURCE RESOLUTION DRESSER RAND		

Agenda Wording

A resolution declaring DRESSER RAND COMPANY (Seattle) a sole source for the maintenance, service, and product supplies necessary for the Condensing Steam Turbine Generator Drive Package for the WTE Facility.

Summary (Background)

DRESSER RAND COMPANY possesses the design, fabrication and manufacturing information required to supply maintenance, service and parts to the Turbine at the WTE. The Company can readily respond to maintenance requests for the Turbine. The Turbine is an integral part of the 24 hr/7 day a week operation of the WTE Facility and an interruption in service would likely cause an outage if it were to break down and maintenance/parts were not readily available. Recommend approval of this resolution.

Fiscal Impact		Budget Account	
Expense	\$ 108,700	#	4490-44100-37148-54803
Select	\$	#	
Select	\$	#	
Select	\$	#	
Approvals		Council Notifications	
Dept Head	CONKLIN, CHUCK	Study Session	PWC 1/12/2015
Division Director	GIMPEL, KEN	Other	
Finance	LESESNE, MICHELE	Distribution List	
Legal	WHALEY, HUNT	ttauscher@spokanecity.org	
For the Mayor	CODDINGTON, BRIAN	lbutz@spokanecity.org	
Additional Approvals		mlesesne@spokanecity.org	
Purchasing	PRINCE, THEA		

ADOPTED BY SPOKANE CITY COUNCIL

on 2/23/2015
[Signature]
SPOKANE CITY CLERK

BRIEFING PAPER
Public Works Committee
Solid Waste Disposal Department
January 12, 2015

Subject

Resolution declaring Dresser Rand Company a sole source for maintenance, service, and product supplies necessary for the Condensing Steam Turbine Generator Drive Package.

Background

The Condensing Steam Turbine Generator Drive Package, Serial #D0823, was supplied to the Waste to Energy Facility in 1990. Dresser Rand Company possesses the design, fabrication and manufacturing information required to supply maintenance, service, and parts to the Turbine and can readily respond to maintenance requests.

Impact

The Turbine is an integral part of the 24hr/7 day a week operation of the Waste to Energy Facility, and an interruption in service would likely cause an outage if it were to break down and maintenance/parts were not readily available.

Action

Request approval.

Funding

Funding is included in the 2015 operation and maintenance budget.

RESOLUTION

A resolution declaring Dresser Rand Company (Seattle, WA) a sole source for the maintenance, service, and product supplies necessary for the Condensing Steam Turbine Generator Drive Package, Serial #D0823 supplied to the Waste to Energy Facility in 1990.

WHEREAS, the Waste to Energy Facility is a 24 hr/7 day a week facility and if something goes wrong with the Turbine immediate services will be needed; and

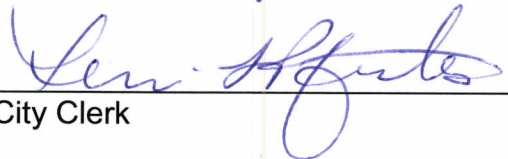
WHEREAS, Dresser Rand Company possesses the design, fabrication and manufacturing information required to supply such maintenance, service and parts to this Turbine; and

WHEREAS, Dresser Rand Company can readily respond to maintenance requests for the Turbine, as the Turbine is an integral part of the 24 hr/7 day a week operation of the Waste to Energy Facility and an interruption in service would likely cause an outage if it were to break down and maintenance/parts not be readily available; and

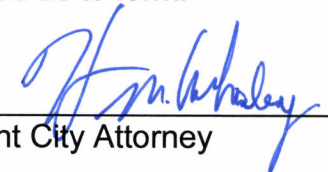
WHEREAS, the cost of the products and related services exceeds the 2015 public bid limit of \$48,400; -- Now, Therefore,

BE IT RESOLVED by the city council for the City of Spokane that it hereby declares Dresser Rand Company a sole source for the maintenance, service and product supplies necessary for the Condensing Steam Turbine Generator Drive Package at an estimated cost of \$100,000.00 per year. And further authorizes the City to contract with Dresser Rand Company for this service without further council action. This Resolution shall be reviewed and updated in five (5) years or sooner if a different brand of equipment is procured.

ADOPTED BY THE CITY COUNCIL ON February 23, 2015


City Clerk

Approved as to form:


Assistant City Attorney





Agenda Sheet for City Council Meeting of:
04/10/2017

Date Rec'd	3/22/2017
Clerk's File #	OPR 2017-0259
Renews #	
Cross Ref #	
Project #	
Bid #	
Requisition #	

Submitting Dept	MUNICIPAL COURT
Contact Name/Phone	HOWARD 625-4450
Contact E-Mail	HDELANEY@SPOKANECITY.ORG
Agenda Item Type	Contract Item
Agenda Item Name	JTI JUSTWARE TO ESUITE

Agenda Wording

Preplacement/Upgrade of the case management software platform used by Spokane Municipal Court, as well as prosecutors, probation and public defender offices.

Summary (Background)

Since March 11, 2009, the city's prosecution, probation, and public defender offices have been using JustWare to manage the City's 7,000 to 10,000 annual criminal case filings in the Municipal Court. The Municipal Court began using JustWare to manage its criminal, civil, and infraction filings on August 13, 2013.

Fiscal Impact		Budget Account	
Select	\$	#	
Select	\$	#	
Select	\$	#	
Select	\$	#	
Approvals		Council Notifications	
<u>Dept Head</u>	DELANEY, HOWARD	<u>Study Session</u>	
<u>Division Director</u>	SZAMBELAN, SHELLEY	<u>Other</u>	
<u>Finance</u>	ORLOB, KIMBERLY	<u>Distribution List</u>	
<u>Legal</u>	WHALEY, HUNT		
<u>For the Mayor</u>	SANDERS, THERESA		
<u>Additional Approvals</u>			
<u>Purchasing</u>			

Briefing Paper
Contract with Journal Technologies, Inc.
City Council
April 3, 2017

Subject

Preplacement/upgrade of the case management software platform used by Spokane Municipal Court, as well as the prosecutors, probation, and public defender offices.

Background

Since March 11, 2009, the city's prosecution, probation, and public defender offices have been using JustWare to manage the City's 7,000 to 10,000 annual criminal case filings in the Municipal Court. The Municipal Court began using JustWare to manage its criminal, civil, and infraction filings on August 13, 2013.

The JustWare system was originally developed, marketed, and supported by New Dawn Technologies, Inc. In 2013, New Dawn Technologies, Sustain Technologies, and ISD Corporation, all competitors in the criminal justice database market merged to form Journal Technologies, Inc. The best elements of the three software platforms are merging into the integrated eSuite of products, with dedicated modules for courts, prosecutors, probation, and public defenders.

Post-merger, Journal Technologies has nearly 600 customers in 41 states, 4 countries, and 2 U.S. territories. The customers of each of the predecessor companies are all on an upgrade path to the eSuite product line and the majority of Journal Technologies' development effort is now going to that product line.

The rapid development in software features and functionality, coupled with the new IT directive to minimize support requirements for city software applications, led to formation of a chartered project team to assess the costs and benefits of: (a) remaining with JustWare and improving the software interfaces between local and regional agencies; (b) transitioning to a new vendor and software application; or (c) upgrading with our current vendor to the eSuite line of products. The team is composed of representatives of the court, prosecutors, probation, public defenders, and Innovation & Technology Services Division (ITSD).

The project team began by conducting an intensive review of both the justice agencies' business needs and ITSD support requirements. The resulting RFI produced seven (7) responses. After an internal review of all responses, the project team selected Tyler Technologies Odyssey platform and the Journal Technologies eSuite platform as worthy of additional investigation.

In order to see both products in the field and meet with current end users, designees of the project team conducted a series of site visits. In each site visit, the programs were demonstrated as they are used in the particular jurisdiction, the justice system end users interviewed, and the ITSD support group interviewed.

DRAFT – FOR DISCUSSION PURPOSES ONLY

Following the post-mortem on the site visits by the project team and the receipt of cost figures, the project team unanimously selected Journal Technologies, Inc., as the vendor.

Impact

The upgrade to the eSuite software platform will allow the Spokane Municipal Court, prosecutors, probation, and public defenders to all operate seamlessly in a unified software environment, with the ability to exchange both data and documents. This will minimize duplicate data entry across city criminal justice entities and free clerical staff up to provide support for emerging criminal justice reform programs and problem solving/therapeutic Courts.

The upgrade will also improve the ability of our criminal justice agencies to expeditiously extract data from all four modules, allowing for improved decision making and program/project evaluation.

Additionally, the new platform will have interfaces with the jail management system, parking citation issuance software, and financial management system. This will reduce the number of systems IT must support, further reduce duplicate data entry, and minimize customer inconveniences associated with having cases spread across multiple case management systems.

Given the fact the proposed contract minimizes the implementation and ongoing efforts required of ITSD, the workload associated with criminal justice case management application should be minimized and become more predictable, thereby reducing stress on ongoing ITSD staffing issues.

Finally, King County and other jurisdictions within the state have adopted the same platform and vendor. Conversations with King County have already begun for collaboration on administrative elements of the program and data exchange.

Action

Spokane Municipal Court, prosecutors, probation, public defenders, ITSD, and the City Administrator all recommend approval of the Journal Technologies, Inc. agreements.

Funding

A total of \$413,000.00 (\$290,000.00 implementation + \$123,000.00 annual license and maintenance fees) in 2018 funding and \$72,277.00 (for usage of existing hardware) in 2017 funding will be allocated by Finance and Budget, with no contract expenditures required until Journal Technologies, Inc., has fully discharged all its contractual obligations.



City of Spokane
CONSULTANT AGREEMENT

Title: **Journal Technologies, Inc. (JTI) Software**

This Consultant Agreement is made and entered into by and between the **City of Spokane** as ("City"), a Washington municipal corporation, and **Journal Technologies, Inc.**, whose address is 915 East First Street, Los Angeles, CA 90012 ("Consultant").

WHEREAS, the City and the Consultant are entering into that certain Software License, Maintenance and Support Agreement of even date herewith (the "License Agreement") and that certain Professional Services Agreement of even date herewith (the "Professional Services Agreement") and the purpose of this Agreement is to set forth additional terms and conditions governing the provision of services under the Professional Services Agreement.

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

1. TERM OF AGREEMENT.

The term of this Agreement begins on the date executed by both Licensor and Licensee, and ends on the date terminated by the parties, 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 F to the Professional Services Agreement.

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

4. PAYMENT.

Total compensation for Consultant's services under this Agreement FOR A ONE TIME FEE shall be a maximum amount not exceed **TWO HUNDRED AND NINETY THOUSAND AND NO/100 DOLLARS**

(\$290,000.00), unless modified by a written amendment to this Agreement. The Annual Software License and Maintenance Fee for Consultant's services under this Agreement shall be a maximum amount not exceed **ONE HUNDRED TWENTY THREE THOUSAND AND NO/100 DOLLARS (\$123,000.00)**.

The ONE TIME FEE Compensation for Consultant's services will not be made until completion of the upgrade, and shall be based upon a Lump Sum arrangement according to further payment details as set forth on Exhibit A to the Consultant's License Agreement.

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 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 four percent (4%) markup. 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 IT DEPARTMENT 7 th 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• IT DEPARTMENT• Project Coordinator: Sandra Willard (Please do not put name in the address portion of the invoice)• Department Contract No. OPR # _____• Contract Title: Journal Technologies, Inc. Software• Period covered by the invoice• Payments for Services shall be in accordance with Exhibit A to Consultant's License Agreement – Payment Method = Lump Sum• 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:
Integrated Capital Management Department - City of Spokane 2nd Floor – City Hall 808 West Spokane Falls Boulevard Spokane, Washington 99201	Journal Technologies, Inc. 915 East First Street Los Angeles, CA 90012 Attention: President and Munger, Tolles & Olson LLP 355 South Grand Avenue, 36 th Floor Los Angeles, CA 90071 Attention: Michael O’Sullivan

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, in each case 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. [Under review by JTI's insurance broker]

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

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

- A. Worker's Compensation Insurance in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers and Employer's Liability Insurance in the amount of \$1,000,000;
- B. General Liability Insurance on an occurrence basis, with a combined single limit of not less than \$1,500,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this agreement. It shall provide that the City, its officers and employees are additional insureds but only with respect to the Consultant's services to be provided under this Agreement; and
- C. Automobile Liability Insurance with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles.
- D. Professional Liability Insurance with a combined single limit of not less than \$1,000,000 each claim, incident or occurrence. This is to cover damages caused by the error, omission, or negligent acts related to the professional services to be provided under this Agreement. The coverage must remain in effect for at least two (2) years after the Agreement is completed.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without sixty (60) days written notice from the Consultant or its insurer(s) to the City. As evidence of the insurance coverage(s) required by this Agreement, the Consultant shall furnish acceptable Certificates Of Insurance (COI) to the City at the time it returns this signed Agreement. The certificate shall specify the City of Spokane as "Additional Insured" specifically for Consultant's services under this Agreement, as well as 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.

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. Notwithstanding the foregoing, the City hereby approves in advance Consultant's use of any independent contractors or consultants who, individually or through small companies, act as regular staff enhancements to Consultant.

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 license, subject to the terms of the License Agreement, to use copy and distribute every document and all the materials prepared by the Consultant solely for the City under this Agreement during the License Term (as defined in the License Agreement). If requested by the City, a copy of all reports, documents, files, input materials, output materials, and/or 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 specifically for the performance of the Agreement or any subcontract and paid for by the City. 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). If pre-existing

materials are incorporated in the Work, the Consultant grants the City a non-exclusive license, subject to the terms of the License Agreement, to use, execute, reproduce, display and transfer the pre-existing material, but only as an inseparable part of the work and only during the License Term (as defined in the License Agreement).

- 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. For the avoidance of doubt, the Licensed Software (as defined in the License Agreement) shall not be deemed a record subject to disclosure pursuant to this Section 21.

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. 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: In the unlikely event of a calendar delays longer than 60 days past any date specifically identified in the project plan as a "major milestone" agreed during the initial planning phase of the project, which delay is due solely to Contractor's failure (and not due to the failure by any other person) to perform the tasks assigned to it on the project plan, the contractor must, within 15 days after receiving a written request from the City, present a plan of action reasonably acceptable to the City to mitigate such delay. If contractor fails to present a reasonably acceptable plan within such time period, or the City may terminate the agreement for cause with no financial obligation (if such termination occurs within six months of the contract start) or a financial obligation limited to 50% of the termination for convenience amounts (if such termination occurs more than after six months after the contract start). In the unlikely event the contractor abandons or otherwise stops effort on the project for more than 30 consecutive days and does not resume effort on the project within 15 days after receiving written notice from the City of its intent to terminate the Agreement on that basis for cause, the City may terminate the agreement for cause without financial obligation.
- 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: Upon termination for any reason, 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 of condition. Neither the acceptance by the City of any performance by the Consultant after the time the same shall have become due nor payment to the Consultant for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City in writing.
- J. 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, and the License Agreement and the Professional Services Agreement comprise the entire agreement between the City and the Consultant.
- 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.

Journal Technologies, Inc.

By _____
Signature Date

Type or Print Name

Title

Consultant's UBI #

Attest:

City Clerk

City of Spokane

By _____
Signature Date

Type or Print Name

Title

Approved as to form:

Assistant City Attorney

Attachments:

Consultant's License Agreement and;
Exhibit A to the Consultant's License Agreement

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

04/10/2017

Date Rec'd

3/27/2017

Clerk's File #

OPR 2017-0260

Renews #**Submitting Dept**

SOLID WASTE COLLECTION

Contact Name/Phone

SCOTT 625-7806

Contact E-Mail

SWINDSOR@SPOKANECITY.ORG

Agenda Item Type

Contract Item

Agenda Item Name

4500 CONTRACT FOR NEW METAL DUMPSTERS

Cross Ref #**Project #****Bid #**

4319-17

Requisition #

VALUE BLANKET

Agenda Wording

Five-year ontract with Rule Steel Tanks, Inc. (Caldwell, ID) for supplying new metal refuse and recycling containers -- annual estimated expenditure \$300,000 (including tax).

Summary (Background)

Solid Waste Collection owns, operates and maintains an inventory of metal front load, rear load and roll off containers that are used by commercial customers for refuse and recycling services. These containers need to be replaced when they can no longer be refurbished. Bid #4319-17 was issued with two responses received. Rule Steel Tanks, Inc. was the lowest responsive bidder. Solid Waste Collection believes this company will supply quality containers built to the department's

Fiscal Impact

Expense \$ 300,000

Select \$

Select \$

Select \$

Budget Account

various

#

#

#

Approvals**Dept Head**

WINDSOR, SCOTT

Division Director

FEIST, MARLENE

Finance

DOVAL, MATTHEW

Legal

WHALEY, HUNT

For the Mayor

SANDERS, THERESA

Council Notifications**Study Session**

PWC 03/27/17

Other**Distribution List**

swindsor@spokanecity.org

Tax & Licenses

Additional Approvals

Burt.Roberts@rulesteel.com

Purchasing

PRINCE, THEA

rschoonover@spokanecity.org

cwahl@spokanecity.org

jsalstrom@spokanecity.org

bpaschal@spokanecity.org



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

required technical specifications. These new metal containers will be paid for out of the Capital Outlay Equipment and Minor Equipment budget lines in the Solid Waste Operations and Recycling programs.

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List

BID TABULATION

BID NUMBER: 4319-17

BID TITLE: FRONT LOAD, REAR LOAD AND ROLL OFF REFUSE/RECYCLING CONTAINERS

DUE DATE: MONDAY, FEBRUARY 27, 2017



CITY OF SPOKANE - PURCHASING
 808 W. Spokane Falls Blvd.
 Spokane, Washington 99201-3316
 (509) 625-6400
 FAX (509) 625-6413

BIDS RECEIVED FROM:	RULE STEEL TANKS, INC. CALDWELL, ID		CAPITAL INDUSTRIES, INC. SEATTLE, WA	
QUANTITY AND DESCRIPTION	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
SECTION 1: REAR LOAD REFUSE/RECYCLING CONTAINERS				
45 EA REAR LOAD REFUSE/RECYCLING CONTAINERS, 1 CUBIC YARD	519.50	23,377.50	510.00	22,950.00
18 EA REAR LOAD REFUSE/RECYCLING CONTAINERS, 2 CUBIC YARD	643.50	11,583.00	560.00	10,080.00
24 EA REAR LOAD REFUSE/RECYCLING CONTAINERS, 3 CUBIC YARD WITH SWING AWAY LIDS	1,190.00	28,560.00	1,315.00	31,560.00
45 EA REAR LOAD REFUSE/RECYCLING CONTAINERS, 4 CUBIC YARD WITH SWING AWAY LIDS	1,455.00	65,475.00	1,435.00	64,575.00
60 EA REAR LOAD REFUSE/RECYCLING CONTAINERS, 6 CUBIC YARD WITH SWING AWAY LIDS	1,880.00	112,800.00	1,895.00	113,700.00
SECTION 2: FRONT LOAD REFUSE/RECYCLING CONTAINERS				
30 EA FRONT LOAD REFUSE/RECYCLING CONTAINERS, 1 CUBIC YARD	460.00	13,800.00	470.00	14,100.00
12 EA FRONT LOAD REFUSE/RECYCLING CONTAINERS, 2 CUBIC YARD	560.75	6,729.00	520.00	6,240.00
12 EA FRONT LOAD REFUSE/RECYCLING CONTAINERS, 3 CUBIC YARD	625.50	7,506.00	600.00	7,200.00
30 EA FRONT LOAD REFUSE/RECYCLING CONTAINERS, 4 CUBIC YARD	736.50	22,095.00	665.00	19,950.00
40 EA FRONT LOAD REFUSE/RECYCLING CONTAINERS, 6 CUBIC YARD	876.80	35,072.00	885.00	35,400.00
SECTION 3: ROLL OFF REFUSE/RECYCLING CONTAINERS				

7 EA ROLL OFF REFUSE/RECYCLING CONTAINERS, 20 CUBIC YARD TUB STYLE WITH DOME LINE	6,295.00	44,065.00	7,730.00	54,110.00
7 EA ROLL OFF REFUSE/RECYCLING CONTAINERS, 30 CUBIC YARD TUB STYLE WITH DOME LINE	7,165.00	50,155.00	8,350.00	58,450.00
SECTION 4: DELIVERY CONTAINERS				
192 EA DELIVERY OF CONTAINERS, REAR LOAD, ALL SIZES	112.50	21,600.00	85.00	16,320.00
124 EA DELIVERY OF CONTAINERS, FRONT LOAD, ALL SIZES	112.50	13,950.00	110.00	13,640.00
14 EA DELIVERY OF CONTAINERS, ROLL OFF, ALL SIZES	385.00	5,390.00	425.00	5,950.00
SUBTOTAL:		\$462,157.50		\$474,225.00
SALES TAX:		\$40,207.70		\$41,257.58
TOTAL BID:		\$502,365.20		\$515,482.58
ADDENDUM 1 ACKNOWLEDGED:	YES		YES	

The Request for bid was e-mailed to 37 Firms/Plan Holders, with 2 bid responses received.

PLEASE NOTE THAT THIS BID TABULATION IS NOT AN INDICATION OF AWARD RECOMMENDATION. CRITERIA, IN ADDITION TO PRICE, ARE EVALUATED TO DETERMINE RESPONSIVE BID MEETING SPECIFICATIONS. AWARD OF BID IS MADE BY CITY COUNCIL.

BRIEFING PAPER
Public Works Committee
Solid Waste Collection
March 27, 2017

Subject

Award of a five year Value Blanket Order for the supplying of new metal refuse and recycling front and rear load containers and roll off containers.

Background

The Solid Waste Collection Department owns, maintains and operates an inventory of metal refuse and recycling containers that need to be replaced when they are no longer repairable. A bid was issued, #4319-17, and two responses were received. Rule Steel Tanks, Inc. Caldwell, ID was the lowest bidder that took no exceptions. The Solid Waste Collection Department believes that this company will provide quality containers for our customers use.

Impact

The cost for purchasing new metal refuse and recycling containers is approximately \$300,000 per year.

Action

Recommend approval.

Funding

These funds are from the operations and recycling capital outlay equipment/machinery budget and/or minor equipment budget.



City of Spokane

CONTRACT

**Title: Purchase of Front Load, Rear Load and
Roll Off Refuse/Recycling Containers**

THIS CONTRACT is between the **CITY OF SPOKANE**, a Washington State municipal corporation, as ("City"), and **RULE STEEL TANKS, INC.**, whose address is 11299 Bass Lane, Caldwell, Idaho 83605, as ("Company"). Individually hereafter referenced as a "party", and together as the "parties".

The parties agree as follows:

1. **PERFORMANCE.** The Company shall provide for the City of Spokane Solid Waste Collection Department an annual supply of FRONT LOAD, REAR LOAD AND ROLL OFF REFUSE/RECYCLING CONTAINERS.
2. **CONTRACT DOCUMENTS.** The contract documents are this Contract, the City's Request for Bids (RFB # 4319-17), entitled Front Load, Rear Load and Roll Off Refuse/Recycling Containers for the City of Spokane Solid Waste Collection Department, the Company's completed bid proposal form, contract provisions, contract plans, standard specifications, standard plans, addenda, various certifications and affidavits, supplemental agreements, change orders, and subsurface boring logs (if any). Federal and state requirements and the terms of this Contract, respectively, supersede other inconsistent provisions. These contract documents are on file with the Solid Waste Collection Department, 915 North Nelson Street, Spokane, Washington and are incorporated into this Contract by reference, as if they were set forth at length.
3. **CONTRACT TERM.** The Contract term shall be for five (5) years, beginning upon signature of both parties, unless terminated sooner. Orders will be placed as needed using a blanket order process.
4. **LIQUIDATED DAMAGES.** In the event of delivery delay beyond the date specified in the Bid, the City shall assess, as liquidated damages TEN AND NO/100 DOLLARS (\$10.00) per day per container beyond the completion date specified. The City shall have the right to deduct and retain the amount of such liquidated damages from any monies due or which may become due the Company or to initiate legal proceedings for the collection of same.

5. TERMINATION. This Contract may be terminated in accordance with the contract documents.

6. COMPENSATION. The City shall pay the Company a maximum annual amount of **THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00)**, including applicable sales tax, for everything furnished and done under this contract.

7. TAXES. Retail sales tax where applicable shall be added to the amounts due and the Company shall be responsible for making payment of the tax to Washington State. The City reserves the right to claim any exemption authorized by law. The City reserves the right to claim any exemption authorized by law.

8. PAYMENT. The Company will send its applications for payment to the Solid Waste Collection Department, 915 North Nelson Street, Spokane, Washington 99202. Payment will be made via direct deposit/**ACH** within thirty (30) days after receipt of the Company's application except as provided in RCW 39.76. If the City objects to all or any portion of the invoice, it shall notify the Company and reserves the right to only pay that portion of the invoice not in dispute. In that event, the parties shall immediately make every effort to settle the disputed amount.

9. INDEMNIFICATION.

A. The Company is an independent Company and not the agent or employee of the City. No liability shall attach to the City for entering into this Contract or because of any act or omission of the Company except as expressly provided.

B. The Company agrees to defend, indemnify and hold the City and Engineers harmless from any and all claims, demands, losses and liabilities to or by third parties arising from, resulting from or connected with services performed or to be performed under this Contract by the Company, its agents or employees to the fullest extent permitted by law. The Company's duty to indemnify the City and Engineers shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City, its agents or employees. The Company's duty to indemnify the City and Engineers for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) the City or its agents or employees, and (b) the Company or its agents or employees, shall apply only to the extent of negligence of the Company or its agents or employees. Company's duty to defend, indemnify and hold the City and Engineers harmless shall include, as to all claims, demands, losses and liability to which it applies, the City's personnel-related costs, reasonable attorneys' fees, court costs and all other claim-related expenses.

C. **The Company waives immunity under Title 51 RCW to the extent necessary to protect the City's interests under this indemnification. This provision has been specifically negotiated.**

10. BONDS. The Company may not commence work until it obtains all insurance, permits and bonds required by the contract documents and applicable law. This includes the execution of a performance bond and a payment bond on the forms attached, each equal to one hundred percent (100%) of the contract price, and written by a corporate surety company licensed to do business in Washington State.

11. INSURANCE. The Company 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.

12. COMPANY'S WARRANTY. The Company's warranty for all work, labor and materials shall be in accordance with the contract documents.

13. SUBCONTRACTOR RESPONSIBILITY. The Company must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350(1) and possesses an electrical Company license, if required by chapter 19.28 RCW, or an elevator Company license, if required by chapter 70.87 RCW. The responsibility criteria are listed in the request for bids document.

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

15. ASSIGNMENTS. The Company may not assign, transfer or sublet any part of the work under this Contract, or assign any monies due, without the written approval of the City, except as may be required by law. In the event of assignment of accounts or monies due under this Contract, the Company specifically agrees to give immediate written notice to the City Administrator, no later than five (5) business days after the assignment.

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

17. COMPLIANCE WITH LAWS. Each party shall comply with all applicable federal, state, and local laws and regulations that are incorporated herein by reference.

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

19. SEVERABILITY. In the event any provision of this Contract should become invalid, the rest of the Contract shall remain in full force and effect.

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

21. BUSINESS REGISTRATION REQUIREMENT. Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid annual business registration. The Company 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 Company does not believe it is required to obtain a business registration, it may contact the City's Taxes and Licenses Division at (509) 625-6070 to request an exemption status determination.

22. CONSTRUAL. The Company acknowledges receipt of a copy of the contract documents and agrees to comply with them. The silence or omission in the contract documents concerning any detail required for the proper execution and completion of the work means that only the best general practice is to prevail and that only material and workmanship of the best quality are to be used. This Contract shall be construed neither in favor of nor against either party.

Dated: _____

CITY OF SPOKANE

By: _____

Title: _____

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Dated: _____

RULE STEEL TANKS, INC.

By: _____

Title: _____

Email Address, if available: _____

Attachments that are a part of this Contract:

Performance Bond

City's Request for Bids (RFB # 4319-17), entitled Front Load, Rear Load and Roll Off Refuse/Recycling Containers for the City of Spokane Solid Waste Collection Department

U2017-129

PERFORMANCE BOND

We, **RULE STEEL TANKS, INC.**, as principal, and _____, as surety, are held and firmly bound to the City of Spokane, Washington, in the sum of THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$300,000.00), plus a ten percent (10%) administrative reserve, for the payment of which, we bind ourselves and our legal representatives and successors, jointly and severally by this document.

The principal has entered into a Contract with the City of Spokane, Washington, to do all work and furnish all materials for the FRONT LOAD, REAR LOAD AND ROLL OFF REFUSE/RECYCLING CONTAINERS FOR THE CITY OF SPOKANE SOLID WASTE COLLECTION DEPARTMENT project defined in the City's Request for Bids (RFB # 4319-17). If the principal shall:

- A. promptly and faithfully perform the contract, and any contractual guaranty and indemnify and hold harmless the City from all loss, damage or claim which may result from any act or omission of the principal, its agents, employees, or subcontractors; and
- B. comply with all applicable federal, state and local laws and regulations;

then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The surety hereby waives notice of and consents to any contract alteration or extension of time made by the City. Any judgment obtained against the City, which relates to or is covered by the contract or this bond, shall be conclusive against the principal and the surety, not only as to the amount of damages, but also as to their liability, if reasonable notice of the suit has been given.

SIGNED AND SEALED on _____

RULE STEEL TANKS, INC.

By: _____

Title: _____

_____,
AS SURETY

A valid POWER OF ATTORNEY
for the surety's agent must
accompany this bond.

By: _____
Its Attorney in Fact

STATE OF WASHINGTON)
) ss.
County of _____)

I certify that I know or have satisfactory evidence that _____
_____ signed this document; on oath
stated that he/she was authorized to sign the document and acknowledged it as the agent
or representative of the named surety company which is authorized to do business in the
State of Washington, for the uses and purposes mentioned in this document.

DATED on _____.

Signature of Notary

My appointment expires _____

Approved as to form:

Assistant City Attorney

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

04/10/2017

Date Rec'd

3/27/2017

Clerk's File #

OPR 2017-0261

Renews #**Submitting Dept**

PUBLIC WORKS

Contact Name/Phone

MATT 625-6221

Contact E-Mail

MLOWMASTER@SPOKANECITY.ORG

Agenda Item Type

Contract Item

Agenda Item Name

5200 - PUBLIC WORKS SAFETY PROGRAM

Cross Ref #**Project #****Bid #**

4344-17

Requisition #

CR 17960

Agenda Wording

Contract for a public works safety program with Delta Business Training (Spokane, WA) not to exceed \$50,000 including tax. This contract will have a one (1) year term with four (4) optional annual renewals not to exceed a total of five (5) years.

Summary (Background)

RFP #4344-17 was issued March 6, 2017 to thirty-two (32) firms/plan holders. One (1) proposal was received and opened on March 20, 2017. That proposal was determined by the evaluation committee to be reasonable in cost and responsive to the City's needs. This project will include (but not be limited to) on-site classroom safety sessions, a safety exam and supplemental materials, safety videos, and a recognition program.

Fiscal Impact**Budget Account**

Expense \$ 50,000.00

VARIOUS ENTERPRISE FUND BUDGETS

Select \$

#

Select \$

#

Select \$

#

Approvals**Council Notifications****Dept Head**

FEIST, MARLENE

Study Session**Division Director**

FEIST, MARLENE

Other

PWC 3/27/2017

Finance

HUGHES, MICHELLE

Distribution List**Legal**

WHALEY, HUNT

DAVE@DELTABUSINESSTRAINING.COM

For the Mayor

SANDERS, THERESA

KGIMPEL@SPOKANECITY.ORG

Additional Approvals

MLOWMASTER@SPOKANECITY.ORG

Purchasing

PRINCE, THEA

CWAHL@SPOKANECITY.ORG

MLOWDON@SPOKANECITY.ORG

SJOHNSON@SPOKANECITY.ORG

TAXES & LICENSES

BRIEFING PAPER
Public Works Committee
Public Works Division
March 27, 2017

Subject

Contract for public works safety program with Delta Business Training (Spokane, WA) not to exceed \$50,000 including tax.

Background

Request for Proposals #4344-17 was issued March 6, 2017 to thirty-two (32) firms/plan holders. One (1) proposal was received and opened on March 20, 2017. The evaluation committee has determined that proposal, from Delta Business Training, responsive to the City's needs and reasonable in cost. This contract will be good for a one (1) year period with four (4) optional annual renewals at mutual agreement not to exceed a total term of five (5) years.

This project will include (but not be limited to) on-site classroom safety sessions, a safety exam and supplemental materials, safety videos, and a recognition program.

Impact

This program will improve the safe job performance of Public Works employees and assist with standardizing safety training across the following departments in the Public Works Division: Solid Waste, Streets, Waste to Energy, Wastewater Maintenance, Wastewater Treatment, and Water & Hydroelectric Services.

Action

Recommend approval.

Funding

Funding for this purchase will be split evenly between the participating enterprise department budgets.



City of Spokane

CONTRACT

**Title: DEVELOP AND IMPLEMENT SAFETY
PROGRAM FOR CITY
PUBLIC WORKS EMPLOYEES**

THIS CONTRACT is between the **CITY OF SPOKANE**, a Washington State municipal corporation, as ("City"), and **DELTA BUSINESS TRAINING, LLC**, whose address is 2301 West Pacific Avenue, Suite 510, Spokane, Washington 99201, as ("Company"). Individually hereafter referenced as a "party", and together as the "parties".

The parties agree as follows:

1. **PERFORMANCE.** The Company shall provide DEVELOPMENT AND IMPLEMENTATION OF A SAFETY TRAINING PROGRAM; INCLUDING (BUT NOT LIMITED TO) PUBLICATION OF ALL NECESSARY HANDBOOKS, VIDEOS, AND SUPPLEMENTAL MATERIALS, INCLUDING ALL ASSOCIATED TRAINING, EXAMINATION, AND A RECOGNITION PROGRAM IN ACCORDANCE WITH THE PROPOSAL PROVIDED IN RESPONSE TO RFP #4344-17.
2. **CONTRACT TERM.** The Contract shall begin April 14, 2017, and run through April 13, 2018, with the possibility of four (4) one (1) year Extensions/Renewals, for a total Term of five (5) years, upon mutual agreement of the parties, or unless amended by written agreement or terminated earlier under the provisions.
3. **COMPENSATION.** The City shall pay the Company a maximum amount not to exceed **FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00)**, including applicable taxes, for everything furnished and done under this Contract.
4. **PAYMENT.** The Company shall send its application for payment to Wastewater Management, 909 East Sprague Avenue, Spokane, Washington 99202. **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt of the Company's application except as provided by state law.
5. **COMPLIANCE WITH LAWS.** Each party shall comply with all applicable federal, state, and local laws and regulations applicable to the subject matter of this Contract, and are incorporated herein by reference.
6. **ASSIGNMENTS.** This Contract is binding on the parties and their heirs, successors, and assigns. Neither party may assign, transfer or subcontract its interest, in whole or in part, without the other party's prior written consent.
7. **AMENDMENTS.** This Contract may be amended at any time by mutual written agreement.

8. ANTI-KICKBACK. No officer or employee of the City of Spokane, having the power or duty to perform an official act or action related to this Contract shall have or acquire any interest in the Contract, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in this Contract.
9. INDEMNIFICATION. The Company shall defend, indemnify and hold harmless the City, its officers and employees, from and against all claims for damages, liability, cost and expense arising out of the negligent conduct of the Company, its officers, employees and subcontractors in connection with the performance of the Contract, except to the extent of those claims arising from the negligence of the City, its officers and employees.
10. SEVERABILITY. In the event any provision of this Contract should become invalid, the rest of the Contract shall remain in full force and effect.
11. DISPUTES. This Contract shall be performed under the laws of the State of Washington. Any litigation to enforce this Contract or any of its provisions shall be brought in Spokane County, Washington.
12. STANDARD OF PERFORMANCE. The silence or omission in the Contract regarding any detail required for the proper performance of the work, means that the Company shall perform the best general practice.
13. NONDISCRIMINATION. No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Contract because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation including gender expression or gender identity, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. The Contractor 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 Contractor.
14. BUSINESS REGISTRATION REQUIREMENT. Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid annual business registration. The Company 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 Company does not believe it is required to obtain a business registration, it may contact the City's Taxes and Licenses Division at (509) 625-6070 to request an exemption status determination.
15. INSURANCE. During the term of the Contract, the Company shall maintain in force at its own expense, the following insurance coverages:
- A. Worker's Compensation Insurance in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers and Employer's Liability Insurance in the amount of \$1,000,000;
 - B. General Liability Insurance on an occurrence basis, with a combined single limit of not less than \$1,500,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this contract. It shall provide that the City, its officers and employees are additional insureds but only with respect to the Company's services to be provided under this Contract; and
 - C. Automobile Liability Insurance with a combined single limit, or the equivalent of not less than

\$1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without sixty (60) days written notice from the Consultant or its insurer(s) to the City. As evidence of the insurance coverage(s) required by this Agreement, the Consultant shall furnish acceptable Certificates of Insurance (COI) to the City at the time it returns this signed Agreement. The certificate shall specify the City of Spokane as "Additional Insured" specifically for Consultant's services under this Agreement, as well as 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.

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

Dated: _____

CITY OF SPOKANE

By: _____

Title: _____

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Dated: _____

DELTA BUSINESS TRAINING, LLC

By: _____

Title: _____

E-Mail address: _____



CITY OF SPOKANE
PROPOSAL RESPONSE LIST

PROJECT #: RFP #4344-17

TITLE: PUBLIC WORKS SAFETY PROGRAM

FOR: Public Works Division

DUE: Monday, March 20, 2017

No Addenda

PROPOSALS RECEIVED FROM:

1. Delta Business Training – Spokane, WA

This Request for Proposals was sent to 32 Firms/Plan holders with 1 response.

PLEASE NOTE THAT THIS RESPONSE LIST IS NOT AN INDICATION OF AWARD. PROPOSALS ARE FORWARDED TO THE REQUESTING DEPARTMENT FOR EVALUATION AND RECOMMENDATION TO CITY COUNCIL. AWARD OF CONTRACT IS MADE BY CITY COUNCIL.

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

04/10/2017

Date Rec'd

3/27/2017

Clerk's File #

OPR 2016-0156

Renews #**Submitting Dept**

CITY ATTORNEY

Contact Name/Phone

NATE ODLE 6288

Contact E-Mail

NODLE@SPOKANECITY.ORG

Agenda Item Type

Contract Item

Cross Ref #**Project #****Bid #****Requisition #**

CLAIMS

Agenda Item Name

0500 AMENDMENT TO SPECIAL COUNSEL CONTRACT

Agenda Wording

Amendment to contract with the firm of Keating, Bucklin & McCormack, Inc., P.S., for outside counsel services in the legal matter of Estate of Daniel Jones v. City of Spokane. Increase of \$201,660.00 for a total of \$250,000.00.

Summary (Background)

The City entered into contract with the above firm for outside legal counsel service in the matter of Estate of Daniel Jones v, City of Spokane. Additional funds are necessary.

Fiscal Impact**Budget Account**

Expense \$ 201,600.00

5800-78100-18680-54601

Select \$

#

Select \$

#

Select \$

#

Approvals**Council Notifications****Dept Head**

DALTON, PAT

Study Session**Division Director****Other**

Exec Session 3/27/17

Finance

ORLOB, KIMBERLY

Distribution List**Legal**

DALTON, PAT

sestes@kbmlawyers.com

For the Mayor

SANDERS, THERESA

tdinivant@spokanecity.org

Additional Approvals

james.scott@ascrisk.com

Purchasing

nodle@spokanecity.org

jasampson@spokanecity.org

sdhansen@spokanecity.org



City of Spokane

CONTRACT AMENDMENT

Title: **SPECIAL COUNSEL CONTRACT**

This Contract Amendment is made and entered into by and between the **CITY OF SPOKANE** as ("City"), a Washington municipal corporation, and **KEATING, BUCKLIN & MCCORMACK, INC., P.S.**, whose address is 800 Fifth Avenue, Suite 4141, Seattle, Washington 98104-3175, as ("Firm"). Individually hereafter referenced as a "party", and together as the "parties".

WHEREAS, the parties entered into a Contract wherein the Firm agreed to shall act as SPECIAL COUNSEL providing legal services and advice to the City and individual officers and employees regarding the matter of the Estate of Daniel Jones consistent with applicable laws and this Contract; and

WHEREAS, a change or revision of the Work has been requested, thus the original Contract needs to be formally Amended by this written document; and

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

1. CONTRACT DOCUMENTS.

The original Contract executed by the parties on January 27, 2016 and February 17, 2016, any previous amendments, addendums and / or extensions / renewals thereto, are incorporated by reference into this document as though written in full and shall remain in full force and effect except as provided herein.

2. EFFECTIVE DATE.

This Contract Amendment shall become effective upon signatures of the parties.

3. AMENDMENT.

Section 3 of the contract documents is amended to read as follows:

3. COMPENSATION. The City shall pay the hourly fees and other charges, as stated in the attached exhibit, up to a maximum amount of ~~FORTY EIGHT THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$48,400.00)~~ **TWO HUNDRED ONE THOUSAND SIX HUNDRED AND NO/100 DOLLARS (\$201,600.00)**, as full compensation for everything furnished and done under this this Contract Amendment. The new amount under the original Contract and this Amendment is **TWO HUNDRED FIFTY THOUSAND AND NO/100 (\$250,000.00)**.

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

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

CITY OF SPOKANE

By _____
Signature Date

By _____
Signature Date

Type or Print Name

Type or Print Name

Title

Title

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

17-032

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

04/10/2017

Date Rec'd

3/28/2017

Clerk's File #

ORD C35488

Renews #**Submitting Dept**

HUMAN RESOURCES

Cross Ref #**Contact Name/Phone**

CHRIS 625-6383

Project #**Contact E-Mail**

CCAVANAUGH@SPOKANECITY.ORG

Bid #**Agenda Item Type**

Emergency Budget Ordinance

Requisition #**Agenda Item Name**

0620 EBO RANGE CHANGES FOR FOUR POSITIONS

Agenda Wording

Range Changes for 1st Quarter. Four positions going up in Range.

Summary (Background)

SPN 063 going from 45 to 46 SPN 922 going from 22 to 37 SPN 839 going from 46 to 51 SPN 715 going from 61 to 64

Fiscal Impact**Budget Account**

Select \$

#

Select \$

#

Select \$

#

Select \$

#

Approvals**Council Notifications****Dept Head**

CAVANAUGH, CHRISTINE

Study Session**Division Director**

CAVANAUGH, CHRISTINE

Other**Finance**

ORLOB, KIMBERLY

Distribution List**Legal**

DALTON, PAT

For the Mayor

SANDERS, THERESA

Additional Approvals**Purchasing**

Range Changes for 1st Quarter

- SPN 063 – Going from Range 45 to Range 46 of M & P – B – Name Change from Code Enforcement Supervisor to Enforcement Supervisor. Currently there is one person in this position, Suzanne Tresko, who is at step 4 of Range 45.
- SPN 922 – Going from Range 22 to Range 37 of the Exempt/Confidential Pay Plan – Currently there is one person in this position, Luvimae Omana, who is at step 6 of range 22.
- SPN 839 – Going from Range 46 to Range 51 of the M & P-A Pay Plan – Currently there is one person in this position, Megan Duvall, who is at step 6 of range 46.
- SPN 715 – Going from Range 61 to Range 64 of the M & P-A Pay Plan – Currently there is one person in this position, Dan Kegley, who is at step 6 of this range. There is also a name change for this position going from “Director – Water-Hydroelectric Services” to “Director – Water/Wastewater/Hydro Services.

ORDINANCE NO. C35488

An ordinance amending Ordinance No. C-35457, passed the City Council November 28, 2016, and entitled, "An ordinance adopting the Annual Budget of the City of Spokane for 2017, making appropriations to the various funds, departments, and programs of the City of Spokane government for the fiscal year ending December 31, 2017, and providing it shall take effect immediately upon passage", and declaring an emergency.

WHEREAS, subsequent to the adoption of the 2017 budget Ordinance No. C-35457, as above entitled, and which passed the City Council November 28, 2016, it is necessary to make changes in the appropriations of the General Fund, Code Enforcement Fund, and the Water 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:	0020-88100	General Fund	
	18900-59951	Reserve for Budget Adjustment	<u>\$ 27,935</u>
TO:	0030-11500	General Fund – Ombudsman Office	
	57200-09220	Asst to Ombudsman (Grade 22 to 37)	\$ 15,500
	57200-52110	FICA	1,185
	57200-52210	Retirement	1,280
	0470-53610	General Fund – Historic Preservation	
	58620-08390	Historic Preservation Officer (Grade 46 to 51)	8,600
	58620-52100	FICA	660
	58620-52210	Retirement	710
			<u>\$ 27,935</u>

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

FROM:	1200-30210	Code Enforcement Fund	
	24600-54201	Contractual Services	<u>\$ 1,625</u>
TO:	1200-30210	Code Enforcement Fund	
	24600-00630	Code Enforcement Sup. (Grade 45 to 46) (from grade 45 to 46)	\$ 1,400
	24600-52110	FICA	110
	24600-52210	Retirement	115
			<u>\$ 1,625</u>

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

FROM:	4100-30210	Water Fund	
	34141-59951	Reserve for Budget Adjustment	<u>\$ 3,940</u>
TO:	4100-30210	Water Fund	
	34141-07150	Director – Water (Grade 61 to 64)	\$ 3,400
	34141-52110	FICA	260
	34141-52210	Retirement	280

\$ 3,940

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 implement quarterly classification and pay adjustments in accordance with approved union agreements and City policies, and as approved by management, 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:**

04/10/2017

Date Rec'd

3/28/2017

Clerk's File #

RES 2017-0022

Renews #**Submitting Dept**

CITY COUNCIL

Cross Ref #**Contact Name/Phone**

LORI KINNEAR 625-6261

Project #**Contact E-Mail**

LKINNEAR@SPOKANECITY.ORG

Bid #**Agenda Item Type**

Resolutions

Requisition #**Agenda Item Name**

0320 - AUTHORIZING 2017 PILOT PROGRAM FOR DOWNTOWN PARKLETS

Agenda Wording

This resolution authorizes a demonstration program for the installation and operation of parklets in downtown Spokane from May to October, 2017.

Summary (Background)

The City of Spokane has authorized pilot programs in the summers of 2015 and 2016 for the installation and operation of parklets in downtown Spokane. Currently, staff are working on the formation of permanent permitting regulations for the installation and operation of parklets throughout the City. However, these regulations will likely not be prepared in time for summer, 2017, which is a period in which some property and business owners downtown desire to establish parklets.

Fiscal Impact**Budget Account**

Neutral \$

#

Select \$

#

Select \$

#

Select \$

#

Approvals**Council Notifications****Dept Head**

MCCLATCHEY, BRIAN

Study Session**Division Director****Other**

CHE Committee, 2-6-

Finance

ORLOB, KIMBERLY

Distribution List**Legal**

DALTON, PAT

tpalmquist@spokanecity.org

For the Mayor

SANDERS, THERESA

kbecker@spokanecity.org

Additional Approvals

htrautman@spokanecity.org

Purchasing

RESOLUTION NO. 2017-0022.

A Resolution authorizing a parklet demonstration project for summer, 2017.

WHEREAS, parklets are public gathering spaces located in the public right of way designed to energize and activate specific areas of a city; and

WHEREAS, parklets activate the streetscape, generate interest in the immediate area, increase the vibrancy of the public realm, and increase opportunities for local business activity by increasing pedestrian presence in focused areas; and

WHEREAS, parklets have been shown to have a very positive impact on pedestrian and business activity in cities such as Seattle, Portland, San Francisco, New York, Washington, D.C., and others; and

WHEREAS, business and property owners in several areas of downtown Spokane and in other neighborhoods near downtown have expressed sustained enthusiasm for the placement of a parklet in their areas; and

WHEREAS, the Downtown Spokane Partnership (“DSP”) worked with City staff and with the local nonprofit design group you express studio (“YES”) to implement a successful parklet demonstration project in 2015 in downtown Spokane which had the support of the adjacent business owners and the public and which the City Council authorized by passage of Resolution 2015-0093 (Aug. 31, 2015); and

WHEREAS, the City of Spokane extended the pilot project into the summer of 2016 by the passage of Resolution 2016-0040 (April 25, 2016), which resulted in the construction of parklets in two different locations in downtown Spokane; and

WHEREAS, the DSP, YES, and business owners in both downtown Spokane and in several neighborhoods have expressed an interest in hosting parklets in their areas in the future; and

WHEREAS, to be successful, a parklet demonstration project must adequately address infrastructure and parking impacts, be tied to a specific location, have the support of the adjacent business owners, not reduce available parking in the immediate area, be safe for the public to use, be easily maintained by a sponsor of the project, be for an express duration, and be capable of easy and fast installation and removal; and

WHEREAS, prior to formalizing the criteria for parklets city-wide, a further phase of the pilot project is needed to ensure that these public realm enhancements can work in several different kinds of contexts; and

WHEREAS, a City Council resolution is needed to ensure that the next phase of the parklet demonstration project in summer 2017 adheres to specific design guidance and operational criteria.

NOW, THEREFORE, BE IT RESOLVED BY THE SPOKANE CITY COUNCIL that the City Council requests that the administration, the Downtown Spokane Partnership, YES, and the owners of property adjacent to the selected sites enter into memoranda of understanding to implement a parklet demonstration project in downtown Spokane during the summer of 2017.

BE IT ALSO RESOLVED, that the City Council requests that DSP make a follow-up report to the City Council on outcomes and lessons learned from the 2017 parklet demonstration project at some point in the third or fourth quarter of 2017 along with a staff report containing recommendations concerning a permanent development code section authorizing a permit process for parklets City-wide.

BE IT FURTHER RESOLVED, that the 2017 parklet demonstration project shall adhere at all times to the design and operational guidance document which attached to this Resolution as Attachment 'A'.

PASSED by the City Council on _____.

Council President

Attest:

Approved as to form:

City Clerk

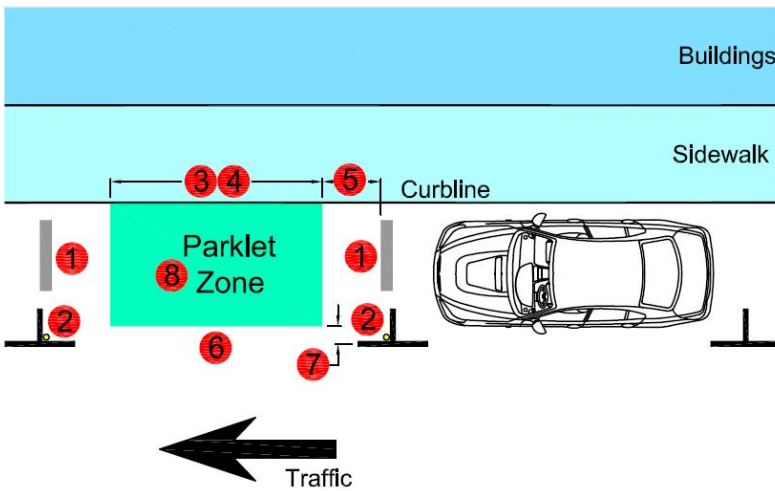
Assistant City Attorney

Mayor

Date

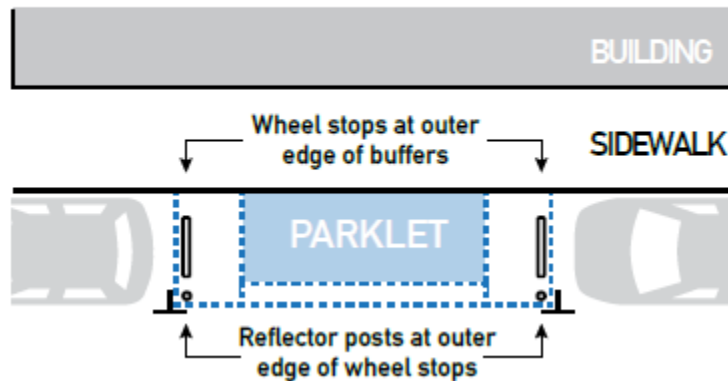
Effective Date

Parklet Overview

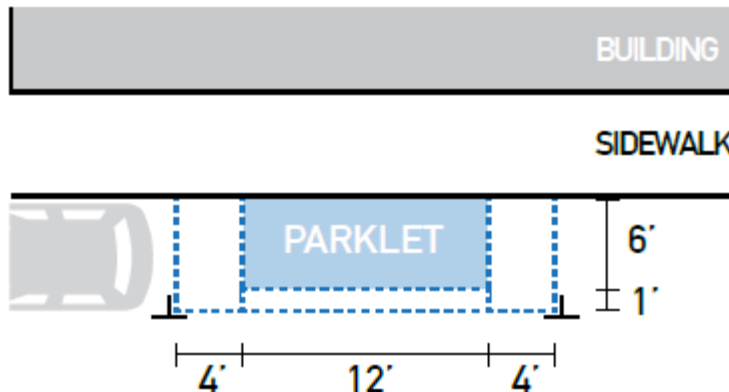


1. Wheel stops shall be installed one foot from the curbline at the edge of the parking spaces in front of and behind the parklet.
2. Reflective elements (soft-hit posts) are required at the outside corners of the parklet.
3. Maintain curbline drainage.
4. The parklet shall be flush with the curb (no more than 1/2" gap), level with the adjacent sidewalk, and must be accessible at several locations by pedestrians.
5. Buffer zone - The parklet shall be located at least four feet from the wheel stops.
6. The outside edge and railings shall not create a visual barrier.
7. There must be one foot setback from the edge of an adjacent bike lane or vehicle travel lane and shall have an edge to buffer the street. This edge can take the form of planters, railing, cabling, or some other appropriate buffer. The height and scale of the buffer required will vary depending on context of the site.
8. The parklet frame should be a freestanding structural foundation that rests on the street surface or curb. This frame can't be permanently attached to the street, curb, or adjacent planting strip.

WHEEL STOP & REFLECTOR POSTS

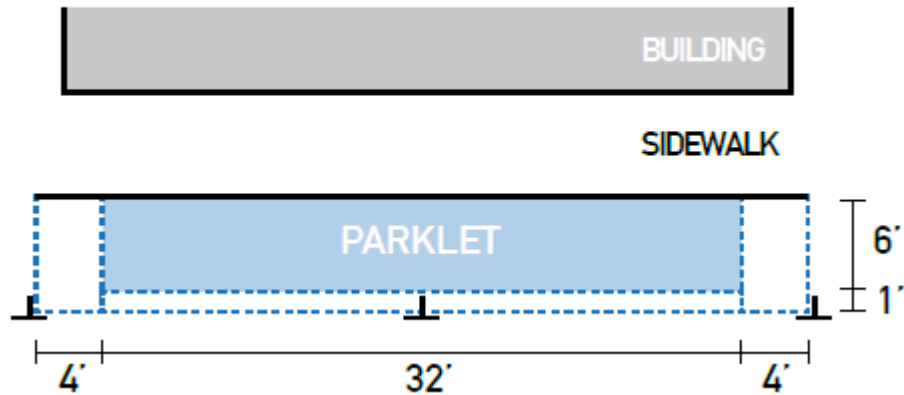


MINIMUM DIMENSIONS



Parklet Overview

DOUBLE SPACE DIMENSIONS



If you are considering putting a parklet in a load zone or another specially designated space, we recommend you first look for a nearby place to move that zone and then notify other businesses on the block. Consideration will be given to removing the special zone with written acknowledgment from your block's other property managers, owners, street-level businesses, and/or residential property associations.

• PARKLET PLAN REQUIRED ELEMENTS

A parklet plan that includes the existing sidewalk and street environment is required for all applications. The plan must indicate where the proposed parklet will be located on the street and should include the following elements:

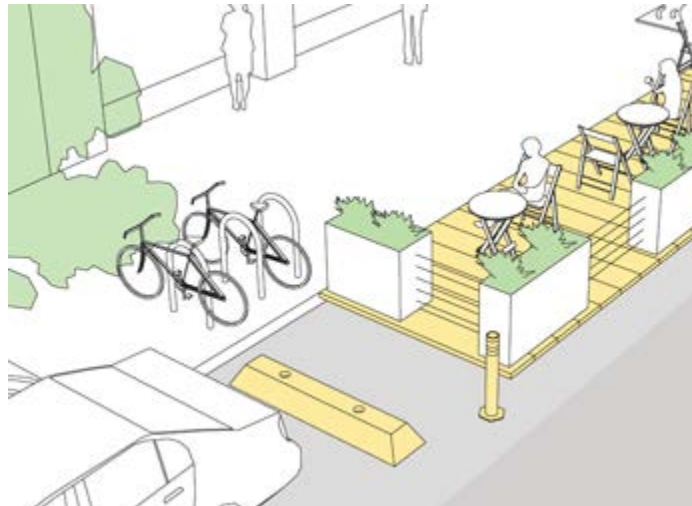
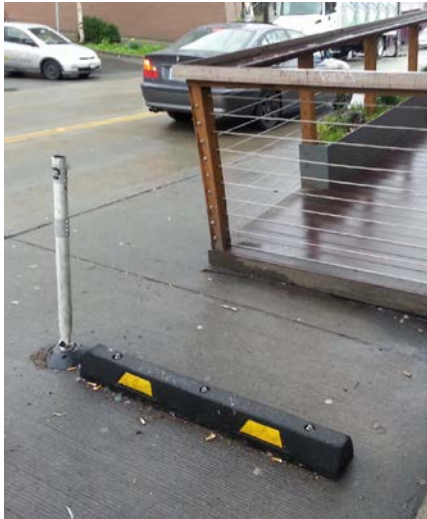
- Street and sidewalk utilities (e.g. manholes, water valves, etc.)
- Street poles and signs
- Parking meters including those that you would like to have removed
- Fire hydrants and fire department connections on buildings
- Street furniture (litter cans, benches, etc.)
- Street trees, including tree surrounds
- Sidewalk and street grade elevations
- Bike lanes (if applicable)
- Parklet dimensions
- Parklet materials and details as necessary
- Parklet Planting Plan
- Flexible bollards and wheel stops
- Sufficient notations regarding materials, design elements, or other proposed features to allow for adequate review
- Parklet design should allow for stormwater flow and drainage along curb.
- Parklets shall include a physical barrier along the street, while also maintaining clear visual sightlines.

Parklet Safety Elements

- Safety is our most important consideration, so all parklet locations must be chosen to keep sightlines clear for people on streets and sidewalks.
- The parklet must have installed wheel stops and reflective delineator posts at the outside edges of your parklet buffer. Wheel stops must be placed on each end of the parklet that borders a parking space. The wheel stops must be mounted four feet back from the edge of the parklet and one foot out from the curb.

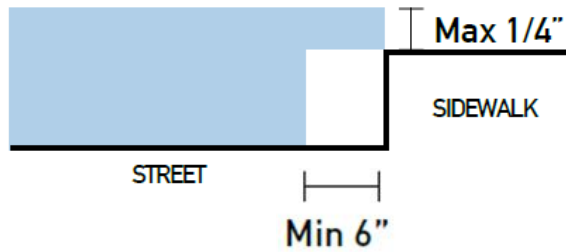
The delineator posts must be placed six inches out from the corners of the wheel stops.

The wheel stops are to be four feet long, bolt-mounted, and preferably made of recycled rubber. Delineator posts must be 36-inch tall, cylindrical, white safe-hit posts and must include reflective striping. These posts should follow the City of Spokane standard and be attached to the street with either a butyl adhesive pad or epoxy kit.

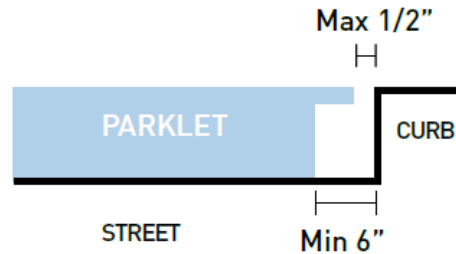


Parklet Curb Elements

MAXIMUM VERTICAL GAP



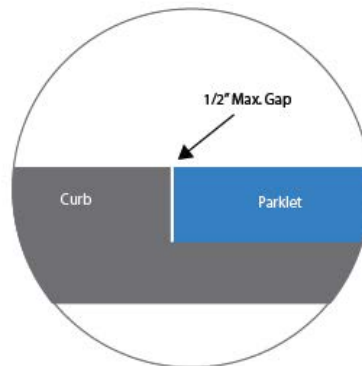
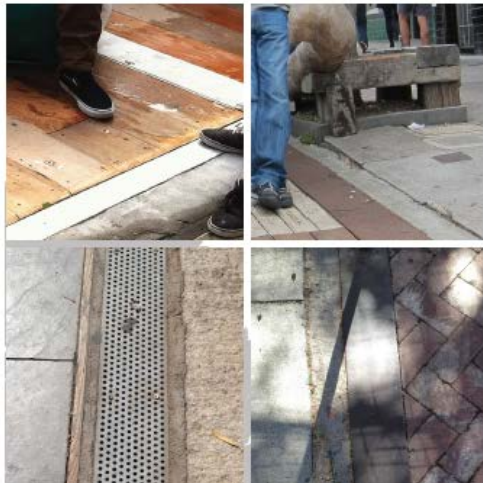
GUTTER & DECK GAP



- Parklet design shall allow for stormwater flow and drainage along curb.

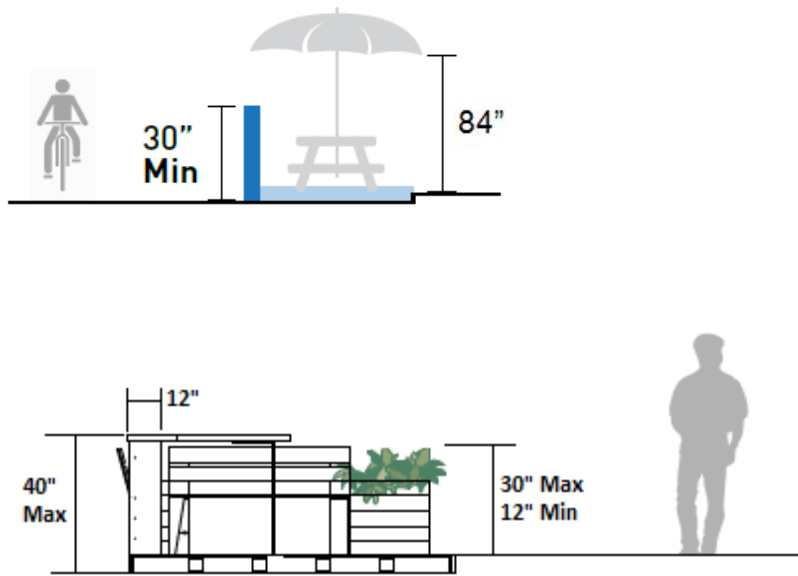
The Parklet must have a seamless connection to the existing curb to meet ADA requirements. Below are examples of connections found at other parklets.

"SPANNING THE GAP"



Parklet Sight Line Elements

MINIMUM HEIGHT



- The parklet design must ensure visibility to passing traffic and pedestrians and not create a visual barrier.
- The parklet shall maintain a visual connection to the street. Continuous opaque walls above 42" that block views into the parklet from the surrounding streetscape are prohibited. You are allowed to include columns and other vertical elements. 96" is the minimum overhead clearance that must be provided for any parklet enclosure that has a canopy to not create a visual barrier and provide adequate clearance.
- The parklet should have a notable, defined edge along the side of the parklet facing the roadway and adjacent parking stalls to protect parklet users from moving traffic. This could be a continuous railing, planter, fence, or similar structure.
- The height of the outside wall is dependent on the context, but should be between 30 inches minimum on the street side to a maximum of 42 inches.

It is recommended to have a minimum buffer width of 12 inches from a busy travel lane to improve the parklet experience.

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

04/10/2017

Date Rec'd

3/22/2017

Clerk's File #

RES 2017-0023

Renews #**Submitting Dept**

INTEGRATED CAPITAL

Cross Ref #**Contact Name/Phone**

KATHERINE 625-6338

Project #**Contact E-Mail**

KEMILLER@SPOKANECITY.ORG

Bid #**Agenda Item Type**

Resolutions

Requisition #**Agenda Item Name**

4250 - RESOLUTION - DECISION MATRIX FOR CONSTRUCTION PROJECTS

Agenda Wording

Resolution establishing a decision matrix for construction projects within centers and corridors.

Summary (Background)

As the City moves forward to implement within Centers & Corridors the Comprehensive Planning Goals through further planning processes such as Neighborhood Plans, Area Wide Plans, Downtown Plan there is a need to balance the planning level scope and public input that occurs during planning stages with the input received from adjacent property/business owners, adjacent neighborhoods during the engineering level scoping stage which typically occurs closer to the actual construction of a project.

Fiscal Impact**Budget Account**

Select \$

#

Select \$

#

Select \$

#

Select \$

#

Approvals**Council Notifications****Dept Head**

MILLER, KATHERINE E

Study Session**Division Director**

SIMMONS, SCOTT

Other

PWC 3/27/17

Finance

CLINE, ANGELA

Distribution List**Legal**

RICHMAN, JAMES

For the Mayor

SANDERS, THERESA

Additional Approvals**Purchasing**

BRIEFING PAPER
Public Works Committee
Integrated Capital Management
March 27, 2017

Subject:

A Decision Matrix has been created to help both Council and the Administration to better evaluate whether project scopes within Centers and Corridors should move forward to design based on being consistent with planning documents, having public support for the project and other key factors as shown in the attached document.

Background:

As the City moves forward to implement, within Centers and Corridors, the City's Comprehensive Planning Goals through further planning processes such as Neighborhood Plans, Area Wide Plans, Downtown Plan, etc., there is a need to balance the planning level scope and public input that occurs during planning stages with the input received from adjacent property/business owners, adjacent neighborhoods, etc during the engineering level scoping stage which typically occurs closer to the actual construction of a project.

City staff has developed a "Decision Matrix" to help Council determine their support for future projects that fall within Centers and Corridors. City Staff will seek Council approval of the "Decision Matrix" through Resolution prior to applying it to current and future projects within Centers and Corridors.

Impact:

State and Federal funding agencies are no longer allowing local governments to have significant delays in the project delivery once they go to design. Because of this Integrated Capital Management has actively been engaging adjacent property owners/businesses/neighborhoods to develop consensus on the final scope prior to handing the project over to design. This decision matrix will help gauge support for projects prior to design and in some cases prior to project funding to ensure the City does not find itself in the position of having to give funds back due to missed funding deadlines.

Action:

Seeking a Resolution to accept the Decision Matrix, associated weighting and establishing a 60% or better "yes" result from the Decision Matrix confirms.

RESOLUTION NO. 2017-0023

A RESOLUTION ESTABLISHING A DECISION MATRIX FOR CONSTRUCTION PROJECTS WITHIN CENTERS AND CORRIDORS

WHEREAS, Planning for large infrastructure construction projects within a business center or corridor requires the input of many stakeholders with differing opinions; and

WHEREAS, These kinds of investments likely will set the direction for a center or corridor for many decades, demanding a thorough, thoughtful approach and a way to consistently evaluate project options and acceptance; and

WHEREAS, the City's Integrated Capital Management team endeavors to actively engages adjacent property owners/businesses/neighborhoods to develop consensus on a final scopes prior to projects going to design; and

WHEREAS, Additionally, State and Federal funding agencies are demanding greater accountability and more timely use of dollars, requiring projects to move ahead without significant delays once they are in design; and

WHEREAS, The City does not want to jeopardize funding due to lack of clear direction on the scope of a construction project, while also allowing for a robust discussion among stakeholders; and

WHEREAS, A standard Decision Matrix is needed to provide a means for both the City Council and the Administration to determine whether a project moves to design and, ultimately, construction; and

WHEREAS, To be used successfully, the tool would need to be an effective way to gauge support for projects prior to design; and

WHEREAS, Such a matrix must balance the general goals derived from the City's Comprehensive Plan, transportation project prioritization, and any subsequent area planning documents including public feedback taken at the time with the more detailed scoping work and public input that typically occurs prior to the project going to design; and

NOW, THEREFORE BE IT RESOLVED, that the Spokane City Council has reviewed and accepts the attached "Decision Matrix" and accompanying weighting to be used to evaluate current and future projects within Centers and Corridors at the stage of engineering scoping work led by Integrated Capital Management; and

BE IT FURTHER RESOLVED, That a score of a 60 percent or better "yes" result confirms the City's resolve to move the project forward to design and ultimately construction.

ADOPTED BY THE CITY COUNCIL ON _____

City Clerk

Approved as to form:

Assistant City Attorney

Decision Matrix Layout

		Weight of decision			
	Percent YES	Percent NO		Weighted YES	Weighted NO
Planning Documents			42		
Comp Plan			32	0	0
Subarea/Neighborhood Plan			10	0	0
Feedback- Public Input			42		
Neighborhood Residence			10	0	0
Property owners			10	0	0
Businesses			10	0	0
Adjacent Neighborhood Res			8	0	0
Rest of City Neighborhoods and Out side of City (if collected)			4	0	0
Matrix: Existing Conditions			10	0	0
Other Considerations:			6	0	0
			100	0	0

Looking for at least a 60% or more weighted “Yes” to move forward





Agenda Sheet for City Council Meeting of:
03/27/2017

Date Rec'd	3/10/2017
Clerk's File #	ORD C35486
Renews #	

Submitting Dept	CITY COUNCIL	Cross Ref #	
Contact Name/Phone	BREEAN BEGGS 509-625-6714	Project #	
Contact E-Mail	HALLERS@SPOKANECITY.ORG	Bid #	
Agenda Item Type	First Reading Ordinance	Requisition #	
Agenda Item Name	0320 ASSET FORFEITURE ORDINANCE		

Agenda Wording

An ordinance relating to the asset forfeiture policy of the City of Spokane; enacting a new Chapter 08.19 of the Spokane Municipal Code.

Summary (Background)

This ordinance would create a new Chapter 08.19 of the Spokane Municipal Code relating to the process for using funds received via asset forfeiture by the Spokane Police Department and ensuring such expenditures are approved under City budgetary processes.

Fiscal Impact		Budget Account	
Select	\$		#
Select	\$		#
Select	\$		#
Select	\$		#
Approvals		Council Notifications	
Dept Head	MCDANIEL, ADAM	Study Session	
Division Director		Other	Finance Committee on
Finance	DOVAL, MATTHEW	Distribution List	
Legal	DALTON, PAT		
For the Mayor	SANDERS, THERESA		
Additional Approvals			
Purchasing			

ORDINANCE NO. C-35486

An ordinance relating to the asset forfeiture policy of the City of Spokane; enacting a new chapter 08.19 of the Spokane Municipal Code.

WHEREAS, the long and well-established laws of the State of Washington provide for law enforcement agencies to seize and subsequently, through legal process, cause the forfeiture of assets used in, or gained from, illegal activity to be disposed of; and

WHEREAS, in 2014, the Spokane Police Department implemented comprehensive policies and ethical standards in regards to seizing property; and

WHEREAS, the Spokane Police Department undergoes annual audits by the Washington State Auditor's Office regarding the receipt and use of proceeds of those seizures; and

WHEREAS, Section 12 of the Spokane City Charter provides that "[a]ll legislation and appropriations of money shall be by ordinance;" and

WHEREAS, Washington law provides for the process of seizure, forfeiture, and distribution of assets for the purpose of the "expansion and improvement" of law enforcement activity and may not supplant pre-existing funding sources; and

WHEREAS, the Washington State Auditor's Office has confirmed that the Legislature has not provided a definition beyond the plain meaning of "law enforcement activity"; and

WHEREAS, the Washington State Legislature, in enacting seizure and forfeiture laws, recognized that "state and local governmental agencies incur immense expenses in the investigation, prosecution, adjudication, incarceration," resulting from criminal conduct that are not adequately resourced by existing funding sources; and

WHEREAS, police youth programs are proven methods of expanding and improving law enforcement activity to reduce the crimes targeted by the above forfeiture statutes, particularly youth drug diversion, prevention, and mitigation strategies; and

WHEREAS, police participation in community court programs is also a proven method of expanding and improving law enforcement activity to reduce the crimes targeted by the above forfeiture statutes, recidivism and overall criminal justice expenditures; and

WHEREAS, police participation in units devoted to monitoring and engaging with persons with a history of chronic property offenses is also a proven method of

expanding and improving law enforcement activity to reduce the crimes targeted by the above forfeiture statutes, recidivism and overall criminal justice expenditures; and

WHEREAS, the Spokane City Council intends to ensure that the proceeds legally obtained by the Police Department are used for the "expansion and improvement" of law enforcement within the City of Spokane that is proven to reduce crime and recidivism as well to establish specific requirements and accountability relating to seizure and forfeiture cases.

NOW THEREFORE, the City of Spokane does ordain:

Section 1. That there is enacted a new chapter 08.19 of the Spokane Municipal Code as follows:

Chapter 08.19 Asset Forfeiture Program

Section 08.19.010 Purpose and Intent

- A. The City Council recognizes that asset forfeitures can be a useful law enforcement tool by removing the financial incentive for various criminal enterprises.
- B. Coupling the proceeds of asset forfeitures with programs to expand and improve law enforcement activities which help reduce criminal activity and recidivism accomplishes the intent of Washington State Law to assist the criminal justice system in protecting the community.

Section 08.19.020 Process

- A. No later than 180 days after the latest to occur of (1) the closure of a case; (2) the expiration of the final opportunity for appeal; or (3) the date an asset is no longer required as evidence in an active case, the police department shall dispose of forfeited property, by auction or other commercially-reasonable method, such as by sealed bids, except as provided for in sections G. and H.
- B. No less than 10 days prior to an auction or solicitation of bids pursuant to SMC 08.19.020(A), the police department shall place a public notice in the City Gazette and in a newspaper of general circulation notifying the public of the date and time of the auction or solicitation of bids.
- C. The Police Department shall comply with all federal and state property disposition procedural requirements. And no expenditures of funds arising from forfeiture that violate state or federal law will be approved by City Council.
- D. The Police Department shall not utilize seizure and forfeiture laws as an aspect of case development criterion.

- E. The Police Department shall document in each and every case involving a seizure and forfeiture the legal basis for the seizure and forfeiture including the specific Washington state or federal law under which the asset/s were seized, forfeited or obtained.
- F. The Police Department shall establish a procedure for a yearly audit by a qualified financial professional outside of the Police Department of all seizures, forfeitures, proceeds distributions and expenditures, the results of which shall be provided to the Mayor and City Council. This annual requirement is satisfied by an audit of the forfeiture funds by the Office of the Washington State Auditor.
- G. The Police Department may choose to use forfeited property indefinitely prior to auctioning off the item, if there is a demonstrated law enforcement purpose for the item and the use of the property would allow the Police Department to avoid the need to purchase additional equipment.

Section 08.19.030 Permitted Use of Funds

- A. No asset forfeiture funds may be expended beyond the purposes allowed under applicable state and federal law and may not supplant existing funding.
- B. Asset forfeiture funds under the control of the Police Department may only be spent by appropriation and approval of the Spokane City Council under its applicable policies for approving budgets and expenditures.
- C. The City Council will not approve spending of any asset forfeiture funds absent a request by the Chief of Police. The Chief of Police may request expenditure of asset forfeiture funds as part of the preparation and submission of the annual budget to City Council or by requesting approval of an emergency budget ordinance.

Section 08.19.040 Reporting on Use of Funds

The Police Department shall provide to the Spokane City Council Public Safety Committee quarterly and yearly reporting of the receipt of proceeds from all civil forfeiture funds, the specific source of all forfeiture funds and all expenditures of forfeiture funds including the amount paid from the proceeds to the Washington State Treasurer. The reports shall also provide information related to and certification that all seized funds were spent consistent with any limitations imposed by federal or state law.

PASSED by the City Council on _____.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date

City of Spokane
City Council

TO: Council Member Breean Beggs

FROM: Brian McClatchey, Policy Advisor

DATE: March 7, 2017

RE: Analysis of possible conflicts between proposed asset forfeiture ordinance and state law on asset forfeitures.

Issues:

1. Does a proposed ordinance, which creates a new chapter 08.19 to the Spokane Municipal Code, creating regulations on the use of funds forfeited to, and seized by, the Spokane Police Department, conflict with state law concerning the permissible use(s) of such funds?
2. Does legislation creating regulations for the use of funds seized by the Spokane Police Department conflict with Spokane City Charter section 22?

Short answers:

1. The proposed ordinance does not likely conflict with state law concerning the permissible use of forfeiture funds or the procedures contained in state law concerning forfeited property.
2. The proposed ordinance does not appear to conflict with City Charter section 22.

Detailed scope:

Specifically, this memorandum examines the following issues:

1. Under state law, do law enforcement agencies have the authority to determine how to spend the proceeds of seized and forfeited property?
2. Can the City Council pass legislation creating regulations, guidelines, or prohibitions on the use of funds derived from seized and forfeited property sold by the Police Department without running afoul of the prohibition on “directing” City employees who report to the Mayor?
3. Are there any procedural differences or conflicts between the proposed ordinance and state law?

Analysis:

1. Different sources of funds drive different permissible uses of proceeds from forfeited property.

Several provisions of state law govern the use of funds derived from the sale of property seized and forfeited due to its connection with various types of criminal activity:

Prostitution crimes

State law allows police departments three options when it comes to disposal of items of property seized in connection with crimes related to prostitution: they may “[r]etain it for official use . . . ; sell that which is not required to be destroyed . . . or [r]equest the appropriate sheriff or director of public safety to take custody of the property . . .”¹ If the property is sold, net proceeds (after payment of various expenses) “shall be retained by the seizing law enforcement agency for the exclusive use of enforcing the provisions of this chapter [prohibitions on prostitution] or chapter 9.68A RCW [relating to sexual exploitation of children].”²

Commission of a felony

Similarly, with respect to the disposition of property seized by a police department and forfeited in connection with the commission of a felony, police departments have two options: they may “[r]etain if for official use . . . [or they may] [s]ell that which is not required to be destroyed by law and which is not harmful to the public.”³ If the property is sold, the net proceeds (again, after payment of relevant expenses), “shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of law enforcement activity.”⁴ Also, funds derived from the sale of property seized under this section “may not be used to supplant preexisting funding sources.”⁵

Controlled substances laws

And with respect to property seized in connection with enforcement controlled substances laws, the police department has four options: it may “[r]etain it for official use . . . [s]ell that which is not required to be destroyed by law and which is not harmful to the public; [r]equest the appropriate sheriff or director of public safety to take custody of the property . . . ; or [f]orward it to the drug enforcement administration for disposition.”⁶ If sold, the proceeds “shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of controlled substances related law enforcement activity.”⁷ And as with prostitution-related seizures, net proceeds of the

¹ RCW 9A.88.150(7).

² RCW 9A.88.150(10).

³ RCW 10.105.010(6).

⁴ RCW 10.105.010(7)(c).

⁵ *Id.*

⁶ RCW 69.50.505(7).

sale of drug crime-related property “may not be used to supplant existing funding sources.”⁸

Procedure

In any case, regardless of the source of the property seized and regardless of the crime committed, there are three stages, each with their own procedural safeguards: seizure, forfeiture, and disposition.

Seizure

Generally property which is connected with the commission of a crime may not be seized without process issued by superior court.⁹ There are, however, exceptions to that rule. First, property may be seized without process if “incident to an arrest or a search under a search warrant,”¹⁰ if the property “has been the subject of a prior judgment,”¹¹ or if the police officer “has probable cause to believe that the property was used or is intended to be used” in the commission of a crime,¹² or “the officer has probable cause to believe that the property is directly dangerous to health or safety”¹³ or “indirectly dangerous to health or safety.”¹⁴

Forfeiture

Upon seizure, the seizing law enforcement agency must give notice to the property owner prior to a determination of forfeiture.¹⁵ Notice must be given within 15 days of the seizure, and the owner has 45 days to contest the proposed forfeiture in writing.¹⁶ Failure of the owner to do so means that the property is deemed forfeited.¹⁷ The proposed ordinance set a maximum time of 180 days after the latest to occur of: (1) the closure of a case, (2) the last date to appeal a conviction, or (3) the date the property is no longer needed as evidence, as the time in which the property must be disposed of.¹⁸

⁷ RCW 69.50.505(10).

⁸ Id.

⁹ See RCW 9A.88.150(2) (“property subject to forfeiture . . . may be seized by any law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property.”)

¹⁰ RCW 9A.88.150(2)(a) (concerning sexual exploitation of children, indecent exposure, and prostitution crimes).

¹¹ RCW 9A.88.150(2)(b).

¹² RCW 9A.88.150(2)(c); RCW 69.50.505(2)(c) (violation of controlled substances laws).

¹³ RCW 10.105.010(2)(c) (commission of a felony); RCW 69.50.505.

¹⁴ RCW 69.50.505(2)(c).

¹⁵ See RCW 9A.88.150(3)-(4); RCW 10.105.010(3)-(4); RCW 69.50.505(3)-(4).

¹⁶ See RCW 9A.88.150(3)-(4); RCW 10.105.010(3)-(4); RCW 69.50.505(3)-(4).

¹⁷ See RCW 9A.88.150(4); RCW 10.105.010(4); RCW 69.50.505(4).

In essence, the proposed ordinance allows the Police Department six months to determine the best way to dispose of forfeited property among the legally permissible alternatives (i.e., sale, transfer, use, etc.).

If the owner does timely contest the proposed forfeiture, there is to be a hearing before the chief law enforcement officer of the seizing agency (in our case, Police Chief Meidl) or his or her designee,¹⁹ and judicial review of that decision.

Once forfeited, property can be sold or disposed of by law enforcement agencies. Proceeds (net of expenses and taxes) from the sale of forfeited property may only be used for specific statutory purposes, depending on the crime from which the funds were derived. For example, funds derived from forfeiture of property used in sexual exploitation of children, indecent exposure, or prostitution may only be used “for the exclusive use of enforcing” those laws.²⁰ Funds derived from the sale of property used in the commission of a felony may only be used “exclusively for the expansion and improvement of law enforcement activity.”²¹ Funds from the sale of property used in the violation of controlled substances laws may only be used “exclusively for the expansion and improvement of controlled substances related law enforcement activity.”²²

The proposed ordinance does not mandate that forfeiture funds be used for any particular purposes; instead, it requires that funds are to be appropriated by the Council in its normal budget process and that no funds are to be expended in a way that violates state or federal law.²³ In fact, “no expenditures of funds arising from forfeiture that violate state or federal law will be approved by [the] City Council.”²⁴

One change that was recently made to the proposed ordinance is the requirement that forfeited controlled substances are to be forwarded to the DEA²⁵ as state law requires, rather than, as the previously proposed ordinance would have it, destroyed.²⁶

Preemption

¹⁸ [Proposed] SMC 08.19.020(A).

¹⁹ See RCW 9A.88.150(5); RCW 10.105.010(5); RCW 69.50.505(5).

²⁰ RCW 9A.88.150(10).

²¹ RCW 10.105.010(7)(c).

²² RCW 69.50.505(10).

²³ [Proposed] SMC 08.19.020(C).

²⁴ Id.

²⁵ See RCW 69.50.505(7)(d).

²⁶ [Proposed] SMC 08.19.020(G).

Is the proposed ordinance preempted by state law by placing procedural requirements on the use of funds derived from the sale of forfeited property? In determining whether a city ordinance is preempted by Washington state law, the key question is whether the local ordinance “permits what state law forbids or forbids what state law permits.”²⁷ Notably, the inquiry focuses on the substantive content of the two laws, and “[a] conflict arises when the two provisions are contradictory and cannot coexist.”²⁸

The Supreme Court in *Arnold v. City of Seattle* reviewed a city ordinance which provided that employees may be represented at civil service hearings at their own expense. This was in contrast with state law, which required the employer to pay the employee’s attorneys’ fees in any action in which the employee recovers wages. That city ordinance prohibited that which state law permitted, and so was preempted.

Kirwin concerned a local ordinance which made littering an offense from which a fine and jail time could result, while the state law merely provided that littering is a class 3 civil infraction, the maximum penalty for which was a \$50 fine. Reasoning that it is the conduct proscribed by the two laws, and not the punishment for violation of the laws, which is important for conflict analysis, the Supreme Court held that “[t]he two laws coexist because, although the degree of punishment differs, their substance is nearly identical and therefore no irreconcilable conflict arises.”²⁹

In a case involving a constitutional challenge to a city ordinance proscribing disorderly conduct on a bus,³⁰ the Supreme Court held that an ordinance which prohibits “unreasonably disturb[ing] others” on a bus did not conflict with a state statute which prohibited “intentionally disturb[ing] others by engaging in loud or unruly behavior.”³¹ The court reasoned that the ordinance does not prohibit what the statute permits; “nor does it forbid what the legislature has expressly licensed, authorized, or required. . . . Unless legislative provisions are contradictory in the sense that they cannot coexist, they are not to be deemed inconsistent because of mere lack of uniformity in detail.”³²

At least two Attorney General Opinions appear to lead to the conclusion that a city ordinance of the kind contemplated here can in fact coexist with the relevant state statutes. In 1995, Attorney General Gregoire opined that proceeds from the sale of assets forfeited due to their connection with controlled substances laws may be used for other purposes “that relate to” the enforcement of controlled substances laws.³³

²⁷ *Arnold v. City of Seattle*, 185 Wash.2d 510, 528 (2016) (quoting *State v. Kirwin*, 165 Wash.2d 818, 825 (2009) (citing *Parkland Light & Water Co. v. Tacoma-Pierce County Bd. of Health*, 151 Wash.2d 428, 433 (2004))).

²⁸ *Kirwin*, 165 Wash.2d at 826 (citing *Parkland*, 151 Wash.2d at 433).

²⁹ *Id.* at 827.

³⁰ *City of Seattle v. Eze*, 111 Wash.2d 22 (1988).

³¹ *C.f.*, SMC 12A.12.040(F), with RCW 9.91.025(1)(f).

³² *Eze*, 111 Wash.2d at 33 (quoting *Bellingham v. Schampera*, 57 Wash.2d 106, 111 (1960)).

Specifically, “RCW 69.50.505(i) does not restrict the use of drug forfeiture proceeds to law enforcement activities that are closely related to controlled substances.”³⁴

The 1995 Attorney General Opinion concerned whether certain uses of proceeds from the sale of forfeited property were precluded by the statutory requirement that funds be used “exclusively for the expansion and improvement of controlled substances related law enforcement activity”³⁵ notwithstanding that these other activities “also further other law enforcement purposes.”³⁶ “Related” means “having a connection.” The opinion further explains that this means that the activity must have a “significant relationship” or “a close and demonstrable relationship” between the law enforcement activity funded and the enforcement of controlled substances laws.

In 2010, Attorney General McKenna opined that law enforcement agencies can use the proceeds of property seized and forfeited due to a connection with the commission of a felony under chapter 10.105, RCW, for accreditation and re-accreditation, and associated training activities.³⁷ That opinion focused on the use of the words “expansion and improvement” of law enforcement agency activities. In that context, accreditation, reaccreditation, and training are connected to “increasing the extent, size, number, volume, or scope” of law enforcement activity, and are certainly connected to the “enhancement or augmentation of value or quality” of law enforcement activities.

Although these opinions referred to specific property forfeiture laws, the language they both analyzed was the “exclusive use” concept which is before us now.³⁸ For that reason, AGO 1995 No. 11 and AGO 2010 No. 1 should be considered highly persuasive commentary on the question at issue here.

However, the different statutory language used with respect to the proceeds of property seized due to its involvement in prostitution³⁹ likely would compel a different result and a different, narrower, allowable use of the funds.⁴⁰ In any event, the Police Department

³³ AGO 1995 No. 11 (Aug. 30, 1995).

³⁴ Id. (emphasis added).

³⁵ RCW 69.50.505(i).

³⁶ AGO 1995 No. 11.

³⁷ AGO 2010 No. 1 (Jan. 6, 2010).

³⁸ C.f., RCW 10.105.010(7)(c) (“exclusive use for the improvement and enhancement of law enforcement related activity.”); RCW 69.50.505(10) (“exclusively for the expansion and improvement of controlled substances related law enforcement activity”).

³⁹ RCW 9A.88.150(10) (“exclusive use of enforcing the provisions of this chapter [prohibitions on prostitution] or chapter 9.68A RCW [relating to sexual exploitation of children]”).

⁴⁰ See, e.g., AGO 2010 No. 1 at *3 (“Although your inquiry does not specify the nature of the criminal activity that

would be presenting its proposed use of these funds in its annual budget, to be approved by the City Council, the approval of which, by the plain terms of the SMC, may not conflict with state law. There seems little, if any, reason to think there is a conflict between the proposed ordinance and state law.

- (1) Such ordinances do not likely create a conflict with section 22 of the City Charter, because the appropriation of all city money is to be done by ordinance.

Section 22 of the City Charter provides, in relevant part:

Except as otherwise provided by this Charter, neither the council president, the city council, nor any member thereof shall give orders to any subordinate of the City under the jurisdiction of the mayor, either publicly or privately. However, the city council and the council president are not precluded from requesting information from city staff. The council president or any council member shall not attempt to coerce or influence a city employee regarding any contract or the purchase of any supplies.⁴¹

This section's plain language shows that it does not prohibit the City Council from making policy determinations concerning the use of City funds. Section 22 makes direct reference to other provisions of the Charter ("Except as otherwise provided by this Charter . . ."), such as the budget and appropriations process. The City Council's fiscal authority is "otherwise provided by this Charter" and clearly stated in section 12: "All legislation and appropriations of money shall be by ordinance . . ."⁴²

Section 22 does not prohibit the Council from giving City departments policy direction, but rather prohibits the Council members from trying to supervise or manage individuals within the administration (i.e., "any subordinate of the City under the jurisdiction of the mayor"), to clearly delineate that the policy-making function of the Council does not include the day-to-day management of City employees (other than Council staff).

Conclusions:

- City ordinances providing for the use of funds derived from the sale of property forfeited under state law may not conflict with state law, depending upon the source of the funds or provenance of the forfeited property.

The contemplated use of funds derived from the sale of forfeited property will determine whether there is an irreconcilable conflict between the ordinance and state law.

gives rise to the forfeited property, the legislature has put more specific constraints on certain kinds of state asset forfeiture funds.")

⁴¹ City Charter, section 22 (emphasis added).

⁴² City Charter, section 12 (emphasis added).

Property seized due to its involvement in the commission of a felony may be used for any purpose having a close connection or a significant and demonstrable relationship with the improvement or enhancement of law enforcement activity. So, using funds derived from property seized due to the commission of a felony to improve community engagement with at-risk youth, improving community relationships with law enforcement, and reducing criminal activity⁴³ can have a close or a demonstrable connection with the improvement and enhancement of law enforcement activity.

As well, funds derived from the sale of property seized due to its involvement in the commission of violations of controlled substances laws may be used for any purpose having a close connection or a significant and demonstrable relationship with the improvement or enhancement of the enforcement of controlled substances laws. In that connection, the use of these funds for programs designed to reduce drug use and abuse among at-risk youth⁴⁴ can be shown to have a close connection or a significant demonstrable connection with the improvement and enhancement of controlled substances law enforcement activity.

Property seized due to its involvement in the violation of criminal prohibitions on prostitution may be used for the enforcement of prostitution laws.⁴⁵

- The proposed ordinance does not likely create a conflict with section 22 of the City Charter, because the appropriation of all city money is to be done by ordinance.

By referring to other provisions of the Charter, section 22 expressly allows the City Council to make fiscal and appropriations decisions for the City as a whole through the express grant of authority to do so provided in section 12 of the Charter.

Section 22's prohibition is focused on preventing the Council Members from acting as day-to-day managers of the City and plainly does not preclude the City Council from setting fiscal policy by directing the use of otherwise unencumbered funds received by the Police Department.

- Timelines do not present procedural issues, because the time frame in which the Police Department is to dispose of forfeiture property only begins to run after all legal avenues have been exhausted, and the ordinance does not speak to the process for forfeiture itself.

⁴³ See, e.g., proposed SMC 08.19.030(C).

⁴⁴ See, e.g., proposed SMC 08.19.030(A).

⁴⁵ C.f., proposed SMC 08.19.030(B) (use of those funds determined by state law).



Agenda Sheet for City Council Meeting of:
03/27/2017

Date Rec'd	3/15/2017
Clerk's File #	ORD C35487
Renews #	

Submitting Dept	INNOVATION & TECHNOLOGY	Cross Ref #	
Contact Name/Phone	MICHAEL 625-6468	Project #	
Contact E-Mail	MSLOON@SPOKANECITY.ORG	Bid #	
Agenda Item Type	First Reading Ordinance	Requisition #	
Agenda Item Name	5300 - ORDINANCE		

Agenda Wording

An ordinance relating to the creation of 4 new departments within the Innovation and Technology Services Division; amending SMC section 3.01A.340 & adopting new sections 3.01A.341, 3.01A.342, & 3.01A.344 to chapter 3.01A of the Spokane Municipal Code

Summary (Background)

The ITSD is responsible for strategic & operational information technology system support, to include electronic mail, telephone system, network infrastructure, enterprise server & Cloud services, desktop support, Geographic Information Systems, datacenter operations, & security & monitoring systems. Central management of technology innovation & strategic planning, information security, administration, technology contracts & procurement, & mail center functions are maintained @ division level.

Fiscal Impact		Budget Account	
Neutral	\$	#	
Select	\$	#	
Select	\$	#	
Select	\$	#	
Approvals		Council Notifications	
Dept Head	SLOON, MICHAEL	Study Session	Fin & Tech Meeting
Division Director	FINCH, ERIC	Other	
Finance	DOVAL, MATTHEW	Distribution List	
Legal	PICCOLO, MIKE	Accounting - kkeck@spokanecity.org	
For the Mayor	SANDERS, THERESA	Contract Accounting - jsalstrom@spokanecity.org	
Additional Approvals		Legal - hwhaley@spokanecity.org	
Purchasing		Purchasing - cwahl@spokanecity.org	
		IT - itadmin@spokancity.org	
		Taxes & Licenses	

ORDINANCE NO. C35487

An ordinance relating to the creation of four new departments within the Innovation and Technology Services Division; amending SMC section 3.01A.340 and adopting new sections 3.01A.341, 3.01A.342, 3.01A.343 and 3.01A.344 to chapter 3.01A of the Spokane Municipal Code.

The City of Spokane does ordain:

Section 1. That SMC section 3.01A.340 is amended to as follows:

3.01A.340 Innovation and Technology Services Division (ITSD)

~~((A. The innovation and technology services department is responsible for information technology application and system support, to include electronic mail, telephone system, network infrastructure, city web site, help desk, GIS, datacenter operations, and security and monitoring systems.~~

~~B. The mail room services section collects and distributes interoffice mail and posts outgoing City mail including utility billing invoices.~~

~~C. The reprographic services section provides full digital imaging and printing services for the City.))~~

The innovation and technology services division is responsible for strategic and operational information technology system support, to include electronic mail, telephone system, network infrastructure, enterprise server and Cloud services, desktop support, Geographic Information Systems, datacenter operations, and security and monitoring systems. Central management of technology innovation and strategic planning, information security, administration, technology contract/procurement management, and mail center functions are maintained at the division level.

Section 2. That there is adopted a new section 3.01A.342 to chapter 3.01A of the Spokane Municipal Code to read as follows:

3.01A.341 ITSD – Public Works Technology Department

The innovation and technology services – public works technology department provides dedicated and integrated technology roles for systems and related process needs that can match or exceed the other parts of the City ITSD budget.

Section 3. That there is adopted a new section 3.01A.342 to chapter 3.01A of the Spokane Municipal Code to read as follows:

3.01A.342 ITSD – Program Management Department

The innovation and technology services – program management department provides strategic partnerships, innovation support, project management, continuous improvement, resiliency and business continuity planning, and open government/open data services.

Section 4. That there is adopted a new section 3.01A.343 to chapter 3.01A of the Spokane Municipal Code to read as follows:

3.01A.343 ITSD – Information Delivery Services Department

The innovation and technology services – information delivery services department provides application, GIS, database and records management support that focus on delivering digital solutions and information directly to both internal and external users.

Section 5. That there is adopted a new section 3.01A.344 to chapter 3.01A of the Spokane Municipal Code to read as follows:

3.01A.344 ITSD – Technology Operations Department

The innovation and technology services – technology operations department provides critical back-office functions including desktop support, physical and wireless communications infrastructure, enterprise services, and data center services.

PASSED BY THE CITY COUNCIL ON _____, 2017.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date

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

03/27/2017

Date Rec'd

3/16/2017

Clerk's File #

OPR 2017-0211

Renews #**Cross Ref #****Submitting Dept**

CITY COUNCIL

Contact Name/Phone

LORI KINNEAR 625-6261

Project #**Contact E-Mail**

LKINNEAR@SPOKANECITY.ORG

Bid #**Agenda Item Type**

Special Considerations

Requisition #**Agenda Item Name**

0320 - LETTER OUTLINING GOALS FOR POLICE GUILD NEGOTIATIONS

Agenda Wording

This item is a proposed letter which outlines the City Council's goals and objectives for the upcoming collective bargaining negotiations with the Police Guild.

Summary (Background)

The City Council wishes to state its desires and goals for the next version of the Police Guild collective bargaining agreement, including fiscal and operational matters and significant improvements to the civilian oversight function provided by the Office of the Police Ombudsman.

Fiscal Impact**Budget Account**

Neutral \$

#

Select \$

#

Select \$

#

Select \$

#

Approvals**Council Notifications****Dept Head**

MCCLATCHEY, BRIAN

Study Session**Division Director****Other****Finance**

DOVAL, MATTHEW

Distribution List**Legal**

DALTON, PAT

For the Mayor

SANDERS, THERESA

Additional Approvals**Purchasing**

Mayor David A. Condon
City of Spokane, City Hall
808 W. Spokane Falls Blvd.
Spokane, WA 99201

March 27, 2017

Mayor Condon:

We are writing to share the City Council's goals for the next round of negotiations with the Spokane Police Guild. We ask your negotiations with the Guild seek the improvements to the City's contract outlined in this letter.

While this letter briefly describes improvements the Council seeks in the next Guild agreement, we would be happy to meet with you in executive session to provide more thorough specifics of these proposals.

General provisions

We have specific suggestions and concerns which we have shared with you over the past several months, and we request that you negotiate for the following improvements to the agreement with the Guild. They are listed here in no order of priority or importance:

- Cap overtime at 20 hours per week, per officer for SPD regular duty. In the case of "special duty" for private entities, institute a cap on the total of overtime hours or total work hours (i.e., regular time plus overtime and off-duty/special duty work hours) so that officers may not work more than 18 consecutive hours per day or 64 hours per week. We also believe that there should be an annual cap on overtime hours for each officer but will leave it to the administration to determine that number. We share the concerns raised in section 1040.3(d) of SPD Police Policy regarding potential performance and employee efficiency impacts to our officers. Off-duty police work can affect overtime use if officers take leave to work off-duty, as other officers must back fill for the employee on leave. Additionally, officers who work both overtime and off-duty may be at risk of fatigue and increased use of sick leave.
- Reform SPD's policy of assigning overtime based solely on seniority in favor of a more equitable approach, such as a rolling seniority roster similar to the approach used by the Fire Department.
- Allow SPD to employ non-commissioned property crimes technicians for routine administrative work surrounding property crimes (i.e., processing evidence, engaging with the public at their residences following a burglary, etc). Doing so would leave commissioned officers free to engage in patrol and investigation duties. These property crime technician job positions shall not

supplant existing or future commissioned officer positions. This efficiency measure has been discussed by Council members for some months now.

OPO ordinance changes:

We also strongly believe the City's OPO ordinance, which should be consistent with the next collective bargaining agreement with the Police Guild, can be dramatically improved in the following ways to deliver on the will of the voters who, in 2013, modified sections 129 and 130 of the City Charter ("Prop. 1"). To do this, we want to see the existing OPO provisions of the Guild agreement remain in place, with the following changes, in no particular order of priority or importance:

- **Types of Incidents Involved**

Add Administrative Review Panels of critical incidents, use of force and deadly incidents, vehicle pursuits, and vehicle collisions to the list of situations which the OPO can monitor.

- **Independent Investigations**

The OPO must be able to initiate investigations into particular incidents if IA chooses not to investigate. The scope of OPO independent investigations is to be determined solely by the OPO, provided that the investigation does not interfere with an IA investigation.

- **Closing Reports or Letters**

It is crucial that IA is required to prepare closing reports at the conclusion of its investigations. The OPO also should have the discretion to independently determine whether to write closing reports on incidents the OPO deems to be of public importance. If the OPO makes formal recommendations to the Police Department, the Police Department should be required to respond.

- **Umbrella of Police Ombudsman**

The definition of "OPO" must include both the Police Ombudsman himself, but also the employees within the office, so that the OPO can efficiently conduct document review and discharge other administrative duties of the OPO. In that connection, all OPO office employees, staff, interns, agents, and the like would also be subject to background checks, confidentiality agreements, and polygraph testing.

- **Selection of the OPO**

The fifth member of the OPO selection committee should be a member of the OPOC. SMC 04.32.060(I) should be amended to allow the OPO to be a resident of Spokane County.

- **OPO Qualifications**

Applicants for the position of OPO should have 5 years of legal or investigative experience in criminal procedure, police practices, or civil rights, as well as at least 5 years' experience with the law of criminal procedure, civil rights, and police practices, as well as knowledge of national models of civilian police oversight at the time of application.

- Statements Concerning Inability to Use OPO Investigation or IA Investigation Documents in discipline of an Officer

We need to reiterate that both the City and SPD are precluded from using OPO investigation documents obtained outside and after the IA process in a manner that disciplines or has an effect on discipline of an officer.

- "OPO-Involved Investigation" definition

We should amend the definition of "OPO-Involved Investigation" to include any allegation of police officer misconduct brought by a community member.

- Monthly and Annual Council Reporting

We should require monthly reports to the Council's Public Safety Committee by the Commission chair, OPO, and IA, as well as annual reports from both the OPO and the Commission to the City Council concerning the prior years' activities and the coming year's work plan.

There are many issues subject to mandatory bargaining that we believe should be included in the next contract in order to strengthen the management prerogatives of civilian oversight. The Guild largely approved them in the last contract and we urge that the administration secure them in the next contract.

For example, although the OPO can currently determine whether to certify whether an investigation was timely, thorough, and objective, the OPO's certification authority should be expanded to include certification of the accuracy and completeness, on a more probable than not basis, of any key factual findings published by IA, including the ability to certify investigations upon the completion of further factual findings.

The OPO should also have the authority to either complete (or seek a third party to complete) an IA investigation of a Guild member if the Police Department is not willing to complete the investigative activities recommended by the OPO to the OPO's satisfaction.

Again, we would be happy to discuss with you further details of these requests, in executive session.

As we see it, the City has the opportunity within this window of bargaining to fully implement Prop. 1, while at the same time supporting our dedicated police officers. As you enter this, the last Guild negotiation of your tenure, we hope to partner with you to obtain these much needed changes which will restore public

trust, improve officer working conditions, and improve public safety for our citizenry.

Sincerely yours,

Council President Ben Stuckart

Council Member Lori Kinnear

Council Member Amber Waldref

Council Member Candace Mumm

Council Member Karen Stratton

Council Member Mike Fagan

Council Member Breean Beggs

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

02/06/2017

Date Rec'd

1/25/2017

Clerk's File #

ORD C35471

Renews #**Submitting Dept**

CITY COUNCIL

Cross Ref #**Contact Name/Phone**

BEN STUCKART 6258

Project #**Contact E-Mail**

BSTUCKART@SPOKANECITY.ORG

Bid #**Agenda Item Type**

First Reading Ordinance

Requisition #**Agenda Item Name**

0320 - AN ORDINANCE STREAMLINING THE DEVELOPMENT CODE AMENDMENT PROCESS

Agenda Wording

An ordinance relating to the process for amending the unified development code; amending section 17G.025.010 of the Spokane Municipal Code.

Summary (Background)

This ordinance would streamline the process for amending the unified development code by allowing changes to the international building codes (such as the international plumbing, electrical, and fire codes, for example) to be made under the normal ordinance amendment process, rather than the more detailed and lengthy process required by the Growth Management Act.

Fiscal Impact**Budget Account**

Neutral \$

#

Select \$

#

Select \$

#

Select \$

#

Approvals**Council Notifications****Dept Head**

MCCLATCHEY, BRIAN

Study Session**Division Director****Other**

PED Comm. 1-23-2017

Finance

DOVAL, MATTHEW

Distribution List**Legal**

RICHMAN, JAMES

For the Mayor

SANDERS, THERESA

Additional Approvals**Purchasing**

ORDINANCE NO. C35471

An ordinance relating to the process for amending the unified development code; amending section 17G.025.010 of the Spokane Municipal Code.

NOW THEREFORE, the City of Spokane does ordain:

Section 1. That section 17G.025.010 of the Spokane Municipal Code is amended to read as follows:

Section 17G.025.010 Text Amendments to the Unified Development Code

A. Initiation.

Text amendments to this code may be initiated by any of the following:

1. Property owner(s) or their representatives;
2. Any citizen, agency, neighborhood council, or other party; or
3. A City department, the plan commission, or the city council.

B. Applications. Applications shall be made on forms provided by the City.

C. Application Submittal.

1. After submittal of an applicant-initiated application, the application shall be subject to a pre-application conference, counter-complete determination, and fully complete determination pursuant to chapter 17G.060 SMC.
2. After submittal, the application shall be placed on the next available plan commission agenda.

D. Notice of Public Hearing.

Amendments to this code require a public hearing before the plan commission.

1. Contents of Notice.

A notice of public hearing shall include the following:

- a. The citation, if any, of the provision that would be changed by the proposal along with a brief description of that provision;
- b. A statement of how the proposal would change the affected provision;
- c. The date, time, and place of the public hearing;
- d. A statement of the availability of the official file; and
- e. A statement of the right of any person to submit written comments to the planning commission and to appear at the public hearing of the planning commission to give oral comments on the proposal.

2. Distribution of Notice.

The department shall distribute the notice to the applicant, newspaper, City Hall and the main branch of the library. The applicant is then responsible for following the public notice requirements outlined in SMC 17G.060.120, Public Notice – Types of Notice.

E. Plan Commission Recommendation – Procedure.

Following the public hearing, the plan commission shall consider the proposal and shall prepare and forward a recommendation to the city council. The plan commission shall take one of the following actions:

1. If the plan commission determines that the proposal should be adopted, it may, by a majority vote, recommend that the city council adopt the proposal. The plan commission may make modifications to any proposal prior to recommending the proposal to city council for adoption;
2. If the plan commission determines that the proposal should not be adopted, it may, by a majority vote, recommend that the city council not adopt the proposal; or
3. If the plan commission is unable to take either of the actions specified in subsection (E)(1) or (2) of this section, the proposal will be sent to city council with the notation that the plan commission makes no recommendation.

F. Approval Criteria.

The City may approve amendments to this code if it finds that:

1. The proposed amendment is consistent with the applicable provisions of the comprehensive plan; and
2. The proposed amendment bears a substantial relation to public health, safety, welfare, and protection of the environment.

G. City Council Action.

Within sixty days of receipt of the plan commission's findings and recommendations, the city council shall consider the findings and recommendations of the commission concerning the application and shall hold a public hearing pursuant to council rules. Notice of city council hearings must be published in the *Official Gazette*. The applicant shall also publish a legal notice in the newspaper at least two weeks prior to the hearing by the city council. By a majority vote, the city council shall:

1. Approve the application;
2. Disapprove the application;
3. Modify the application. If modification is substantial, the council must either conduct a public hearing on the modified proposal; or
4. Refer the proposal back to the plan commission for further consideration.

H. Transmittal to the State of Washington.

At least sixty days prior to final action being taken by the city council, the Washington ((State)) department of ((community, trade and economic development (CTED)))commerce ("commerce") shall be provided with a copy of the amendments in order to initiate the sixty-day comment period. No later than ten days after adoption of the proposal, a copy of the final decision shall be forwarded to ((CTED))commerce.

I. Inapplicability to certain chapters.

This section does not apply to the following chapters of the Spokane Municipal Code: 17F.040 (International Building Code, International Residential Code, International Energy Conservation Code), 17F.050 (National Electrical Code), 17F.080 (International Fire Code), 17F.090 (International Mechanical Code), and 17F.100 (Uniform Plumbing Code) (collectively referred to as the "construction standards"). The construction standards specified in this subsection may be amended, after notice to the Plan Commission, pursuant to the City Council's regular legislative process, subject to the requirements of Chapter 43.21C RCW, if any, and further subject to RCW 19.27.040 and 19.27.060, and shall, to the extent they apply to single-family or multifamily residential buildings, be submitted for the approval of the State Building Code Council pursuant to RCW 19.27.074(1)(b).

PASSED by the City Council on _____.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date