

# THE CITY OF SPOKANE



## ADVANCE COUNCIL AGENDA

MEETING OF MONDAY, OCTOBER 2, 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 LORI KINNEAR

COUNCIL MEMBER KAREN STRATTON

COUNCIL MEMBER MIKE FAGAN

COUNCIL MEMBER CANDACE MUMM

COUNCIL MEMBER AMBER WALDREF

CITY COUNCIL CHAMBERS  
CITY HALL

808 W. SPOKANE FALLS BLVD.  
SPOKANE, WA 99201

## CITY COUNCIL BRIEFING SESSION

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

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

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

### ADDRESSING THE COUNCIL

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

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

**CITY COUNCIL AGENDA:** The City Council Advance and Current Agendas may be obtained prior to Council Meetings from the Office of the City Clerk during regular business hours (8 a.m. - 5 p.m.). The Agenda may also be accessed on the City website at [www.spokanecity.org](http://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 Human Resources at (509) 625-6383, 808 W. Spokane Falls Blvd, Spokane, WA, 99201; or [jjackson@spokanecity.org](mailto:jjackson@spokanecity.org). Persons who are deaf or hard of hearing may contact Human Resources 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

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## ADMINISTRATIVE SESSION

Roll Call of Council

## CONSENT AGENDA

### REPORTS, CONTRACTS AND CLAIMS

### RECOMMENDATION

- |  |                |               |
|--|----------------|---------------|
| 1. Special Counsel Contract Amendment with John Stewart and the firm of Stewart Sokol & Larkin, LLC, in regard to Frank Straub v. City of Spokane—increase of \$10,000. Total Contract Amount: \$78,700.<br><b>Mike Ormsby</b> | Approve        | OPR 2016-0363 |
| 2. Multiple Family Housing Property Tax Exemption Agreements with:   | Approve<br>All |               |
| a. Wolfe Architectural Group for nine multi-family units located at 1021 West 9th Avenue, Parcel Numbers 35193.0913, 35193.0914, and 35193.0915. (Cliff-Cannon Neighborhood)   |                | OPR 2017-0657 |
| b. David Hanson for four multi-family housing units located at 512 South Scott Street, Parcel Number 35201.5354. (East Central Neighborhood)   |                | OPR 2017-0658 |

**Ali Brast**

- |  |                                    |                              |
|--|------------------------------------|------------------------------|
| 3. Contract with DEECO, Inc. (Raleigh, NC) to provide Air Quality Emission Compliance Testing at the Waste to Energy Facility from November 1, 2017 through October 31, 2018—\$99,855 (plus tax) with a 15% contingency for a total contract cost of \$114,833.25.<br><b>David Paine</b> | Approve                            | OPR 2017-0659<br>RFP 4378-17 |
| 4. Contract with 5 Star Testing, Inc. (Brush Prairie, WA) to provide Ultrasonic Testing Services for the Waste to Energy Facility from October 30, 2017 through October 29, 2019—\$66,000 plus 10% contingency of \$6,600 for a yearly total of \$72,600.<br><b>David Paine</b>          | Approve                            | OPR 2017-0660<br>RFP 4390-17 |
| 5. Contract Amendment with Zampell Refractories, Inc. (Newburyport, MA) for refractory installation and sandblasting services at the Waste to Energy Facility—increase of \$150,000. Total Contract Amount: \$790,000.<br><b>David Paine</b>   | Approve                            | OPR 2015-0097<br>RFP 4069-14 |
| 6. Accept funding from the U.S Department of Transportation's Federal Motor Carrier Safety Administration FY2017 High Priority Grant for the term of July 1, 2017 through September 30, 2019—\$135,345 Revenue with the City providing a 20% match.<br><b>Justin Lundgren</b>            | Approve                            | OPR 2017-0661                |
| 7. Report of the Mayor of pending:   | Approve &<br>Authorize<br>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                |
| 8. City Council Meeting Minutes: _____, 2017.  | Approve<br>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.

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## **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**

- Programming Plans for New Riverfront Park.

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## **COUNCIL COMMITTEE REPORTS**

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

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## **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)

Ordinances 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:

**ORD C35550**      Parks and Recreation Fund  
FROM: Unappropriated Reserves, \$770,000;  
TO:      Various accounts, same amount.

and

Golf Fund  
FROM: Parks and Recreation, \$45,000;  
TO:      Professional Services, same amount.

(This action provides funding for several strategic investment projects from the Parks Excess Fund Balance.)

**Mark Buening**

**ORD C35551**      Parks and Recreation Fund  
FROM: Administration – Parks Planning – Project Employee, \$22,086;  
TO:      Various accounts, same amount.

(This action creates an additional Parks Project Manager [from 0 to 1 position].)

**Mark Buening**

**ORD C35552**      Parks Cumulative Reserve Fund  
FROM: Unappropriated Reserves, \$495,778;  
TO:      Various accounts, same amount.

[This action allows for (1) a technical correction to provide additional appropriation for the pass through payment of Conservation Futures Funds to Asset Management for debt service payments on the purchase of the YMCA property and (2) additional expenditure authority for two fleet replacement vehicles.]

**Mark Buening**

## NO EMERGENCY ORDINANCES

**RESOLUTIONS & FINAL READING ORDINANCE**(Require Four Affirmative, Recorded Roll Call Votes)

- RES 2017-0084 Approving the East Sprague Parking and Business Improvement Area ratepayer advisory board bylaws.  
**Melissa Owen**
- RES 2017-0085 Recognizing the YARD Redevelopment Master Plan as a written record of the community's ongoing desire and effort to encourage and invest in development, job creation, and quality of life improvements in the YARD and surrounding area.  
**Melissa Owen**
- RES 2017-0086 Declaring Pacwest Machinery LLC (Spokane, WA) a sole source,  
OPR 2017-0672 without public bidding, for TYMCO, VOLVO Construction Equipment and OMCO parts to be purchased on an "as needed" basis for an annual estimated expenditure of \$100,000 including tax.  
**Steve Riggs**
- ORD C35549 (To be considered under Hearing Item H1.)

**NO FIRST READING ORDINANCES**

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**NO SPECIAL CONSIDERATIONS**

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**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. | Final Reading Ordinance C35549 creating a licensing program for parklets and streateries in Spokane and establishing the fee structure for such licenses; enacting a new chapter 10.55 and a new section 8.2.0235 of the Spokane Municipal Code. (First Reading held on the September 18, 2017, Agenda). | Pass Upon<br>Roll Call<br>Vote | ORD C35549 |
|-----|--|--------------------------------|------------|

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**Motion to Approve Advance Agenda for October 2, 2017**  
(per Council Rule 2.1.2)

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## **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 October 2, 2017, Regular Legislative Session of the City Council is adjourned to October 9, 2017.

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## **NOTES**

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

10/02/2017

Date Rec'd

9/20/2017

Clerk's File #

OPR 2016-0363

Renews #Cross Ref #Submitting Dept

CITY ATTORNEY

Contact Name/Phone

MIKE ORMSBY 6287

Project #Contact E-Mail

MORMSBY@SPOKANECITY.ORG

Bid #Agenda Item Type

Contract Item

Requisition #

19000

Agenda Item Name

0500 SPECIAL COUNSEL AMENDMENT

Agenda Wording

An amendment to the Special Counsel Contract with John Stewart and the firm of Stewart Sokol & Larkin, LLC, in regard to the Frank Straub v. City of Spokane matter. Additional funds are necessary.

Summary (Background)

The City entered into contract with Stewart Sokol & Larkin, LLC. The firm agreed to provide Special Counsel services in the matter of Straub v. City of Spokane. An additional \$10,000 is requested and brings the total paid including this amendment to \$78,700.

Fiscal Impact

Grant related? NO

Budget Account

Public Works? NO

Expense \$ 10,000.00

# 5800-78100-14780-54601

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

DALTON, PAT

Study Session

9/25/17

Division DirectorOtherFinance

ORLOB, KIMBERLY

Distribution ListLegal

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For the Mayor

DUNIVANT, TIMOTHY

tdunivant@spokanecity.org

Additional Approvals

James.Scott@ascrisk.com

Purchasing

sfaggiano@spokanecity.org

sdhansen@spokanecity.org



**City of Spokane**  
**SPECIAL COUNSEL**  
**CONTRACT AMENDMENT**

This Contract Amendment is made and entered into by and between the **City of Spokane** as ("City"), a Washington municipal corporation, and **JOHN SPENCER STEWART and the firm OF STEWART SOKOL & LARKIN LLC**, whose address is 2300 SW First Avenue, Suite 200, Portland, Oregon 97201-5047, as ("Firm").

*WHEREAS, the parties entered into a Contract wherein the Firm agreed to act as SPECIAL COUNSEL providing legal services and advice to the Defendant, City of Spokane City Attorney Nancy Isserlis regarding the matter of FRANK STRAUB v. THE CITY OF SPOKANE, a municipal corporation, CITY OF SPOKANE MAYOR DAVID CONDON, CITY OF SPOKANE CITY ATTORNEY ISSERLIS, AND CITY OF SPOKANE CITY ADMINISTRATOR THERESA SANDERS; and*

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

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

**1. CONTRACT DOCUMENTS.**

The Contract, dated April 15, 2016 and April 19, 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 signature by both parties.

**3. COMPENSATION.**

The City shall pay an additional amount not to exceed **TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00)** as full compensation for everything furnished and done under this Contract Amendment. The new amount under the original Contract, any subsequent amendments, and this Contract Amendment is **SEVENTY EIGHT THOUSAND SEVEN HUNDRED AND NO/100 DOLLARS (\$78,700.00)**.

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.

**STEWART SOKOL & LARKIN LLC**

**CITY OF SPOKANE**

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

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

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest: Approved as to form:

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

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





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

10/02/2017

Date Rec'd

9/19/2017

Clerk's File #

OPR 2017-0657

Renews #Submitting Dept

DEVELOPER SERVICES CENTER

Cross Ref #Contact Name/Phone

ALI BRAST 625-6638

Project #Contact E-Mail

ABRAST@SPOKANECITY.ORG

Bid #Agenda Item Type

Contract Item

Requisition #Agenda Item Name

4700 - MULTI FAMILY HOUSING - 1021 WEST 9TH AVENUE

Agenda Wording

Multiple Family Housing Property Tax Exemption Agreement with Wolfe Architectural Group for nine multi-family units located at 1021 West 9th Avenue, Parcel Numbers 35193.0913, 35193.0914, and 35193.0915.

(Cliff-Cannon Neighborhood Council)

Summary (Background)

RCW Chapter 84.14 authorized the City to create a multiple family housing property tax exemption program and to certify qualified property owners for that property tax exemption. The City Council Enacted Ordinance No. C-32575, which provides for the property tax exemption program for multiple housing in residential targeted areas. Pursuant to Ordinance No. C-33079, the City Council expanded the residential targeted areas.

Fiscal Impact

Grant related? NO

Budget Account

Public Works? NO

Neutral \$

#

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

BECKER, KRIS

Study SessionDivision Director

MALLAHAN, JONATHAN

Other

PED 8/28/17

Finance

ORLOB, KIMBERLY

Distribution ListLegal

PICCOLO, MIKE

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For the Mayor

DUNIVANT, TIMOTHY

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Additional Approvals

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Purchasing

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htrautman@spokanecity.org

mhughes@spokanecity.org

kbecker@spokanecity.org

**BRIEFING PAPER**  
**City of Spokane**  
**MFTE Incentive Program / PED**  
**August 28th, 2017**

**Subject:**

A Multi-Family Tax Exemption Conditional Contract for 9 multi-family units at 1021 W 9th.

**Purpose:**

Chapter 84.14 RCW authorizes the City to create a multiple family housing property tax exemption program and to certify qualified property owners for that property tax exemption. The City Council enacted Ordinance No. C-32575, which provides for the property tax exemption program for multiple housing in residential targeted areas. Pursuant to Ordinance No. C-33079, the City Council expanded the residential targeted areas. The State statute and the City ordinance require the City to approve the application regarding the tax exemption and the necessary construction requirements. The City has received an application from David Hansen for a project of 9 multi-family housing units at 1021 W 9th. The staff has reviewed the application and determined that it meets the requirements of Chapter 8.15 SMC and qualifies for the tax exemption. This contract authorizes the appropriate city official to enter into the attached Multiple Family Housing Property Tax Exemption Agreement, which will ultimately result in the issuance of a final certificate of tax exemption to be filed with the Spokane County Assessor's Office.

**Details:**

Nine's on 9th

MFTE target area: Lower South Hill

Qualifying parcels: 35193.0913, 35193.0914, 35193.0915

Units: 9 units

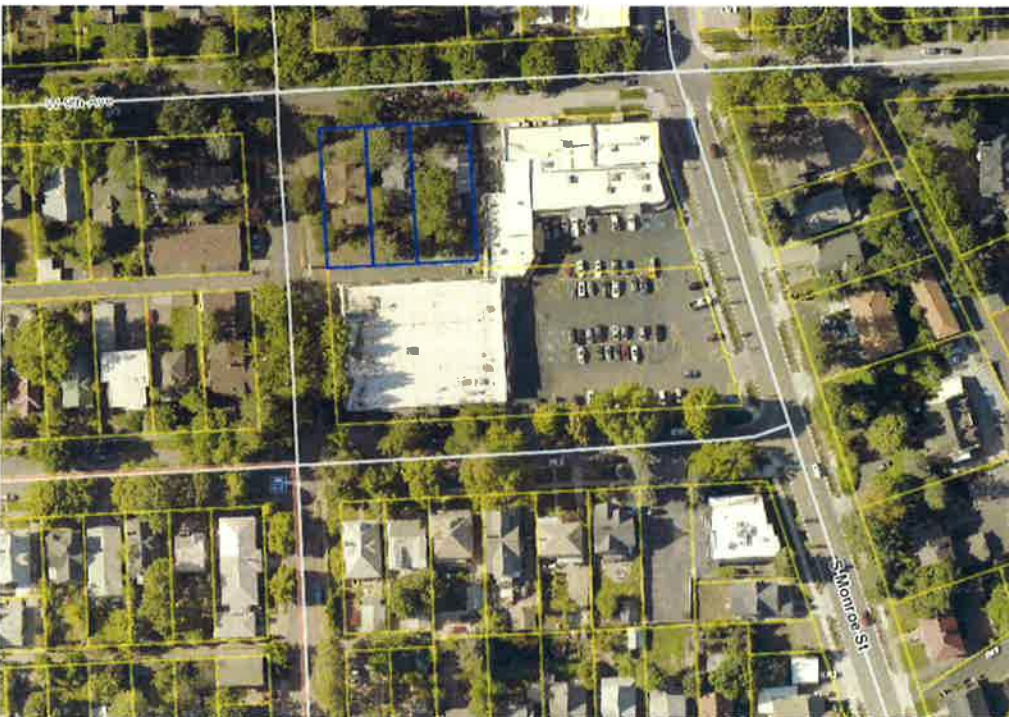
Average Sq Ft: 1,050 sqft

STA Routes: one block from Route 42 and bus stop

Affordable: Affordable Rate

Projected Foregone Tax Revenue over 12 Years: \$89,982

**Project Area Map:**



For more information contact: Ali Brast, 509-625-6638, [abrast@spokanecity.org](mailto:abrast@spokanecity.org)  
Planning & Development Services Department

### Tax Abatement Information:

**Nine's on 9th: Applicant estimates cost for new construction at \$1.2-1.3M and is estimating \$1.6-1.7M or \$184K/unit as Future Market Value (FMV).**

Nine's on 9th:		Average Unit FMV	FMV Project	Spokane '16 TCA10-15 Rate	Property Increase in value	City Tax Forgone
Applicant's estimated post construction Future Market Value (FMV)		\$ 183,333	\$ 1,650,000			
2017 City's tax rate of 4.30				0.0043		
1% increase in property value over 12 yrs.					209,261	
Estimate City of Spokane tax not collected over 12 yrs.						89,982

Nine's on 9th:				Spokane '17 TCA10-15	Spokane property tax not collected
# of Yrs.	Taxable Value	Annual increase	increase in value		
1	1,650,000	1%	16,500	0.0043	7,095
2	1,666,500	1%	16,665	0.0043	7,166
3	1,683,165	1%	16,832	0.0043	7,238
4	1,699,997	1%	17,000	0.0043	7,310
5	1,716,997	1%	17,170	0.0043	7,383
6	1,734,167	1%	17,342	0.0043	7,457
7	1,751,508	1%	17,515	0.0043	7,531
8	1,769,023	1%	17,690	0.0043	7,607
9	1,786,714	1%	17,867	0.0043	7,683
10	1,804,581	1%	18,046	0.0043	7,760
11	1,822,627	1%	18,226	0.0043	7,837
12	1,840,853	1%	18,409	0.0043	7,916
			209,261		89,982

### Recommendation:

Pursuant to SMC 08.15.060, the city council certifies the qualified property owner for this property tax exemption. This contract will be brought forward to City Council in the next few weeks.

For more information contact: Ali Brast, 509-625-6638, [abrast@spokanecity.org](mailto:abrast@spokanecity.org)  
Planning & Development Services Department

MULTIPLE FAMILY HOUSING PROPERTY  
TAX EXEMPTION AGREEMENT

THIS AGREEMENT is between the City of Spokane, a Washington State municipal corporation, as "City", and Wolfe Architectural Group, as "Owner" whose business address is 1021, 1025, and 1029 West 9th Avenue.

W I T N E S S E T H:

WHEREAS, The City has, pursuant to the authority granted to it by Chapter 84.14 RCW, designated various residential targeted areas for the provision of a limited property tax exemption for new and rehabilitated multiple family residential housing; and

WHEREAS, The City has, through SMC Chapter 8.15, enacted a program whereby property owners may qualify for a Final Certificate of Tax Exemption which certifies to the Spokane County Assessor that the Owner is eligible to receive the multiple family housing property tax exemption; and

WHEREAS, The Owner is interested in receiving the multiple family property tax exemption for new multiple family residential housing units in a residential targeted area; and

WHEREAS, The Owner has submitted to the City a complete application form for no fewer than a total of four new multiple family permanent residential housing units to be constructed on property legally described as:

MCINTOSH ADDITION LT 6 BLK 1 EXC E 7FT, MCINTOSH ADDITION LT 7 BLK 1,  
and MCINTOSH ADDITION LT 8 BLK 1

Assessor's Parcel Number(s) 35193.0909, 35193.0910, and 35193.0911,  
commonly known as 1021, 1025, and 1029 West 9th Avenue.

WHEREAS, The City has determined that the improvements will, if completed as proposed, satisfy the requirements for a Final Certificate of Tax Exemption; -- NOW, THEREFORE,

The City and the Owner do mutually agree as follows:

1. The City agrees to issue the Owner a Conditional Certificate of Acceptance of Tax Exemption subsequent to the City Council's approval of this agreement.

2. The project must comply with all applicable zoning requirements, land use requirements, design review recommendations and all building, fire, and housing code requirements contained in the Spokane Municipal Code at the time a complete application for a building permit is received. However, if the proposal includes rehabilitation or demolition in preparation for new construction, the residential portion of the building shall fail to comply with one or more standards of applicable building or housing codes, and the

rehabilitation improvements shall achieve compliance with the applicable building and construction codes.

3. If the property proposed to be rehabilitated is not vacant, the Owner shall provide each existing tenant with housing of comparable size, quality and price and a reasonable opportunity to relocate.

4. The Owner intends to construct on the site, approximately nine new multiple family residential housing units substantially as described in their application filed with and approved by the City. In no event shall such construction provide fewer than a total of four multiple family permanent residential housing units.

5. The Owner agrees to complete construction of the agreed-upon improvements within three years from the date the City issues the Conditional Certificate of Acceptance of Tax Exemption or within any extension granted by the City.

6. The Owner agrees, upon completion of the improvements and upon issuance by the City of a temporary or permanent certificate of occupancy, to file with the City's Business & Development Services Department the following:

(a) a statement of the actual development cost of each multiple family housing unit, and the total expenditures made in the rehabilitation or construction of the entire property;

(b) a description of the completed work and a statement that the rehabilitation improvements or new construction of the Owner's property qualifies the property for the exemption;

(c) a statement that the project meets the affordable housing requirements, if applicable; and

(d) a statement that the work was completed within the required three-year period or any authorized extension of the issuance of the conditional certificate of tax exemption.

7. The City agrees, conditioned on the Owner's successful completion of the improvements in accordance with the terms of this Agreement and on the Owner's filing of the materials described in Paragraph 6 above, to file a Final Certificate of Tax Exemption with the Spokane County Assessor indicating that the Owner is qualified for the limited tax exemption under Chapter 84.14 RCW.

8. The Owner agrees, within 30 days following the first anniversary of the County's filing of the Final Certificate of Tax Exemption and each year thereafter for a period of twelve years, to file a declaration with the City's Business and Development Services Department, verified upon oath and indicating the following:

(a) a statement of occupancy and vacancy of the multiple family units during the previous year;

(b) a certification that the property has not changed use and, if applicable, that the property has been in compliance with the affordable housing requirements as described in SMC 8.15.090 since the date of the filing of the Final Certificate of Tax Exemption, and continues to be in compliance with this Agreement and the requirements of SMC Chapter 8.15; and

(c) a description of any improvements or changes to the property made after the filing of the final certificate or last declaration.

9. The parties acknowledge that the units are to be used and occupied for multifamily residential use. The parties further acknowledge that the certificate of occupancy issued by the City is for multifamily residential units. The Owner acknowledges and agrees that the units shall be used primarily for residential occupancy and any business activities shall only be incidental and ancillary to the residential occupancy.

10. If the Owner converts to another use any of the multiple family residential housing units constructed under this Agreement, or if applicable, if the owner intends to discontinue compliance with the affordable housing requirements as described in SMC 8.15.090 or any other condition to exemption, the Owner shall notify the Spokane County Assessor and the City's Business and Development Services Department within 60 days of such change in use.

11. The Owner will have the right to assign its rights under this Agreement. The Owner agrees to notify the City promptly of any transfer of Owner's ownership interest in the Site or in the improvements made to the Site under this Agreement.

12. The City reserves the right to cancel the Final Certificate of Tax Exemption should the Owner, its successors and assigns, fail to comply with any of the terms and conditions of this Agreement or of SMC Chapter 8.15.

13. No modifications of this Agreement shall be made unless mutually agreed upon by the parties in writing.

14. The Owner acknowledges its awareness of the potential tax liability involved if and when the property ceases to be eligible for the incentive provided pursuant to this agreement. Such liability may include additional real property tax, penalties and interest imposed pursuant to RCW 84.14.110. The Owner further acknowledges its awareness and understanding of the process implemented by the Spokane County Assessor's Office for the appraisal and assessment of property taxes. The Owner agrees that the City is not responsible for the property value assessment imposed by Spokane County at any time during the exemption period.

15. In the event that any term or clause of this Agreement conflicts with applicable law, such conflict shall not affect other terms of this Agreement, which can be given effect without the conflicting term or clause, and to this end, the terms of this Agreement are declared to be severable.

16. Nothing in this Agreement shall permit or be interpreted to permit either party to violate any provision of Chapter 84.14 RCW or SMC Chapter 8.15.

17. This Agreement is subject to approval by the City Council.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017

CITY OF SPOKANE

Russ Wolfe for Wolfe Architectural Group

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

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

Mayor, David A. Condon

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

Attest:

Approved as to form:

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

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

STATE OF WASHINGTON )  
 ) ss.  
County of Spokane )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me, the undersigned, a Notary Public in and for the State of Washington, personally appeared DAVID A. CONDON and TERRI L. PFISTER, to me known to be the Mayor and the City Clerk, respectively, of the CITY OF SPOKANE, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public in and for the State  
of Washington, residing at Spokane

My commission expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
County of Spokane )

On this 21<sup>st</sup> day of August, 2017, before me, the undersigned, a Notary Public in and for the State of Washington, personally appeared Russell J. Wolfe, to me known to be the person who executed the within and foregoing instrument, and acknowledged the said instrument to be his/her free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 21<sup>st</sup> day of August, 2017.



Crist Kanenwischer

Notary Public in and for the State  
of Washington, residing at Spokane

My commission expires 6/24/2018



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

10/02/2017

<u>Date Rec'd</u>	9/19/2017
<u>Clerk's File #</u>	OPR 2017-0658
<u>Renews #</u>	
<u>Cross Ref #</u>	
<u>Project #</u>	
<u>Bid #</u>	
<u>Requisition #</u>	

<u>Submitting Dept</u>	DEVELOPER SERVICES CENTER
<u>Contact Name/Phone</u>	ALI BRAST 625-6638
<u>Contact E-Mail</u>	ABRAST@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Contract Item
<u>Agenda Item Name</u>	4700 - MULTI FAMILY HOUSING - 512 SOUTH SCOTT STREET

**Agenda Wording**

Multiple Family Housing Property Tax Exemption Agreement with David Hanson for four multi-family housing units located at 512 South Scott Street, Parcel Number 35201.5354. (East Central Neighborhood Council)

**Summary (Background)**

RCW Chapter 84.14 authorized the City to create a multiple family housing property tax exemption program and to certify qualified property owners for that property tax exemption. The City Council Enacted Ordinance No. C-32575, which provides for the property tax exemption program for multiple housing in residential targeted areas. Pursuant to Ordinance No. C-33079, the City Council expanded the residential targeted areas.

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? NO	
Neutral	\$	#
Select	\$	#
Select	\$	#
Select	\$	#

<u>Approvals</u>	<u>Council Notifications</u>
<u>Dept Head</u>	BECKER, KRIS
<u>Division Director</u>	MALLAHAN, JONATHAN
<u>Finance</u>	ORLOB, KIMBERLY
<u>Legal</u>	PICCOLO, MIKE
<u>For the Mayor</u>	DUNIVANT, TIMOTHY
<u>Additional Approvals</u>	mpiccolo@spokanecity.org
<u>Purchasing</u>	jmallahan@spokanecity.org
	htrautman@spokanecity.org
	mhughes@spokanecity.org
	kbecker@spokanecity.org

**BRIEFING PAPER**  
**City of Spokane**  
**MFTE Incentive Program / PED**  
**August 28th, 2017**

**Subject:**

A Multi-Family Tax Exemption Conditional Contract for 4 attached units at 512 S Scott St.

**Purpose:**

Chapter 84.14 RCW authorizes the City to create a multiple family housing property tax exemption program and to certify qualified property owners for that property tax exemption. The City Council enacted Ordinance No. C-32575, which provides for the property tax exemption program for multiple housing in residential targeted areas. Pursuant to Ordinance No. C-33079, the City Council expanded the residential targeted areas. The State statute and the City ordinance require the City to approve the application regarding the tax exemption and the necessary construction requirements. The City has received an application from David Hansen for a project of 4 multi-family housing units at 512 S Scott St. The staff has reviewed the application and determined that it meets the requirements of Chapter 8.15 SMC and qualifies for the tax exemption. This contract authorizes the appropriate city official to enter into the attached Multiple Family Housing Property Tax Exemption Agreement, which will ultimately result in the issuance of a final certificate of tax exemption to be filed with the Spokane County Assessor's Office.

**Details:**

David Hansen

MFTE target area: Lower South Hill

Qualifying parcel: 35201.5354

Units: 4 units

Average Sq Ft: 1,382 sqft

STA Routes: 3 blocks from Route 45 and bus stops

Affordable: Affordable Rate

Projected Foregone Tax Revenue over 12 Years: \$21,104

**Project Area Map:**



For more information contact: Ali Brast, 509-625-6638, [abrast@spokanecity.org](mailto:abrast@spokanecity.org)  
Planning & Development Services Department

### **Tax Abatement Information:**

**Hanson Apartments: Applicant estimates cost for rehab and new construction at \$548,000 and is estimating \$592,350 as Future Market Value (FMV).**

Hanson Apts:	Average Unit FMV	FMV Project	Spokane '16 TCA10-15 Rate	Property Increase in value	City Tax Forgone
Applicant's estimated post construction Future Market Value (FMV)	\$ 148,088	\$ 592,350			
2017 City's tax rate of 4.30			0.0043		
1% increase in property value over 8 yrs.				49,080	
Estimate City of Spokane tax not collected over 8 yrs.					21,104

Hanson Apts:				Spokane '17 TCA10-15	Spokane property tax not collected
# of Yrs.	Taxable Value	Annual increase	increase in value		
1	592,350	1%	5,924	0.0043	2,547
2	598,274	1%	5,983	0.0043	2,573
3	604,256	1%	6,043	0.0043	2,598
4	610,299	1%	6,103	0.0043	2,624
5	616,402	1%	6,164	0.0043	2,651
6	622,566	1%	6,226	0.0043	2,677
7	628,791	1%	6,288	0.0043	2,704
8	635,079	1%	6,351	0.0043	2,731
9	-	1%	-	0.0043	-
10	-	1%	-	0.0043	-
11	-	1%	-	0.0043	-
12	-	1%	-	0.0043	-
			49,080		21,104

### **Recommendation:**

Pursuant to SMC 08.15.060, the city council certifies the qualified property owner for this property tax exemption. This contract will be brought forward to City Council in the next few weeks.

For more information contact: Ali Brast, 509-625-6638, [abrast@spokanecity.org](mailto:abrast@spokanecity.org)  
Planning & Development Services Department

MULTIPLE FAMILY HOUSING PROPERTY  
TAX EXEMPTION AGREEMENT

THIS AGREEMENT is between the City of Spokane, a Washington State municipal corporation, as "City", and David Hanson, as "Owner" whose business address is 112 South Monroe Street, Spokane, WA 99201.

W I T N E S S E T H:

WHEREAS, The City has, pursuant to the authority granted to it by Chapter 84.14 RCW, designated various residential targeted areas for the provision of a limited property tax exemption for new and rehabilitated multiple family residential housing; and

WHEREAS, The City has, through SMC Chapter 8.15, enacted a program whereby property owners may qualify for a Final Certificate of Tax Exemption which certifies to the Spokane County Assessor that the Owner is eligible to receive the multiple family housing property tax exemption; and

WHEREAS, The Owner is interested in receiving the multiple family property tax exemption for new multiple family residential housing units in a residential targeted area; and

WHEREAS, The Owner has submitted to the City a complete application form for no fewer than a total of four new multiple family permanent residential housing units to be constructed on property legally described as:

HARTSON'S SUB OF BLKS 3-8 OF HARTSON'S & TOWNSEND'S HIGHLAND PARK  
ADD TR'S A & B OF LT 1 & N40FT OF E135FT LT 3 ALL BLK 3

Assessor's Parcel Number(s) 35201.5354, commonly known as 512 South Scott Street.

WHEREAS, The City has determined that the improvements will, if completed as proposed, satisfy the requirements for a Final Certificate of Tax Exemption; -- NOW, THEREFORE,

The City and the Owner do mutually agree as follows:

1. The City agrees to issue the Owner a Conditional Certificate of Acceptance of Tax Exemption subsequent to the City Council's approval of this agreement.

2. The project must comply with all applicable zoning requirements, land use requirements, design review recommendations and all building, fire, and housing code requirements contained in the Spokane Municipal Code at the time a complete application for a building permit is received. However, if the proposal includes rehabilitation or demolition in preparation for new construction, the residential portion of the building shall fail to comply with one or more standards of applicable building or housing codes, and the

rehabilitation improvements shall achieve compliance with the applicable building and construction codes.

3. If the property proposed to be rehabilitated is not vacant, the Owner shall provide each existing tenant with housing of comparable size, quality and price and a reasonable opportunity to relocate.

4. The Owner intends to construct on the site, approximately four new multiple family residential housing units substantially as described in their application filed with and approved by the City. In no event shall such construction provide fewer than a total of four multiple family permanent residential housing units.

5. The Owner agrees to complete construction of the agreed-upon improvements within three years from the date the City issues the Conditional Certificate of Acceptance of Tax Exemption or within any extension granted by the City.

6. The Owner agrees, upon completion of the improvements and upon issuance by the City of a temporary or permanent certificate of occupancy, to file with the City's Business & Development Services Department the following:

(a) a statement of the actual development cost of each multiple family housing unit, and the total expenditures made in the rehabilitation or construction of the entire property;

(b) a description of the completed work and a statement that the rehabilitation improvements or new construction of the Owner's property qualifies the property for the exemption;

(c) a statement that the project meets the affordable housing requirements, if applicable; and

(d) a statement that the work was completed within the required three-year period or any authorized extension of the issuance of the conditional certificate of tax exemption.

7. The City agrees, conditioned on the Owner's successful completion of the improvements in accordance with the terms of this Agreement and on the Owner's filing of the materials described in Paragraph 6 above, to file a Final Certificate of Tax Exemption with the Spokane County Assessor indicating that the Owner is qualified for the limited tax exemption under Chapter 84.14 RCW.

8. The Owner agrees, within 30 days following the first anniversary of the County's filing of the Final Certificate of Tax Exemption and each year thereafter for a period of twelve years, to file a declaration with the City's Business and Development Services Department, verified upon oath and indicating the following:

(a) a statement of occupancy and vacancy of the multiple family units during the previous year;

(b) a certification that the property has not changed use and, if applicable, that the property has been in compliance with the affordable housing requirements as described in SMC 8.15.090 since the date of the filing of the Final Certificate of Tax Exemption, and continues to be in compliance with this Agreement and the requirements of SMC Chapter 8.15; and

(c) a description of any improvements or changes to the property made after the filing of the final certificate or last declaration.

9. The parties acknowledge that the units are to be used and occupied for multifamily residential use. The parties further acknowledge that the certificate of occupancy issued by the City is for multifamily residential units. The Owner acknowledges and agrees that the units shall be used primarily for residential occupancy and any business activities shall only be incidental and ancillary to the residential occupancy.

10. If the Owner converts to another use any of the multiple family residential housing units constructed under this Agreement, or if applicable, if the owner intends to discontinue compliance with the affordable housing requirements as described in SMC 8.15.090 or any other condition to exemption, the Owner shall notify the Spokane County Assessor and the City's Business and Development Services Department within 60 days of such change in use.

11. The Owner will have the right to assign its rights under this Agreement. The Owner agrees to notify the City promptly of any transfer of Owner's ownership interest in the Site or in the improvements made to the Site under this Agreement.

12. The City reserves the right to cancel the Final Certificate of Tax Exemption should the Owner, its successors and assigns, fail to comply with any of the terms and conditions of this Agreement or of SMC Chapter 8.15.

13. No modifications of this Agreement shall be made unless mutually agreed upon by the parties in writing.

14. The Owner acknowledges its awareness of the potential tax liability involved if and when the property ceases to be eligible for the incentive provided pursuant to this agreement. Such liability may include additional real property tax, penalties and interest imposed pursuant to RCW 84.14.110. The Owner further acknowledges its awareness and understanding of the process implemented by the Spokane County Assessor's Office for the appraisal and assessment of property taxes. The Owner agrees that the City is not responsible for the property value assessment imposed by Spokane County at any time during the exemption period.

15. In the event that any term or clause of this Agreement conflicts with applicable law, such conflict shall not affect other terms of this Agreement, which can be given effect without the conflicting term or clause, and to this end, the terms of this Agreement are declared to be severable.

16. Nothing in this Agreement shall permit or be interpreted to permit either party to violate any provision of Chapter 84.14 RCW or SMC Chapter 8.15.

17. This Agreement is subject to approval by the City Council.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017

CITY OF SPOKANE

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

Mayor, David A. Condon

Attest:

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

David Hanson

By:  8/17/17

Its: Manager

Approved as to form:

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

STATE OF WASHINGTON )  
 ) ss.  
County of Spokane )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me, the undersigned, a Notary Public in and for the State of Washington, personally appeared DAVID A. CONDON and TERRI L. PFISTER, to me known to be the Mayor and the City Clerk, respectively, of the CITY OF SPOKANE, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public in and for the State  
of Washington, residing at Spokane

My commission expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
County of Spokane )

On this 17<sup>th</sup> day of August, 2017, before me, the undersigned, a Notary Public in and for the State of Washington, personally appeared David Lee Hanson, to me known to be the person who executed the within and foregoing instrument, and acknowledged the said instrument to be his/her free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 17<sup>th</sup> day of August, 2017.



Kyle Appelbaum  
Notary Public in and for the State  
of Washington, residing at Spokane

Notary Public in and for the State  
of Washington, residing at Spokane

My commission expires 05/01/2021



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

10/02/2017

<u>Date Rec'd</u>	9/19/2017
<u>Clerk's File #</u>	OPR 2017-0659
<u>Renews #</u>	

Submitting Dept	SOLID WASTE DISPOSAL	Cross Ref #	
Contact Name/Phone	DAVID PAINE 625-6878	Project #	
Contact E-Mail	DPAINE@SPOKANECITY.ORG	Bid #	RFP#4378-17
Agenda Item Type	Contract Item	Requisition #	18510
Agenda Item Name	CONTRACT FOR AIR QUALITY EMISSION COMPLIANCE TESTING AT WTE		

Agenda Wording

Contract with DEECO, Inc., Raleigh, North Carolina, to provide Air Quality Emission Compliance Testing at the WTE. November 1, 2017 to October 31, 2018. Total contract cost of \$99,855.00 plus tax and 15% admin reserve.

Summary (Background)

Annual emissions testing is required by the operating permits for the WTE. Responses to Request for Proposals #4378-17 were received on August 21, 2017. Four responses were received: Alliance Source Testing: Salt Lake City, Utah Montrose Air Quality Services: Irvine, California TRC Solutions: Woodinville, Washington DEECO: Raleigh, North Carolina After reviewing all proposals it was determined that DEECO. Inc., was the most qualified and the most cost effective.

<u>Fiscal Impact</u>		Grant related?	NO	<u>Budget Account</u>	
		Public Works?	NO		
Expense	\$	\$99,855.00		#	4490-44100-37148-54940
Select	\$			#	
Select	\$			#	
Select	\$			#	
<u>Approvals</u>			<u>Council Notifications</u>		
<u>Dept Head</u>		CONKLIN, CHUCK		<u>Study Session</u>	PWC 9/25/17
<u>Division Director</u>		SIMMONS, SCOTT M.		<u>Other</u>	
<u>Finance</u>		KECK, KATHLEEN		<u>Distribution List</u>	
<u>Legal</u>		SCHOEDEL, ELIZABETH		ttauscher@spokanecity.org	
<u>For the Mayor</u>		DUNIVANT, TIMOTHY		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 annual compliance testing will demonstrate the WTE's compliance with the Air Operating Permit emission limits (Chapter 401 Title V). It will also provide a 3rd party certification of the accuracy of the existing Continuous Emission Monitors as required by Federal regulations in 40CRF 60 Appendices B and F procedures.

Fiscal Impact

Select      \$

Select      \$

Budget Account

#

#

Distribution List


BRIEFING PAPER  
Public Works Committee  
Solid Waste Disposal  
September 25, 2017

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Subject

Contract with DEECO, Inc. (Raleigh, North Carolina) to provide Air Quality Emission Compliance Testing for the WTE.

Background

Annual emissions testing is required by the operating permits for the WTE. Responses to Request for Proposals #4378-17 were received on August 21, 2017. Four responses were received:

Alliance Source Testing: Salt Lake City, Utah  
Montrose Air Quality Services: Irvine, California  
TRC Solutions: Woodinville, Washington  
DEECO: Raleigh, North Carolina

After reviewing all proposals it was determined that DEECO, Inc., was the most qualified and the most cost effective.

The term of the contract will be November 1, 2017, through October 31, 2018, with the option to extend for an additional four 1-year periods. Cost per year is \$99,855.00, with a 15% contingency for a total contract cost of \$114,833.25.

Impact

The annual compliance testing will demonstrate the WTE's compliance with the Air Operating Permit emission limits (Chapter 401 Title V). It will also provide a 3<sup>rd</sup> party certification of the accuracy of the existing Continuous Emission Monitors as required by Federal regulations in 40CFR 60 Appendices B and F procedures.

Action

Recommend approval of this contract.

Funding

As a required annual expenditure, this testing is included in the 2018 WTE operations budget.



**City of Spokane**

**CONSULTANT AGREEMENT**

**Title: AIR QUALITY EMISSIONS COMPLIANCE  
TESTING FOR CITY'S WASTE TO ENERGY  
FACILITY (WTE)**

This Consultant Agreement is made and entered into by and between the **City of Spokane** as ("City"), a Washington municipal corporation, and **DEECO, Inc.**, whose address is 3404 Lake Woodard Road, Raleigh, North Carolina 27604 as ("Consultant"). Individually hereafter referenced as a "party", and together as the "parties".

*WHEREAS, the purpose of this Agreement is to CONDUCT AIR EMISSIONS COMPLIANCE TESTING AT THE WTE FACILITY; and*

*WHEREAS, the Consultant was selected through RFP #4378-17 issued by the City dated August 21, 2017.*

*-- 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 November 1, 2017, and ends on October 31, 2018, unless amended by written agreement or terminated earlier under the provisions. The contract may be extended for four (4) additional one-year contract periods, subject to mutual agreement.

**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 contract documents, the City Agreement controls.

**CONDUCT AIR EMISSIONS COMPLIANCE TESTING AT THE WTE FACILITY**

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 not exceed **NINETY NINE THOUSAND EIGHT HUNDRED FIFTY FIVE AND NO/100 DOLLARS (\$99,855.00)** plus a fifteen (15%) administrative reserve, unless modified by a written amendment to this Agreement

The Company shall submit its applications for payment to Waste to Energy Facility, Administration Office, 2900 South Geiger Boulevard, Spokane, Washington 99224. **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. 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.

## **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. 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.

## **10. INDEMNIFICATION.**

The Consultant shall indemnify and hold the City and the State and their officers and employees harmless from all claims, demands, or suits at law or equity, including but not limited to attorney's fees and litigation costs asserted by third parties for bodily injury (including death) and/or property damage which arise from the Consultant's negligence or willful misconduct under this Agreement; provided that nothing herein shall require a Consultant to indemnify the City against and hold harmless the City from claims, demands or suits based solely upon the conduct of the City, its agents, officers and employees and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the Consultant's agents or employees and (b) the City, its agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence, (2) the costs to the City of defending such claims and suits, etc.; shall be valid and enforceable only to the extent of the negligence of the Consultant, its agents or employees. The Consultant specifically assumes potential liability for actions brought by the Consultant's own employees against the City and, solely for the purpose of this indemnification and defense, the Consultant specifically waives any immunity under the state industrial insurance law, or Title 51 RCW. The Consultant recognizes that this waiver was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. The indemnification provided for in this section shall survive any termination or expiration of this Agreement.

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

## **11. INSURANCE.**

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

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

## **12. 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.

## **13. DEBARMENT AND SUSPENSION.**

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

#### **14. INDEPENDENT CONSULTANT.**

- A. The Consultant is an independent Consultant. This Agreement does not intend the Consultant to act as a City employee. The City has neither direct nor immediate control over the Consultant nor the right to control the manner or means by which the Consultant works. Neither the Consultant nor any Consultant employee shall be an employee of the City. This Agreement prohibits the Consultant to act as an agent or legal representative of the City. The Consultant is not granted express or implied rights or authority to assume or create any obligation or responsibility for or in the name of the City, or to bind the City. The City is not liable for or obligated to pay sick leave, vacation pay, or any other benefit of employment, nor to pay social security or other tax that may arise from employment. The Consultant shall pay all income and other taxes as due. The Consultant may perform work for other parties; the City is not the exclusive user of the services that the Consultant provides.
- B. If the City needs the Consultant to Work on City premises and/or with City equipment, the City may provide the necessary premises and equipment. Such premises and equipment are exclusively for the Work and not to be used for any other purpose.
- C. If the Consultant works on the City premises using City equipment, the Consultant remains an independent Consultant and not a City employee. The Consultant will notify the City Project Manager if s/he or any other Workers are within ninety (90) days of a consecutive 36-month placement on City property. If the City determines using City premises or equipment is unnecessary to complete the Work, the Consultant will be required to work from its own office space or in the field. The City may negotiate a reduction in Consultant fees or charge a rental fee based on the actual costs to the City, for City premises or equipment.

#### **15. KEY PERSONS.**

The Consultant shall not transfer or reassign any individual designated in this Agreement as essential to the Work, nor shall those key persons, or employees of Consultant identified as to be involved in the Project Work be replaced, removed or withdrawn from the Work without the express written consent of the City, which shall not be unreasonably withheld. If any such individual leaves the Consultant's employment, the Consultant shall present to the City one or more individuals with greater or equal qualifications as a replacement, subject to the City's approval, which shall not be unreasonably withheld. The City's approval does not release the Consultant from its obligations under this Agreement.

#### **16. ASSIGNMENT AND SUBCONTRACTING.**

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

#### **17. CITY ETHICS CODE.**

- A. Consultant shall promptly notify the City in writing of any person expected to be a Consultant Worker (including any Consultant employee, subconsultant, principal, or owner) and was a former City officer or employee within the past twelve (12) months.
- B. Consultant shall ensure compliance with the City Ethics Code by any Consultant Worker when the Work or matter related to the Work is performed by a Consultant Worker who has been a City officer or employee within the past two (2) years.
- C. Consultant shall not directly or indirectly offer anything of value (such as retainers, loans, entertainment, favors, gifts, tickets, trips, favors, bonuses, donations, special discounts, work or meals) to any City employee, volunteer or official that is intended, or may appear to a reasonable person to be intended, to obtain or give special consideration to the Consultant. Promotional items worth less than \$25 may be distributed by the Consultant to a City employee if the Consultant uses



the items as routine and standard promotional materials. Any violation of this provision may cause termination of this Agreement. Nothing in this Agreement prohibits donations to campaigns for election to City office, so long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.

#### **18. NO CONFLICT OF INTEREST.**

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

#### **19. ERRORS AND OMISSIONS, CORRECTIONS.**

Consultant is responsible for professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by or on the behalf of the Consultant under this Agreement in the delivery of a final work product. The standard of care applicable to Consultant's services will be the degree of skill and diligence normally employed by professional engineers or Consultants performing the same or similar services at the time said services are performed. The Final Work Product is defined as a stamped, signed work product. Consultant, without additional compensation, shall correct or revise errors or mistakes in designs, drawings, specifications, and/or other consultant services immediately upon notification by the City. The obligation provided for in this Section regarding acts or omissions resulting from this Agreement survives Agreement termination or expiration.

#### **20. INTELLECTUAL PROPERTY RIGHTS.**

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

## 21. CONFIDENTIALITY.

Under Washington State Law (reference RCW Chapter 42.56, the *Public Records Act*) all materials received or created by the City of Spokane are **public records**. These records include but are not limited to bid or proposal submittals, agreement documents, contract work product, or other bid material. Some records or portions of records are legally *exempt from disclosure* and can be redacted or withheld. The Public Records Act (RCW 42.56 and RCW 19.10) describes those exemptions. Consultant must familiarize themselves with the Washington State Public Records Act (PRA) and the City of Spokane's process for managing records.

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

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

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

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

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

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

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

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

## 22. DISPUTES.

Any dispute or misunderstanding that may arise under this Agreement, concerning the Consultant's performance, shall first be through negotiations, if possible, between the Consultant's Project Manager and the City's Project Manager. It shall be referred to the Director and the Consultant's senior executive(s). If such officials do not agree upon a decision within a reasonable period of time, either party may decline or discontinue such discussions and may then pursue the legal means to resolve such

disputes, including but not limited to mediation, arbitration and/or alternative dispute resolution processes. Nothing in this dispute process shall mitigate the rights of the City to terminate the Agreement. Notwithstanding all of the above, if the City believes in good faith that some portion of the Work has not been completed satisfactorily, the City may require the Consultant to correct such work prior to the City payment. The City will provide to the Consultant an explanation of the concern and the remedy that the City expects. The City may withhold from any payment otherwise due, an amount that the City in good faith finds to be under dispute, or if the Consultant provides no sufficient remedy, the City may retain the amount equal to the cost to the City for otherwise correcting or remedying the work not properly completed. Waiver of any of these rights is not deemed a future waiver of any such right or remedy available at law, contract or equity.

### **23. TERMINATION.**

- A. For Cause: The City or Consultant may terminate the Agreement if the other party is in material breach of this Agreement, and such breach has not been corrected to the other party's reasonable satisfaction in a timely manner. Notice of termination under this Section shall be given by the party terminating this Agreement to the other, not fewer than thirty (30) business days prior to the effective date of termination.
- B. For Reasons Beyond Control of Parties: Either party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control, such as, but not limited to, an act of nature, war or warlike operation, civil commotion, riot, labor dispute including strike, walkout or lockout, except labor disputes involving the Consultant's own employees, sabotage, or superior governmental regulation or control. Notice of termination under this Section shall be given by the party terminating this Agreement to the other, not fewer than thirty (30) business days prior to the effective date of termination.
- C. For City's Convenience: The City may terminate this Agreement without cause and including the City's convenience, upon written notice to the Consultant. Notice of termination under this Section shall be given by the party terminating this Agreement to the other, not fewer than ninety (90) business days prior to the effective date of termination.
- D. Actions upon Termination: if termination occurs not the fault of the Consultant, the Consultant shall be paid for the services properly performed prior to the actual termination date, with any reimbursable expenses then due, but such compensation shall not exceed the maximum compensation to be paid under the Agreement. The Consultant agrees this payment shall fully and adequately compensate the Consultant and all subconsultants for all profits, costs, expenses, losses, liabilities, damages, taxes and charges of any kind (whether foreseen or unforeseen) attributable to the termination of this Agreement.
- E. Upon termination, the Consultant shall provide the City with the most current design documents, contract documents, writings and other products the Consultant has produced to termination, along with copies of all project-related correspondence and similar items. The City shall have the same rights to use these materials as if termination had not occurred; provided however, that the City shall indemnify and hold the Consultant harmless from any claims, losses, or damages to the extent caused by modifications made by the City to the Consultant's work product.

### **24. EXPANSION FOR NEW WORK.**

This Agreement scope may be expanded for new work. Any expansion for New Work (work not specified within the original Scope of Work Section of this Agreement, and/or not specified in the original RFP as intended work for the Agreement) must comply with all the following limitations and requirements: (a) the New Work is not reasonable to solicit separately; (b) the New Work is for reasonable purpose; (c) the New Work was not reasonably known either the City or Consultant at time of contract or else was mentioned as a possibility in the solicitation (such as future phases of work, or a change in law); (d) the New Work is not significant enough to be reasonably regarded as an independent body of work; (e) the New Work would not have attracted a different field of competition; and (f) the change does not vary the essential identified or main purposes of the Agreement. The City may make exceptions for immaterial

changes, emergency or sole source conditions, or other situations required in City opinion. Certain changes are not New Work subject to these limitations, such as additional phases of Work anticipated at the time of solicitation, time extensions, Work Orders issued on an On-Call contract, and similar. New Work must be mutually agreed and issued by the City through written Addenda. New Work performed before an authorizing Amendment may not be eligible for payment.

## **25. MISCELLANEOUS PROVISIONS.**

- A. Amendments: No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.
- B. Binding Agreement: This Agreement shall not be binding until signed by both parties. The provisions, covenants and conditions in this Agreement shall bind the parties, their legal heirs, representatives, successors and assigns.
- C. Americans with Disabilities Act (ADA): Specific attention by the designer is required in association with the Americans with Disabilities Act (ADA) 42 U.S.C. 12101-12213 and 47 U.S.C. 225 and 611, its requirements, regulations, standards and guidelines, which were updated in 2010 and are effective and mandatory for all State and local government facilities and places of public accommodation for construction projects including alteration of existing facilities, as of March 15, 2012. The City advises that the requirements for accessibility under the ADA, may contain provisions that differ substantively from accessibility provisions in applicable State and City codes, and if the provisions of the ADA impose a greater or equal protection for the rights of individuals with disabilities or individuals associated with them than the adopted local codes, the ADA prevail unless approval for an exception is obtained by a formal documented process. Where local codes provide exceptions from accessibility requirements that differ from the ADA Standards; such exceptions may not be permitted for publicly owned facilities subject to Title II requirements unless the same exception exists in the Title II regulations. It is the responsibility of the designer to determine the code provisions.
- D. The Consultant, at no expense to the City, shall comply with all laws of the United States and Washington, the Charter and ordinances of the City of Spokane; and rules, regulations, orders and directives of their administrative agencies and officers. Without limiting the generality of this paragraph, the Consultant shall comply with the requirements of this Section.
- E. This Agreement shall be construed and interpreted under the laws of Washington. The venue of any action brought shall be in the Superior Court of Spokane County.
- F. Remedies Cumulative: Rights under this Agreement are cumulative and nonexclusive of any other remedy of law or in equity.
- G. Captions: The titles of sections or subsections are for convenience only and do not define or limit the contents.
- H. Severability: If any term or provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.
- I. Waiver: No covenant, term or condition or the breach shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed a waiver of any preceding or succeeding breach of the same or any other covenant, term 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, comprises the entire agreement between the City and the Consultant. If conflict

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

- L. Negotiated Agreement: The parties acknowledge this is a negotiated agreement, that they have had this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship.
- M. No personal liability: No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Contract, whether expressed or implied, nor for any statement or representation made or in any connection with this Agreement.

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

**CONSULTANT**

**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:** Exhibit A – General Scope of Work  
Exhibit B – Debarment Certificate

17-111

**ATTACHMENT B**

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

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

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

1. The lower tier contractor certified, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
2. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this exhibit, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. The undersigned may contact the City for assistance in obtaining a copy of these regulations.
5. I understand that a false statement of this certification may be grounds for termination of the contract.

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

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

10/02/2017

<u>Date Rec'd</u>	9/19/2017
<u>Clerk's File #</u>	OPR 2017-0660
<u>Renews #</u>	

Submitting Dept	SOLID WASTE DISPOSAL	Cross Ref #	
Contact Name/Phone	DAVID PAINE 625-6878	Project #	
Contact E-Mail	DPAINE@SPOKANECITY.ORG	Bid #	RFP#4390-17
Agenda Item Type	Contract Item	Requisition #	BT
Agenda Item Name	CONTRACT FOR ULTRASONIC TESTING SERVICES FOR THE WTE		

Agenda Wording

Contract with 5 Star Testing, Inc., of Brush Prairie, WA, to provide Ultrasonic Testing Services for the WTE. The term is October 30, 2017 to October 29, 2019. The cost is \$66,000.00, plus 10% contingency of \$6,600.00 for a yearly total of \$72,600.00

Summary (Background)

The WTE requires ultrasonic thickness testing be performed on boiler tubes during each maintenance outage. Accurate thickness readings allow for the repair and replacement of worn components, while retaining those that are not worn or damaged. Responses to Request for Proposals #4390-17 were received on August 28, 2017. 5 Star Testing, Inc., was the only proposer. After review, it was determined that 5 Star Testing was a qualified proposer.

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? NO	

Expense	\$ 72,600.00	# 4490-44100-37148-54201
Select	\$	#
Select	\$	#
Select	\$	#

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	CONKLIN, CHUCK	<u>Study Session</u>	PWC 9/25/17
<u>Division Director</u>	FEIST, MARLENE	<u>Other</u>	
<u>Finance</u>	KECK, KATHLEEN	Distribution List	
<u>Legal</u>	SCHOEDEL, ELIZABETH	ttauscher@spokanecity.org	
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	jsalstrom@spokanecity.org	
<u>Additional Approvals</u>		tprince@spokanecity.org	
<u>Purchasing</u>	PRINCE, THEA	kkeck@spokanecity.org	



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

Having accurate and up to date thickness information will allow repair and maintenance crews to focus their efforts on the areas most in need of repair and replacement. This allows the facility to optimize resources and minimize repair costs. The contract term is October 30, 2017, to October 29, 2019, with the option to extend for 3 additional 1-year periods.

Fiscal Impact

Select      \$

Select      \$

Budget Account

#

#

Distribution List




BRIEFING PAPER  
Public Works Committee  
Solid Waste Disposal  
September 25, 2017

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Subject

Contract with 5 Star Testing, Inc., of Brush Prairie, Washington, to provide Ultrasonic Testing Services for the WTE.

Background

The WTE requires ultrasonic thickness testing be performed on boiler tubes during each maintenance outage. Accurate thickness readings allow for the repair and replacement of worn components, while retaining those that are not worn or damaged.

Responses to Request for Proposals #4390-17 were received on August 28, 2017. 5 Star Testing, Inc., was the only proposer. After review, it was determined that 5 Star Testing was a qualified proposer. The cost of this contract is \$66,000.00, with a 10% contingency of \$6,600.00 for a contract total of \$72,600.00 excluding taxes.

The contract term is October 30, 2017, to October 29, 2019, with the option to extend for 3 additional 1-year periods.

Impact

Having accurate and up to date thickness information will allow repair and maintenance crews to focus their efforts on the areas most in need of repair and replacement. This allows the facility to optimize resources and minimize repair costs.

Action

Recommend approval of this contract.

Funding

Funding for this work is included in the 2017-18 maintenance budget for the WTE.



**City of Spokane**

**CONSULTANT AGREEMENT**

Title: **ULTRASONIC TESTING SERVICES FOR  
THE CITY'S WASTE TO ENERGY (WTE)**

This Consultant Agreement is made and entered into by and between the **City of Spokane** as ("City"), a Washington municipal corporation, and **5 STAR TESTING, INC.**, whose address is 15801 NE 182<sup>nd</sup> Avenue, Brush Prairie, Washington, 98606 as ("Consultant"). Individually hereafter referenced as a "party", and together as the "parties".

*WHEREAS, the purpose of this Agreement is to **CONDUCT ANNUAL ULTRASONIC THICKNESS TESTING AT THE CITY'S WTE FACILITY**; and*

*WHEREAS, the Consultant was selected through an RFP #4390-17 issued by the City dated August 28, 2017.*

*-- 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 October 30, 2017, and ends on October 29, 2019, unless amended by written agreement or terminated earlier under the provisions. The contract may be extended for three (3) additional one-year contract periods, subject to mutual agreement.

**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 contract documents, the City Agreement controls.

**CONDUCT ANNUAL ULTRASONIC THICKNESS TESTING AT THE CITY'S WTE FACILITY**

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

#### **4. PAYMENT.**

Total compensation for Consultant's services under this Agreement shall not exceed **SIXTY SIX THOUSAND AND NO/100 DOLLARS (\$66,000.00)**, unless modified by a written amendment to this Agreement.

The Consultant shall submit its applications for payment to Waste to Energy Facility, Administration Office, 2900 South Geiger Boulevard, Spokane, Washington 99224. **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. 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. 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.

## **7. 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.

## **8. 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.

## **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, 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.

## **10. INSURANCE.**

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

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

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

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

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. DEBARMENT AND SUSPENSION.**

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

#### **12. 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.

#### **13. INDEPENDENT CONSULTANT.**

A. The Consultant is an independent Consultant. This Agreement does not intend the Consultant to act as a City employee. The City has neither direct nor immediate control over the Consultant nor the right to control the manner or means by which the Consultant works. Neither the Consultant nor any Consultant employee shall be an employee of the City. This

Agreement prohibits the Consultant to act as an agent or legal representative of the City. The Consultant is not granted express or implied rights or authority to assume or create any obligation or responsibility for or in the name of the City, or to bind the City. The City is not liable for or obligated to pay sick leave, vacation pay, or any other benefit of employment, nor to pay social security or other tax that may arise from employment. The Consultant shall pay all income and other taxes as due. The Consultant may perform work for other parties; the City is not the exclusive user of the services that the Consultant provides.

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

#### **14. 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.

#### **15. 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.

#### **16. 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.

#### **17. 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.

#### **18. 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.

#### **19. INTELLECTUAL PROPERTY RIGHTS.**

- A. Copyrights. The Consultant shall retain the copyright (including the right of reuse) to all materials and documents prepared by the Consultant for the Work, whether or not the Work is completed. The Consultant grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use copy and distribute every document and all the materials prepared by the Consultant for the City under this Agreement. If requested by the City, a copy of all drawings, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs, and other storage facilities), software program or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents or materials developed solely for and paid for by the City to perform the Work, shall be promptly delivered to the City.
- B. Patents: The Consultant assigns to the City all rights in any invention, improvement, or discovery, with all related information, including but not limited to designs, specifications, data, patent rights and findings developed with the performance of the Agreement or any subcontract. Notwithstanding the above, the Consultant does not convey to the City, nor does the City obtain, any right to any document or material utilized by the Consultant



created or produced separate from the Agreement or was pre-existing material (not already owned by the City), provided that the Consultant has identified in writing such material as pre-existing prior to commencement of the Work. If pre-existing materials are incorporated in the work, the Consultant grants the City an irrevocable, non-exclusive right and/or license to use, execute, reproduce, display and transfer the pre-existing material, but only as an inseparable part of the work.

- C. The City may make and retain copies of such documents for its information and reference with their use on the project. The Consultant does not represent or warrant that such documents are suitable for reuse by the City or others, on extensions of the project or on any other project, and the City releases the Consultant from liability for any unauthorized reuse of such documents.

## **20. CONFIDENTIALITY.**

Under Washington State Law (reference RCW Chapter 42.56, the *Public Records Act*) all materials received or created by the City of Spokane are **public records**. These records include but are not limited to bid or proposal submittals, agreement documents, contract work product, or other bid material. Some records or portions of records are legally *exempt from disclosure* and can be redacted or withheld. The Public Records Act (RCW 42.56 and RCW 19.10) describes those exemptions. Consultant must familiarize themselves with the Washington State Public Records Act (PRA) and the City of Spokane's process for managing records.

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

### **Protecting your Materials from Disclosure (Protected, Confidential, or Proprietary):**

You must determine and declare any materials you want exempted (redacted), and that you also believe are eligible for redaction. This includes but is not limited to your bid submissions, contract materials and work products.

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

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

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

Full Redaction: A public copy that redacts (blacks out) both the exemptions (such as social security numbers) identified by the City and also materials or text you identified as exempt.

The fully redacted version is made public upon contract execution and will be supplied with no notification to you.

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

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

## **21. DISPUTES.**

Any dispute or misunderstanding that may arise under this Agreement, concerning the Consultant's performance, shall first be through negotiations, if possible, between the Consultant's Project Manager and the City's Project Manager. It shall be referred to the Director and the Consultant's senior executive(s). If such officials do not agree upon a decision within a reasonable period of time, either party may decline or discontinue such discussions and may then pursue the legal means to resolve such disputes, including but not limited to mediation, arbitration and/or alternative dispute resolution processes. Nothing in this dispute process shall mitigate the rights of the City to terminate the Agreement. Notwithstanding all of the above, if the City believes in good faith that some portion of the Work has not been completed satisfactorily, the City may require the Consultant to correct such work prior to the City payment. The City will provide to the Consultant an explanation of the concern and the remedy that the City expects. The City may withhold from any payment otherwise due, an amount that the City in good faith finds to be under dispute, or if the Consultant provides no sufficient remedy, the City may retain the amount equal to the cost to the City for otherwise correcting or remedying the work not properly completed. Waiver of any of these rights is not deemed a future waiver of any such right or remedy available at law, contract or equity.

## **22. TERMINATION.**

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

under this Section shall be given by the party terminating this Agreement to the other, not fewer than ninety (90) business days prior to the effective date of termination.

- D. Actions upon Termination: if termination occurs not the fault of the Consultant, the Consultant shall be paid for the services properly performed prior to the actual termination date, with any reimbursable expenses then due, but such compensation shall not exceed the maximum compensation to be paid under the Agreement. The Consultant agrees this payment shall fully and adequately compensate the Consultant and all subconsultants for all profits, costs, expenses, losses, liabilities, damages, taxes and charges of any kind (whether foreseen or unforeseen) attributable to the termination of this Agreement.
- E. Upon termination, the Consultant shall provide the City with the most current design documents, contract documents, writings and other products the Consultant has produced to termination, along with copies of all project-related correspondence and similar items. The City shall have the same rights to use these materials as if termination had not occurred; provided however, that the City shall indemnify and hold the Consultant harmless from any claims, losses, or damages to the extent caused by modifications made by the City to the Consultant's work product.

### **23. 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.

### **24. 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, comprises the entire agreement between the City and the Consultant. If conflict occurs between contract documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this contract to afford the City the maximum benefits.
- L. Negotiated Agreement: The parties acknowledge this is a negotiated agreement, that they have had this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship.
- M. No personal liability: No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Contract, whether expressed or implied, nor for any statement or representation made or in any connection with this Agreement.

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

**5 STAR TESTING, INC.**

**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:** Exhibit A – General Scope of Work  
Exhibit B – Debarment Certificate

17-115

## ATTACHMENT B

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

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

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

1. The lower tier contractor certified, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
2. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this exhibit, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. The undersigned may contact the City for assistance in obtaining a copy of these regulations.
5. I understand that a false statement of this certification may be grounds for termination of the contract.

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

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

10/02/2017

<u>Date Rec'd</u>	9/19/2017
<u>Clerk's File #</u>	OPR 2015-0097
<u>Renews #</u>	

Submitting Dept	SOLID WASTE DISPOSAL	Cross Ref #	
Contact Name/Phone	DAVID PAINE 625-6878	Project #	
Contact E-Mail	DPAINE@SPOKANECITY.ORG	Bid #	RFP#4069-14
Agenda Item Type	Contract Item	Requisition #	BT
Agenda Item Name	AMENDMENT TO CONTRACT FOR REFRACTORY INSTALLATION AT WTE		

Agenda Wording

Amendment to contract with Zampell Refractories, Inc., Newburyport, MA, for refractory installation and sandblasting services at the WTE. This amendment will add \$150,000.00 to the contract. The term of the contract will not change.

Summary (Background)

Sandblasting of tube areas in boilers, convection cavity, and superheater tubes, screen tubes, and generator tubes is performed during scheduled maintenance outages. Also, refractory demolition, tile installation, and miscellaneous anchor welding must be performed. During the scheduled June 2017 outage, it was discovered that more work than anticipated was required.

<u>Fiscal Impact</u>	Grant related?	NO	<u>Budget Account</u>
	Public Works?	YES	
Expense	\$ 150,000.00		# 4490-44100-37148-54803
Select	\$		#
Select	\$		#
Select	\$		#
<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	CONKLIN, CHUCK	<u>Study Session</u>	PWC 9/25/17
<u>Division Director</u>	FEIST, MARLENE	<u>Other</u>	
<u>Finance</u>	KECK, KATHLEEN	<u>Distribution List</u>	
<u>Legal</u>	SCHOEDEL, ELIZABETH	ttauscher@spokanecity.org	
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	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)

Due to this additional discovery work, the contract with Zampell will require an amendment to add sufficient funding to allow for the scheduled work during the Fall 2017 outage. Sandblasting services and removal and replacement of refractory material is essential to keep the boilers in good working order for the continued operation of the waste to energy facility. Failure of any of these items could result in a plant shutdown.

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List




BRIEFING PAPER  
Public Works Committee  
Solid Waste Disposal  
September 25, 2017

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Subject

Amendment to contract with Zampell Refractories, Inc., Newburyport, MA, for refractory installation and sandblasting services at the WTE.

Background

Sandblasting of tube areas in boilers, convection cavity, and superheater tubes, screen tubes, and generator tubes is performed during scheduled maintenance outages. Also, refractory demolition, tile installation, and miscellaneous anchor welding must be performed.

During the scheduled June 2017 outage, it was discovered that more work than anticipated was required. Due to this additional discovery work, the contract with Zampell Refractories, Inc., will require an amendment to add sufficient funding to allow for the scheduled work during the Fall 2017 outage.

This amendment will add \$150,000.00 to the contract, for a total contract price of \$790,000.00. The term of the contract will not change.

Impact

Sandblasting services and removal and replacement of refractory material is essential to keep the boilers in good working order for the continued operation of the waste to energy facility. Failure of any of these items could result in a plant shutdown. This amendment will ensure that the contract is sufficiently funded to complete this required work.

Action

Approval of this amendment is recommended.

Funding

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



**City of Spokane**

**CONTRACT AMENDMENT**

Title: **REFRACTORY INSTALLATION AND  
SANDBLASTING SERVICES**

This Contract Amendment including additional compensation is made and entered into by and between the **City of Spokane** as ("City"), a Washington municipal corporation, and **ZAMPELL REFRACTORIES, INC.**, whose address is 3 Stanley Tucker Drive, Newburyport, Massachusetts 01950-4017, 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 REFRACTORY INSTALLATION AND SANDBLASTING SERVICES AT THE CITY'S WASTE TO ENERGY FACILITY; 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, dated June 4, 2015, and June 18, 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 shall become effective upon signatures of the parties.

**3. COMPENSATION.**

The City shall pay an additional amount not to exceed **ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00)** for everything furnished and done under this Contract Amendment.

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 Extension by having legally-binding representatives affix their signatures below.

**ZAMPELL REFRACTORIES, 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 Contract Extension:**

17-116



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

10/02/2017

<u>Date Rec'd</u>	9/20/2017
<u>Clerk's File #</u>	OPR 2017-0661
<u>Renews #</u>	

<u>Submitting Dept</u>	POLICE	<u>Cross Ref #</u>	
<u>Contact</u>	JUSTIN 625-4115	<u>Project #</u>	
<u>Contact E-Mail</u>	JCLUNDGREN@SPOKANEPOLICE.ORG	<u>Bid #</u>	
<u>Agenda Item Type</u>	Contract Item	<u>Requisition #</u>	
<u>Agenda Item Name</u>	0680-DOT FMCSA FY2017 HIGH PRIORITY GRANT		

Agenda Wording

To accept funding from the U.S Department of Transportation's Federal Motor Carrier Safety Administration FY2017 High Priority Grant (HP-CMV) in the amount of \$135,345.00 with the City providing a 20% match. CFDA # 20.237. Term 07/01/2017-09/30/2019.

Summary (Background)

In January 2017 Spokane PD submitted a grant application to the U.S Department of Transportation for the FY2017 High Priority - Commercial Motor Vehicle (HP-CMV) program. SPD will use the funds to continue the Ticketing Aggressive Cars & Trucks (TACT) program. SPD will conduct an enforcement and public awareness campaign to reduce collisions with commercial vehicles. Part of the funding will be used to purchase two motor vehicles to be used by the commercial motor vehicle inspectors.

<u>Fiscal Impact</u>	Grant related?	YES	<u>Budget Account</u>
	Public Works?	NO	

Revenue	\$ 135,345.00	# 1620-91754-21700-33120-99999
Expense	\$ 135,345.00	# 1620-91754-21700-VARIOUS
Expense	\$ 23,884.00	# 0680-91754-21700-VARIOUS
Select	\$	#

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	OLSEN, ERIC	<u>Study Session</u>	PSC MEETING
<u>Division Director</u>	OLSEN, ERIC	<u>Other</u>	
<u>Finance</u>	DOVAL, MATTHEW	<u>Distribution List</u>	
<u>Legal</u>	DALTON, PAT	SPDFINANCE	
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	MDOVAL	
<u>Additional Approvals</u>		JGRIFFIN	
<u>Purchasing</u>		JGOLDMAN	
		BMOON	



U.S Department of Transportation

**Federal Motor Carrier Safety  
Administration**

## Grant Agreement

**1. RECIPIENT NAME AND ADDRESS**

City of Spokane  
808 W Spokane Falls Blvd  
Spokane, WA 99201-3333

**2. AGREEMENT NUMBER:** FM-MHP-0289-17

**3. AMENDMENT NO.** 0

**4. PROJECT PERFORMANCE PERIOD:** FROM 07/01/2017 TO 09/30/2019

**5. FEDERAL FUNDING PERIOD:** FROM 07/01/2017 TO 09/30/2019

**1A. IRS/VENDOR NO.** 916001280

**1B. DUNS NO.** 115528189

**6. ACTION** New

**7. CFDA#:** 20.237

**8. PROJECT TITLE**  
Implementation of the FY 2017 High Priority Grant (HP-CMV)

TITLE	FEDERAL	NON-FEDERAL	TOTAL
<b>9. PREVIOUS AGREEMENTS</b>	0.00	0.00	0.00
<b>10. THIS AGREEMENT</b>	135,345.00	23,884.00	159,229.00
<b>11. TOTAL AGREEMENT</b>	135,345.00	23,884.00	159,229.00

**12. INCORPORATED ATTACHMENTS**

THIS AGREEMENT INCLUDES THE FOLLOWING ATTACHMENTS, INCORPORATED HEREIN AND MADE A PART HEREOF:

FMCSA Financial Assistance Agreement General Provisions and Assurances; Recipient project plan and budget incorporated by reference unless/except as noted below.

**13. STATUTORY AUTHORITY FOR GRANT/ COOPERATIVE AGREEMENT**

49 U.S.C. §§ 31102(l); 31104 (2016), as amended by the FAST Act, Pub. L. No. 114-94, §§ 5101(a) and (c) (2015).

**14. REMARKS**

See award conditions.

**GRANTEE ACCEPTANCE**

**AGENCY APPROVAL**

**15. NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL**

Mr. Justin Lundgren

**17. NAME AND TITLE OF AUTHORIZED FMCSA OFFICIAL**

Mr. Brandon Poarch  
State Programs Manager

**16. SIGNATURE OF AUTHORIZED GRANTEE OFFICIAL**

Electronically Signed

**16A. DATE**

09/20/2017

**18. SIGNATURE OF AUTHORIZED FMCSA OFFICIAL**

Electronically Signed

**18A. DATE**

09/20/2017

**AGENCY USE ONLY**

**19. OBJECT CLASS CODE:** 41000

**20. ORGANIZATION CODE:** M600000000

**21. ACCOUNTING CLASSIFICATION CODES**

DOCUMENT NUMBER	FUND	BY	BPAC	AMOUNT
FM-MHP-0289-17-01-00	17X05717MH	2017	0905710MHP	135,345.00

Federal Financial Report Cycle			
Reporting Period Start Date	Reporting Period End Date	Reporting Type	Reporting Period Due Date
07/01/2017	09/30/2017	Quarterly	10/30/2017
10/01/2017	12/31/2017	Quarterly	01/30/2018
01/01/2018	03/31/2018	Quarterly	04/30/2018
04/01/2018	06/30/2018	Quarterly	07/30/2018
07/01/2018	09/30/2018	Quarterly	10/30/2018
10/01/2018	12/31/2018	Quarterly	01/30/2019
01/01/2019	03/31/2019	Quarterly	04/30/2019
04/01/2019	06/30/2019	Quarterly	07/30/2019
07/01/2019	09/30/2019	Final	12/29/2019

## AWARD CONDITIONS

- As authorized by 49 U.S.C. sections 31102(l) and 31104, the Federal Motor Carrier Safety Administration (FMCSA) may award High Priority (HP) Program funding for eligible activities or projects related to motor carrier safety and/or innovative technology deployment.

The purpose of this grant award to the City of Spokane is to reduce the percentage of collisions involving commercial motor vehicles and passenger vehicles by 20% by the end of 2018. This will be accomplished by educating commercial motor vehicle drivers by partnering with local business and city departments and conducting safety presentations.

The FMCSA approves the total project plan, line item budget and budget narrative as requested in the original application. The FY 2017 total recommended amount is \$159,229. (Federal award = \$135,345. / State match = \$23,884.)

# AWARD ATTACHMENTS

City of Spokane

FM-MHP-0289-17-01-00

1. Terms and Conditions



**FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**  
**FINANCIAL ASSISTANCE AGREEMENT GENERAL PROVISIONS AND ASSURANCES**

**FY 2017**

**Section 1. Grant Authority**

**a. Contract Authority.**

The Federal Motor Carrier Safety Administration's (FMCSA) authorizing legislation, The Fixing America's Surface Transportation Act [FAST Act], Pub. L. No. 114-94, §5101 (2015) granted FMCSA contract authority. As codified in 49 U.S.C. §31104, the Secretary of Transportation's approval of the grant funds made available imposes a contractual obligation upon the United States for payment of the Government's share of costs in carrying out the grant objectives.

**b. Lapse in Appropriations and/or Authorization.**

Except in limited circumstances, the absence of FMCSA appropriations and/or authorization prevents the continuation of Federal supervision and support to the performance of a grant. In the absence of such supervision or support, the Recipient may only continue to proceed with its work if (1) the performance of such grant is not incurring obligations from the lapsed appropriations; (2) if continued grant management supervision or support is not critical to the Recipient's continued performance of the work; (3) and FMCSA has approved the continuation of such work. FMCSA will make such determinations in accordance with the Executive Office of the President, Office of Management and Budget, Memorandum "Planning for Agency Operations During a Lapse in Government Funding" (April 7, 2011), and any amendments or updated guidance thereto.

**Section 2. Effective Date.**

Recipient acknowledges that Federal funds are obligated on the effective date of the Grant Agreement. The effective date is the date that the Grant Agreement contains the authorized signatures of both parties to this agreement. Where the dates accompanying the signatures differ from party to party, the effective date of the Grant Agreement shall be the most recent of these dates.

**Section 3. Electronic Signatures.**

The Recipient understands that electronic signatures are binding. An electronic signature to the Grant Agreement commits the Recipient to these Provisions and Assurances, as well as all requirements denoted in Section 4.

**Section 4. General Requirements.**

**a. Obligation of Recipient to Comply.**

The Recipient understands that by signing the Grant Agreement, the Recipient is agreeing to carry out the approved project plan and the approved budget and to comply with all applicable Federal laws and requirements imposed by the FMCSA concerning special requirements of law, program requirements, and other administrative requirements. This includes, but is not limited to: (1) 49 U.S.C. chapters 311 and 313 (2016), as applicable and denoted in the Notice of Grant Agreement; (2) FAST Act, Pub. L. No. 114-94, §§5101 and 5104 (2015), as applicable and denoted in the Notice of Grant Agreement; (3) U.S. Department of Transportation (DOT) regulations; (4) the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR

part 200); and (5) the Federal Grant and Cooperative Agreement Act of 1977

For all Federal awards, compliance with statutory and national policy requirements also includes the provisions of the Federal Funding and Accountability Transparency Act (FFATA), which includes requirements on executive compensation, and also requirements implementing the Act for the non-Federal entity, codified at 2 CFR part 25 and 2 CFR part 170. See also statutory requirements for whistleblower protections at 10 U.S.C. §§ 2324 and 2409 and 41 U.S.C. § § 4304, 4310, and 4712 §§ .

**b. Application of Federal, State, and Local Laws and Regulations.**

**i. Federal Laws.**

The Recipient understands that Federal laws, regulations, policies, and related administrative practices applicable to this Agreement on the date the Agreement was executed may be modified from time to time. The Recipient agrees that the most recent of such Federal requirements will govern the administration of this Agreement at any particular time. Likewise, new Federal laws, regulations, policies and administrative practices may be established after the date the Agreement has been executed and may apply to this Agreement. To achieve compliance with changing Federal requirements, the Recipient agrees to include in all Subrecipient agreements and third party contracts financed with FMCSA assistance, specific notice that Federal requirements may change and the changed requirements will apply to the Project as required. All limits or standards set forth in this Agreement to be observed in the performance of the Project are minimum requirements.

**ii. State or Territorial Law and Local Law.**

Except to the extent that a Federal statute or regulation preempts State or territorial law, nothing in this Agreement shall require the Recipient to observe or enforce compliance with any provision thereof, perform any other act, or do any other thing in contravention of any applicable State or territorial law; however, if any of the provisions of this Agreement violate any applicable State or territorial law, or if compliance with the provisions of this Agreement would require the Recipient to violate any applicable State or territorial law, the Recipient agrees to notify the FMCSA immediately in writing in order that FMCSA and the Recipient may make appropriate arrangements to proceed with the Project as soon as possible.

**c. Subrecipients.**

State Recipients shall follow State law and procedures when awarding and administering subawards to local and Indian tribal governments including 2 CFR § 200.317. All other non-federal entities, including Subrecipients of a State, will follow 2 CFR §§ 200.318, General procurement standards, through 200.326, Contract provision, as well as the Standards for Financial and Program Management, at §§ 200.300 through 200.309. Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

**d. Subawards.**

Subaward means an award provided by a pass-through entity to a Subrecipient for the Subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

**e. Pass-Through Entity.**

Pass-through entity means a non-Federal entity that provides a subaward to a Subrecipient to carry out part of a Federal program. All Pass-Through Entities must comply fully with 2 CFR §§ 200.330, 200.331, 200.332 and 200.505.

**f. Prohibition Against Transferring An Award.**

The Recipient is prohibited from transferring or subrogating their rights and responsibilities of the grant program and funds associated with that grant to another entity. Subrogation is when a non-federal entity substitutes another entity, not awarded the subject grant by FMCSA, to a lawful claim, demand, or right, so that that entity succeeds to the rights of the other in relation to the debt or claim, and its rights, remedies, or fund access. The act of subawarding to a Subrecipient is not considered as the subrogation of the Recipient's award.

**Section 5. Internal Controls. The Recipient must:**

- a. Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO);
- b. Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards;
- c. Evaluate and monitor the non-Federal entity's compliance with statute, regulations and the terms and conditions of Federal awards;
- d. Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings; and
- e. Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state and local laws regarding privacy and obligations of confidentiality.

**Section 6. Ethics.**

**a. Written Code of Ethics.**

The Recipient agrees to maintain a written code or standards of ethical conduct that shall govern the performance of its officers, employees, board members, or agents engaged in the award and administration of contracts supported by Federal funds. The code or standards shall provide that the Recipient's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors or anything of monetary value from present or potential contractors, Subrecipients, or regulated entities. The Recipient may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. As permitted by State or local law or regulations, such code or standards shall provide for penalties, sanctions, or other disciplinary actions for violations by the Recipient's officers, employees, board members, or agents, or by contractors or Subrecipients or their

agents.

**b. Personal Conflict of Interest.**

The Recipient's code or standards must provide that no employee, officer, board member, or agent of the Recipient may participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the parties set forth below has a financial or other interest in the firm selected for award:

- i. The employee, officer, board member, or agent;
- ii. Any member of his or her immediate family;
- iii. His or her partner; or
- iv. An organization that employs, is considering to employ, or is about to employ, any of the above.

**c. Organizational Conflicts of Interest.**

The Recipient's code or standards of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interests. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract or subaward, may, without some restrictions on future activities, result in an unfair competitive advantage to the contractor or Subrecipient or impair the contractor's or Subrecipient's objectivity in performing the contract work.

**Section 7. Hatch Act.**

The Recipient agrees to comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7321-7326), which limit the political activities of state or local employees whose principal employment is in connection with programs financed in whole or in part by loans or grants made by the United States or a Federal agency. The Hatch Act specifically exempts employees of educational institutions, and the Hatch is not applicable to private, nonprofit organizations unless the statutes through which the nonprofit organizations derive their federal funding contain a provision stating that the recipient organizations are deemed to be state or local government agencies for purposes of the Hatch Act. On December 19, 2012, Congress passed the Hatch Act Modernization Act of 2012 (the Act). The Act became effective on January 27, 2013. Now, only state, D.C., or local government employees whose salaries are paid for entirely by federal funds are prohibited from running for partisan office. All other state, D.C., and local employees, even if they are otherwise covered by Hatch Act restrictions are free under the Hatch Act to run for partisan office.

**Section 8. Limitation on Use of Federal Funds for Lobbying for Grants in Excess of \$100,000.**

By signing this agreement, the Recipient declares that it is in compliance with 31 U.S.C. § 1352, which prohibits the use of federally appropriated funds to influence a Federal employee, officer, or Member of Congress in connection with the making or modification of any Federal grant, loan, contract, or cooperative agreement. Unless the payment of funds is otherwise reported to FMCSA, signing this agreement constitutes a declaration that no funds, including funds not federally appropriated, were used or agreed to be used to influence this grant.

Recipients of subawards in excess of \$100,000 must make the same declarations to the Recipient. With respect to the payment of funds not federally appropriated by the Recipient and Subrecipients, the Recipient must report to the FMCSA the name and address of each person paid or performing services for which payment is made, the amount paid, and the activity for which the person was paid.

**Section 9. Contracting (Federal Standards).**

The Recipient and Subrecipients agree to comply with the Procurement Standards requirements set forth at 2 CFR §§ 200.317 through 200.326 inclusive, whichever may be applicable, and with applicable supplementary U.S. DOT or FMCSA directives or regulations. If determined necessary for proper Project administration, FMCSA reserves the right to review the Recipient's technical specifications and requirements.

#### **Section 10. Notification Requirement.**

With respect to any procurement for goods and services (including construction services) having an aggregate value of \$500,000 or more, the Recipient agrees to:

- a. Specify in any announcement of the awarding of the contract for such goods or services the number of Federal funds that will be used to finance the acquisition; and
- b. Express the said amount as a percentage of the total costs of the planned acquisition.

#### **Section 11. Debarment and Suspension.**

The Recipient agrees to obtain certifications on debarment and suspension from its third-party contractors and Subrecipients and otherwise comply with U.S. DOT regulations, Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants), 49 CFR part 32. This action of certification shall take place for each federal year, regardless of prior certification completed for a Subrecipient or contractor.

#### **Section 12. Notification of Third Party Contract or Subaward Disputes or Breaches.**

The Recipient agrees to notify FMCSA of any current or prospective major dispute, breach, or litigation pertaining to any third-party contract or subaward. If the Recipient seeks to name FMCSA as a party to litigation for any reason, the Recipient agrees first to inform FMCSA before doing so. This provision applies to any type of litigation whatsoever, in any forum.

#### **Section 13. Participation by Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals.**

FMCSA encourages the Recipient to utilize small business concerns owned and controlled by socially and economically disadvantaged individuals (as that term is defined for other DOT agencies in 49 CFR part 26) in carrying out the Project.

#### **Section 14. Records Retention.**

##### **a. Requirement to Retain Records.**

During the course of the Project and for three years after the final Federal financial report is submitted (form SF-425), the Recipient agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as FMCSA may require. Reporting and record-keeping requirements are set forth in 2 CFR § 200.333.

##### **b. Access to Recipient and Subrecipient Records.**

The Recipient, and related subrecipients, will give FMCSA, the Secretary of Transportation, the Comptroller General of the United States, or any of their duly authorized representatives, and, if appropriate the State, through any authorized representative, access to and the right to examine all records, books, papers or

documents related to the award and will establish a proper accounting system in accordance with generally accepted accounting standards. Access requirements to records are set forth in 2 CFR § 200.336.

## **Section 15. Audit and Inspection.**

### **a. Inspector General Act of 1978.**

Under the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3 § 1 et seq., an audit of the award may be conducted at any time.

### **b. Single Audit Act Amendments of 1996.**

The Recipient agrees to undergo the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and 2 CFR § 200.501.

### **c. Other Audit Requirements.**

A Recipient that is: (a) a State, local government or Indian tribal government, an institution of higher education or nonprofit organization agrees to comply with the audit requirements of 2 CFR § 200.501, and any revision or supplement thereto; (c) a private for-profit organization agrees to comply with the audit requirements of 2 CFR § 200.501(h).

It is imperative that Recipients submit required Single Audits within the time limits specified in the Circular. The Recipient agrees to submit the data collection form and copies of the reporting package required under the Single Audit Act Amendments of 1996 and 2 CFR § 200.501 to:

The Federal Audit Clearinghouse Bureau of the Census  
1201 East 10 Street,  
Jefferson, IN 47132.

The Recipient agrees to obtain any other audits required by FMCSA. Project closeout will not alter the Recipient's audit responsibilities. Audit costs for Project administration and management are allowable under this Project to the extent authorized by 2 CFR § 200.501.

The Recipient agrees to permit FMCSA, the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Recipient and its Subrecipients pertaining to the Project. The Recipient agrees to require each Subrecipient to permit the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that subaward, and to audit the books, records, and accounts involving that subaward as it affects the Project.

## **Section 16. Responsibility for Reporting Fraudulent Activity, Waste, and Abuse.**

The Recipient understands that the Federal government shall pursue administrative, civil, or criminal action under a variety of statutes relating to fraud and making false statement or claims.

The Recipient is required to contact the DOT, the Office of Inspector General (OIG), if the Recipient becomes aware of the existence (or apparent existence) of fraudulent activity, waste, or abuse.



The OIG has authority within the DOT to conduct criminal investigations. The DOT OIG maintains a post office box and a toll-free hotline for receiving information from individuals concerning fraud, waste, or abuse under DOT grants and cooperative agreements. The hotline is available 24 hours a day, 7 days a week at <https://www.oig.dot.gov/Hotline>. The identity of the caller is kept confidential, and callers are not required to give their names.

Examples of fraud, waste, and abuse that should be reported include, but are not limited to, embezzlement, misuse, or misappropriation of grant funds or property, and false statements, whether by organizations or individuals. Other examples include, but not limited to, theft of grant funds for personal use; using funds for non-grant-related purposes; theft of federally owned property or property acquired or leased under a grant; charging inflated building rental fees for a building owned by the Recipient; submitting false financial reports; and submitting false financial data in bids submitted to the Recipient (for eventual payment under the grant).

## **Section 17. Budget and Finance.**

The Recipient agrees to carry out Agreement activities and seek reimbursement in accordance with the Approved Project Budget after securing FMCSA written approval. The funding of items identified in the budget constitutes FMCSA's authorization for the Recipient to incur these costs, if they are allowable, allocable, necessary, and reasonable. Furthermore, funds cannot be spent that violate any FMCSA policy or grants manual. Costs not specifically budgeted in this Agreement may be allowable if prior approval is not required and costs are incurred consistently with the applicable cost principles.

Prior Approval means written permission provided by an FMCSA authorized official in advance of an act that would result in either (1) the obligation or expenditure of funds or (2) the performance or modification of an activity under the grant-supported project where such approval is required. Prior approval must be obtained in writing from the designated Grants Management Officer or FMCSA authorized official for the grant involved. Documentation of the approved budget on the Notice of Grant Award constitutes prior approval. Prior approval applies for the performance of activities and expenditure of funds as described in the grant application, unless otherwise restricted by the terms and conditions of the Agreement.

In accordance with 2 CFR § 200.407 and § 200.308, the Recipient must obtain prior, written approval from FMCSA before making any revisions to the approved project budget and/or project plan: (1) extending the project period of the grant beyond the project period end date specified in the most recent revision of the Agreement; (2) that would require any transfer of funds between Standard Form (SF) 424A (direct-cost budget categories) cumulatively greater than ten percent of the total approved project budget; or (3) that require the addition of expenditures for items or services not approved in the original project plan. Examples include: increased cost of equipment purchased; subawarding, transferring or contracting out of any work under a Federal award not included in the original approved budget; or a first-time request to recover indirect costs.

The Recipient agrees to submit a request for prior approval no less than 30 days prior to the expiration of the Agreement. The FMCSA will not process requests for prior approval received less than 30 days from the Agreement expiration date. Within 30 calendar days from the date of the Recipient's request for prior approval, FMCSA will review the request and notify the Recipient whether the request has been approved. If the revision is still under consideration at the end of 30 calendar days, FMCSA will inform the Recipient in writing of the date when the Recipient may expect the decision.

The Recipient may, without prior approval from FMCSA, make any reasonable and necessary modification to the project budget if such deviations do not cumulatively exceed, or expect to exceed, ten percent of the total approved project amount and provided that such deviations only involve the transfer of funds between expenditure items, cost objectives or categories authorized by FMCSA in the currently approved budget. The Recipient agrees to notify FMCSA of this change.

The Recipient agrees to establish and maintain for the Project either a separate set of accounts or accounts within the framework of an established accounting system, in a manner consistent with 2 CFR § 200.302, as amended, whichever is applicable. Consistent with the provisions of 2 § 200.305, as amended, whichever is applicable, the Recipient agrees to record in the Project Account, and deposit in a financial institution all Project payments received by it from FMCSA pursuant to this Agreement and all other funds provided for, accruing to, or otherwise received because the Project (Project Funds). The Recipient is encouraged to use financial institutions owned at least 50 percent by minority group members.

All costs charged to the Project, including any approved services contributed by the Recipient or others, shall be supported by properly executed payroll documents, time and attendance records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. All match expenditures shall be supported by appropriate records. The Recipient also agrees to maintain accurate records of all Program Income derived from Project implementation. The Recipient agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other financial documents pertaining in whole or in part to the Project shall be clearly identified, readily accessible, and, to the extent feasible, kept separate from documents not pertaining to the Project.

## **Section 18. Payments.**

### **a. Request by the Recipient for Payment.**

The Recipient's request for payment of the Federal share of approved costs shall be made to FMCSA and will be acted upon by FMCSA as set forth in this section. Each payment made to the Recipient must be in compliance with Department of the Treasury regulations, "Rules and Procedures for Funds Transfers, 31 CFR part 205. To receive a Federal assistance payment, the Recipient must:

- i. Have demonstrated or certified that it has made a binding commitment of non-Federal funds, if applicable, adequate when combined with Federal payments, to cover all costs to be incurred under the Project to date. A Recipient required by Federal statute or this Agreement to provide contributory matching funds or a cost share agrees:
  - A. To refrain from requesting or obtaining Federal funds in excess of the amount justified by the contributory matching funds or cost share that has been provided; and
  - B. To refrain from taking any action that would cause the proportion of Federal funds made available to the Project at any time to exceed the percentage authorized under this Agreement. The requirement for contributory matching funds or cost share may be temporarily waived only to the extent expressly provided in writing by FMCSA.
- ii. Have submitted to FMCSA all financial and progress reports required to date under this Agreement;
- iii. Have identified the source(s) of financial assistance provided under this Project, if applicable, from which the payment is to be derived; and
- iv. Have expended any earned Program Income before requesting any federal funds for reimbursement.

### **b. Delphi eInvoicing System for DOT Financial Assistance Awardees.**

Subject to the requirements in 2 CFR § 200.305, payments will be made after receipt of required FMC SA reporting forms and supporting documentation. Each payment request must be made electronically via the Delphi eInvoicing System.



The following are the procedures for accessing and utilizing the Delphi elnvoicing System.

i. Grant Recipient Requirements.

- A. Recipient must have internet access to register and submit payment requests through the Delphi elnvoicing system.
- B. Recipient must submit payment requests electronically and FMCSA must process payment requests electronically.

ii. System User Requirements.

- A. Recipients should contact FMCSA to request access to the system. The FMCSA will provide the Recipient's name and email address to the DOT Financial Management Office. The DOT will then notify the Recipient to register for the system through an electronic invitation. The Recipient must complete online training prior to DOT giving system access.
- B. The DOT will send the Recipient an email with an electronic form to verify the Recipient's identity. The Recipient must complete the form, and present it to a Notary Public for verification. The Recipient will return the notarized form to:

DOT Enterprise Services Center  
FAA Accounts Payable, AMZ-1 00  
PO Box 25710  
Oklahoma City, OK 73125.

- C. The DOT will validate the form and email a user ID and password to the Recipient. The Recipient should contact the FMCSA grants management office with changes to their system information.

- D. Note: Additional information, including access forms and training materials, can be found on the DOT elnvoicing website:  
<https://www.transportation.gov/cfo/delphi-einvoicing-system>

E. Waivers.

DOT Financial Management officials may, in highly limited circumstances and on a case by case basis, waive the requirement to register and use the electronic grant payment system. Waiver request forms can be obtained on the DOT elnvoicing website <https://www.transportation.gov/cfo/delphi-einvoicing-system> or by contacting FMCSA.

Recipients must explain why they are unable to use or access the internet to register and enter payment requests.

**c. Reimbursement Payment by FMCSA. If the reimbursement method is used, the Recipient agrees to:**

- i. Complete and submit Standard Form 3881, "Payment Information Form - ACH Payment Vendor Payment System," to FAA-ESC; and

- ii. Complete and submit, on at least a quarterly basis, Standard Form 270, "Request for Advance or Reimbursement," to FMCSA.
- iii. Possess and maintain a current DUNS number and entity registration with the System for Award Management ([www.sam.gov](http://www.sam.gov)).

Upon receipt of a payment request and adequate accompanying information (invoices in accordance with applicable cost principles), FMCSA will authorize payment by direct deposit provided the Recipient: (i) is in compliance with its obligations under this Agreement, (ii) has satisfied FMCSA that it needs the requested Federal funds during the requisition period, and (iii) is making adequate and timely progress toward Project completion. If all these circumstances are present, FMCSA may reimburse approved costs incurred by the Recipient up to the maximum amount of FMCSA's share of the total Project funding. FMCSA will employ a payment term of 20 days. The clock will start running for payment on receipt of the invoice by FMCSA's financial processor.

**d. Other Payment Information.**

The Recipient agrees to adhere to and impose on its Subrecipients all applicable foregoing "Payment by FMCSA" requirements of this Agreement. If the Recipient fails to adhere to the foregoing "Payment by FMCSA" requirements of this Agreement, FMCSA may revoke the portion of the Recipient's funds that has not been expended.

**e. Effect of Program Income, Refunds, and Audit Recoveries on Payment.**

In accordance with 2 CFR § 200.305(b)(5) State, local government, nonprofit organizations and Indian tribal Recipients and Subrecipients shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash reimbursements.

**f. Reimbursable Costs.** The Recipient's expenditures will be reimbursed only if they meet all requirements set forth below:

- i. Conform with the Project description and the approved Project Budget and all other terms of this Agreement;
- ii. Be necessary to accomplish the Project;
- iii. Be reasonable for the goods or services purchased;
- iv. Be actual net costs to the Recipient (i.e., the price paid minus any refunds, rebates, or other items of value received by the Recipient that have the effect of reducing the cost actually incurred);
- v. Be incurred (and be for work performed) after the Federal Funding Period start date of this Agreement, unless specific prior authorization from FMCSA to the contrary is received in writing (pre-award costs);
- vi. Unless permitted otherwise by Federal statute or regulation, conform with Federal guidelines or regulations and Federal cost principles as set forth below:

**A.** For Recipients that are governmental organizations, institutions of higher education,

private non-profit organizations, the cost principles of 2 CFR § 200, subpart E; and

- B.** For Recipients that are for-profit organizations, the standards of the Federal Acquisition Regulations, 48 CFR chapter I, subpart 31.2, "Contracts with Commercial Organizations" apply.

- vii.** Be satisfactorily documented; and

- viii.** Be treated uniformly and consistently as non-Federal funds under accounting principles and procedures approved and prescribed by FMCSA for the Recipient, and those approved or prescribed by the Recipient for its Subrecipients and contractors.

**g. Indirect Costs.**

If indirect costs are included in the approved budget, the Recipient may not request these costs for reimbursement absent a current approved indirect cost rate agreement submitted to the FMCSA Division Office, and included as part of the official grant record.

Indirect costs will not be reimbursed without documentation of an approved indirect cost rate from the Recipient's cognizant agency; however, a Recipient or Subrecipient that has never had a negotiated indirect cost rate may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely, without documentation. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time

As described in 2 CFR § 200.403, factors affecting allowability of costs, costs must be consistently charged as either indirect or direct costs, but may not be double-charged or inconsistently charged as both. Except as provided above, if a Recipient intends to request reimbursement of indirect costs, the Recipient must submit the proper documentation before vouchers are submitted for reimbursement. The Recipient must indicate in its budget that it will be seeking indirect costs, and a placeholder indirect cost rate will suffice until an approved rate can be determined.

The Recipient must obtain prior approval through formal amendment in order to recover indirect costs at an approved rate higher than the place holder indirect cost rate if the cumulative amount of such transfer exceeds or is expected to exceed 10 percent of the total approved budget.

The Recipient may not request additional grant funds to recover indirect costs that it cannot recover by shifting funding from direct costs to indirect costs. After this Grant Agreement has been signed, any request for changes to the indirect cost rate will require an amendment and must be approved by formal amendment if the change to the indirect cost rate is a new rate or would cause the cumulative amount of a budget transfer to exceed 10 percent of the total approved budget.

The cognizant agency for indirect costs may allow for a one-time extension of the current indirect cost rate of up to four years without further negotiation of a federally approved indirect cost rate. If the cognizant agency permits any one-time extension, the Recipient is locked in with that indirect cost rate until the end of the approved extension.

**h. Pre-Award Costs. A Recipient may be reimbursed for obligations incurred before the effective date of the award if:**

- i.** The Recipient receives prior written approval from the FMCSA before the effective date of the grant agreement;

- ii. The costs are necessary to conduct the project; and
- iii. The costs would be allowable under the grant, if awarded.

If a specific expenditure would otherwise require prior approval before making the expenditure (i.e. pursuant to 2 CFR § 200.407), then the Recipient must obtain FMCSA written approval before incurring the cost.

Recipient understands that the incurrence of pre-award costs in anticipation of an award is taken at the Recipient's risk and imposes no obligation on FMCSA to make the award or to increase the amount of the approved budget if (1) there is no award subsequently made; (2) an award is made for less than anticipated and is inadequate to cover the pre-award costs incurred; or (3) there are inadequate appropriations.

**i. Disallowed Costs.**

In determining the amount of Federal assistance FMCSA will provide, FMCSA will exclude:

- i. Any Project costs incurred by the Recipient before the effective date of this Agreement, or amendment or modification thereof, whichever is later, unless otherwise permitted by Federal Law or regulation, or unless an authorized representative of FMCSA states in writing to the contrary;
- ii. Any costs incurred by the Recipient that are not included in the latest approved Project Budget; and
- iii. Any costs attributable to goods or services received under a contract or other arrangement that is required to be, but has not been, concurred with or approved in writing by FMCSA.

The Recipient agrees that reimbursement of any cost under the "Payment by FMCSA," part of this Agreement does not constitute a final FMCSA decision about the allowability of that cost and does not constitute a waiver of any violation by the Recipient of the terms of this Agreement. The Recipient understands that FMCSA will not make a final determination about the allowability of any cost until an audit of the Project has been completed. If FMCSA determines that the Recipient is not entitled to receive any part of the Federal funds requested, FMCSA will notify the Recipient stating the reasons thereof. Project closeout will not alter the Recipient's obligation to return any funds due to FMCSA as a result of later refunds, corrections, or other transactions. Nor will Project closeout alter FMCSA's right to disallow costs and recover funds based on a later audit or other review. Unless prohibited by law,

FMCSA may offset any Federal assistance funds to be made available under this Project as needed to satisfy any outstanding monetary claims that the Federal Government may have against the Recipient. Exceptions pertaining to disallowed costs will be assessed based on their applicability, as set forth in the applicable Federal cost principals or other written Federal guidance.

**Section 19. Program Income.**

Recipient agrees to comply with the regulations relating to program income, located at 2 CFR §§ 200.305(b)(5) and 200.307 for State, local government, Indian tribal recipients, and non-profit organizations, and their Subrecipients.

Program income means gross income earned by the Recipient, Subrecipient, or contractor under a grant that is

directly generated by a grant-supported activity or earned because of the award during the award period. "During the grant period " is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

Program income includes, but is not limited to, user charges or user fees, income from fees for services performed, the use or rental of real or personal property acquired under federally- funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them. Per 2 CFR § 200.307 (c), Governmental revenues, taxes, special assessments, levies, fines, and other such revenues raised by a non-Federal entity are not program income unless the revenues are specifically identified in the Federal award or Federal awarding agency regulations as program income.

Recipients agree to use the Program income in accordance with 2 CFR §§ 200.305(b)(5) 200.307 for State, local government, nonprofit organizations and Indian tribal recipients and subrecipients.

## **Section 20. Reports.**

### **a. Performance Progress Reports.**

The Recipient will submit, at a minimum, quarterly performance progress reports and a final performance progress report at the completion of the award (within 90 days after) to the agency point of contact listed in the award document. Recipient must submit all performance progress report forms required by FMCSA. These reports will cover the period: January 1 -March 31, April 1-June 30, July 1- September 30, and October 1-December 31. The Recipient shall furnish one (1) copy of a quarterly performance progress report to the district office and respective Grant Manager, on or before the thirtieth (30th) calendar day of the month following the end of the quarter being reported. Each quarterly report shall set forth concise statements concerning activities relevant to the Project, and shall include, but not be limited to, the following:

- i. An account of significant progress (findings, events, trends, etc.) made during the reporting period;
- ii. A description of any technical and/or cost problem(s) encountered or anticipated that will affect completion of the grant within the time and fiscal constraints as set forth in this Agreement, together with recommended solutions or corrective action plans (with dates) to such problems, or identification of specific action that is required by the FMCSA, or a statement that no problems were encountered;
- iii. An outline of work and activities planned for the next reporting period; and
- iv. A status update/resolution for all outstanding findings from program reviews and/or audits.

### **b. Quarterly Financial Status Reports.**

The Recipient shall furnish one (1) copy of a quarterly financial status report to the division, and one (1) copy to the respective Grant Manager, on or before the thirtieth (30th) calendar day of the month following the end of the quarter being reported. The Recipient shall use SF-425, Federal Financial Report, to report the status of funds for all non-construction projects or programs. If the Recipient's accounting records are not normally kept on an accrual basis, the Recipient shall not be required

to convert its accounting system, but shall develop such accrual information through an analysis of the documentation on hand. The Recipient shall certify to the expenditure of its proposed cost share for the period being reported, in the "Remarks" block.

## **Section 21. Non-Discrimination.**

The Recipient will comply with all Federal authorities relating to nondiscrimination. These include, but are not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), which prohibits discrimination on the basis of race, color, or national origin, as implemented by 49 C.F.R. § 21.1 et seq. and 49 CFR § 303;
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), which prohibits discrimination on the basis of sex;
- Title IX of the Education Amendments of 1972, as amended, (20 U.S.C. § 1681 et seq.), which prohibits discrimination on the basis of sex in education programs or activities, as implemented by 49 CFR § 25.1 et seq.;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), which prohibits discrimination on the basis of age;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, which prohibits discrimination on the basis of disability and 49 CFR part 27;
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 - 12189), as implemented by Department of Justice regulations at 28 CFR parts 35 and 36, and Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Civil Rights Restoration Act of 1987, (102 Stat. 28.), "which restore[d] the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964.";
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prohibits discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting Department of Transportation guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP);
- Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. § 2000e et seq., 78 Stat. 252), which prohibits discrimination in employment on basis of race, color, national origin, religion, or disability, as implemented by 29 CFR § 1601.1, et seq.
- The Recipient also agrees to comply with the FMCSA Standard Title VI/Non-Discrimination Assurances (DOT Order No. 1050.2A).

## **Section 22. Executive Order on Equal Opportunity Related to Contracts.**

The Recipient will comply with all Federal statutes and Executive Orders relating to Equal Employment Opportunity.

The Recipient agrees to incorporate in all contracts having a value of over \$10,000, the provisions requiring compliance with Executive Order 11246, as amended, and implementing regulations of the United States Department of Labor at 41 CFR part 60, the provisions of which, other than the standard EEO clause and applicable goals for employment of minorities and women, may be incorporated by reference.

The Recipient agrees to ensure that its contractors and subcontractors, regardless of tier, awarding contracts and/or issuing purchase orders for material, supplies, or equipment over \$10,000 in value will incorporate the required EEO provisions in such contracts and purchase orders.

### **Section 23. Employment Policies.**

The Recipient further agrees that its own employment policies and practices will be without discrimination based on race, color, religion, sex, national origin, disability or age; and that it has an affirmative action plan (AAP) consistent with the Uniform Guidelines on Employee Selection Procedures, 29 CFR § 1607, and the Affirmative Action Guidelines, 29 CFR § 1608. The applicant/Recipient shall provide the AAP to FMCSA for inspection or copy upon request.

### **Section 24. Property.**

#### **a. General.**

In general, title to equipment and supplies acquired by a Recipient with DOT funds vests in the Recipient upon acquisition, subject to the property management requirements of 2 CFR §§ 200.302(b)(4); 200.307(d); 200.310; 200.313; 200.316; and 200.344(4).

A Recipient that is a State, local, or Indian tribal governments, institutions of higher education, and non-profits agrees to comply with the property management standards detailed in 2 CFR §§ 200.312 and 200.313, including any amendments thereto, and with other applicable Federal regulations and directives. A Recipient that is a for-profit entity agrees to comply with property management standards satisfactory to FMCSA.

#### **b. Use of Project Property.**

- i. The State Recipient agrees to use Project property for the purpose for which it was acquired under the period of performance of the Grant. State Recipients acknowledge that the FMCSA may ensure that the purpose of the grant is being satisfied. State Recipients acknowledge that FMCSA may request a copy of the State statute and procedures in determining whether a State is in compliance with its own State procedures, and to assist the FMCSA in determining the allocability, reasonableness, and allowability of costs.
- ii. The Non-State Recipient agrees to use Project property for appropriate Project purposes (which may include joint development purposes that generate program income, both during and after the award period, beginning on the effective date, and used to support public transportation activities) for the duration of the useful life of that property, as required by FMCSA. Should the Recipient unreasonably delay or fail to use Project property during the useful life of that property, the Recipient agrees that it may be required to return the entire amount of the Federal assistance expended on that property. The Non-State Recipient further agrees to notify FMCSA immediately when any Project property is withdrawn from Project use or when any Project property is used in a manner substantially different from the representations the Recipient has made in its Application or in the Project Description for the Grant Agreement or Cooperative Agreement for the Project.

#### **c. Maintenance.**

The State Recipient agrees to maintain Project property in accordance with State law and procedures.

The Non-State Recipient agrees to maintain Project property in good operating order, in compliance with any applicable Federal regulations or directives that may be issued.

**d. Records.**

The State Recipient agrees to maintain property records in accordance with State law and procedures. The Non-State Recipient agrees to keep satisfactory property records pertaining to the use of Project property, and submit to FMCSA upon request such information as may be required with this agreement.

**e. Incidental Use.**

Any incidental use of Project property will not exceed that permitted under applicable Federal laws, regulations, and directives.

**f. Encumbrance of Project Property.**

- i. The State Recipient agrees to maintain satisfactory continuing control of Project property in accordance with State law and procedures. The State Recipient understands that an encumbrance of project property may not interfere with the purpose for which the equipment was purchased.
- ii. The Non-State Recipient agrees to maintain satisfactory continuing control of Project property as follows:

**A. Written Transactions.**

The Non-State Recipient agrees that it will not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, subaward, grant anticipation note, alienation, innovative finance arrangement (such as a cross border lease, leveraged lease, or otherwise), or any other obligation pertaining to Project property, that in any way would affect the continuing Federal interest in that Project property.

**B. Oral Transactions.**

The Non-State Recipient agrees that it will not obligate itself in any manner to any third party with respect to Project property.

**C. Other Actions.**

The Non-State Recipient agrees that it will not take any action adversely affecting the Federal interest in or impair the Recipient's continuing control of the use of Project property.

- D. The Non-State Recipient agrees that no use under this section will interference with the purpose for which the equipment was purchased.

**g. Transfer of Project Property.**

- i. The State Recipient agrees to transfer Project property in accordance with State law and procedures.
- ii. The Non-State Recipient understands and agrees as follows:



A. The Non-State Recipient may transfer any Project property financed with Federal assistance authorized under 49 U.S.C. chapter 53 to a public body to be used for any public purpose with no further obligation to the Federal Government, provided the transfer is approved by the FMCSA Administrator and conforms with the requirements of 49 U.S.C. §§ 5334(h)(1) and (2). Any leasing or rental of equipment purchased by federal funds or state match/cost sharing, during the period of performance will be considered program income and will be managed, expended, and reported per 2 CFR § 200.307.

**B. Federal Government Direction.**

The Non-State Recipient agrees that the Federal Government may direct the disposition of, and even require the Recipient to transfer, title to any Project property financed with Federal assistance under the Grant Agreement or Cooperative Agreement.

**h. Leasing Project Property to Another Party.**

If the Non-State Recipient leases any Project property to another party, the Non-State Recipient agrees to retain ownership of the leased Project property, and assure that the lessee will use the Project property appropriately, either through a written lease between the Non-State Recipient and lessee, or another similar document.

Upon request by FMCSA, the Non-State Recipient agrees to provide a copy of any relevant documents. Any leasing or rental of equipment purchased by federal funds or state match/cost sharing, during the period of performance will be considered program income and will be managed, expended, and reported per 2 CFR § 200.307.

**i. Disposition of Project Property.**

i. The State Recipient may use its own disposition procedures, provided that those procedures comply with the laws of that State.

ii. The Non-State Recipient agrees to dispose of Project property as follows:

A. With prior FMCSA approval, the Non-State Recipient may sell, transfer, or lease Project property and use the proceeds to reduce the gross project cost of other eligible capital public transportation projects to the extent permitted by 49 U.S.C. §5334(h)(4). The Non-State Recipient also agrees that FMCSA may establish the useful life of Project property, and that it will use Project property continuously and appropriately throughout the useful life of that property.

B. Project Property with Expired Useful Life. When the useful life of Project property has expired, the Non-State Recipient agrees to comply with FMCSA's disposition requirements.

C. Project Property Prematurely Withdrawn from Use. For Project property withdrawn from appropriate use before its useful life has expired, the Recipient agrees as follows:

D. Notification Requirement. The Non-State Recipient agrees to notify FMCSA immediately when any Project property is prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.

**E. Calculating the Fair Market Value of Prematurely Withdrawn Project Property.** The Non-State Recipient agrees that the Federal Government retains a Federal interest in the fair market value of Project property prematurely withdrawn from appropriate use. The amount of the Federal interest in the Project property shall be determined by the ratio of the Federal assistance awarded for the property to the actual cost of the property. The Non-State Recipient agrees that the fair market value of Project property prematurely withdrawn from use will be calculated as follows:

- 1. Equipment and Supplies.** The Non-State Recipient agrees that the fair market value of Project equipment and supplies shall be calculated by straight-line depreciation of that property, based on the useful life of the equipment or supplies as established or approved by FMCSA. Information on straight line depreciation may be found in the Internal Revenue Code. The fair market value of Project equipment and supplies shall be the value immediately before the occurrence prompting the withdrawal of the equipment or supplies from appropriate use. In the case of Project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of that equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage.
- 2. Real Property.** The Non-State Recipient agrees that the fair market value of real property shall be determined either by competent appraisal based on an appropriate date approved by the Federal Government, as provided by 49 CFR part 24, or by straight line depreciation, whichever is greater.
- 3. Exceptional Circumstances.** The Non-State Recipient agrees that the Federal Government may require the use of another method to determine the fair market value of Project property. In unusual circumstances, the Non-State Recipient may request that another reasonable valuation method be used including, but not limited to, accelerated depreciation, comparable sales, or established market values. In determining whether to approve such a request, the Federal Government may consider any action taken, omission made, or unfortunate occurrence suffered by the Non-State Recipient with respect to the preservation of Project property withdrawn from appropriate use.

**j. Financial Obligations to the Federal Government.**

The Recipient agrees to remit to the Federal Government the Federal interest in the fair market value of any Project property prematurely withdrawn from appropriate use. In the case of fire, casualty, or natural disaster, the Recipient may fulfill its obligations to remit the Federal interest by either:

Investing an amount equal to the remaining Federal interest in like-kind property that is eligible for assistance within the scope of the Project that provided Federal assistance for the Project property prematurely withdrawn from use; or

Returning to the Federal Government an amount equal to the remaining Federal interest in the withdrawn Project property.

**k. Insurance Proceeds.**

If the Recipient receives insurance proceeds as a result of damage or destruction to the Project property, the Recipient agrees to:

- i. Apply those insurance proceeds to the cost of replacing the damaged or destroyed Project property taken out of service, or
- ii. Return to the Federal Government an amount equal to the remaining Federal interest in the damaged or destroyed Project property.

**l. Transportation of Hazardous Materials.**

The Recipient agrees to comply with applicable requirements of U.S. Pipeline and Hazardous Materials Safety Administration regulations, "Shippers - General Requirements for Shipments and Packagings," 49 CFR part 173, in connection with the transportation of any hazardous materials.

**m. Misused or Damaged Project Property.**

If any damage to Project property results from abuse or misuse occurring with the Recipient's knowledge and consent, the Recipient agrees to restore the Project property to its original condition or refund the value of the Federal interest in that property, as the Federal Government may require.

**n. Responsibilities after Project Closeout.**

The Recipient agrees that Project closeout by FMCSA will not change the Recipient's Project property management responsibilities as stated in these Grant Provisions and Assurances, and as may be set forth in subsequent Federal laws, regulations, and directives, except to the extent the Federal Government determines otherwise in writing.

**Section 25. Davis-Bacon Act Requirements.**

The Recipient agrees to comply, as applicable, with the provisions of the Davis Bacon Act (40 U.S.C. § 3145 and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 et seq.) regarding labor standards for federally-assisted construction sub-agreements.

**Section 26. Environmental Requirements.**

The Recipient agrees to comply, as applicable, with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

**Section 27. Government Rights (Unlimited).**

FMCSA shall have unlimited rights for the benefit of the Government in all other work developed in the performance of this Agreement, including the right to use same on any other Government work without

additional cost to FMCSA. The rights to any inventions made by a Recipient under an FMCSA financial assistance award are determined by the Bayh-Dole Act, Pub. L. 96-517, as amended, and codified in 35 U.S.C. § 200, et seq., except as otherwise provided by law.

**a. Patent Rights.**

If any invention, improvement, or discovery of the Recipient or any of its third-party contractors is conceived or first actually reduced to practice in the course of or under this Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Recipient agrees to notify FMCSA immediately and provide a detailed report. The rights and responsibilities of the Recipient, third party contractors and FMCSA with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.

If the Recipient secures a patent with respect to any invention, improvement, or discovery of the Recipient or any of its third-party contractors conceived or first actually reduced to practice in the course of or under this Project, the Recipient agrees to grant to FMCSA a royalty-free, non-exclusive, and irrevocable license to use and to authorize others to use the patented device or process for Federal Government purposes.

The Recipient agrees to include the requirements of the "Patent Rights" section of this Agreement in its third-party contracts for planning, research, development, or demonstration under the Project.

**b. Data Rights.**

The term "subject data" used in this section means recorded information, whether or not copyrighted, that is developed, delivered, or specified to be delivered under this Agreement. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to Project administration. The following restrictions apply to all subject data first produced in the performance of this Agreement:

- i. Except for its own internal use, the Recipient may neither publish or reproduce such data in whole or in part, or in any manner or form, nor may the Recipient authorize others to do so, without the written consent of FMCSA, until such time as FMCSA may have either released or approved the release of such data to the public.
- ii. As authorized by 2 CFR § 200.31S(b), FMCSA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:
  - A. Any work developed under a grant, cooperative agreement, sub-grant, sub-agreement, or third party contract, irrespective of whether or not a copyright has been obtained; and
  - B. Any rights of copyright to which a Recipient, Subrecipient, or a third-party contractor purchases ownership with Federal assistance.

- iii. When FMCSA provides assistance to a Recipient for a Project involving planning, research, or development of a system, program, document, enforcement concept, or any other activity provided for in the terms of this grant, it is generally FMCSA's intent to increase the body of knowledge, rather than to limit the benefits of the Project to those parties that have participated therein. Therefore, unless FMCSA determines otherwise, the Recipient understands and agrees that, in addition to the rights set forth in preceding portions of this section of this Agreement, FMCSA may make available to any FMCSA Recipient, Subrecipient, third party contractor, or third party subcontractor, either FMCSA's license in the copyright to the "subject data" derived under this Agreement or a copy of the "subject data" first produced under this Agreement. In the event that such a Project which is the subject of this Agreement is not completed, for any reason whatsoever, all data developed under that Project shall become subject data as defined herein and shall be delivered as FMCSA may direct.
- iv. Unless prohibited by State law, the Recipient agrees to indemnify, save and hold harmless FMCSA, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Recipient of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Recipient shall not be required to indemnify FMCSA for any such liability arising out of the wrongful acts of employees or agents of FMCSA.
- v. Nothing contained in this section on rights in data, shall imply a license to FMCSA under any patent or be construed as affecting the scope of any license or other right otherwise granted to FMCSA under any patent.
- vi. The requirements of this section of this Agreement do not apply to material furnished to the Recipient by FMCSA and incorporated in the work carried out under this Agreement, provided that such incorporated material is identified by the Recipient at the time of delivery of such work.
- vii. Unless FMCSA determines otherwise, the Recipient agrees to include the requirements of this section of this Agreement in its third-party contracts for planning, research, development, or demonstration under the Project.

**c. Acknowledgment or Support and Disclaimer.**

- i. An acknowledgment of FMCSA support and a disclaimer must appear in any Recipient publication, whether copyrighted or not, based on or developed under the Agreement, in the following terms:

"This material is based upon work supported by the Federal Motor Carrier Safety Administration under a grant/cooperative agreement/subaward, dated (fill-in appropriate identification of grant/cooperative agreement);"

- ii. All Recipient publications must also contain the following:

"Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of the Federal Motor Carrier Safety Administration and/or the U.S. Department of Transportation."

- iii. The Recipient agrees to cause to be erected at the site of any construction, and maintain during construction, signs satisfactory to FMCSA identifying the Project and indicating that FMCSA is participating in the development of the Project.

#### **Section 28. Drug Free Workplace.**

By signing this agreement, the Recipient certifies that it is in compliance with the Drug-Free Workplace Act (41 U.S.C. §§ 701 et seq.) and implementing regulations (49 CFR part 32), which require, in part, that Recipients prohibit drug use in the workplace, notify the FMCSA of employee convictions for violations of criminal drug laws occurring in the workplace, and take appropriate personnel action against a convicted employee or require the employee to participate in a drug abuse assistance program.

#### **Section 29. Background Screening.**

FMCSA reserves the right to perform individual background screening on key individuals of organizational units associated with the application at the effective date and at another interval thereafter for the life of the award. If in performance of a grant award requires Recipient organization personnel to have unsupervised physical access to a federally controlled facility for more than 180 days or access to a Federal information system, such personnel must undergo the personal identity verification credential process under Homeland Security Presidential Directive 12.

#### **Section 30. Site Visits.**

FMCSA, through its authorized representatives, has the right, at all reasonable times, to make site visits to review Project accomplishments and management control systems and to provide such technical assistance as may be required. If any site visit is made by FMCSA on the premises of the Recipient, Subrecipient, or contractor under this Agreement, the Recipient shall provide and shall require its Subrecipients or contractors to provide, all reasonable facilities and assistance for the safety and convenience of FMCSA representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner as will not unduly delay work being conducted by the Recipient, Subrecipient, or subcontractor.

**Section 31. Liability.** The Recipient acknowledges it is responsible for any act or omission of Recipient or Subrecipient, its officers, contractors, employees, or members, participants, agents, representatives, as appropriate, arising out of or in any way connected to activities authorized pursuant to this Agreement.

The Recipient acknowledges that FMCSA is not responsible for any act or omission of Recipient or Subrecipient, its officers, contractors, employees, or members, participants, agents, representatives, as appropriate, arising out of or in any way connected to activities authorized pursuant to this Agreement. This provision shall survive the expiration or termination of this Agreement.

#### **Section 32. Right of FMCSA to Terminate Agreement.**

##### **a. General Right to Suspend or Terminate Assistance Agreement.**

Upon written notice, the Recipient agrees that FMCSA may suspend or terminate all or part of the financial assistance provided herein if the Recipient has violated the terms of the Grant Agreement or these Provisions and Assurances, or if FMCSA determines that the purposes of the statute under which the Project is authorized would not be adequately served by continuation of Federal financial assistance for the Project. Any failure to make reasonable progress on the Project or other violation of this

Agreement that significantly endangers substantial performance of the Project shall provide sufficient grounds for FMCSA to terminate this Agreement. The Recipient agrees to give the Federal Motor Carrier Safety Administration at least 90 days' notice of its intention to terminate this agreement.

**b. Financial Obligations of the Government.**

In general, termination of any financial assistance under this Agreement will not invalidate obligations properly incurred by the Recipient and concurred by FMCSA before the termination date; to the extent those correctly accrued obligations cannot be cancelled.

However, if FMCSA determines that the Recipient has willfully misused Federal assistance funds by failing to make adequate progress, failing to make reasonable use of the Project property, facilities, or equipment, or failing to adhere to the terms of this Agreement, meet required match/cost sharing or maintenance of effort (MOE) levels, FMCSA reserves the right to require the Recipient to refund the entire amount of FMCSA funds provided under this Agreement or any lesser amount as may be determined by FMCSA.

**c. De-obligation of Funds.**

FMCSA reserves the right to unilaterally de-obligate any remaining grant or cooperative agreement funds due to the time elapsed since the effective date, lack of payment vouchers from the Recipient, lack of plans to expend funds based on this grant, failure to provide quarterly progress reports, or other such determination made by FMCSA. If FMCSA takes action to deobligate funds, a grant amendment/modification must be in place.

**Section 33. Project Completion, Settlement, and Closeout.**

**a. Project Completion.**

Within 90 days of the Project completion date or termination by FMCSA, the Recipient agrees to submit a final SF-425, Federal Financial Report, a certification or summary of Project expenses, and third party audit reports, as applicable.

**b. Remittance of Excess Payments.**

If FMCSA has made payments to the Recipient in excess of the total amount of FMCSA Federal funding due to cover accumulated expenses, the Recipient agrees to promptly remit that excess and interest as may be required by the "Payment by FMCSA" section of this Attachment.

**c. Project Closeout.**

Project closeout, as defined in 2 CFR § 200.16, occurs when all required Project work and all administrative procedures described in 2 CFR § 200.343, as applicable, have been completed, and when FMCSA notifies the Recipient and forwards the final Federal assistance payment, or when FMCSA acknowledges the Recipient's remittance of the proper refund amount. Project closeout shall not invalidate any continuing obligations imposed by allowable, allocable, and reasonable costs on the Recipient by this Agreement that supports the project plan(s) or by the FMCSA's final notification or acknowledgment, if it occurs within the period of performance.

**Section 34. Severability.**

If any provision of this Agreement is held invalid, all remaining provisions of this Agreement shall continue in full force and effect to the extent not inconsistent with such holding.

**Section 35. Entire Agreement and Amendments.**

This Agreement constitutes the entire agreement between the parties. All prior discussions and understandings concerning such scope and subject matter are superseded by this Agreement.

Any modification not specifically permitted by this agreement requires an Amendment. These modifications may be made only in writing, signed by each party's authorized representative, and specifically referred to as an Amendment to this Agreement. Electronic signatures are binding. However, retroactive modifications to the project plan(s) or any aspects of the budget will not be approved.

#### **Section 36. Use of Information Obtained.**

Information obtained under this agreement may only be used by the Recipient to accomplish the project plan under this agreement.

Any information obtained or exchanged between FMCSA and the grant Recipient, to carry out each party's responsibility under this agreement and project plan, shall not be released by the Recipient to any third party without the written permission of FMCSA.

Recipient shall ensure that all its employees authorized to access FMCSA data and information systems sign and submit information technology user agreements provided by FMCSA.

#### **Section 37. Miscellaneous Provisions.**

##### **a. Prohibition on Human Trafficking.**

The Recipient agrees to comply, as applicable, with the provisions of Section 7104(g) of the Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7104 as amended.

##### **b. Wild and Scenic Rivers Act of 1968.**

The Recipient agrees to comply, as applicable, with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

##### **c. Fly America Act.**

The Recipient shall comply with the provisions of the Fly America Act, 49 U.S.C. § 401 18.

##### **d. Criminal and Prohibited Activities.**

The Recipient will adhere to the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801- 3812, which provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal Government for money. Recipient will also adhere to the False Statements Act, 18 U.S.C. §§ 287 and 1001 which provides that whoever makes or presents any false, fictitious or fraudulent statements, representation, or claims against the United States shall be subject to imprisonment of not more than 5 years and shall be subject to a fine in the amount provided by 18 U.S.C. § 287. Recipient shall also adhere to the False Claims Act, 31 U.S.C. § 3729, which provides that suits under this act can be brought by the Government or a person on behalf of the Government, for false claims under the Federal assistance programs. Recipient shall also adhere to the Copeland "Anti- Kickback" Act, 18 U.S.C. § 874 and 40 U.S.C. § 3145, which prohibits a person or organization engaged in a federally supported project from enticing an employee working on the project from



giving up a part of his compensation under an employment contract.

### **Section 38. Laptop Encryption.**

All laptops used by Recipients, Subrecipients, and contractors in carrying out the Recipient's project plan, which contain FMCSA-related data, including sensitive information and Personally Identifiable Information (PII), must be encrypted to the same standards utilized by FMCSA. The FMCSA encryption standards prescribe whole disk encryption (FOE), which requires software or hardware to encrypt all data on a disk, including the partition tables, whole physical disk, master boot record, and available files. FMCSA requires that each Recipient who utilizes FMCSA sensitive information or PII complete installation of FOE on all laptop computers as soon as practicable, but no later than thirty (30) days from the execution of this agreement and prior to using the laptop to access FMCSA data systems or store FMCSA related data.

### **Section 39. Adaptability to Climate Changes.**

If the grant is to be used to place equipment or temporary facilities, modify structures, or to alter existing infrastructure, the recipient is required to assess the ability for the equipment, modifications, or alterations to withstand current and future climatic conditions, including potential changes in climatic conditions. The recipient shall use the best-available peer reviewed studies and science to determine the potential climatic conditions the equipment, modifications or alterations may experience over the life-cycle of the equipment, modification or alteration funded by the grant. The recipient can rely on existing Federal Highway Administration suggestions or guidelines for placing infrastructure, or on other federally-issued guidance on assessing potential impacts of climate change.

### **Section 40. Commercial Vehicle Information Systems and Networks (CVISN) provisions.**

The following provisions apply where applicable.

#### **a. Compliance with the National ITS Architecture.**

The recipient will ensure that Innovative Technology Deployment (ITO) activities, such as hardware procurement, software and system development, infrastructure modifications, etc., are consistent with the National ITS and commercial motor vehicle information and systems Architectures and available standards and promote interoperability and efficiency to the extent practicable and required by law.

#### **b. Interoperability.**

For implementing ITO capabilities, the recipient will complete interoperability tests and ensure architectural conformance throughout the life of the project. Perform pairwise and end-to-end tests to demonstrate conformance with the standards and interoperability, verify that interfaces between selected products/systems meet the applicable standards, verify dataflow and data usage among the products/systems.

#### **c. Independent Evaluation.**

The FMCSA may conduct an independent evaluation of the effectiveness of the project in achieving Federal and State program goals. The independent evaluation will be -conducted using existing Federal resources. Participants of projects that are selected for independent evaluations shall cooperate with the independent evaluators and participate in evaluation planning and progress review meetings to ensure a mutually acceptable, successful implementation of the independent evaluation. The FMCSA may contract with one or more independent evaluation contractor(s) to evaluate the projects.

#### **d. Dedicated Short-Range Communications.**

If applicable, the State shall also require that its contractors only install Dedicated Short Range Communications (DSRC) equipment that is interoperable and compatible at layers 1 and 2 of the Open Systems Interconnect Reference Model with equipment in operation on the North American Preclearance and Safety System and the Heavy Vehicle Electronic License Plate Inc.'s PrePass™ System deployments as well as the International Border Crossing Operational Tests, based upon on ASTM Draft 6, dated February 23, 1996.

#### **Section 41. Federal Funding Accountability and Transparency Act.**

The Federal Funding Accountability and Transparency Act (FFATA) of 2006 (Public Law 109-282) requires for each Federal award of \$25,000 or more that OMB create a searchable, no cost, publicly accessible website(<http://usaspending.gov/>) that includes basic information about the recipient and the project being funded. The Government Funding Transparency Act of 2008 (Public Law 110-252) amended FFATA, requiring recipients to report certain information about themselves and their first tier Subrecipient awards obligated as of October 1, 2010. Prime grant recipients/awardees of new non-Recovery Act federally funded grants and cooperative agreements of \$25,000 or more awarded on or after October 1, 2010 are subject to FFATA reporting, sub-award reporting requirements and executive compensation reporting requirements as outlined in the Office of Management and Budgets guidance issued August 27, 2010. The prime awardee is required to file a FFATA sub-award report by the end of the month following the month in which the prime recipient awards any sub-grant greater than or equal to \$25,000.

#### **Section 42. Executive Order 13513.**

Executive Order 13513 (E.O. 13513) requires each Federal agency to encourage contractors, subcontractors, and grant and cooperative agreement recipients and subrecipients to adopt and enforce policies that ban text messaging while driving company-owned or -rented vehicles or Government Owned Vehicles, or while driving Personally Owned Vehicles when on official Government business or when performing any work for or on behalf of the Government. To further the requirement of encouraging such policies, the FMCSA encourages recipients to consider new rules and programs, reevaluate existing programs to prohibit text messaging while driving, and conduct education, awareness, and other outreach for employees about the risks associated with texting while driving. These initiatives should encourage voluntary compliance with the recipient agency's text messaging policy while off duty. For the purposes of these Grant Provisions and Assurances and pursuant to E.O. 13513, the following definitions apply:

"Texting" or "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of SMS texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

"Driving" means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light or stop sign, or otherwise. It does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

#### **Section 43. Certification.**

The Recipient certifies that the statements it made in the grant application are true and correct, and Recipient understands that any false statements made as part of these certifications can be prosecuted.

**Briefing Paper**  
**City of Spokane**  
**SPD – DOT TACT FY2017 Grant Application**  
**December 12, 2016**

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**Subject**

Approval to apply for the Department of Transportation TACT FY2017 (Ticketing Aggressive Cars and Trucks) grant. Estimated budget is \$118,000.00.

**Background**

The SPD Commercial Vehicle Inspectors would like to apply for the TACT FY2017 grant in their effort to reduce collisions involving commercial vehicles in Spokane County. To combat the collision issue, SPD will launch a DOT sponsored Ticketing Aggressive Cars and Trucks (TACT) program to conduct enforcement and public awareness campaign to reduce the behavior that results in collisions with commercial vehicles. \$68,000.00 will be used to purchase vehicles. The rest of the funds will be used for overtime (\$45,000.00) and public awareness (\$5,000.00).

**Impact**

The goal of the grant is to reduce commercial vehicle collisions involving passenger vehicles in Spokane County. The SPD Commercial Vehicle Inspectors provide support to all of Spokane County for commercial vehicle enforcement. The increased enforcement and public awareness campaign will reduce aggressive driving and decrease collisions between passenger vehicles and commercial vehicles, specifically those collisions where the passenger vehicle was at fault.

**Action**

Approval to apply for US. DOT TACT FY2017

**Funding**

80% (\$94,400.00) of approved budget will come from the Department of Transportation. The grant requires a 20% (23,600.00) match which will be paid out of the general fund.



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

10/02/2017

<u>Date Rec'd</u>	8/25/2017
<u>Clerk's File #</u>	CPR 2016-0037
<u>Renews #</u>	

Submitting Dept	PARKS & RECREATION	Cross Ref #	
Contact Name/Phone	JONATHAN 625-6243	Project #	
Contact E-Mail	JMOOG@SPOKANECITY.ORG	Bid #	
Agenda Item Type	Report Item	Requisition #	
Agenda Item Name	1400 - UPDATE ON PROGRAMMING PLANS FOR NEW RIVERFRONT PARK		

Agenda Wording

Programming Plans for New Riverfront Park

Summary (Background)

As the new Riverfront Park begins to open this fall with the first project, the Skate Ribbon, Parks and Recreation would like to share a vision of the future programming for the entirety of the park.

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? TEST	
Neutral	\$	#
Select	\$	#
Select	\$	#
Select	\$	#
<u>Approvals</u>		<u>Council Notifications</u>
<u>Dept Head</u>	CONLEY, JASON K.	<u>Study Session</u>
<u>Division Director</u>	EADIE, LEROY	<u>Other</u>
<u>Finance</u>	DOVAL, MATTHEW	Distribution List
<u>Legal</u>	DALTON, PAT	fdickson@spokanecity.org
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	
<u>Additional Approvals</u>		
<u>Purchasing</u>		



# **Programming for the Future**

Jonathan Moog

Riverfront Park Director

# What is Programming

Any activity which activates Riverfront Park, establishes placemaking or creates a compelling experience.

- Licensee Events
- Partner supported activities
- RFP developed content
- Promotional Sampling (Product displays)
- Fixed Attractions





# We Know It Well







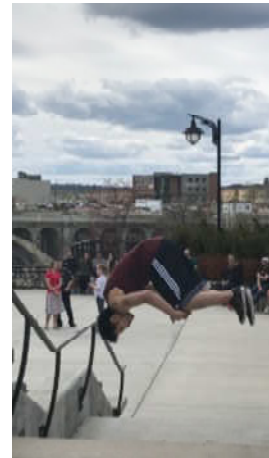
# Mission Statement

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To create a vibrant urban park dedicated to connecting our community and visitors through activities, nature, culture and traditions that meaningfully contribute to the livability and enjoyment for all.

## Our Values

Inspire & Innovate ♦ Respect & Represent ♦  
Accountability & Ownership ♦ Delight & Surprise



# What If...



# Programming Categories

## Entertainment

- Movie Nights
- Local Band & Brew Thursdays

## Arts & Culture

- Acrobatic Performances
- Craft and Arts Fair
- Living Art (performers, paint)

## Families & Children

- Skate with Santa Claus
- Kids Disco Party
- Storytime Tuesday

## Heathy Living

- Class/demo (Parkour, Zumba)
- Recycle Saturdays
- Farmers Market

## Special Events

- Holiday Tree Lighting
- Grand Opening Parties

## Other Public Events (Licensee)

- Hoopfest
- Pig Out





# **Programming for the Future**

Jonathan Moog

Riverfront Park Director

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

10/02/2017

Date Rec'd

7/26/2017

Clerk's File #

ORD C35550

Renews #Submitting Dept

PARKS &amp; RECREATION

Contact Name/Phone

MARK 625-6544

Contact E-Mail

MBUENING@SPOKANECITY.ORG

Agenda Item Type

Special Budget Ordinance

Agenda Item Name

1400 - SBO - APPROPRIATION OF EXCESS FUND BALANCE

Cross Ref #Project #Bid #Requisition #Agenda Wording

This is consistent with policy governing the use of excess Park Fund balance for strategic investment purposes allowing use of fund balance over and above 7% reserve fund balance. Approved by Park Board July 13 and briefed by P&ED Committee Aug. 28.

Summary (Background)

Eight projects were chosen primarily since they could be leveraged for additional dollars from other sources; or have the ability to produce additional program income. The Therapeutic Recreation Services Snow Chalet Repairs was selected due to the immediate need to prevent further facility deterioration for improved access for the program's clients. Funds would also be provided to study stream bank stabilization solutions on Latah-Qualchan Creek.

Fiscal Impact

Grant related?

Budget Account

Public Works?

Neutral \$

#

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

CONLEY, JASON K.

Study SessionDivision Director

EADIE, LEROY

Other

P&amp;ED Committee Aug. 28

Finance

BUENING, MARK

Distribution ListLegal

DALTON, PAT

pclarke@spokanecity.org

For the Mayor

DUNIVANT, TIMOTHY

parksaccounting@spokanecity.org

Additional ApprovalsPurchasing

## ORDINANCE NO C35550

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 Park and Recreation and Golf Funds, 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 Park and Recreation Fund and the budget annexed thereto with reference to the Park and Recreation Fund, the following changes be made:

FROM:	1400-99999	Parks and Recreation Fund	
	99999-	Unappropriated Reserves	<u>\$ 770,000</u>
TO:	1400-30210	Parks and Recreation Fund	
	94000-56701	Reserve Capital Outlay	450,000
	94000-56203	Other Improvements	45,000
	94000-56203	Other Improvements	130,000
	76103-54101	Professional Services	100,000
	97115-80101	Transfer to Golf Fund	<u>45,000</u>
			<u>\$ 770,000</u>

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

FROM:	4600-55100	Golf Fund	
	99999-39724	From Parks and Recreation	<u>\$ 45,000</u>
TO:	4600-55100	Golf Fund	
	76611-54101	Professional Services	<u>\$ 45,000</u>

Section 3. It is therefore, by the City Council declared that an urgency and emergency exists for making the changes set forth herein, such urgency and emergency arising from the need to provide funding for several strategic investment projects from the Parks Fund Excess Fund Balance not anticipated during the 2017 budget process, 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

## July Finance Committee

### 2017 Excess Fund Balance Recommended Projects

#### Recreation

\$45,000 TRS Snow Chalet Repairs

\$250,000 Southeast Sports Field Grant Match

**\$295,000 Total Recreation**

#### RFP

\$130,000 Fountain Café Remodel

\$100,000 RFP Capital Campaign – Parks Foundation Staffing

**\$230,000 Total RFP**

#### Golf

\$25,000 Qualchan-Latah Creek Bank Stabilization Study

\$20,000 Indian Canyon Irrigation Design Services

**\$45,000 Total Golf**

#### Park Ops

\$150,000 Dutch Jakes Park Grant Match

\$50,000 Rochester Heights Improvements - Neighborhood Match

**\$200,000 Total Park Operations**

**\$770,000 Grand Total**



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

10/02/2017

Date Rec'd

9/8/2017

Clerk's File #

ORD C35551

Renews #Submitting Dept

PARKS &amp; RECREATION

Cross Ref #Contact Name/Phone

MARK BUENING 625-6544

Project #Contact E-Mail

MBUENING@SPOKANECITY.ORG

Bid #Agenda Item Type

Special Budget Ordinance

Requisition #Agenda Item Name

1400 - SBO - CREATE FTE PROJECT MANAGER POSITION

Agenda Wording

Approve the SBO to provide the FTE and expenditure authority in Fund 1400, the Parks and Recreation fund for a newly classified position titled Parks Planning Project Manager. Ordinance was approved by Park Board Sept. 14.

Summary (Background)

This position is instrumental in managing and overseeing many important and crucial aspects of the Riverfront Park reconstruction project. This function has been accomplished through a special project position which has now reached it's time limit and we have been directed by Civil Service that this must be a permanent classification.

Fiscal Impact

Grant related?

NO

Budget Account

Public Works?

TEST

Neutral \$

#

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

CONLEY, JASON K.

Study SessionDivision Director

EADIE, LEROY

Other

Council Finance - 09/18

Finance

BUENING, MARK

Distribution ListLegal

DALTON, PAT

pclarke@spokanecity.org

For the Mayor

DUNIVANT, TIMOTHY

parksaccounting@spokanecity.org

Additional ApprovalsPurchasing

ORDINANCE NO C35551

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 Park and Recreation Fund, which changes could not have been anticipated or known at the time of making such budget ordinance; and

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

The City of Spokane does ordain:

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

FROM:	1400-30210	Park & Recreation Fund	
	76150-08500	Administration – Parks Planning –	
		Project Employee	<u>\$22,086</u>
TO:	1400-30210	Park & Recreation Fund	
	76150-00760	Administration	
		Parks Planning	
		Project Manager (Parks)	
		(From 0 to 1.0 Position)	<u>\$15,900</u>
	1400-30210-76150-52110	FICA	<u>\$1,216</u>
	1400-30210-76150-52210	Retirement	<u>\$1,232</u>
	1400-30210-76150-52310	Medical	<u>\$3,000</u>
	1400-30210-76150-52320	Dental	<u>\$200</u>
	1400-30210-76150-52330	Life Insurance	<u>\$95</u>
	1400-30210-76150-52340	Disability	<u>\$49</u>
	1400-30210-76150-52400	Industrial Insurance	<u>\$14</u>
	1400-30210-76150-51640	Deferred Compensation	<u>\$375</u>
	1400-30210-76150-54602	Retiree's Insurance	<u>\$4</u>

Section 2. It is, therefore, by the City Council declared that an urgency and emergency exists for making the changes set forth herein, such urgency and emergency arising from the need create an additional Project Manager (Parks), 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

Approved as to form \_\_\_\_\_  
Assistant City Attorney

Attest: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

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

**BRIEFING PAPER**  
**City of Spokane**  
**Parks and Recreation / City Council Finance Committee**  
**September 18, 2017**

---

**Subject**

SBO to provide the FTE and expenditure authority in Fund 1400, the Parks and Recreation fund for a newly classified position entitled Parks Planning Project Manager.

**Background**

This position is instrumental in managing and overseeing many important and crucial aspects of the Riverfront Park reconstruction project. This function has been accomplished through a special project position which has now reached it's time limit and we have been directed by Civil Service that this must be a permanent classification.

**Impact**

The supervision of many different aspects of the multiple construction projects going on at Riverfront Park requires the expertise of an overall Planning Project Manager.

**Action**

The department would like to have this approved by the City Council as soon as possible. Without the creation of this FTE position, we cannot proceed with the actual hiring process and meeting the Civil Service mandate.

**Funding**

Funding is requested for a part of the year in 2017, and is coming from Project Employee funds already budgeted. There is no net impact to Parks and Recreation's overall 2017 budget authority.

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

10/02/2017

<u>Date Rec'd</u>	9/8/2017
<u>Clerk's File #</u>	ORD C35552
<u>Renews #</u>	
<u>Cross Ref #</u>	
<u>Project #</u>	
<u>Bid #</u>	
<u>Requisition #</u>	

<u>Submitting Dept</u>	PARKS & RECREATION
<u>Contact Name/Phone</u>	MARK BUENING 625-6544
<u>Contact E-Mail</u>	MBUENING@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Special Budget Ordinance
<u>Agenda Item Name</u>	1400 - SBO - DEBT SERVICE REPAYMENT/VEHICLE PURCHASE

**Agenda Wording**

Approve SBO to appropriate an additional \$495,778 from Fund 1950 - Parks Cumulative Reserve Fund unencumbered fund balance.

**Summary (Background)**

This SBO has two parts, including: 1) technical correction to provide additional appropriation in the amount of \$350,000 for the pass through payment of Conservation Futures funds to Asset Management for debt service payments on the purchase of the YMCA property. This item was inadvertently left out of the 2017 Adopted budget; 2) additional expenditure authority for two fleet replacement vehicles. This SBO was approved by Park Board Sept. 14.

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? TEST	
Expense	\$ 495,778	# 1950-99999-99999
Revenue	\$ 350,000	# 1950-54300-97185-80102
Revenue	\$ 145,778	# 1950-54925-94000-56404
Select	\$	#

<u>Approvals</u>		<u>Council Notifications</u>	
<u><b>Dept Head</b></u>	CONLEY, JASON K.	<u><b>Study Session</b></u>	
<u><b>Division Director</b></u>	EADIE, LEROY	<u><b>Other</b></u>	Council Finance - 09/18
<u><b>Finance</b></u>	BUENING, MARK	<u>Distribution List</u>	
<u><b>Legal</b></u>	DALTON, PAT	pclarke@spokanecity.org	
<u><b>For the Mayor</b></u>	DUNIVANT, TIMOTHY	parksaccounting@spokanecity.org	
<u>Additional Approvals</u>			
<u><b>Purchasing</b></u>			

ORDINANCE NO C35552

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, 2015, it is necessary to make changes in the appropriations of the Park and Recreation Fund, which changes could not have been anticipated or known at the time of making such budget ordinance; and

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

The City of Spokane does ordain:

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

From:	1950-99999-99999	Unappropriated Reserves	<u>\$ 495,778</u>
To:	1950-54300-97185-80102	Oper. Transf. Out - Debt	<u>\$350,000</u>
	1950-54925-94000-56404	Vehicles	<u>\$145,778</u>

Section 4. It is, therefore, by the City Council declared that an urgency and emergency exists for making the changes set forth herein, such urgency and emergency arising from the need to budget for transfer out for debt service repayment and the purchase of replacement of Parks and Recreation vehicles not anticipated during the 2017 budget process, 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

**BRIEFING PAPER**  
**City of Spokane**  
**Parks and Recreation / City Council Finance Committee**  
**September 18, 2017**

---

**Subject**

An SBO to appropriate an additional \$495,778 from Fund 1950 – Parks Cumulative Reserve Fund unencumbered fund balance.

**Background**

This SBO has two parts. The first is a technical correction to provide additional appropriation in the amount of \$350,000 for the pass through payment of Conservation Futures funds to Asset Management for debt service payments on the purchase of the YMCA property. This item was inadvertently left out of the 2017 Adopted budget.

The second item is to provide additional expenditure authority for the purchase of two replacement vehicles in the Parks inventory. One is the purchase of a bus for the transportation needs of the Therapeutic Recreation Services Program in the amount of \$85,972. The other is the purchase of a dump truck for the Dwight Merkel Sports Complex in the amount of \$59,806. This additional expenditure authority is required as the department has purchased and/or encumbered other fleet replacement vehicles this year to replace other aging vehicles and equipment in the Parks fleet and there is insufficient expenditure authority for these two items.

**Impact**

Passage will allow the debt service payment to be made for the property from Conservation Futures revenue. And the purchase of the vehicles will allow Parks to provide an updated vehicle for the transportation of a special needs population served by Therapeutic Recreation Services and the replacement of an aging vehicle at the Dwight Merkel Sports complex.

**Action**

This SBO has been approved by the Parks Board Finance Committee and the Parks Board. Department staff would like to have this on the Council agenda at the earliest convenience.

**Funding**

Funds would come from the unencumbered fund balance from Fund 1950.





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

10/02/2017

<u>Date Rec'd</u>	9/19/2017
<u>Clerk's File #</u>	RES 2017-0084
<u>Renews #</u>	

Submitting Dept	PLANNING	Cross Ref #	
Contact Name/Phone	MELISSA OWEN 625-6063	Project #	
Contact E-Mail	MOWEN@SPOKANECITY.ORG	Bid #	
Agenda Item Type	Resolutions	Requisition #	
Agenda Item Name	0650 - EAST SPRAGUE PBIA		

Agenda Wording

A resolution approving the East Sprague Parking and Business Improvement Area (PBIA) ratepayer advisory board bylaws.

Summary (Background)

As per SMC 4.31C.080 D, the ratepayer advisory board of the East Sprague Parking and Business Improvement Area shall adopt bylaws, which shall be approved by the City Council, including all subsequent revisions and amendments. East Sprague Parking and Business Improvement Area (PBIA) ratepayer advisory board adopted the attached bylaws on June 14, 2017.

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? NO	

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

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	KEY, LISA	<u>Study Session</u>	
<u>Division Director</u>	MALLAHAN, JONATHAN	<u>Other</u>	Finance and Technology
<u>Finance</u>	HUGHES, MICHELLE	Distribution List	
<u>Legal</u>	PICCOLO, MIKE	jmallahan@spokanecity.org	
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	lkey@spokanecity.org	
<u>Additional Approvals</u>		aworlock@spokanecity.org	
<u>Purchasing</u>		bborisov@spokanecity.org	
		mowen@spokanecity.org	
		mpiccolo@spokanecity.org	
		deannah@primesourcecu.org	



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

Fiscal Impact

Select      \$

Select      \$

Budget Account

#

#

Distribution List

speedy1727@gmail.com

tara.brown1@usbank.com

bob@nwseed.com

laverne@accessunified.net

ierr811@omnicast.net

darrell@boydwalker.com

sbishop@spokanecity.org

RESOLUTION No. 2017-0084

A RESOLUTION approving the East Sprague Parking and Business Improvement Area (PBIA) ratepayer advisory board bylaws.

WHEREAS, the SMC 4.31C.080 D states that the East Sprague Parking and PBIA ratepayer advisory board shall adopt bylaws; and

WHEREAS, the Spokane Municipal Code states that the ratepayer advisory board bylaws shall be approved by the City Council, including all subsequent revisions and amendments; and

WHEREAS, the East Sprague PBIA ratepayer advisory board's adopted bylaw are attached.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL that East Sprague Parking and Business Improvement Area (PBIA) ratepayer advisory board bylaws are approved.

Adopted by the City Council this \_\_\_\_\_ of \_\_\_\_\_, 2017

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

Approved as to form:

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

## **East Sprague PBIA Ratepayer Advisory Board**

**BYLAWS Adopted June 14, 2017**

### **Article I: General**

- 1.1 Name. The name of the organization is the East Sprague Parking and Business Improvement Area (PBIA) Ratepayer Advisory Board.
- 1.2 Statement of Purpose. The purpose of the East Sprague PBIA is to improve East Spokane through services including clean & green, district beautification, branding & marketing, safety & security and administration.
- 1.3 Ratepayers. All property owners within the geographical boundaries of the East Sprague PBIA and assessed by the PBIA are members.

### **Article II: The Ratepayer Board**

2.1 Qualifications. Board service on the East Sprague PBIA Ratepayer Advisory Board and its committees shall be available to all property owners assessed by the PBIA who are in good standing or owner's designated representative or managers of real property. "Persons in good standing" are those ratepayers who are not more than sixty days delinquent on any PBIA assessment unless the ratepayer has appealed the PBIA assessment and is in the appeal process, in which case the ratepayer retains his or her "in good standing" status through completion of the appeal process.

2.2 Composition. East Sprague PBIA advisory board shall have a minimum of five members or a maximum of seven members. Board positions are designated by geography, business, and property type to ensure that the PBIA's interests are well represented and served. To the extent individuals are willing to serve, Ratepayer Advisory Board positions consist of at least one individual representing properties in each of the areas, one through three, and should include property owners or owner's designated representative or managers of real property and representatives of commercial businesses, nonprofit organizations, residential or mixed-use property, and one current officer of the East Spokane Business Association.

One representative of the Management Entity (Program Manager) shall be a nonvoting, ex officio member of the ratepayer advisory board. The program manager shall provide administrative staff to the ratepayer advisory board.

2.3 Election of Board Members and Terms: The initial membership of the ratepayer advisory board shall be nominated by the Mayor and appointed by the City Council; three of which shall serve a two year term and two of which shall serve a one year term. Subsequent appointments shall be made consistent with this subsection below:

Each member of the ratepayer advisory board will be elected by property owners, an owner's designated representative, or managers of real property within the PBIA for a term of two years from the date of election (unless such member is appointed by the ratepayer advisory board to fulfill the remaining unexpired term of a prior member). Board Members may serve for no more than three consecutive terms. Upon the expiration of three consecutive terms, a past advisory board member is not allowed to seek election to the Board until one year after the expiration of the third term, and then again can only serve for three consecutive terms.

A subcommittee of ratepayer advisory board members will receive nomination applications. Members may directly submit their nomination application to the secretary by the published deadline for nomination applications. The Nominating Committee will select a slate of candidates for open ratepayer advisory board positions to be presented at the annual meeting. Other than the candidates nominated as provided for in this paragraph, no other individual may be considered for election for an advisory board position. New ratepayer advisory board members will be elected by a majority vote of ratepayers in good standing who attend the annual meeting. Ratepayers can vote by proxy if they are unable to attend the annual meeting.

2.4 Duties and Responsibilities of Directors: The ratepayer advisory board shall:

1. Establish and maintain a database which includes a list and classification of all ratepayers;
2. Represent the interests of ratepayers by developing projects, programs, and budgets; proposing assessments; monitoring service delivery; and planning for the future of the PBIA;
3. Make recommendations to the program manager on matters relating to the PBIA budget, expenditures, and programs for the purpose of monitoring the contract to administer the PBIA;
4. Make determinations regarding ratepayer disputes as provide in SMC 04.31C.120;
5. Set the policies of the organization, defining a plan of action in accordance with the mission, general purpose, and goals of the East Sprague PBIA Ratepayer Advisory Board; and,
6. Periodically review the organization's policies.

2.5 Quorum. A quorum of the Board for all purposes shall be a majority of the members of the Board.

2.6 Majority Vote. All matters shall be determined by simple majority vote of the quorum.

2.7 Meetings. The Board of directors shall meet regularly. A minimum of four meetings per year shall be required. Minutes of all such meeting shall be taken. Board members may participate in board meetings telephonically or by other applicable methods with prior notice to the board chairperson. Special meetings of the Board may be called by the Chair of the Board, or by request of a majority of the Board. Only Board members are entitled to vote.

2.8 Annual Meeting. An annual meeting of the East Sprague PBIA Ratepayer Advisory Board shall be held in the month of July at such time and location as designated by the board. The Board shall, through the Program Manager, to their best efforts notify ratepayers of each regular and annual meeting, not less than ten (10) calendar days before the date of the meeting.

2.9 Compensation. No member shall receive compensation for services as a member. Board members and actions on behalf of the Board by the Management Entity's Program Manager may be reimbursed for business expenses with Board approval.

2.10 Removal of Board Members. The Board of Directors shall be empowered to decide when any board member is incapable of carrying out his or her duties. The decision to vacate shall be by simple majority vote.

2.11 Replacement of Directors. A vacancy on the Board shall be filled as promptly as possible by the Chair with approval of the board. The new member shall serve for the remaining term of the member replaced.

### **Article III: Officers and Management**

3.1 Designation. The principal officers of the Board shall be the Chairperson, Vice-Chairperson, Treasurer and Secretary, all of whom shall be elected by the Board. Co officers maybe elected to fill leadership roles by a majority of the Board as necessary.

3.2 Election of Officers. The Board shall elect officers from its sitting board, using a process it develops. The newly elected officers assume their duties at the next scheduled Board meeting following their election. They shall hold office for one year from that time. In the event the Chairperson is temporarily unable, for any reason, to carry out the duties of office, the Vice Chairperson will carry out the duties.

3.3 Replacement of Officers. A vacant office shall be filled as promptly as possible by a majority vote at a Regular or Special Meeting of the Board.

3.4 Agreement, Contracts, Deeds, Checks, ETC. The Officers of the Board shall have no power to execute agreements, contracts, deeds, leases, checks and other instruments on behalf of the East Sprague PBIA Ratepayer Advisory Board.

### **Article IV: Committees**

4.1 Committees. The Board may establish committees of the Board as it deems necessary to effectuate the purpose of the Board. Committees will work to develop and carry out strategies that reflect the policy direction chosen by the Board. Committees shall make recommendations to the Board that are necessary to carry out its function and responsibilities as a Board.

4.2 Composition. Committee members may include any rate payer in good standing, or their duly appointed representative.

4.3 Meetings. All Committee meetings will be open to the ratepayers. Minutes of all meetings will be taken.

## **Article V: Indemnification**

5.1 Right to Indemnification. The PBIA may indemnify and hold each director and officer of the PBIA harmless against any and all loss (including any and all litigation expenses consisting of attorney fees and costs) arising from a legal action because the director or officer was acting as a director or officer of the PBIA, except for losses arising out of: (a) the officer's or director's acts or omissions finally adjudged to be intentional misconduct or a knowing violation of law; (b) the officer's or director's approval of certain distributions or loans by such officer or director which are finally adjudged to be in violation of RCW 23B.08.310 of the Revised Code of Washington; or (c) any transaction in which it is finally adjudged that the officer or director personally received a benefit in money, property, or services to which the officer or director was not legally entitled.

5.2 Insurance Contracts, and Funding. The PBIA may maintain insurance to satisfy its indemnification obligation under this Article and/or to protect itself, any officer director, employee, or agent of the PBIA against any expense, liability, or loss, whether or not the PBIA would have the power or obligation to indemnify such person against such expense, liability, or loss.

5.3 Contract Right. Rights of indemnification under this Article shall continue as to a prior officer or director who has ceased to be an officer or director, as long as the officer or director shall be subject to any possible legal action, by reason of the fact that the individual was an officer or director of the PBIA or serving in any other capacity referred to herein, and shall inhere to the benefit of his or her heirs, executors, and administrators. The right to indemnification conferred in this Article shall be a contract right upon which each officer or director shall be presumed to have relied in determining to serve or to continue to serve as such. Any amendment to or repeal of this Article shall not adversely affect any right or protection of an officer or director of the PBIA for or with respect to any acts or omissions of such officer or director occurring prior to such amendment or repeal.

5.4 Indemnification of Employees and Agents of the PBIA. The PBIA may, by action of its Board, provide indemnification and pay expenses in advance of the final disposition of a legal action to employees and agents of the PBIA, with the same scope and effect as the provisions of this Article with respect to the indemnification and advancement of expenses of officers and directors of the PBIA.

5.5 Severability. If any provision of this article or any application thereof shall be invalid, unenforceable or contrary to applicable law, the remainder of this Article, or the application of such provisions to persons or circumstances other than those as to which it is held invalid, unenforceable, or contrary to applicable law, shall not be affected thereby and shall continue in full force and effect.

## **Article VI. Exemption from Liability**

6.1 Nothing herein shall constitute the directors of the PBIA as partners for any purpose. No director, officer, agent, or employee shall be liable for the acts or failure to act of any other director, officer, agent, or employee of the PBIA; nor shall any member, officer, agent, or employee be liable for his or her acts or failure to act under these Bylaws, executing only acts or omissions arising out of his or her willful misfeasance.

## **Article VII: Amendments**

7.1 The Board of Directors may amend the Bylaws at any regular or special meeting of the Board. Approving an amendment requires a simple majority vote of the Board. The Board may not make changes to the Bylaws if those changes would conflict with the City Ordinance establishing the East Sprague PBIA Ratepayer Advisory Board. Amendments and revisions of the Board's Bylaws require council approval pursuant to SMC 04.31C.080.



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

10/02/2017

<u>Date Rec'd</u>	9/18/2017
<u>Clerk's File #</u>	RES 2017-0085
<u>Renews #</u>	

Submitting Dept	PLANNING	Cross Ref #	
Contact Name/Phone	MELISSA OWEN 625-6063	Project #	
Contact E-Mail	MOWEN@SPOKANECITY.ORG	Bid #	
Agenda Item Type	Resolutions	Requisition #	
Agenda Item Name	0650 - RESOLUTION RECOGNIZING THE YARD REDEVELOPMENT MASTER PLAN		

Agenda Wording

Requesting Council recognize the YARD Redevelopment Master Plan as a written record of the community's ongoing desire and effort to encourage and invest in development, job creation, and quality of life improvements in The YARD and surrounding area.

Summary (Background)

The development and recognition of the YARD Redevelopment Master Plan is intended to advance the YARD Development Strategy by building on and respecting previous planning efforts while also capitalizing on the Northeast Public Development Authority (NEPDA) as project champion and as liaison between City of Spokane and the community. The YARD Redevelopment Master Plan has been grounded in a market feasibility analysis and aligns with the goals and policies of the City's Comprehensive Plan.

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? YES	

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

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	KEY, LISA	<u>Study Session</u>	
<u>Division Director</u>	MALLAHAN, JONATHAN	<u>Other</u>	Public Works 7/11/16 &
<u>Finance</u>	HUGHES, MICHELLE	Distribution List	
<u>Legal</u>	RICHMAN, JAMES	ssimmons@spokanecity.org	
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	lkey@spokanecity.org	
<u>Additional Approvals</u>		aworlock@spokanecity.org	
<u>Purchasing</u>		bborisov@spokanecity.org	
		mowen@spokanecity.org	
		tstripes@spokanecity.org	
		<a href="mailto:sbishop@spokanecity.org">sbishop@spokanecity.org</a>	
		<a href="mailto:kemiller@spokanecity.org">kemiller@spokanecity.org</a>	
		rromero@spokanecity.org	



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List

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burrisrichard@comcast.net

craigriley08@gmail.com

nicole.hydzik@avistacorp.com

cstewart@nwagc.org

cwolff@spokanecity.org

RESOLUTION No. 2017-0085

A RESOLUTION recognizing the *YARD Redevelopment Master Plan* as a written record of the community's ongoing desire and effort to encourage and invest in development, job creation, and quality of life improvements in the YARD and surrounding area.

WHEREAS, the Planning Department, in an effort to implement the Hillyard Redevelopment Strategy, secured a USEPA Brownfield Area-wide Planning grant to aid the City of Spokane, the Northeast Public Development Authority (NEPDA), and the Hillyard community in developing a path from overarching development strategy to specific implementable projects intended to spur private investment and development; and,

WHEREAS, the City Council has designated the YARD as a Target Investment Area; and,

WHEREAS, the Area-Wide Planning (AWP) effort resulted in the development of the *YARD Redevelopment Master Plan*; and,

WHEREAS, the *YARD Redevelopment Master Plan* aligns with the goals and policies of the City's Comprehensive Plan including but not limited to Land Use, Transportation, Capital Facilities and Utilities, and Economic Development Chapters; and,

WHEREAS, the *YARD Redevelopment Master Plan* builds on the recommendations of the Greater Hillyard Northeast Planning Alliance's Neighborhood Plan (2010) and previous planning studies conducted by the NEPDA including the NEPDA Development Strategy, the YARD Brownfield Business Plan, and Heavy Freight User Analysis; and,

WHEREAS, the *YARD Redevelopment Master Plan* supports the community's vision of The YARD as home to an array of commercial and industrial businesses, providing quality employment and economic opportunity to residents in the region, and quality housing for area workers; and,

WHEREAS, the *YARD Redevelopment Master Plan* supports the community's goals to create and sustain family-wage jobs, capture the opportunity provided by the NSC to promote economic revitalization of a historically industrial area, promote development that is economically and environmentally sustainable, improve health and safety of neighborhoods through environmental restoration, and improve quality of life for residents, employees and visitors; and,

WHEREAS, City Planning and grant consultants Maul, Foster, and Alongi, developed web-based communications, hosted a March, 2016 public open house, provided information an opportunity for comment and dialog at the NEPDA's Annual CEO luncheon held in May, 2016, and sought feedback from the community at the Hillyard Festival in August 2016; and,

WHEREAS, City Planning and grant consultants Maul, Foster, and Alongi conducted stakeholder interviews, workshops sessions with the NEPDA, monthly and bi-

monthly updates with the NEPDA, coordinated with Integrated Capital Management and City Water and Wastewater departments, and staff working on the LINK project; and,

WHEREAS, planning staff conducted multiple briefings of the EPA Area Wide Planning process and the YARD Redevelopment Master Plan with City Council and the City Plan Commission between July, 2016 and July, 2017; and,

WHEREAS, the final draft YARD Redevelopment Master Plan was presented and discussed by the Northeast Public Development Authority Board at regular meetings beginning April 14, 2017; and,

WHEREAS, the Plan Commission made a motion to recommend that the City Council accept and recognize the YARD Redevelopment Master Plan at their July 26, 2017 meeting; and,

WHEREAS, the YARD Development Master Plan was approved by the NEPDA Board at their July 28, 2017 meeting; and,

WHEREAS, per Spokane Municipal Code 4.12.010, this resolution is not an action to amend the City's Comprehensive Plan or development regulations by recommendation of the Plan Commission;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL that the *YARD Redevelopment Master Plan* is recognized as:

- a credible representation of the ongoing desire of the Northeast Public Development Authority Board and community stakeholders to encourage and invest in development, job creation, and quality of life improvements in the YARD and surrounding area; and
- is consistent with the planning principles of Washington's Growth Management laws and the goals and policies of the City of Spokane Comprehensive Plan; and
- provides an appropriate level of specificity and direction for short- and long-term plan implementation by the City of Spokane.

Adopted by the City Council this \_\_\_\_\_ of \_\_\_\_\_, 2017

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

Approved as to form:

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

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

10/02/2017

<u>Date Rec'd</u>	8/29/2017
<u>Clerk's File #</u>	RES 2017-0086
<u>Renews #</u>	

Submitting Dept	FLEET OPERATIONS	Cross Ref #	
Contact Name/Phone	STEVE RIGGS 625-7706	Project #	
Contact E-Mail	SRIGGS@SPOKANECITY.ORG	Bid #	SOLE SOURCE
Agenda Item Type	Resolutions	Requisition #	VB
Agenda Item Name	5100-FLEET SOLE SOURCE RESOLUTION FOR PACWEST		

Agenda Wording

A resolution declaring PACWEST MACHINERY LLC (Spokane, WA) a sole source for the purchase of TYMCO, VOLVO CONSTRUCTION EQUIPMENT AND OMCO parts utilized by the Fleet Services Department and authorizing the purchase of these parts without public

Summary (Background)

PACWEST MACHINERY is our local authorized dealer for Tymco, Volvo Construction Equipment and Omco parts. These parts are specifically used for the City's street sweepers, Volvo construction equipment and street flushers.

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? TEST	
Expense	\$ 100,000.00	# various
Select	\$	#
Select	\$	#
Select	\$	#
<u>Approvals</u>		<u>Council Notifications</u>
<u>Dept Head</u>	RIGGS, STEVEN	<u>Study Session</u>
<u>Division Director</u>	SIMMONS, SCOTT M.	<u>Other</u> PWC 8/28/17
<u>Finance</u>	DOVAL, MATTHEW	<u>Distribution List</u>
<u>Legal</u>	ODLE, MARI	TPRINCE
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	SRIGGS
<u>Additional Approvals</u>		TAXES & LICENSES
<u>Purchasing</u>	PRINCE, THEA	



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

bidding for a five (5) year period at a cost of approximately \$100,000.00 annually (incl tax).

Summary (Background)

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List


## RESOLUTION 2017-0086

A Sole Source Resolution declaring PACWEST MACHINERY LLC (Spokane, WA) a sole source for TYMCO, VOLVO CONSTRUCTION EQUIPMENT AND OMCO parts to be purchased on an "as needed" basis for an annual estimated expenditure of \$100,000.00 including tax.

WHEREAS, the above referenced parts are only available through authorized distributors and PacWest Machinery LLC is our local authorized distributor; and

WHEREAS, these parts are essential in maintaining the city's equipment fleet and

WHEREAS, the estimated annual expenditure for Tymco, Volvo and Omco parts exceeds the 2017 public bid limit of \$49,000

-- Now, Therefore,

BE IT RESOLVED by the City Council for the City of Spokane that it hereby declares without further Council action PACWEST MACHINERY, LLC a sole source for Tymco, Volvo and Omco parts to be purchased on an "as needed" basis for a period of five (5) years for \$100,000.00 estimated annual expenditure including tax.

ADOPTED BY THE CITY COUNCIL ON \_\_\_\_\_

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

Approved as to form:

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

BRIEFING PAPER  
Public Works Committee  
Fleet Services  
August 14, 2017

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**Subject**

Five Year Sole Source Resolution with PacWest Machinery, LLC (Spokane, WA) for Tymco parts, Volvo Construction Equipment parts and Omco parts - \$100,000.00 estimated annual expenditure including sales tax.

**Background**

PacWest Machinery is our local authorized distributor the above referenced parts.

**Impact**

This VB will be utilized to procure parts specifically for the City's street sweepers, Volvo construction equipment, and street flushers.

**Action**

Recommend approval.

**Funding**

The expenditure is included in the 2017 Fleet Services Department budget.



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

09/18/2017

Date Rec'd

8/30/2017

Clerk's File #

ORD C35549

Renews #Submitting Dept

DEVELOPER SERVICES CENTER

Cross Ref #Contact Name/Phone

TAMI PALMQUIST 625-6157

Project #Contact E-Mail

TPALMQUIST@SPOKANECITY.ORG

Bid #Agenda Item Type

First Reading Ordinance

Requisition #Agenda Item Name

4700 - PARKLET &amp; STREATERY PERMIT ORDINANCE

Agenda Wording

An ordinance creating a licensing program for parklets and streateries in Spokane and establishing the fee structure for such licenses; enacting a new chapter 10.55 and a new section 08.02.0235 of the Spokane Municipal Code.

Summary (Background)

During the last six months, a working group made up of staff from many departments, as well as Councilmember Lori Kinnear and Council Attorney Brian McClatchey has worked to develop the proposed ordinance and the design guidelines. Significant public outreach has been undertaken, including presentations to the Community Assembly, Downtown Spokane Partnership, the Parking Advisory Committee, the Business Improvement District, and via the web and social media.

Fiscal Impact

Grant related?

NO

Budget Account

Public Works?

TEST

Neutral

\$

#

Select

\$

#

Select

\$

#

Select

\$

#

ApprovalsCouncil NotificationsDept Head

BECKER, KRIS

Study SessionDivision Director

TRAUTMAN, HEATHER

Other

PED 7/10/17 &amp; 8/28/17

Finance

ORLOB, KIMBERLY

Distribution ListLegal

PICCOLO, MIKE

tpalmquist@spokanecity.org

For the Mayor

DUNIVANT, TIMOTHY

kbecker@spokanecity.org

Additional Approvals

bmclatchey@spokanecity.org

Purchasing

sbishop@spokanecity.org

BRIEFING PAPER  
City of Spokane  
Planning & Development  
September 18, 2017

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**Subject**

A proposed ordinance to allow parklets and streateries to be installed in the City, by permit, between April 1 and November 1 of each year. This would be a permanent program to replace the current pilot program.

**Background**

Parklets and streateries have emerged as a way for cities to provide additional public gathering spaces in urban areas and, in the case of streateries, provide for additional service space and restaurant revenue during the warmer months of the year – in exchange for the use of street parking, loading areas, and/or shoulders. Parklets have been utilized successfully by many cities throughout the United States, including the Cities of Seattle, San Francisco, and Boise. The City of Spokane has successfully run two pilot projects (for a total of two years) authorizing parklets and streateries in the downtown core.

During the last six months, a working group made up of staff from many departments as well as Councilmember Lori Kinnear and Council Attorney Brian McClatchey has worked to develop the proposed ordinance and the design guidelines. Significant public outreach has been undertaken, including presentations to the Community Assembly, Downtown Spokane Partnership, the Parking Advisory Committee, the Business Improvement District, and via the web and social media.

**Impact**

Each installed parklet or streateries would have the most immediate effect on the street and city block in which they are placed. They allow for greater pedestrian amenities – accommodating small events and other public interest features while serving as a creative focus for nearby businesses and residences. Streateries have a private component during the day that provides for greater service area for the restaurant or café that installs it and similar benefits to a parklet during those times that they are not for private use.

Negative impacts could include loss of parking revenue, obstructions to street traffic, and visibility issues. The proposed ordinance and associated materials such as the proposed Design Standards seek to minimize those negative impacts to the greatest extent practical. Parking revenue would be recompensed through the permitting process as well.

**Action**

City staff presented a draft Ordinance, design standards, and associated information to the Plan Commission on August 9, 2017. PC offered a few amendments upon recommendation by staff, which is noted in the edited draft presented to P&ED. STA has also asked for additional language to be added, which is now noted in the draft submitted for consideration. The Plan Commission has made a recommendation of approval for the eventual adoption of this ordinance by the City Council, to be heard by Council.

## **ORDINANCE NO. C35549**

An ordinance creating a licensing program for parklets and streateries in Spokane and establishing the fee structure for such licenses; enacting a new chapter 10.55 and a new section 08.02.0235 of the Spokane Municipal Code.

**WHEREAS**, for the past two summers, downtown Spokane has been the location of a successful pilot program for parklets; and

**WHEREAS**, parklets and streateries help to activate and improve the public realm, by allowing greater opportunities for people to socialize and interact with others and to activate the streetscape, leading to decreases in crime and an enhanced sense of public safety; and

**WHEREAS**, restauranteurs and bar owners have successfully implemented sidewalk cafes in downtown Spokane in recent years, and the desire exists to extend, in the appropriate situations and locations, sidewalk cafés into an adjacent parking space(s) (known as “streateries”) in Spokane; and

**WHEREAS**, parklets and streateries have been used in many cities of all sizes throughout North America and are proven methods to increase the vibrancy and activity of a streetscape; and

**WHEREAS**, the City Council intends to establish a licensing program for parklets and streateries in order to build on the successful pilot programs of the past two summers in downtown Spokane and improve the quality of life in Spokane.

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

Section 1. That there is enacted a new chapter 10.55 of the Spokane Municipal Code to read as follows:

### **Chapter 10.55      Parklets and Streateries** **Section 10.55.005 Definitions**

- A. “Parklet” means a small public gathering space, occupying up to two parking stalls or a loading zone, as applicable, on a public street, and treated in all respects as a public sidewalk, but the facilities of which are privately owned and maintained.
- B. “Streatery” means up to two parking stalls or a loading zone, as applicable, used either as an extension of, or a stand-alone sidewalk café, connected visually to, and for use by patrons of, a nearby restaurant or bar and service at which is subject to all the terms and conditions of the nearby restaurant or bar’s food service permits and alcohol licenses.

### **Section 10.55.010 License Required**

It is unlawful to install or operate a parklet or streatory without a written license to do so from the city engineer as provided in this chapter and SMC 08.02.0220. All licenses issued under this chapter and SMC 08.02.0220 are temporary and personal licenses, revocable by the City at any time.

### **Section 10.55.020 License Class**

Parklet and streatory licenses are Class IIIE licenses and are subject to SMC Chapter 04.04.

### **Section 10.55.030 Construction**

By enactment of this chapter, the City Council deems the licensing of parklets and streateries in Spokane to be in the best interest of the people of the City and the provisions of this chapter shall be reasonably construed by the City to balance the needs of the license applicant with the protection of public safety.

### **Section 10.5.5.040 Application**

- A. In addition to the information required by SMC 10.55.060, an application for a parklet or streatory license shall state:
  - 1. The anticipated periods of use during the year, and the proposed hours of daily use, including Saturdays, Sundays and holidays; and
  - 2. Whether any liquor as defined in RCW 66.04.010 will be sold or consumed in the area to be covered by the license.
- B. At the time of application the city engineer shall set a time for an administrative hearing before which the public may offer objections to the issuance of the license.

### **Section 10.55.050 Notice to Adjacent Property Owners and Users**

- A. The applicant shall mail or serve a notice stating the:
  - 1. Nature of the application;
  - 2. The parklet or streatory area sought to be used; and
  - 3. Date, time and place at which the city engineer will consider such application

at least ten days prior thereto, upon the owners, building managers and street-level tenants of the properties on the block face on which would be located the proposed parklet or streatory and the block face across the street from the proposed parklet or streatory, as well as any parking meters or loading zones to be impacted and shall file

with the city engineer a copy of the notice mailed and a list of the persons to whom it was sent.

- B. The city engineer shall prepare notices containing the license application details and shall deliver to the applicant a public notice, which shall be posted in a window or on the building exterior of the adjacent property.

#### **Section 10.55.060 Parklet Terms and Conditions**

- A. The City Engineer shall issue a license for the use of a parking stall(s) as a parklet upon such terms and conditions as the City Engineer, in the exercise of his/her professional discretion, may deem appropriate, if the City Engineer determines that:
  - 1. The applicant is the owner or occupant of the property adjacent to the proposed parklet area;
  - 2. The applicant has the permission of the owner and occupant, if different, of the property adjacent to the proposed parklet area to place a parklet in the proposed location;
  - 3. The proposed parklet use would not unduly and unreasonably impair passage of the public on the sidewalk adjacent to the area for which the license is sought; and
  - 4. The design and construction of the proposed parklet meets all applicable guidelines.
  - 5. No more than one parklet or streatory would be placed per block face.
- B. Terms and conditions imposed by the City Engineer upon the approval of a parklet application may include, without limitation:
  - 1. restrictions as to the number and placement of furnishings (such as tables and chairs) and as to the hours and dates of use;
  - 2. a requirement that the parklet and all associated furnishing, fixtures, and equipment in the parklet area be cleared when not in use as a parklet, upon the request of the city engineer or other appropriate City officer, such as the chief of police or fire official or their authorized representatives, and that if the licensee does not clear the area, the City may clear the area with the licensee liable to the City for the cost of such work;
  - 3. a requirement that the parking space(s) be vacated and restored to their original condition and free from all obstructions from November 1 through April 1 of each year;
  - 4. that the licensee shall maintain the sidewalk adjacent to the parklet as well as the parklet itself in a clean and safe condition for pedestrian travel and use, and if the applicant fails to maintain the area that the City may, in its sole discretion, perform such maintenance, cleaning, and/or repairs as the City deems necessary with the applicant liable to the City for the cost of such maintenance, cleaning, and/or repairs;

5. a requirement that the licensee maintain the parking stalls adjacent to the parklet area clean and free of debris;
  6. a requirement that the applicant maintain the sidewalk adjacent to the parklet as necessary to accommodate deliveries to adjacent or other nearby properties;
  7. regulations upon lighting and illumination of the parklet;
  8. an indemnity agreement approved by the City Attorney's Office in accordance with the provisions of this chapter;
  9. a requirement that the parklet area display a sign, approved or provided by the City, stating the permitted hours of use for the parklet.
- C. Unless expressly authorized by the City, no license applicant authorized to construct, maintain, and operate a parklet under this chapter shall:
1. Break or damage any pavement or street surface;
  2. Disturb, remove, damage, or obstruct any parking meters, signs, or parking area striping;
  3. Place adjacent to or obstruct safe, accessible access to a bus stop;
  4. Permanently install any fixture of any kind; or
  5. Cover or obstruct any utility manholes or handholes
- in or on the parking space(s) occupied by a parklet or in or on the sidewalk area adjacent to the parklet area.
- D. The terms and conditions of this section are in addition and supplemental to all other City permit requirements including, without limitation, the fire and building codes and the City's noise regulations stated in chapter 10.08D of the Spokane Municipal Code, as applicable.

### **Section 10.55.065 Streatery Terms and Conditions**

- A. The City Engineer shall issue a license for the use of a parking space(s) as a streatery upon such terms and conditions as the City Engineer, in the exercise of his/her professional discretion, may deem appropriate, if the City Engineer determines that
1. The applicant is the owner or occupant of the adjacent property and operates a cafe or restaurant thereon;
  2. The applicant has the permission of the owner and occupant, if different, of the property adjacent to the proposed streatery area to place a streatery in the proposed location;
  3. The proposed streatery is included adjacent to, near, or within a food service establishment permit issued by the Spokane City-County health

district, or its representative, which has otherwise authorized such use of the area; and

4. The proposed streatory use would not unduly and unreasonably impair passage of the public on the sidewalk adjacent to the area for which the license is sought.
  5. No more than one parklet or streatory would be placed per block face.
- B. Terms and conditions imposed by the City Engineer upon the approval of a streatory application may include, without limitation:
1. restrictions as to the number and placement of furnishings (such as tables and chairs) and as to the hours and dates of use;
  2. a requirement that the streatory and all associated furnishing, fixtures, and equipment in the streatory area be cleared when not in use as a streatory, upon the request of the city engineer or other appropriate City officer, such as the chief of police or fire official or their authorized representatives, and from November 1 through April 1 of each year, and that if the area is not cleared, the City may clear the area and charge the costs for such clearance to the licensee;
  3. that the streatory be removed immediately if the applicant's food establishment or liquor permit is revoked;
  4. that the licensee shall maintain the sidewalk adjacent to the streatory as well as the streatory itself in a clean and safe condition for pedestrian travel and use, and if the applicant fails to maintain the area, the City may, in its sole discretion, perform such maintenance, cleaning, and/or repairs as the City deems necessary with the applicant liable to the City for the cost of such maintenance, cleaning, and/or repairs;
  5. a requirement that the licensee maintain the parking stalls adjacent to the streatory area clean and free of debris;
  6. a requirement that the applicant maintain the sidewalk adjacent to the streatory as necessary to accommodate deliveries to adjacent or other nearby properties;
  7. regulations upon lighting and illumination of the streatory;
  8. an indemnity agreement approved by the City Attorney's Office in accordance with the provisions of this chapter;
  9. a requirement that the streatory area display a sign, approved or provided by the City, stating the permitted hours of use for the streatory.
- C. Unless expressly authorized by the City, no license applicant authorized to construct, maintain, and operate a streatory under this chapter shall:
1. Break or damage any pavement or street surface;
  2. Disturb, remove, damage, or obstruct any parking meters, signs, or parking area striping;
  3. Place adjacent to or obstruct safe, accessible access to a bus stop;

4. Permanently install any fixture of any kind; or
  5. Cover or obstruct any utility manholes or handholes
- in or on the parking space(s) occupied by a parklet or in or on the sidewalk area adjacent to the parklet area.

- D. The terms and conditions of this section are in addition and supplemental to all other City permit requirements, including, without limitation, the fire and building codes and the City's noise regulations, stated in chapter 10.08D of the Spokane Municipal Code, as applicable.

### **Section 10.55.070 Liquor Use and Sale**

Liquor, as defined in RCW 66.04.010, as now existing or hereafter amended, may be used and sold at a streatory when authorized in both the license provided for herein and by permit of the Washington State Liquor and Cannabis Board ("LCB"), and not otherwise. Nothing in the chapter shall be construed or deemed to modify, conflict with, or allow separate conditions for alcohol use, sale, or consumption than those provided in Title 66, RCW, specifically chapter 66.20, RCW, WAC 314-03-200, and LCB Board Interim Policy BIP 06-2011 (Aug. 10, 2011). Nothing herein shall be deemed or construed to allow liquor use or consumption on a parklet as the same is defined in this chapter.

### **Section 10.55.080 Insurance Required**

An applicant for a parklet or streatory license shall, prior to issuance of such license, provide and maintain in full force and effect while the license is in effect, public liability insurance in the amount specified by SMC 12.02.0718 to cover potential claims for bodily injury, death or disability and for property damage, which may arise from or be related to the use of the parking space(s) and sidewalk area adjacent thereto for parklet or streatory purposes, naming the City as an additional insured.

### **Section 10.55.090 Indemnity – License Revocation**

- A. The applicant for a parklet or streatory license shall execute and deliver to the City upon a form approved by the City Attorney's Office an agreement in writing and acknowledged by the applicant, forever to hold and save the City free and harmless from any and all claims, actions or damages of every kind and description which may accrue to, or be suffered by, any persons by reason of or related to the operation of such parklet or streatory.
- B. In addition, such agreement shall contain a provision that the license is wholly of a temporary nature, that it vests no permanent right whatsoever, that upon thirty days' notice, posted on the premises, or by publication in the official newspaper of the City, or without such notice, in case the licensed use shall become dangerous or unsafe, or shall not be operated in accordance with the provisions



of this title, the same may be revoked and the parklet or streatory ordered removed, and if the licensee fails to remove the parklet or streatory that the City may, in its sole discretion, remove the parklet or streatory with the costs of such removal and any related storage to be charged to the licensee.

- C. Every such agreement, after it has been received in his office and numbered, and after the same has been recorded, shall be retained by the city clerk.

### **Section 10.55.100 Compliance – Street and Sidewalk Condition**

The applicant shall comply with the terms and conditions of the parklet or streatory license issued, and shall maintain the parking space(s) and the sidewalk area adjacent thereto in a clean and safe condition for pedestrian travel, and shall immediately clear the parklet or streatory area when ordered to do so by the city engineer or other appropriate City officer such as the chief of police or fire official or their authorized representatives.

### **Section 10.55.110 Requirements not Cumulative**

The requirements of SMC 7.02.070, obstruction of streets, and obstruction of sidewalks, shall not apply to a parklet or streatory validly licensed under this chapter, except as herein provided.

### **Section 10.55.120 Regulations and Design Guidelines**

No later than 120 days after the effective date of this section, the city engineer shall publish regulations (including a reasonable license application fee) and design guidelines for parklets and streateries licensed under this chapter.

Section 2. That there is enacted a new section 08.02.0235 of the Spokane Municipal Code to read as follows:

### **Section 08.02.0235 Parklets and Streateries**

- A. An annual license fee of one hundred dollars (\$100) shall be paid for operation of a parklet or streatory, as the same are defined in SMC 10.55, as long as the original approved site plan is implemented. Modifications of an approved parklet or streatory license application which extend beyond the original approved plan shall require a new review and a review fee of two hundred fifty dollars (\$250).
- B. The application fee for a license for a new parklet or streatory is fifty dollars (\$50).
- C. The review fee for an application for a new parklet or streatory license is three hundred dollars (\$300).
- D. License applicants shall post a refundable cash bond to secure removal of the parklet or streatory, at the time of application, in the amount of one thousand dollars (\$1,000).

E. Parking meter revenue loss mitigation.

1. Streatery license applications in locations requiring removal of parking meters shall be subject to the following fees:
  - a. 2-hour meter zone: \$2.09 per square foot per month
  - b. 4-hour and all-day meter zones: \$2.09 per square foot per month
  - c. Time-restricted free parking: \$1.05 per square foot per month
  - d. Meter removal and replacement fee: \$80.
2. Parklet license applications in locations requiring removal of parking meters shall be subject to the following fees:
  - a. 2-hour meter zone: \$1.05 per square foot per month
  - b. 4-hour and all-day meter zones: \$1.05 per square foot per month
  - c. Meter removal and replacement fee: \$80.

F. In addition to the annual fee, the city shall collect from the license applicant and remit to the state department of revenue the required state leasehold excise tax, as prescribed in chapter 82.29A, RCW.

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

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

Attest:

Approved as to form:

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

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

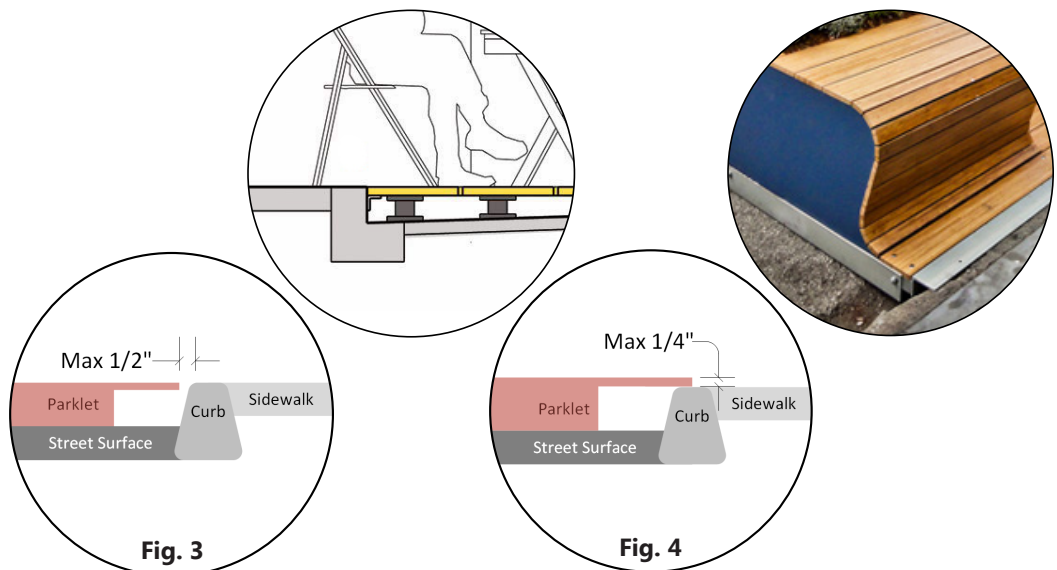
\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

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

5. Buffer zone - the parklet/streategy shall be located at least four feet from the wheel stops.
6. The outside edge and railings must not create a visual buffer.
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 the context of the site.
8. The parklet/streategy frame should be a freestanding structural foundation that rests on the street surface or curb. No features or structural components may be permanently attached to the street, curb, or adjacent planting strip.
9. Parklets/streateries must be designed for ADA compliance and shall be easily removable if/when necessary.
10. Parklets/streateries shall only be installed on streets with a grade no greater than 5 percent.
11. In general, parklets/streateries should be placed at least one parking space from corners. The presence of a bulb-out, an on-street bicycle corral, or some other physical barrier may allow the City to allow placement closer than that.
12. Parklets/streateries shall be placed no closer than 15 feet from catch basins or fire hydrants.
13. In no case shall any portion of the parklet/streategy, or any furniture placed upon it, obstruct the view of a traffic control device.

- Parklet/streategy design shall allow for stormwater flow and drainage along the curb.
- The maximum horizontal gap between the curb and the parklet surface shall be 1/2 inch.
- The maximum vertical gap shall be 1/4 inch.
- The parklet/streategy must have a seamless connection to the existing curb to meet ADA requirements.





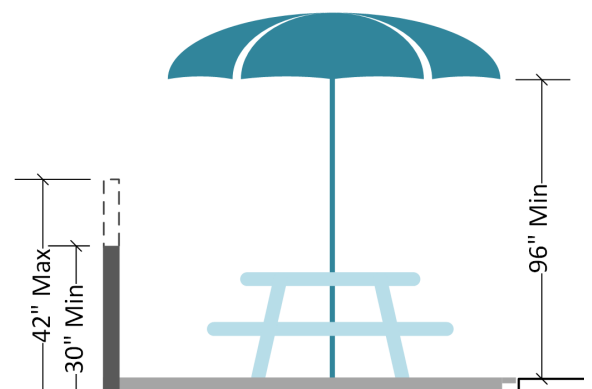
## Required Safety Elements

- Safety is foremost in the City's consideration. As such, all parklets and streateries must be designed so as to maintain clear sight lines both on the street and on sidewalks.
- Wheel stops must be installed at both ends of the parklet/streatery four feet from the parklet/streatery structure and one foot from the curb.
- Wheel stops shall be no less than four feet long and no greater than six feet long, mounted with three butyl pads, preferably made of recycled rubber.
- Reflective delineator posts must be placed at the outer corners of the parking space/loading zone six inches from the wheel stops.
- Delineator posts must be 36 inches tall, cylindrical, white Safe-Hit® Duraposts and must include reflective striping. Posts should follow the City of Spokane standard and be attached to the street with a butyl adhesive pad.



## Sight Line Elements and Requirements

- The parklet/streatery design must ensure visibility to passing traffic and pedestrians and not create a visual barrier.
- The parklet/streatery 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.
- A minimum overhead clearance of 96" must be provided for any parklet/streatery that includes a canopy (or similar element) in order to avoid creating a visual barrier and to provide adequate clearance for people.
- 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 can be accomplished via 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.
- A minimum 1-foot buffer should be maintained between the parklet features and the travel lane to increase safety adjacent to moving traffic.



**Fig. 5 - SIGHT LINE HEIGHT STANDARDS**



# Parklet and Streatory Design Standards

DRAFT Edition

## Parklets and Streateries in Loading Zones

If you are considering putting a parklet or streatory in a loading zone or other specialty designated space, the City recommends you first look for a nearby location to move that zone and then notify other businesses on the block of your desire to do so. 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/STREATORY AMENITIES

### Seating

All parklets/streateries must incorporate built-in seating, which can be integrated in a variety of creative ways. These seats can be a part of the structure, planters, or creative features within the parklet/streatory. Comfortable places to sit are important to creating welcoming and inviting public spaces.

Additional movable seating is recommended as well. This seating can be removed and stored at the end of the day or locked with cables to the parklet structure.

Furnishings should be distinct from any furnishings used by the hosting business or organization. If the parklet host is a business with a sidewalk café, the tables and chairs must be a different style from the ones used in the café. It is important to remember that the parklet is a public amenity, and as such, should be easily distinguishable from nearby private property. Streateries are exempt from this requirement.

### Landscaping

Your parklet/streatory must have some type of landscaping. Landscape plantings help soften the space and can serve as a pleasant buffer along the street-facing edge. Landscape elements may be incorporated as planter boxes, hanging planters, green walls, raised beds, or similar features. Drought-tolerant and native plants are good choices for ease of maintenance. Edible plants and plants with fragrance, texture, and seasonal interest are also recommended.

### Signs

All parklets/streateries must feature City of Spokane provided signs indicating the space is public. In the case of Streateries, the sign must explain the hours when the Streatory is for the use of the adjacent business and when its available to the general public. These signs should be mounted to both ends of the parklet and should be visible from the adjacent sidewalk. Signs acknowledging sponsorship, logos, or designs that "brand" the parklet must comply with the City of Spokane sign code (SMC 17C.240).

### Heating and Gas Power

Outdoor heaters and elements that use gas or propane fuel can help to make your parklet more comfortable throughout the year. Heating and gas-powered features are allowed in parklets/streateries but will require an additional permit.

### Lighting

Lighting is allowed but may require a permit, depending on what you propose. Self-contained low-voltage systems, such as solar or battery-powered lights, are a good choice. Decorative or seasonal lighting may be allowed in street trees near the parklet, but requires an Urban Forestry Permit.



## Plan Submittal - Required Elements

Plans should include sufficient detail as to allow for adequate review. The following items must be shown on the plans you submit with your permit application:

- Location on the street;
- Street and sidewalk utilities (i.e. manholes, water valves, etc.);
- Street poles and signs;
- Parking meters (including any required to be removed);
- Fire hydrants and Fire Department connections on adjacent buildings;
- Street furniture (litter cans, benches, etc.);
- Street trees, including tree surrounds;
- Sidewalk and street grade elevations;
- Bike lanes (if any);
- Parklet/streatery dimensions;
- Parklet/streatery materials and details as necessary;
- Parklet/streatery planting plan;
- Flexible delineator posts and wheel stops; and,
- Materials, design elements, or other proposed features.

## Signage

All parklets must feature signs indicating the space is public. All streateries must feature signs that indicate hours of service and that the streatery is open to the public at all other times. These signs should be mounted to both ends of the parklet or streatery and should be visible from the adjacent sidewalk. Signs acknowledging sponsorship, logos, or designs that “brand” the parklet or streatery must comply with the City of Spokane sign code (SMC 17C.240).



For more information, contact City of Spokane Planning and Development Services at:

3rd Floor City Hall  
808 W Spokane Falls Blvd  
Spokane, WA 99201

[bdsinfo@spokanecity.org](mailto:bdsinfo@spokanecity.org)

**Planning & Development**

509.625.6300

**From:** [Hynes, Mike](#)  
**To:** [Palmquist, Tami](#)  
**Cc:** [Weinand, Kathleen](#)  
**Subject:** Parklet/Streeteries Ordinance  
**Date:** Thursday, August 10, 2017 4:55:58 PM

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Tami,

Good afternoon. It is exciting to read the City may be moving forward with the proposed ordinance to allow for parklets and streateries. In conjunction with proposed terms, conditions and requirements, Spokane Transit would like to propose that additional language be added to address transit and bus stops.

I believe this would best fit under Section 10.55.060, C; with proposed language that states *a parklet cannot be placed adjacent to or obstruct safe, accessible access to a bus stop*. By access, we are referring to not only access by the transit bus but by those customers wishing to access the transit bus at the bus stop.

Thank you for your consideration.

Mike Hynes  
Associate Transit Planner  
Spokane Transit  
Office: 509.325.6059  
[mhynes@spokanetransit.com](mailto:mhynes@spokanetransit.com)



**Spokane City Plan Commission  
Findings of Fact, Conclusions, and Recommendation  
Proposed New Chapter to Spokane Municipal Code,  
Chapter 10.55 Parklets and Streateries**

**A recommendation from the City Plan Commission to the City Council to APPROVE proposed new chapter to the Spokane Municipal Code, *Chapter 10.55, Parklets and Streateries*.**

**Findings of Fact:**

- A.** For the past two summers, downtown Spokane has been the location of a successful pilot program for parklets. Parklets and streateries help to activate and improve the public realm, by allowing greater opportunities for people to socialize and interact with others and to activate the streetscape, leading to decreases in crime and an enhanced sense of public safety.
- B.** Restauranters and bar owners have successfully implemented sidewalk cafes in downtown Spokane in recent years, and the desire exists to extend, in the appropriate situations and locations, sidewalk cafés into an adjacent parking space(s) (known as “streateries”) in Spokane.
- C.** The City Council intends to establish a licensing program for parklets and streateries in order to build on the successful pilot programs of the past two summers in downtown Spokane and improve the quality of life in Spokane.
- D.** City of Spokane Comprehensive Plan, Urban Design and Historic Preservation Chapter, Goal DP4.2, Street Life states: *Promote actions designed to increase pedestrian use of streets, especially downtown, thereby creating a healthy street life in commercial areas.*
- E.** City of Spokane Comprehensive Plan, Economic Development Chapter, Goal ED2.4, Mixed-Use states: *Support mixed-use development that brings employment, shopping, and residential activities into shared locations that stimulate opportunities for economic activity.* Policy ED 3.6, Small Businesses states: *Recognize the significant contributions of small businesses to the city’s economy and seek to enhance small business opportunities.*
- F.** A web site was created in early June to provide easy access to information and allow the public to comment directly through the web site.
- G.** Written public comments were received in support of the proposal via the City’s blog posts and website.
- H.** On March 8, May 10, and July 12, 2017, the Spokane City Plan Commission held workshops to study the proposed Ordinance.
- I.** On May 12, 2017, pursuant to RCW 36.70A.106, the City notified the Washington State Department of Commerce of its intent to adopt proposed changes to chapter



17C.370 SMC. On May 22, 2017, the City received an acknowledgement letter from the Department of Commerce.

- J. On July 26 and August 2, 2017, the City caused Notice of the proposed ordinance and announcement of the Plan Commission's August 9, 2017 hearing to be published in the Spokesman Review.
- K. On June 12, 2017, the responsible official issued a State Environmental Policy Act (SEPA) Checklist and Determination of Non-Significance for the proposed amendments to SMC chapter 17C.370. The public comment period for the SEPA determination ended on June 26, 2017.
- L. A public hearing was held before the Plan Commission on August 9, 2017.
- M. The following modifications to the proposed text amendment were considered by the Plan Commission at its hearing on 9, 2017:
  - In SMC Section 10.55.060, Parklet Terms and Conditions, item A.2, it was proposed to be amended to read "the applicant has the permission of the owner AND occupant, if different;
  - In SMC Section 10.55.065, Streatery Terms and Conditions, it was proposed to add a new item A.2 prior to the existing A.2 stating the same as the amended item A.2 in 10.55.060 above, and change the existing items 2 and 3 to now become items 3 and 4.
  - In SMC Section 10.55.060, Parklet Terms and Conditions, Item A, it was proposed to add a new item 5 to state that "no more than one parklet or streatery would be placed per block face."
  - In SMC Section 10.55.060, 10.55.065, Item A, it was proposed to add a new item 5, also stating that "no more than one parklet or streatery would be placed per block face."

The Plan Commission unanimously voted to incorporate the proposed text amendments, as detailed above.

#### **Public Testimony:**

No public testimony was heard.

#### **Conclusions:**

- A. With regard as to whether the proposed ordinance, as amended, meets the approval criteria of SMC 17G.025.010(F) for text amendments to the Development Code, although this Chapter is not located in the UDC, the Plan Commission made the following findings:
  1. The proposed amendments are consistent with the applicable goals and policies of the City's Comprehensive Plan.
  2. The proposed amendments do bear a substantial relation to public health, safety, welfare, and protection of the environment.

**Recommendation:**

By a vote of 7 to 0, the Plan Commission recommended to the City Council the APPROVAL of the proposed new Chapter 10.55 to the Spokane Municipal Code.

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**Todd Beyreuther, Vice-President  
Spokane Plan Commission  
August 9, 2017**

## NOTICE OF CITY COUNCIL PUBLIC HEARING CHANGE IN DATE

Notice is hereby given that the City Council for the City of Spokane will hold a public hearing Monday October 2, 2017 (*moved from Monday, September 18*), in the Council Briefing Center, Lower Level of City Hall, 808 West Spokane Falls Boulevard, during the City Council Legislative Session, starting at 6:00 p.m. This hearing may be continued to a later date. The purpose of the hearing is to receive public testimony related to an Ordinance on Parklets and Streeteries.

The City ran a pilot program for parklets last year and continued that program into this year, when up to three parklets could be approved for the warmer months of 2017. As a follow up to the pilot program, the City is considering a more permanent program that would allow parklets and streeteries to be installed each summer.

Documents related to this Ordinance are available for viewing on the City of Spokane Planning and Development Department's website at: <https://my.spokanecity.org/projects/parklets/>

Written and oral testimony at the hearing will be made part of the record. Any person may submit written comments and appear at the public hearing, or call to obtain additional information:

*Planning & Development Department*  
*Attn: Tami Palmquist*  
*808 West Spokane Falls Boulevard*  
*Spokane, WA 99201-3333*  
*Phone (509) 625-6300; [tpalmquist@spokanecity.org](mailto:tpalmquist@spokanecity.org)*

**More information on the process:** The City Council will be briefed on the Ordinance on Monday, September 11 at 3:30 p.m. There is no public testimony at the briefing. The 1st Reading of the Ordinance before City Council is scheduled for Monday, September 18, 2017. Generally no presentations are made at the 1st reading, and no public testimony is taken at the 1<sup>st</sup> reading. The 2<sup>nd</sup> reading and Public Hearing for the proposed amendments is scheduled for Monday, October 2, 2017. At this meeting there will be opportunity for public testimony. The public may also submit written comment to the City Council at [citycouncil@spokanecity.org](mailto:citycouncil@spokanecity.org). The City Council reserves the right to continue this public hearing.

**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 Council Briefing Center 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.) through the meeting organizer. Individuals requesting reasonable accommodations or further information may call, write, or email Human Resources at 509.625.6363, 808 W. Spokane Falls Blvd, Spokane, WA, 99201; or [jjackson@spokanecity.org](mailto:jjackson@spokanecity.org). Persons who are deaf or hard of hearing may contact Human Resources through the Washington Relay Service at 7-1-1. Please contact us forty-eight (48) hours before the meeting date.