

CITY COUNCIL MEETINGS RULES – PUBLIC DECORUM

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

- 1. No Clapping!**
- 2. No Cheering!**
- 3. No Booing!**
- 4. No public outbursts!**
- 5. Three-minute time limit for comments made during open forum and public testimony on legislative items!**
- 6. No person shall be permitted to speak at open forum more often than once per month. In addition, please silence your cell phones when entering the Council Chambers!**

Further, keep the following City Council Rules in mind:

Rule 2.2 Open Forum

- D. The open forum is a limited public forum; all matters discussed in the open forum shall relate to the affairs of the City. No person shall be permitted to speak regarding items on the current or advance agendas, pending hearing items, or initiatives or referenda in a pending election. Individuals speaking during the open forum shall address their comments to the Council President and shall not use profanity, engage in obscene speech, or make personal comment or verbal insults about any individual.
- E. To encourage wider participation in open forum and a broad array of public comment and varied points of view, no person shall be permitted to speak at open forum more often than once per month. However, there is no limit on the number of items on which a member of the public may testify, such as legislative items, special consideration items, hearing items, and other items before the City Council and requiring Council action that are not adjudicatory or administrative in nature, as specified in Rules 5.3 and 5.4.

Rule 5.4 Public Testimony Regarding Legislative Agenda Items – Time Limits

- A. 5.4.1 The City Council shall take public testimony on all matters included on its legislative agenda, with those exceptions stated in Rule 5.4(B). Public testimony shall be limited to the final Council action. Public testimony shall be limited to three (3) minutes per speaker, unless, at his or her discretion, the Chair determines that, because of the number of speakers signed up to testify, less time will need to be allocated per speaker in order to accommodate all of the speakers. The Chair may allow additional time if the speaker is asked to respond to questions from the Council.
- B. No public testimony shall be taken on consent agenda items, amendments to legislative agenda items, or procedural, parliamentary, or administrative matters of the Council.
- C. For legislative or hearing items that may affect an identifiable individual, association, or group, the following procedure may be implemented:
 1. Following an assessment by the Chair of factors such as complexity of the issue(s), the apparent number of people indicating a desire to testify, representation by designated spokespersons, etc., the Chair shall, in the absence of objection by the majority of the Council present, impose the following procedural time limitations for taking public testimony regarding legislative matters:
 - a. There shall be up to fifteen (15) minutes for staff, board, or commission presentation of background information, if any.
 - b. The designated representative of the proponents of the issue shall speak first and may include within his or her presentation the testimony of expert witnesses, visual displays, and any other reasonable methods of presenting the case. Up to thirty (30) minutes shall be granted for the proponent's presentation. If there be more than one designated representative, they shall allocate the 30 minutes between or among themselves.

- c. Three minutes shall be granted for any other person not associated with the designated representative who wishes to speak on behalf of the proponent's position.
 - d. The designated representative, if any, of the opponents of the issue shall speak following the presentation of the testimony of expert witnesses, visual displays, and any other reasonable methods of presenting the case. The designated representative(s) of the opponents shall have the same time allotted as provided for the proponents.
 - e. Three minutes shall be granted for any other person not associated with the designated representative who wishes to speak on behalf of the opponents' position.
 - f. Up to ten minutes of rebuttal time shall be granted to the designated representative for each side, the proponents speaking first, the opponents speaking second.
- 2. In the event the party or parties representing one side of an issue has a designated representative and the other side does not, the Chair shall publicly ask the unrepresented side if they wish to designate one or more persons to utilize the time allotted for the designated representative. If no such designation is made, each person wishing to speak on behalf of the unrepresented side shall be granted three minutes to present his/her position, and no additional compensating time shall be allowed due to the fact that the side has no designated representative.
 - 3. In the event there appears to be more than two groups wishing to advocate their distinct positions on a specific issue, the Chair may grant the same procedural and time allowances to each group or groups, as stated previously.
- D. The time taken for staff or Council member questions and responses thereto shall be in addition to the time allotted for any individual or designated representative's testimony.

THE CITY OF SPOKANE



ADVANCE COUNCIL AGENDA

MEETING OF MONDAY, MARCH 26, 2018

MISSION STATEMENT

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

MAYOR DAVID A. CONDON

COUNCIL PRESIDENT BEN STUCKART

COUNCIL MEMBER BREEAN BEGGS

COUNCIL MEMBER MIKE FAGAN

COUNCIL MEMBER CANDACE MUMM

COUNCIL MEMBER KATE BURKE

COUNCIL MEMBER LORI KINNEAR

COUNCIL MEMBER KAREN STRATTON

**CITY COUNCIL CHAMBERS
CITY HALL**

**808 W. SPOKANE FALLS BLVD.
SPOKANE, WA 99201**

CITY COUNCIL BRIEFING SESSION

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

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

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

ADDRESSING THE COUNCIL

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA) INFORMATION: The City of Spokane is committed to providing equal access to its facilities, programs and services for persons with disabilities. The Spokane City Council Chamber in the lower level of Spokane City Hall, 808 W. Spokane Falls Blvd., is wheelchair accessible and also is equipped with an infrared assistive listening system for persons with hearing loss. Headsets may be checked out (upon presentation of picture I.D.) at the City Cable 5 Production Booth located on the First Floor of the Municipal Building, directly above the Chase Gallery or through the meeting organizer. Individuals requesting reasonable accommodations or further information may call, write, or email Human Resources at 509.625.6383, 808 W. Spokane Falls Blvd, Spokane, WA, 99201; or msteinolfson@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

ADMINISTRATIVE SESSION

Roll Call of Council

CONSENT AGENDA

REPORTS, CONTRACTS AND CLAIMS

RECOMMENDATION

- | | | |
|--|---------|------------------------------|
| 1. Contract with a Spokane geotechnical firm (to be determined via RFP) for specialized engineering on the Havana Well Project. (East Central Neighborhood)—\$274,300.
Dan Buller | Approve | OPR 2018-0153
ENG 2016142 |
| 2. Proposed Contract with the team of Kiewit/KPFF for the design and construction of the Post Street Bridge—not to exceed \$13,500,000, with an administrative reserve of 10% of the project cost.
Kyle Twohig | Approve | OPR 2018-0169
ENG 2017105 |
| 3. Contract Amendment with XO Communications (Herndon, VA) to increase funds for the second year variable costs associated with Telecommunications Carrier Services for the City—\$38,166.22 (incl. tax). Total Contract Amount: \$114,582.44.
Michael Sloon | Approve | OPR 2012-0011
RFP 4299-16 |
| 4. Funding agreement with Spokane River Forum to provide funding for the Glover Field Boat Ramp Project—not to exceed \$235,000.
Eric Lester | Approve | OPR 2018-0170
ENG 2017186 |

- | | | |
|---|-----------------------------------|------------------------------|
| 5. Contract Amendment with Liberty Lake Police Department (Liberty Lake, WA) for evaluating workflow processes—\$20,000. Total Contract Amount—\$111,500.
Eric Olsen | Approve | OPR 2017-0475 |
| 6. Contract with Divco Inc. (Spokane, WA) for quarterly scheduled and unscheduled maintenance on the HVAC systems at the Waste to Energy Facility. This Contract is for a period of three years with a cost of \$195,000 (\$65,000.00 annually).
Chuck Conklin | Approve | OPR 2018-0171
RFB 4227-17 |
| 7. Contract with QUINN (Spokane, WA) to support the City's efforts to achieve at least three strategic measures identified in the joint plan: increasing median household income, increasing property values, and increasing livable-wage jobs—\$250,000. (Relates to Special Budget Ordinance ORD C35605)
Brian Coddington | Approve | OPR 2018-0172 |
| 8. Contract with Chapter & Verse (Spokane, WA) to support the City's efforts to achieve at least three strategic measures identified in the joint plan: increasing median household income, increasing property values, and increasing livable-wage jobs—\$250,000. (Relates to Special Budget Ordinance ORD C35605)
Brian Coddington | Approve | OPR 2018-0173 |
| 9. Report of the Mayor of pending claims and payments of previously approved obligations, including those of Parks and Library, through _____, 2018, total \$_____, with Parks and Library claims approved by their respective boards. Warrants excluding Parks and Library total \$_____. | Approve &
Authorize
Payment | CPR 2018-0002 |
| 10 City Council Meeting Minutes: _____, 2018. | Approve
All | CPR 2018-0013 |

EXECUTIVE SESSION

(Closed Session of Council)

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

CITY COUNCIL SESSION

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

(Council Briefing Center)

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

LEGISLATIVE SESSION

(6:00 P.M.)

(Council Reconvenes in Council Chamber)

WORDS OF INSPIRATION

PLEDGE OF ALLEGIANCE

ROLL CALL OF COUNCIL

ANNOUNCEMENTS

(Announcements regarding Changes to the City Council Agenda)

BOARDS AND COMMISSIONS APPOINTMENTS

(Includes Announcements of Boards and Commissions Vacancies)

APPOINTMENTS

RECOMMENDATION

Spokane Arts Commission: Two Re-appointments

Confirm

CPR 1981-0043

Spokane Arts Commission: Three appointments

Confirm

CPR 1981-0043

ADMINISTRATIVE REPORT

COUNCIL COMMITTEE REPORTS

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

OPEN FORUM

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

Note: No person shall be permitted to speak at Open Forum more often than once per month (Council Rule 2.2.E).

LEGISLATIVE AGENDA

SPECIAL BUDGET ORDINANCES

(Require Five Affirmative, Recorded Roll Call Votes)

Ordinances amending Ordinance No. C35565 passed by the City Council December 11, 2017, and entitled, "An Ordinance adopting the Annual Budget of the City of Spokane for 2018, making appropriations to the various funds, departments and programs of the City of Spokane government for the fiscal year ending December 31, 2018, and providing it shall take effect immediately upon passage, and declaring an emergency and appropriating funds in:

ORD C35605 General Fund
FROM: Unappropriated Reserves, \$500,000;
TO: Contractual Services, same amount.

(This action allows budgeting for one-time funding to support the City's communication and marketing efforts related to Economic Development.) (Relates to Consent Agenda Items 8 & 9)

Council President Stuckart & Brian Coddington

ORD C35606 Development Services Center
FROM: Minor Equipment, \$1,526;
TO: Various Accounts, same amount.

(This action allows for implementation of classification and pay adjustments in accordance with approved union agreements and City policies.)

Chris Cavanaugh

NO EMERGENCY ORDINANCES

RESOLUTIONS & FINAL READING ORDINANCE

(Require Four Affirmative, Recorded Roll Call Votes)

RES 2018-0021 Regarding the City Council's approval of the Comprehensive Plan Amendment Work Program for 2018.

Tirrell Black

RES 2018-0022 Declaring JustWare by Journal Technologies, Inc. as a sole source for
OPR 2018-0174 Legal Case Management Systems software and authorizing staff to negotiate and execute a Contract with Journal Technologies, Inc., for the procurement—\$117,327.76 (incl. tax).

Michael Sloon

RES 2018-0023 Setting hearing before City Council April 30, 2018 for the vacation of the portions of Erie Street identified in Exhibit "A" as requested by the City.

Eldon Brown

RES 2018-0024 Approving settlement of Robert O. Swearingen arising from an incident on or about December 6, 2017—\$87,709.23.

Nathaniel Odle

ORD C35596 Vacating a portion of 7th Avenue and Chestnut Street as requested by Namva Chan. (First Reading held February 26, 2018).

Eldon Brown

FIRST READING ORDINANCES

(No Public Testimony Will Be Taken)

ORD C35607 (To be considered under Hearings Item H1.b.)

FURTHER ACTION DEFERRED

NO SPECIAL CONSIDERATIONS

HEARINGS

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

RECOMMENDATION

- | | | | |
|-----|---|-------------------------------------|------------|
| H1. | a. Vacation of the alley between Sinto Avenue and Sharp Avenue, from South Riverton Avenue to Helena Street; and the east 15 feet of South Riverton Avenue from Sinto Avenue to Sharp Avenue, as requested by owners having an interest in real estate abutting the above right-of-way. | Approve
Subject to
Conditions | |
| | b. First Reading Ordinance C35607 vacating the alley between Sinto Avenue and Sharp Avenue, from South Riverton Avenue to Helena Street; and the east 15 feet of South Riverton Avenue from Sinto Avenue to Sharp Avenue. | Further
Action
Deferred | ORD C35607 |

Eldon Brown

Motion to Approve Advance Agenda for March 26, 2018
(per Council Rule 2.1.2)

OPEN FORUM (CONTINUED)

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

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

Note: No person shall be permitted to speak at Open Forum more often than once per month (Council Rule 2.2.E).

ADJOURNMENT

The March 26, 2018, Regular Legislative Session of the City Council is adjourned to April 9, 2018.

Note: The regularly scheduled City Council meeting for Monday, April 2, 2018, has been canceled.

NOTES

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

03/26/2018

Date Rec'd

2/26/2018

Clerk's File #

OPR 2018-0153

Renews #Submitting Dept

ENGINEERING SERVICES

Contact Name/Phone

DAN BULLER 625-6391

Contact E-Mail

DBULLER@SPOKANECITY.ORG

Agenda Item Type

Contract Item

Agenda Item Name

0370 - BLANK AGENDA FOR GEOTECHNICAL SERVICES

Cross Ref #Project #

2016142

Bid #Requisition #

19129

Agenda Wording

Hiring of Spokane geotechnical firm, _____(to be determined via RFP) for specialized engineering on the Havana Well Project. (East Central Neighborhood Council)

Summary (Background)

The Havana Well Field project consists of drilling six wells on the City owned parcel at the southeast corner of Havana Street and 6th Avenue. This project was bid and awarded in the fall of 2017 with construction planned for spring/summer 2018. A subsequent project, scheduled for 2019 will install the pumps and associated piping, building and electrical and connect it all to the City's existing transmission mains in Havana Street. Engineering Services proposes to hire _____ (to be

Fiscal Impact

Grant related? NO

Budget Account

Public Works? YES

Expense \$ 274,300.00

4250 42300 94000 56501 15753

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

TWOHIG, KYLE

Study SessionDivision Director

SIMMONS, SCOTT M.

Other

Finance & Admin

Finance

ORLOB, KIMBERLY

Distribution ListLegal

ODLE, MARI

Engineering Admin

For the Mayor

DUNIVANT, TIMOTHY

publicworksaccounting

Additional Approvals

dbuller@spokanecity.org

Purchasing

htrautman@spokanecity.org

mdoval@spokanecity.org



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

determined via pending RFP)a Spokane Geotechnical firm, to provide construction management and quality control services due to the specialized nature of this work.

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List

Briefing Paper

Finance & Administration

Division & Department:	Public Works, Engineering
Subject:	Havana Well Project
Date:	3-19-18
Contact (email & phone):	Dan Buller (dbuller@spokanecity.org 625-6391)
City Council Sponsor:	
Executive Sponsor:	Scott Simmons
Committee(s) Impacted:	PIES
Type of Agenda item:	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	This project is in the 6 year water plan
Strategic Initiative:	Innovative Infrastructure
Deadline:	
Outcome: (deliverables, delivery duties, milestones to meet)	Approval of consultant contract
Background/History: <ul style="list-style-type: none"> The Havana well field project consists of drilling 6 wells on the city owned parcel at the southeast corner of Havana St. and 6th Ave.. This project was bid and awarded fall 2017 with construction planned spring/summer 2018. A subsequent project, scheduled for 2019, will install the pumps and associated piping, building and electrical and connect it all to the city's existing transmission mains in Havana St. This project only drills the wells. 	
Executive Summary: <ul style="list-style-type: none"> Engineering Services is conducting an RFQ to select a firm to provide construction management/quality control services for the Havana well drilling project due to the specialized nature of this work. The contract with the proposed consultant is likely to be in the \$250,000 - \$300,000 range and will include construction management as well as Washington State Department of Health required new source (well) approval documentation. 	
Budget Impact: Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Annual/Reoccurring expenditure? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A If new, specify funding source: Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impact: Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Requires change in current operations/policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A Specify changes required: Known challenges/barriers:	



Havana St. (Spokane/ Spokane Valley dividing line)

Proposed Havana wellfield

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

03/26/2018

<u>Date Rec'd</u>	3/14/2018
<u>Clerk's File #</u>	OPR 2018-0169
<u>Renews #</u>	

<u>Submitting Dept</u>	ENGINEERING SERVICES	<u>Cross Ref #</u>	
<u>Contact Name/Phone</u>	KYLE TWOHIG 625-6152	<u>Project #</u>	2017105
<u>Contact E-Mail</u>	KTWOHIG@SPOKANECITY.ORG	<u>Bid #</u>	
<u>Agenda Item Type</u>	Contract Item	<u>Requisition #</u>	BT
<u>Agenda Item Name</u>	0370 - DESIGN BUILD CONTRACT - KIEWITT/KPFF		

Agenda Wording

Proposed award of Progressive Design Build contract to the team of Kiewit/KPFF for the design and construction of the Post Street Bridge, not to exceed amount of \$13,500,000.00, with an administrative reserve of 10% of the project cost.

Summary (Background)

The proposed contract with the team of Kiewit/KPFF was the result of a two-part RFQ/RFP process. There were five (5) teams which submitted qualifications, and three (3) of those teams were invited to propose on the project. The Federal Funding Agency is in agreement with the City's selection process. The final type and size of the bridge structure will be developed through the project validation process which includes public meetings and Council briefings.

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

Expense	\$ 1,372,000.00	# 3200 95104 95100 56501 99999
Expense	\$ 8,000,000.00	# 3200 95104 95300 56501 99999
Expense	\$ 5,478,000.00	# 4250 43387 94000 56501 14392
Select	\$	#

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	TWOHIG, KYLE	<u>Study Session</u>	
<u>Division Director</u>	SIMMONS, SCOTT M.	<u>Other</u>	PIES 2/26/18
<u>Finance</u>	ORLOB, KIMBERLY	<u>Distribution List</u>	
<u>Legal</u>	ODLE, MARI	Engineering Admin	
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	kgoodman@spokanecity.org	
<u>Additional Approvals</u>		mserbousek@spokanecity.org	
<u>Purchasing</u>		publicworksaccounting	
		mdoval@spokanecity.org	

Briefing Paper

Public Infrastructure, Environment and Sustainability (PIES)

Division & Department:	Public Works – Engineering Services
Subject:	Design/Build Contract for Post Street Bridge
Date:	2/14/2018
Contact (email & phone):	Mark Serbousek x6154
City Council Sponsor:	Councilmember Beggs
Executive Sponsor:	Scott Simmons
Committee(s) Impacted:	PIES/Urban Experience
Type of Agenda item:	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	This project is funded and approved in the City-Wide program. <i>“This project meets 50 goals in Chapter 4 of the Comprehensive Plan. Specifically in TR 1-8 and TR 10.”</i>
Strategic Initiative:	PIES - Repurposing of Public Property and Assets to Stimulate Private Investment – Leverage Riverfront Park Investments Urban Experience – Develop and Formalize World Class River Trail System
Deadline:	N/A
Outcome: (deliverables, delivery duties, milestones to meet)	Award of Design/Build contract – April 2018
Background/History: In 2015 the City conducted a Type, Size and Location Study for the Post Street Bridge and established a preliminary budget in the City-Wide Capital Program. The bridge construction is funded with State, Federal and Local utility dollars. The City produced an RFP in late 2017 and will award a contract to the selected Design Build Team in March after State and Federal funding agency review.	
Executive Summary: The Design/Build contracting process will proceed as follows: Selection Process <ul style="list-style-type: none"> February 12 – Received RFP responses February 21 – Team interviews (3 teams) February 26 - Presentation of highest scoring Design/Build team to PIES Committee End of February – Submit Preferred Design/Build proposal to funding agencies for approval Mid-March – Receive approval to proceed from funding agencies Award <ul style="list-style-type: none"> Late March – Submit Design/Build Contract for City Council Approval. 	

Design/Construction

- April – August – Validation Phase for budget, scope and schedule
- Late April – Early May – Public Process related to structure selection
- July – Public Process related to surface and amenities
- September – Start Final Design Phase
- Winter 2018/2019 – Begin Bridge Demolition

*** Quarterly updates to PIES committee on validation process findings, design evolution and construction progress.*

Budget Impact:

Approved in current year budget? ☒ Yes ☐ No ☐ N/A

Annual/Reoccurring expenditure? ☐ Yes ☒ No ☐ N/A

If new, specify funding source: Utility Rates, Federal Bridge Funds, and Sec. 129 (in City-Wide program and budget)

Other budget impacts: (revenue generating, match requirements, etc.) N/A

Operations Impact:

Consistent with current operations/policy? ☒ Yes ☐ No ☐ N/A

Requires change in current operations/policy? ☐ Yes ☒ No ☐ N/A

Specify changes required: N/A

Known challenges/barriers: N/A



STANDARD FORM OF PROGRESSIVE DESIGN-BUILD AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER - COST PLUS FEE WITH A GUARANTEED MAXIMUM PRICE

Document No. 530

Second Edition 2010

© Design-Build Institute of America

Washington, DC

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Standard Form of Progressive Design-Build Agreement Between Owner and Design-Builder – with Cost Plus Fee and a Guaranteed Maximum Price

*This document has important legal consequences. Consultation with
an attorney is recommended with respect to its completion or modification.*

This **AGREEMENT** is made as of the _____ day of _____
in the year of 2018, by and between the following parties, for services in connection with the Project
identified below:

OWNER:

(Name and address)

City of Spokane, Washington
808 W. Spokane Falls Blvd
Spokane, WA 99201-3316

DESIGN-BUILDER:

(Name and address)

Kiewit Infrastructure West Co.
2200 Columbia House Blvd.
Vancouver, WA 98661Kiewit Infrastructure West Co.
33455 6th Ave St.
Federal Way, WA 98003

PROJECT:

(Include Project name and location as it will appear in the Contract Documents)

Post St. Bridge Replacement Design-Build Project

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder
agree as set forth herein.

Article 1

Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

Article 2

Contract Documents

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with the Contract Documents;

2.1.2 The GMP Amendment in accordance with Section 6.6.1 herein, provided such Amendment is executed between the parties.

2.1.3 This Agreement, including all exhibits but excluding the GMP Amendment:

- | | | |
|----|------------|---|
| .1 | Exhibit A: | Insurance Requirements; |
| .2 | Exhibit B: | Form of Performance and Payment Bond; |
| .3 | Exhibit C: | Validation Period Scope of Work; |
| .4 | Exhibit D: | Owner's Project Criteria; |
| .5 | Exhibit E: | FHWA Form 1273; |
| .6 | Exhibit F: | Federal and State Wage Rates |
| .7 | Exhibit G: | Inadvertent Discovery Plan (Archeological and Historic Objects) |
| .8 | Exhibit H: | UDBE Requirements: WSDOT 1-07.11.OPT3.FR1 |

2.1.4 The General Conditions of Contract, DBIA 530, Standard Form of General Conditions of Progressive Design-Build Contract Between Owner and Design-Builder;

2.1.5 The Special Provisions of the Contract;

2.1.6 General Provisions of the Contract;

2.1.7 The Design-Builder's Proposal;

2.1.8 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract.

Article 3

Interpretation and Intent

3.1 Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including the various documents Owner's Project Criteria set forth in Exhibit D, for

any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

3.2 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement or after the parties' execution of the GMP Amendment, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence as set forth in the General Provisions, Section 1-03.2. *(Note, the parties are strongly encouraged to establish in the GMP Exhibit or GMP Proposal (as applicable) the priority of the various documents comprising such exhibit or proposal.)*

3.3 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

3.4 If the Owner's Project Criteria contain design or prescriptive specifications the Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design or prescriptive specifications and their compatibility with other information set forth in Owner's Project Criteria, including any performance specifications for the purposes of developing the Scope of Services for the Validation Period, the Validation Period Not to Exceed Amount, the Lump Sum General Conditions Costs, and the Lump Sum Fee. However, Design-Builder is required to perform an independent evaluation of such design or prescriptive specifications to verify the information provided by the Owner during the Validation Period. Further, regardless of the inclusion of design or prescriptive specifications or criteria, Design-Builder shall remain responsible for meeting the performance requirements of the Project, including but not limited to the requirements that the Project meet the Owner's Project Criteria and the Basis of Design Documents as well as all applicable Legal Requirements. Provided Design-Builder complies with other requirements set forth in this Agreement such as those regarding notice of claims to Owner and identification of differing site conditions, Design-Builder shall be entitled to an adjustment in the Scope of Services for the Validation Period, the Validation Period Not to Exceed Amount, the Design-Builder's Lump Sum Fee and/or the Design-Builder's Lump Sum General Conditions, but only to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design or prescriptive specifications that are inconsistent with meeting the performance requirements.

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 4

Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

4.2 Ownership of Work Product and Owner's Limited License upon Project Completion and Payment in Full to Design-Builder. Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder: (a) grants Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project; and (b) transfers all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in that portion of the Work Product that consists of architectural and other design elements and specifications that are unique to the Project. The parties shall specifically designate those portions of the Work Product for which ownership in the Work Product shall be transferred. Such grant and transfer are conditioned on Owner's express

understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below.

4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

4.3.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party, and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below, and

4.3.2 Owner shall not be required to pay Design-Builder additional compensation for the right to use the Work Product to complete the Project and subsequently use the Work Product in accordance with Section 4.2 if Owner resumes the Project through its employees, agents, or third parties.

4.4 Owner's Limited License upon Design-Builder's Default. If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

4.5 Owner's Indemnification for Use of Work Product. If Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless such Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product.

Article 5

Contract Time

5.1 Date of Commencement. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion, Physical Completion and Project Completion.

5.2.1 The Validation Period shall be completed no later than ~~ninety-one~~ **ninety-one hundred thirty five** days after the Date of Commencement ("Validation Period Completion Date"). The parties will establish a date for Substantial Completion of the entire Work ("Scheduled Substantial Completion Date") in the GMP Amendment.

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be determined during the Validation Period: *(Insert any interim milestones for portions of the Work with different scheduled dates for Substantial Completion)*

The Lump Sum Fee shall include the following items, which shall not be charged as a Cost of the Work:

- .1 All profit of the Design-Builder for this Project; and
- .2 All regional and home office overhead expenses, including labor and materials, phone, facsimile, postage, internet service, and other incidental office expenses attributed to work on this Project that is not specifically identified in the Fixed Amount for Specified General Conditions Work.

6.2.2 Lump Sum General Conditions Costs. The Design-Builder's Lump Sum General Conditions Costs shall be \$ One million, four hundred ninety thousand dollars (~~\$1,490,000~~). The Lump Sum General Conditions Costs include the items set forth in Section 6.4.5.

6.2.3 Prior to the execution of the GMP Amendment, Design-Builder's Lump Sum Fee and Lump Sum General Conditions Costs will only be adjusted pursuant to Section 3.4 of this Agreement. After the execution of the GMP Amendment, Design-Builder's Lump Sum Fee and Lump Sum General Conditions Costs will only be adjusted if the GMP increases more than fifteen percent over the original GMP set forth in Section 6.1.1. In such case, the Lump Sum Fee and Lump Sum General Conditions Costs shall be adjusted by the same percentage that the Lump Sum Fee and/or the Lump Sum General Conditions Costs (as applicable) are to the original GMP set forth in Section 6.1.1.

6.2.4 The Lump Sum Fee and the Lump Sum General Conditions Costs shall be paid pursuant to Section 6.4.3.

6.3 Cost of the Work. The term Cost of the Work shall mean costs reasonably and actually incurred by Design-Builder in the proper performance of the Work. The Cost of the Work shall include only the following and shall not include any costs that are included in the Lump Sum Fee or the Lump Sum General Conditions Costs:

6.3.1 Unless included in Lump Sum General Conditions Costs, direct labor costs of employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site; provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement. Wages for those employees performing construction services shall be paid as follows: Basic wages and fringe benefits: The hourly wage (without markup or labor burden) and fringe benefits paid by the Design-Builder as established by the Washington Department of Labor and Industries or contributed to labor trust funds as itemized fringe benefits. Whichever is applicable, not to exceed that specified in the applicable "Intent to Pay Prevailing Wage" for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the Change in the Work on the site. The premium portion of overtime wages is not included unless pre-approved in writing by the Owner. The Design-Builder shall provide to the Owner copies of payroll records, including certified payroll statements for itself and Subcontractors of any tier for the period pursuant to Section 1-07.9(5) of the General Provisions. Direct labor costs also include direct contributions to the State of Washington as industrial insurance, medical aid, and supplemental pension by class and rates established by the Washington Department of Labor and Industries and contributions required by the Federal Insurance Compensation Act (FICA), the Federal Unemployment Tax Act (FUTA) and the State Unemployment Compensation Act (SUCA).

6.3.4 Unless included in Lump Sum General Conditions Costs, costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by

law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 6.3.1 through 6.3.3 hereof.

6.3.6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.

6.3.7 Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work. The material costs shall be based upon the net cost after all discounts or rebates, freight costs, express charges, or special delivery costs, when applicable. No lump sum costs will be allowed except when approved in writing in advance by the Owner. Discounts and rebates based on prompt payment need not be included, however, if the Design-Builder offered but the Owner declined the opportunity to take advantage of such discount or rebate.

6.3.8 Costs (less salvage value) of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

6.3.9 Costs of removal of debris and waste from the Site.

6.3.11 Unless included in Lump Sum General Conditions Costs, rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work. The rental charge the applicable rental cost as established by the lower of the local prevailing rate published in the Rental Rate Blue Book by Data Quest. San Jose. California, as modified by the AGC/WSDOT agreement or the actual rate paid to an unrelated third party as evidenced by rental receipts. Rates and quantities of equipment rented that exceed the local fair market rental costs shall be subject to the Owner's prior written approval. Total rental charges for equipment or tools shall not exceed 75% of the fair market purchase value of the equipment or the tool. Actual, reasonable mobilization costs are permitted if the equipment is brought to the site solely for the change in the Work. The rental rates are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance. When rental rates payable do not include fuel, lubrication, maintenance, and servicing, as defined as operating costs in the Blue Book, such operating costs shall be reimbursed based on actual costs. Equipment not of modern design and/or not in good working condition will have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, will be applied to yield the lowest total cost. The rate for equipment necessarily standing by for future use (and standing by for no longer than two (2) weeks') on the changed Work shall be 50% of the rate established above. The total cost of rental allowed shall not exceed the cost of purchasing the equipment outright. If equipment is required for which a rental rate is not established by The Rental Rate Blue Book, an agreed rental rate shall be established for the equipment, which rate and use must be approved by the Owner prior to performing the Work.

6.3.13 All fuel and utility costs incurred in the performance of the Work.

6.3.14 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work, with the exception of Washington State Sales Tax, which shall be paid outside the Validation NTE or GMP.

6.3.15 Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.

6.3.17 Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.

6.3.21 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner and not included in the Design-Builder's Contingency, Design Builder's Fee or the Lump Sum General Conditions Costs.

6.4 Other Methods of Compensation

Within the Validation NTE or the GMP, the parties may agree to the following methods of pricing Design-Builder's Compensation

6.4.1 Allowance Items and Allowance Values.

.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in Exhibit C or the GMP Amendment and are included within any established NTE and the GMP, as applicable.

.2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

.4 The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original Contract Price, and are not subject to adjustment, regardless of the actual amount of the Allowance Item.

.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.4.4; however, Design-Builder must provide written notice of the difference between the actual cost and the Allowance Value pursuant to the Changes provisions in the General Conditions. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

6.4.2 Not To Exceed Sums

- .1 The Owner and Design Builder may establish Not to Exceed (“NTE”) Sums for specific scopes of the Work. Any such NTE Sum will be negotiated between the Owner and Design-Builder. The NTE Sum agreed upon by the Parties shall be incorporated into the GMP Amendment or a Change Order, and the parties shall include the following information:
 - a. A specific description of the Scope of the Work that is subject to the NTE Sum;
 - b. An updated Schedule of Values that incorporates the NTE Sum; and
 - c. Any milestone dates associated with the scope of the Work associated with the NTE Sum.
- .2 For each scope of work for which a NTE Sum has been established, the Design-Builder shall be reimbursed for the scope of the Work as a Cost of the Work; however, Design-Builder’s compensation shall not exceed the NTE Sum without a written Change Order.
- .3 Design-Builder shall not request reimbursement for costs subject to the NTE Sum, unless those costs are identified in the Payment Application as subject to the NTE Sum.
- .4 NTE Sums may only be modified by Change Order pursuant to the General Conditions.

6.4.3 Lump Sums

- .1 The Owner and Design-Builder may establish a Lump Sum for specific scopes of the Work. Any such Lump Sum will be negotiated between the Owner and Design-Builder. The Lump Sum agreed upon by the Parties shall be incorporated into the GMP Amendment or a Change Order, and the parties shall include the following information:
 - a. A specific description of the Scope of the Work that is subject to the Lump Sum;
 - b. An updated Schedule of Values that incorporates the Lump Sum; and
 - c. Any milestone dates associated with the scope of the Work associated with the Lump Sum.
- .2 For each scope of work for which a Lump Sum has been established, the Design-Builder shall be compensated pursuant to the Schedule of Values set forth above based on the percentage of the Scope of the Work subject to the Lump Sum that has been completed.
- .3 Design-Builder shall not request reimbursement for costs subject to the Lump Sum, unless those costs are identified in the Payment Application as subject to the Lump Sum.
- .4 Lump Sums may only be modified via Change Order pursuant to the General Conditions

6.4.4 Design-Builder's Contingency

- .1 The parties shall establish, as part of any NTE and the GMP, a Design-Builder's Contingency which is available for Design-Builder's exclusive use for unanticipated costs it has incurred that are not a Cost of the Work and not the basis for a Change Order under the Contract Documents (collectively "Contingency Items"). By way of example, and not as a limitation, such costs may include the following:
 - (a) trade buy-out differentials;
 - (b) overtime or acceleration;
 - (c) escalation of materials;
 - (d) Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (excluding any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise its best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained;
 - (e) Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder; or
 - (f) Subcontractor defaults.
- .2 The Design-Builder shall be reimbursed for items that are included in the Design-Builder's Contingency in the same manner as set forth in Section 6.3, as a Cost of the Work; however, Design-Builder's compensation for Contingency items shall not exceed the amount set forth as the Design-Builder's Contingency in the applicable NTE or GMP without a written Change Order, and Design-Builder shall not be entitled to any Fee for items reimbursed under this Section. If the Fee is fixed, the amounts included in the Design-Builder's Contingency shall be excluded from the calculation set forth in Section 6.2.3 to determine whether the GMP has changed.
- .3 The Contingency is not available to Owner for any reason, including, but not limited to changes in scope or any other item which would enable Design-Builder to increase an NTE or GMP under the Contract Documents.
- .4 Design-Builder shall provide Owner notice of all anticipated charges against the Contingency, and shall provide Owner as part of the monthly status report required by Section 2.1.2 of the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

6.4.5 Lump Sum General Conditions Costs

.1 The Lump Sum General Conditions Costs includes, but is not limited to the following items:

a. Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work. Specifically, the following personnel are included in the Lump Sum General Conditions Costs:

Project Executive
Project Manager
Superintendent
Quality Control Manager
Project Engineer

b. Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, including the Project Executive.

c. The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work. Such costs must be approved in writing by Owner in advance.

d. The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.

e. Premiums for insurance and bonds required by this Agreement or the performance of the Work.

f. The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

g. Accounting and data processing costs related to the Work.

h. Fees paid by the Design-Builder for the approval of Statements of Intent to Pay Prevailing Wages and certification of Affidavits of Wages Paid by the industrial statistician of the State Department of Labor and Industries. The Design-Builder will remain responsible for the actual submittal of the documents to the industrial statistician. In order to receive this reimbursement the Design-Builder will be required to submit to Owner, a list of its subcontractors at all tiers and have their Statements of Intent to Pay Prevailing Wages on file with the Owner.

i. The following costs are specifically included in the Lump Sum General Conditions Costs:

1. Shop Drawing Reproduction
2. Construction Schedule & Updates
3. Safety/Security
4. Field Office Set-up (mobilization/demobilization)
5. Office Supplies
6. Telephone System
7. Telephone Service Charge
8. Computer Network/System Set-up

9. Courier Service
10. Postage (Fed-X, USPS)
11. Furniture/Equipment
12. Office Cleaning
13. Project Superintendent Vehicle
14. Computers
15. Copy Machine
16. Temporary Electric Hook-up/Removal
17. Temporary Electric Material
18. Project Sign
19. Temporary Water Hook-up/Removal
20. Drinking Water & Supplies
21. Chemical Toilets
22. O&M Manuals
23. Project Record Documents
24. Field Engineering/Layout Survey
25. Final bridge load rating

- .2 For the Costs of the Work that are included in the Lump Sum General Conditions Costs, the Design-Builder shall not be reimbursed for such costs as part of the Cost of the Work. The Lump Sum General Conditions Costs shall not be modified unless the GMP varies, either upward or downward, by more than fifteen percent (15%) from the original GMP established in this Agreement.

6.5 Non-Reimbursable Costs.

6.5.1 The following shall not be deemed as costs of the Work:

- .1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 6.3.1, 6.3.2 and 6.3.3 hereof.
- .2 Overhead and general expenses, except as provided for in Section 6.3 hereof.
- .3 The cost of Design-Builder's capital used in the performance of the Work.
- .4 Costs that would cause the GMP, the Design Builder's Contingency, or any NTE or Lump Sum Amount, as adjusted in accordance with the Contract Documents, to be exceeded.

6.6 Compensation During Project Phases.

6.6.1 Validation Period

- .1 **Compensation.** During the Validation Period, the Design Builder shall be compensated for the following:
 - a. The Cost of the Work set forth in Section 6.3;
 - b. That portion of the Lump Sum Fee and Lump Sum General Conditions Costs pursuant to the Schedule of Values provided by the Design-Builder and based on the percentage of the Scope of the Work that has been completed.;

- c. Any Lump Sums established pursuant to Section 6.4.3; and
- d. Contingency Items charged under Section 6.4.4.

.2 Validation Period Not to Exceed Amount. Design-Builder guarantees that its Compensation during the Validation Period shall not exceed the Validation Period Not to Exceed Amount ("Validation NTE") of four hundred seventy-five thousand Dollars (~~\$~~ \$475,000). Documents used as a basis for the Validation NTE shall be identified in Exhibit C to this Agreement. Design-Builder agrees that it will be responsible for paying all costs of completing the Work which exceed the Validation NTE, as adjusted in accordance with the Contract Documents.

.3 The Validation NTE includes the Design-Builder's Contingency in the amount of Dollars (\$).

.4 GMP Proposal. At the conclusion of the Validation Period, Design-Builder shall submit a GMP Proposal to Owner which shall include the information set forth in Exhibit C, which includes but is not limited to the following, unless the parties mutually agree otherwise:

- a. A Validated GMP which shall not exceed the GMP set forth in Section 6.1.1, unless the Owner agrees in writing. The Validated GMP which shall be the sum of:
 - i. Design-Builder's Lump Sum Fee as defined in Section 6.2.1;
 - ii. The estimated Cost of the Work as defined in Section 6.3 hereof;
 - iii. Contingency Items charged under Section 6.4.4;
 - iv. The Lump Sum General Conditions Costs as defined in Section 6.2.2;
 - v. If applicable, any Lump Sum established by the Parties pursuant to Section 6.4.3.
- b. The Basis of Design Documents;
- c. A list of the assumptions and clarifications made by Design-Builder in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design Documents;
- d. The Validated Project Schedule, including but not limited to the Scheduled Substantial Completion Date and Milestone Dates upon which the Validated GMP is based;
- e. If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis;
- f. If applicable, a list of NTEs and the information required pursuant to Section 6.4.2 above;
- g. If applicable, a list of Lump Sums and the information required pursuant to Section 6.4.3 above;
- h. If applicable, a schedule of unit prices;
- i. A Schedule of Values for the Project;

- j. The amount for liquidated damages for failure to complete the Project in a timely fashion;
- k. The time limit for acceptance of the GMP Proposal; and
- l. Incentive Payment Plan.

.5 Submission of the GMP Proposal. Submission of the GMP Proposal constitutes Design-Builder's representation and agreement that the Project is adequately defined, that the Basis of Design Documents are sufficiently defined to provide an accurate Contract Price, and that the Project is sufficiently clear and understandable for the Design-Builder to perform the Work in accordance with the Contract Documents for an amount that will not exceed the GMP.

.6 Review and Adjustment to GMP Proposal. After submission of the GMP Proposal, Design-Builder and Owner shall meet to discuss and review the GMP Proposal. If Owner has any comments regarding the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the GMP Proposal.

.7 Acceptance of GMP Proposal. If Owner accepts the GMP Proposal, as may be amended by Design-Builder, the GMP and its basis shall be set forth in the GMP Amendment. Execution of the GMP Amendment constitutes Design-Builder's representation and agreement that the Project is adequately defined, that the Final Basis of Design Documents are sufficiently defined to provide an accurate Guaranteed Maximum Price, and that the Project is sufficiently clear and understandable for the Design-Builder to perform the Work in accordance with the Contract Documents for an amount that will not exceed the GMP.

.8 Failure to Accept the GMP Proposal. If Owner rejects the GMP Proposal, or fails to notify Design-Builder in writing on or before the date specified in the GMP Proposal that it accepts the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

- a. Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 6.6.1.3 above;
- b. Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 6.1 hereof without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; however, Design-Builder may not exceed any NTE or Lump Sum that may be established between the Parties; or
- c. Owner may terminate this Agreement for convenience in accordance with Article 8 hereof; provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

.7 Performance of Work After Submission of GMP Proposal. The Design-Builder shall not perform any Work after the submission of the GMP Proposal until the Owner has approved and signed the GMP Proposal unless the Design-Builder obtains the Owner's prior, written consent to perform such Work and only to the extent that such Work is expressly described in writing in such written consent.

6.6.2 Post GMP Period.

.1 Compensation. During the Post GMP Period, the Design Builder shall be compensated for the following, all subject to the GMP and any Lump Sum and/or Not to Exceed Amounts established by the Parties:

- a. The Cost of the Work set forth in Section 6.3;
- b. Design-Builder's Lump Sum Fee established pursuant to Section 6.2.1;
- c. Any Lump Sums established pursuant to Section 6.4.3;
- d. Contingency Items charged under Section 6.4.4;
- e. Design-Builder's Lump Sum General Conditions Costs established pursuant to Section 6.2.2; and
- f. Payments pursuant to the Incentive Payment Plan

.2 GMP The total compensation paid to Design-Builder for this Project shall not exceed the GMP, as amended pursuant to this Contract. By agreeing to the GMP Amendment, the Design-Builder understands that if the Work cannot be completed for the agreed GMP, any additional costs shall be the responsibility of the Design-Builder, and Design-Builder hereby assumes liability for such costs without reimbursement by the Owner.

6.6.4 Savings.

.1 If the sum of the actual compensation to the Design-Builder is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall go to 100% to the Owner.

Article 7

Procedure for Payment

7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner on the twenty fifth (25th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.1.3 If Design-Builder's Fee under Section 6.2.1 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

7.1.4 Design-Builder shall separately account for all Costs of the Work attributable to warranty items, including but not limited to the warranty set forth in Section 1-05.16 of the General Provisions.

7.2 Not Used

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment pursuant and subject to RCW Chapter 60.28 and RCW Chapter 39.08 and all applicable laws and regulations, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.4 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of one and a half_percent (1.5) per year until paid.

7.5 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of six (6) years after Final Payment, Owner, Owner's accountants, the Washington State Department of Commerce and the Washington State Auditor shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of six (6) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

Article 8

Termination for Convenience

8.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate all or a portion of this Agreement. In such event, Owner shall pay Design-Builder for the following:

8.1.1 All Work executed and for proven loss, cost or expense in connection with the Work;

8.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

8.1.3 That portion of the Design-Builder's Lump Sum Fee and Lump Sum General Conditions Costs that corresponds with the percentage of Work complete.

8.2 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.

Article 9

Representatives of the Parties

9.1 Owner's Representatives.

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Kyle Twohig
City of Spokane Engineering Operations Manager
808 W. Spokane Falls Blvd
Spokane, WA 99201
(509) 625-6700
Ktwohig@spokanecity.org

9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract. This individual is also referenced as the City Engineer in the Contract Documents: *(Identify individual's name, title, address and telephone numbers)*

Mark Serbousek
City of Spokane Bridge Engineer
808 W. Spokane Falls Blvd
Spokane, WA 99201
(509) 625-6154
mserbousek@spokanecity.org

9.2 Design-Builder's Representatives.

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Article 10

Bonds and Insurance

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

10.2 Bonds and Other Performance Security. Upon execution of this Agreement, Design-Builder shall provide a performance and a labor and material payment bond, pursuant to RCW Chapter 39.08, equal to one hundred percent (100%) of the Validation NTE in the form set forth as Exhibit B. Upon execution of the GMP Amendment, Design-Builder shall provide a performance and labor and material bond, pursuant to RCW Chapter 39.08, equal to one hundred percent (100%) of the GMP in the form set forth as Exhibit B.

Article 11

Other Provisions

11.1 Other provisions, if any, are as follows: *(Insert any additional provisions)*

11.2 Wages.

11.2.1 The Design-Builder and its Subcontractors, Consultants and Sub-Consultants shall pay all laborers, workmen, or mechanics employed by it or them in the performance of this Contract the applicable state prevailing wage rate required by RCW Chapter 39.12 and the Davis-Bacon Act, as set forth in Exhibit E. The schedule of prevailing wage rates for the locality or localities of the Work is determined by the Industrial Statistician of the Department of Labor and Industries. It is the Design-Builder's responsibility to verify the applicable prevailing wage rate. To the extent that RCW Chapter 39.12 and the Davis-Bacon Act conflict, the more stringent requirement shall prevail.

11.3 Hours of Labor

11.3.1 Design-Builder shall comply with applicable provisions of RCW Chapter 49.28, and such provisions are incorporated herein by reference.

11.3.2 RCW 49.28 permits entities performing public works contracts to enter into an agreement where employees work up to ten hours in a calendar day, subject to the provisions of the statute. No such agreement may provide that employees work ten-hour days for more than four calendar days a week. Any such agreement is subject to approval by the employees.

11.4 Off Site Prefabricated Items.

11.4.1 In accordance with RCW 39.04.370, Design-Builder shall submit certain information about off-site, prefabricated, nonstandard, project specific items produced under the terms of the contract and produced outside Washington as a part of the Affidavit of Wages Paid form filed with the Washington State Department of Labor and Industries.

11.5 Nondiscrimination.

11.5.1 Discrimination in all phases of contracted employment, contracting activities and training is prohibited by Title VI of the Civil Rights Act of 1964, and other related laws and statutes. These laws (and corresponding regulations) establish the minimum requirements for affirmative action efforts and define the basic nondiscrimination provisions as required by this Section of these General Provisions.

It is the policy of the City that Disadvantaged Business Enterprises (DBEs) and other small businesses, as defined in 49 Code of Federal Regulations (CFR) Part 26, shall have equal opportunity to participate in contracts financed in whole or in part with USDOT funds.

DBE goals have been assigned to this project. Accordingly, the Design-Builder shall take all necessary and reasonable steps to ensure that DBEs have the maximum opportunity to compete for and perform work on this contract that corresponds with their DBE certification (work descriptors).

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

11.6 Business Registration Requirement.

11.6.1 Design-Builder represents and warrants that it and all of its subconsultants, subcontractors and suppliers are properly licensed to perform the work for which they are contracted and have all applicable business licenses, including but not limited to any licenses or registrations required by the State of Washington and Section 8.01.070 of the Spokane Municipal Code, as well as any other regulatory authority. Design-Builder shall be solely 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.

11.7 Contractor's Registration Requirement.

11.7.1 Design-Builder represents and warrants that it and all of its subconsultants, subcontractors and suppliers performing construction work are properly licensed pursuant to RCW 39.06.010.

11.8 Apprenticeship Program

11.8.1 All Contractors and subcontractors are required to comply with the Spokane Municipal Code (SMC). In accordance with Article X, 7.06 SMC, Public Works Apprentice Program, for public works construction projects as defined in RCW 39.04.010 with an estimated cost of six hundred thousand dollars (\$600,000.00) or more, at least fifteen (15%) percent of the total contract labor project (all contractor and subcontractor hours) shall be performed by apprentices enrolled in a state-approved apprenticeship program.

1. The utilization percentage requirement of apprenticeship labor for public works construction contracts shall also apply to all subcontracts which value exceeds one hundred thousand dollars (\$100,000), provided there is a state-approved apprenticeship program for the trade for which a subcontract is issued (see, SMC 7.06.510).
2. Each subcontractor which this chapter applies is required to execute a form, provided by the city, acknowledging that the requirements of Article X 07.06 SMC are applicable to the labor hours for the project.
3. Each subcontractor is required to submit by the 15th of each month, a City of Spokane Statement of Apprentice/Journeyman Participation form for worked performed the previous month.

11.9 Anti-Kickback

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

11.10 Federal Funding Requirements

11.10.1 The Design-Builder shall comply with the requirements of Exhibits E and F and as well as any requirements relating to the use of Federal Funding on this Project.

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:

(Name of Owner)

(Signature)

(Printed Name)

(Title)

Date: _____

DESIGN-BUILDER:

(Name of Design-Builder)

(Signature)

(Printed Name)

(Title)

Date: _____

Caution: An original DBIA document has this caution printed in blue. This is a printable copy and an original assures that changes will not be obscured as may occur when documents are reproduced.



STANDARD FORM OF GENERAL CONDITIONS OF PROGRESSIVE DESIGN-BUILD CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

Document No. 535

Second Edition, 2010

© Design-Build Institute of America
Washington, DC

Article 1

General

1.1 Mutual Obligations

1.1.1 *Owner and Design-Builder* commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.1.2 Integrated Delivery: The Parties wish to fully embrace the principles of collaboration and integrated delivery in the performance of the Work of this Project. Integrated delivery emphasizes a cooperative approach to problem solving involving all key parties to the Project: the Owner, Design-Builder, Designer and principal Subcontractors (electrical, mechanical and others as the Design-Builder and the Owner jointly agree are appropriate). Toward that end, the Parties agree to employ the following techniques to maximize efficiency and minimize waste:

- .1 Create a culture of open and honest communication throughout the course of the Project;
- .2 Resolve disputes at the lowest possible level;
- .3 Integrate the design and construction team (including key specialty contractors and trade partners) as early as possible into the design process;
- .4 Utilize lean construction methods efficiently and effectively;
- .5 Establish a collaborative environment where all parties have the opportunity to contribute their best efforts for the benefit of the Project as a whole rather than to the benefit of individual parties; and
- .6 Establish business terms that allow for equitable shared risk and reward for the parties who are members of the Design-Build Team.

1.2 Basic Definitions

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under DBIA Document No. 530, *Standard Form of Progressive Design-Build Agreement Between Owner and Design-Builder – with Cost Plus Fee and a Guaranteed Maximum Price* (2010 Edition).

1.2.2 *Basis of Design Documents* are those documents developed as a Validation Period deliverable that outline the scope of the Project and include the DBIA 530 Standard Form of Progressive Design-Build Agreement Between Owner and Design-Builder Cost plus Fee with a Guaranteed Maximum Price; the DBIA 535 Standard Form of General Conditions of Progressive Design-Build Contract, and the other documents required as a Validation Period deliverable. The Scope of Work set forth in the Basis of Design Documents shall be consistent with the Commercial Terms, including but not limited to the Guaranteed Maximum Price set forth in Section 6.1.1 of the Agreement, and the Owner's Project Criteria.

1.2.3 *Commercial Terms* are any terms that establish a GMP, Not to Exceed, Lump Sum, or Contract Time.

1.2.4 *Completion* occurs when the requirements in Section 1-08.5(3) of the General Provisions are achieved.

1.2.5 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by the Design-Builder consistent with the Owner's Project Criteria and the Basis of Design Documents unless a deviation from the Owner's Project Criteria or the Basis of Design Documents (as applicable) is specifically set forth in a Change Order executed by both the Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

1.2.6 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.7 *Design-Build Team* is comprised of the Design-Builder, the Design Consultant, and key Subcontractors identified by the Design-Builder.

1.2.8 *Design Consultant* is a qualified, design professional licensed in the State of Washington who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of the Design Consultant, but is retained by the Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

1.2.9 *Design Log* is a log of Reliable Design Decisions agreed upon by the parties. The Design Log supplements the Owner's Project Criteria and the Basis of Design Documents, as applicable.

1.2.10 *Design Submission* is a drawing, mock up, or other representation of the design created by the Design-Builder and provided to the Owner as part of the Design Services of this Agreement.

1.2.11 *Final Acceptance* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2 and the obligations set forth in Section 1-05.12 of the General Provisions.

1.2.12 *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

1.2.13 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition, as amended).

1.2.14 *General Provisions* refer to the General Provisions set forth in the RFP Chapter 1.

1.2.15 *GMP Amendment* means an amendment to the Agreement entered into the parties at the conclusion of the GMP Development Period that establishes the Basis of Design Documents, the GMP, the Project Schedule and other terms agreed to by the parties.

1.2.16 *GMP Proposal* means that proposal developed by Design-Builder in accordance with Section 6.6 of DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee With a Guaranteed Maximum Price*.

1.2.17 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements and includes Hazardous Materials as defined in the General Provisions.

1.2.18 *Legal Requirements* have the definition set forth in the General Provisions.

1.2.19 *Owner's Project Criteria* refers to the project requirements set forth as Exhibit D to the Agreement.

1.2.20 *Physical Completion* occurs when the requirements in Section 1-08.5(2) of the General Provisions are achieved.

1.2.21 *Project Schedule* is the schedule provided by the Design-Builder pursuant to Section 2.1.3 of the General Conditions.

1.2.22 *Reliable Design Decision* is a decision, development, or election that refines the Owner's Project Criteria or Basis of Design Documents, that is approved by the Owner and that is set forth in the Design Log. A Reliable Design Decision cannot change the Owner's Project Criteria or Basis of Design Documents but shall instead constitute a further development or refinement of the design for the Project with which all subsequent design, development and Construction Documents shall be consistent.

1.2.23 *Site* is the land or premises on which the Project is located.

1.2.24 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include Design Consultants, materialmen, and suppliers.

1.2.25 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include Design Sub-Consultants, materialmen, and suppliers.

1.2.26 *Substantial Completion* or *Substantially Complete* occurs when the requirements in Section 1-08.5(1).3 of the General Provisions are achieved.

1.2.27 *Trend* is an issue identified in the Trend Log.

1.2.28 *Trend Log* is a log of issues that have been identified by the Design-Builder or the Owner during the design process that may cause any Commercial Term to be modified or cause the Contract Time to be exceeded.

1.2.29 *Validation Period* is the first period in the Project. The purpose of the Validation Period is for the Design-Builder to conduct the Work described in Section 2.11.2.

1.2.30 *Work* shall mean the services, design and construction to be completed by the Design-Builder under the terms of this Contract. Work specifically includes the furnishing of all services, labor, materials, equipment, and all incidentals necessary to the successful completion of the services, design and construction, whether expressly required by or reasonably inferable from the Contract Documents, whether they are temporary or permanent, and whether they are incorporated into the finished Work or not. Work also includes all other obligations imposed on the Design-Builder by the Contract. The Work is sometimes generally referred to as the "Project."

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Design-Builder shall provide Owner with a Monthly Progress Report pursuant to Section 1-09.9(1).4 of the General Provisions detailing the progress of the Work.

2.1.3 Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, the Project Schedule for the execution of the Validation Period for Owner's review and response. The Project Schedule shall indicate the dates for the start

and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.1.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.1.5 The Design-Build Team, which at a minimum shall consist of the Design-Builder's Representative and a representative from the lead designer and lead constructor, shall meet with the Owner at least on a weekly basis and shall provide to the Owner a written update regarding the status of the Project, including but not limited to the following information: any updates to the Project Schedule, status of any changes or potential changes to the Owner's Project Criteria, the Basis of Design Documents, the Project Schedule, the Commercial Terms, the progress of the design, and any issues that may have a material effect on the Project. The Design-Build Team shall issue meeting minutes within three days of meeting.

2.2 Design Professional Services.

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant. Design-Builder shall provide to Owner a list of all Design Consultants and Design Sub-Consultants who will perform material portions of the Work. "Material portions of the Work" shall, at a minimum, include the civil, landscape, architectural, structural, mechanical, electrical, and plumbing design. Design-Builder shall not substitute a listed Design Consultant or Sub-Consultant without obtaining Owner's prior written consent, such consent shall not be unreasonably withheld. The Contract Documents shall not be construed to create a contractual relationship of any kind between Owner and any Design Consultant or Subconsultant of any tier.

2.3 Standard of Care for Design Professional Services.

2.3.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. The Design-Builder shall also perform the design and construction so that the Work meets or exceeds the performance requirements set forth in the Owner's Project Criteria and Basis of Design Documents.

2.4 Design Development Services.

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. At a minimum, Design-Builder shall provide the following design submissions to Owner for its review and approval pursuant to Section 2.4.3: one hundred percent (100%) schematic design; sixty-five percent (65%) design development; one hundred percent (100%) design development; fifty percent (50%) construction documents; one hundred percent (100%) construction documents. Estimates shall be submitted with each submittal.

2.4.1.1 Interim and final design submissions shall be consistent with the Commercial Terms as well as the Owner's Project Criteria and the Basis of Design Documents, as these documents may have been changed through the design process set forth in this Section 2.4.1. By submitting a design submission, the Design-Builder represents to the Owner that the design submission may be constructed for the Owner's Project Criteria, the then current Basis of Design Documents (as applicable), and the Commercial Terms. Notwithstanding the above, Design-Builder may propose designs that may alter the Owner's Project Criteria, the Basis of Design Documents, and/or the Commercial Terms; however, Design-Builder must provide notice thereof in accordance with Article 9

2.4.1.2 On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Owner's Project Criteria, the Basis of Design Documents, or, if applicable, previously submitted design submissions.

2.4.1.3 The Owner shall review and comment on such Design Submissions, providing any comments and/or concerns about such Design Submissions. The Owner shall provide all comments on the Design Submissions within the time provided by the Schedule. The Design-Builder shall revise the Design Submissions (and any other deliverables) in response to the Owner's comments, and incorporate said responses into the next Design Submission.

2.4.1.4 If incorporation of the Owner's comments result in a design that is inconsistent with or otherwise give rise to a change in the Owner's Project Criteria, the Basis of Design Documents, and/or the Commercial Terms, the Design-Builder shall provide notice thereof in accordance with Article 9. Changes to the Owner's Project Criteria, the Basis of Design Documents, and the Commercial Terms, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9.

2.4.1.5 The Design-Builder shall provide an updated cost model for the Project periodically as agreed by Owner throughout the Work. The cost model will be based on a detailed labor and material type cost estimate for the GMP and other Commercial Terms, consistent with Association for the Advancement of Cost Engineering (AACE) practices. The cost model shall be organized by CSI division listing all materials, equipment, and systems necessary to construct the facilities. The Design-Builder shall also schedule and facilitate a one-day review meeting with the Owner to present and summarize changes in the Design Submission, changes to the scheduled Milestone dates and present an overview of cost model.

2.4.1.6 Design Log. A Design Log, including a full listing of Reliable Design Decisions and all changes to the Owner's Project Criteria and the Basis of Design Documents, will be maintained by the Design-Builder and provided to all attendees for review.

- a. The Design Log shall be updated after every Design Review Meeting, and in any case, on a weekly basis.
- b. Once a Reliable Design Decision in the Design Log is approved in writing by the Owner, it shall be binding on the Design-Builder as if set forth in the Owner's Project Criteria or Basis of Design Documents.
- c. The Design Log is for the sole purpose of tracking the development of the Design Submissions. If a Reliable Design Decision will cause a change in the Owner's Project Criteria or Basis of Design Decisions, or any of the Commercial Terms, such changes must be processed pursuant to Article 9.

2.4.1.7 Trend Log. If the Design-Builder does not know the extent to which a Design Submission will alter a Commercial Term or require a change in the Owner's Project

Criteria or Basis of Design Documents, the Design-Builder shall request in writing for the Owner to agree to identify the Trend in the Trend Log.

- a. The request to include a Trend in the Trend Log must include the following information:
 - i. Identification of the portion of the Design Submission for which the cost or schedule implication are uncertain and may cause any Commercial Term to be exceeded;
 - ii. The estimated change in the applicable Commercial Term; and
 - iii. Potential impacts or changes to the Owner's Project Criteria and/or the Basis of Design Documents as a result of the Trend.
- b. The Design-Builder must obtain the Owner's consent to include the Trend in the Trend Log. The Design-Builder will track the Trend on the Trend Log, and the Trend Log shall be updated with the most recent information on a weekly basis.
- c. The parties will work collaboratively to resolve Trends in the Trend Log as quickly as possible. When a Trend in the Log is resolved and the resolution changes the Owner's Project Criteria, the Basis of Design Documents and/or any Commercial Term, the resolution shall be memorialized in a Change Order.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded as set forth above. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.4.3 Owner's review and approval of interim design submissions, meeting minutes, the Design Log, the Trend Log, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions, meeting minutes, the Design Log, the Trend Log and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner. Design-Builder shall provide Owner with sufficient time in the Project Schedule to review and approve the design submissions, such time period shall not be less than two (2) weeks.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements.

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.5.2 The Commercial Terms shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date the parties agree upon the Commercial Term. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Government Approvals and Permits.

2.6.1 Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.7 Design-Builder's Construction Phase Services.

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Design-Builder shall, prior to the start of construction, provide Owner with a list of all Subcontractors performing at least fifteen percent (15%) of the construction work to Owner. To the extent that the Design-Builder has not selected a Subcontractor prior to performing the construction work, Design-Builder shall inform Owner in writing of the scope of work that has not been subcontracted and provide Owner a list of any subsequently added Subcontractors prior to the Subcontractor performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder may not substitute listed Subcontractors without Owner's prior consent; such consent shall not be unreasonably withheld. The Contract Documents shall not be construed to create a contractual relationship of any kind between Owner and any Subcontractor of any tier.

2.7.4 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.7.5 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.7.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.8 Design-Builder's Responsibility for Project Safety.

2.8.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as

to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.8.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

2.9 Design-Builder's Warranty.

2.9.1 Design-Builder provides the warranty set forth in Section 1-05.16(2) of the General Provisions. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.10 Correction of Defective Work.

2.10.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

2.10.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

2.10.3 The one-year period referenced in Section 2.10.1 above applies only to Design-Builder's

obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

2.11 Contract Phases

2.11.1 Validation Period. The Validation Period shall commence upon Notice to Proceed from the Owner and shall end on the Validation Period Completion Date as set forth in DBIA Document 530, Section 5.2. The services provided by the Design-Builder during the Validation Period shall be established in Exhibit C.

2.11.1.1 In the Validation Period, the Design-Builder shall carefully and thoroughly examine the information set forth in Exhibit D, the existing site conditions, and any other information provided by the Owner with respect to the Project. Such information includes, but is not limited to, as-built drawings of the existing facilities; necessary testing of existing facilities; geotechnical and other site conditions; and legal, permitting and regulatory requirements and restrictions

2.11.1.2 The Design-Builder may not rely on information provided by the Owner and must validate all information provided by the Owner during the Validation Period as set forth in Exhibit D. Notwithstanding the above, the parties recognize that the Design-Builder relied on the information set forth in the Request for Proposals to establish the Validation Period NTE, the Lump Sum Fee and the Lump Sum General Conditions Costs, and if the actual conditions differ materially from the information set forth in the RFP, then the Design-Builder shall provide Notice thereof and may be entitled to an equitable adjustment in the Validation Period NTE, the Lump Sum Fee and/or the Lump Sum General Conditions Costs, as applicable, provided that the Design-Builder meets the requirements in Section 4.2.1 of the General Conditions.

2.11.1.3 The Design-Builder shall, in collaboration with the Owner, perform the Scope of Work set forth in Exhibit C, including but not limited to developing the Basis of Design Documents and the Final Project Schedule, all within the applicable Commercial Terms. The Design-Builder shall provide all pricing information in an open book format. The parties will collaboratively review the pricing requirements set forth in the Special Provisions to determine the appropriate method of pricing to validate the GMP.

2.11.1.4 The Design-Builder and the Owner shall, consistent with any applicable provision of the Contract Documents and during the Validation Period, agree upon the quantity and level of development for Design Submissions that the Owner may wish to review, which Design Submissions may include Milestone Design Submissions, design criteria, drawings, diagrams and specifications setting forth the Project requirements. At a minimum, Design-Builder shall provide the submissions set forth in Section 2.4.1. Design Submissions shall be consistent with the Commercial Terms and the Owner's Project Criteria, as they may develop through the design process set forth in the Contract Documents.

2.11.1.5 Design-Builder must verify the information set forth in Exhibit D by the conclusion of the Validation Period. The extent to which such verification will occur in the Validation Period shall be set forth in Exhibit C. If the Design-Builder discovers or should have discovered with reasonable diligence material differences from the actual conditions and the information provided in Exhibit D, Design-Builder shall, at the conclusion of the Validation Period, provide Owner with written notice of any such material differences. A "Material Difference" is defined as one that would either a) impact the Basis of Design Documents, Design-Builder's Lump Sum Fee or Design-Builder's Lump Sum General Conditions Costs or b) be considered a Differing Site Condition pursuant to Section 4.2.1 of the General Conditions. Design-Builder shall not be entitled to a Change Order for Differing Site Conditions pursuant to Section 4.2.1(i) of the General Conditions if the

Differing Site Condition could have been discovered, with reasonable diligence, during the Validation Period.

2.11.1.6 At the conclusion of the Validation Period, the Design-Builder will submit a GMP Proposal pursuant to Section 6.6.1 of the Agreement. The parties will negotiate the Final terms of the GMP Proposal, and if the parties agree, they will enter into the GMP Amendment. Upon execution of the GMP Amendment, the Design-Builder shall provide a payment and performance bond for the amount of the GMP.

2.11.1.7 The Basis of Design Documents submitted with the GMP Proposal will be developed collaboratively with the Owner and shall, at a minimum, comply with the requirements in Exhibit C.

2.11.1.8 If the Design-Builder performs Work after the submission of the GMP Proposal but before the parties enter into the Validation Amendment pursuant to Section 6.6.2 of the Agreement, the Design-Builder shall be entitled to be paid in the same manner as it was paid during the Validation Period; however, in no case shall the Design-Builder be entitled to be paid in excess of the Validation NTE.

2.11.2 Post GMP Period. The Post GMP Period is the final phase of the Contract where the Design-Builder: (i) completes the design services and develops Construction Documents for the Project, (ii) performs the construction, start-up, testing and commissioning and closeout of the Project, and (iii) undertakes any necessary warranty services for the Project.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

3.1.3 Owner, after discovery, shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

3.2 Furnishing of Services and Information.

3.2.1 Not Used.

3.2.2 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Financial Information.

3.3.1 If Design-Builder has reasonable belief that Owner will not have sufficient funds to

complete the Project, at Design-Builder's written request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

3.4 Owner's Representative.

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

3.5 Government Approvals and Permits.

3.5.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in Section 2.6.1.

3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.6 Owner's Separate Contractors.

3.6.1 Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

3.7 Owner Inspectors and Commissioning

3.7.1 Owner may hire separate inspectors for the Work and/or a separate commissioning agent. Design-Builder shall provide Owner's inspectors and commissioning agents access to the Work and shall fully cooperate with any investigation or commissioning activity.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site that could have been reasonably discovered during the Validation Period, provided that Design-Builder provides notice to Owner pursuant to the Differing Site Conditions clause in Section 4.2.1 below prior to the conclusion of the Validation Period. If the Hazardous Condition could have been

discovered during the Validation Period, and Design-Builder did not provide notice of the Hazardous Condition prior to the conclusion of the Validation Period, the Design-Builder is responsible for the costs associated with the Hazardous Condition. Unless working with such Hazardous Condition is part of the scope of the Work, upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions that are not set forth as part of the Work or that could not have been reasonably discovered during the Validation Period, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Unless expressly provided in the Contract Documents to be part of the Work, Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

4.1.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site pursuant to this Section.

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.1.7 With respect to Hazardous Conditions that are part of the Work, Design-Builder agrees to comply with all applicable regulatory authorities, including but not limited to any statute, regulation or regulatory agency regarding such Hazardous Conditions. Design-Builder agrees to work cooperatively with Owner and regulatory agencies with jurisdiction over the Project to properly handle, dispose of, and/or remediate any Hazardous Conditions.

4.2 Differing Site Conditions.

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in Exhibit D or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the applicable Commercial Term to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition. Notwithstanding the above, provided the parties sign the

GMP Amendment, Design-Builder shall not be entitled to a Change Order for Differing Site Conditions pursuant to Section 4.2.1(i) of the General Conditions if the Differing Site Condition could have been discovered, with reasonable diligence, during the Validation Period.

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered. Design-Builder and Owner shall work together cooperatively to determine the appropriate course of action regarding any Differing Site Condition.

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Insurance Exhibit to the Agreement. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement.

5.1.2 Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

5.1.3 Upon signing and returning the signed Agreement to the Owner, and in any event, prior to performing any Work under this Agreement, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least sixty (60) days prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Design-Builder with reasonable promptness according to the Design-Builder's information and belief.

5.2 Owner's Liability Insurance.

5.2.1 Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance as set forth in the Insurance Exhibit to the Agreement to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

5.3 Builder's Risk Insurance.

5.3.1 Design-Builder shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located builder's risk insurance upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The builder's risk insurance obtained by Design-Builder shall be the broadest coverage commercially available, and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property

insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner. The Design-Builder is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1 to the extent that Design-Builder, or any subcontractor or subconsultant for which it is liable is responsible for the claim against the builder's risk insurance.

5.3.2 Any loss covered under Design-Builder's builder's risk insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

5.3.4 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

Article 6

Payment

6.1 Schedule of Values.

6.1.1 Unless required by the Owner upon execution of this Agreement, within sixty (60) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a preliminary schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work. Design-Builder will furnish, as part of the Schedule of Values, adequate and reliable cost justification and documentation so as to provide both Owner and Design Builder a transparent understanding of the cost data estimates and bids that comprise the initial baseline Schedule of Values as well as any updates thereto. Design-Builder will provide a final Schedule of Values with the GMP Proposal.

6.1.2 The Owner will timely review and approve the schedule of values so as not to delay the submission of the Design-Builder's first application for payment. The Owner and Design-Builder shall timely resolve any differences so as not to delay the Design-Builder's submission of its first application for payment.

6.2 Monthly Progress Payments.

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents, specifically Section 1-09.9(1) of the General Provisions and/or established at the meeting required by Section 2.1.4 hereof.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials

are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.3 All discounts offered by Subcontractor, Sub-Subcontractors and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

6.2.4 The Application for Payment shall constitute Design-Builder's representation that the Work described herein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments.

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.4 Right to Stop Work and Interest.

6.4.1 If Owner fails to pay timely Design-Builder any undisputed amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof, provided Design-Builder gives Owner five business days' written notice of its intent to stop work and an opportunity to cure the late payment. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

6.5 Design-Builder's Payment Obligations.

6.5.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.6 Completion.

6.6.1 Substantial Completion. Owner and Design-Builder shall comply with the provisions of Section 1-08.5(1) with respect to Substantial Completion.

6.6.2 Physical Completion. Owner and Design-Builder shall comply with the provisions of Section 1-08.5(2) with respect to Physical Completion.

6.6.3 Completion. Owner and Design-Builder shall comply with the provisions of Section 1-

08.5(3) with respect to Completion.

6.7 Final Payment.

6.7.1 After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has achieved Final Acceptance pursuant to Section 1-05.12 of the General Provisions.

6.7.2 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

6.7.2.1 An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

6.7.2.2 A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

6.7.2.3 Consent of Design-Builder's surety, if any, to final payment;

6.7.2.4 All operating manuals, warranties and other deliverables required by the Contract Documents; and

6.7.2.5 Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

6.7.3 Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion and (iii) the terms of any special warranties required by the Contract Documents.

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such

patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

7.1.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

7.2 Tax Claim Indemnification.

7.2.1 If, in accordance with Owner's direction, an exemption for all or part of the Work is claimed for taxes, Owner shall indemnify, defend and hold harmless Design-Builder from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner's directive. Owner shall furnish Design-Builder with any applicable tax exemption certificates necessary to obtain such exemption, upon which Design-Builder may rely.

7.3 Payment Claim Indemnification.

7.3.1 Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.4 Design-Builder's General Indemnification.

7.4.1 Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its Consultants, and their respective, its officers, directors, and employees (collectively "Indemnitees") from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable. Design-Builder's duty to indemnify shall not apply to liability for damages arising out of Design-Builder's services or out of bodily injury to persons or damage to property that are (a) caused by or resulting from the sole negligence of Indemnitee or (b) caused by or resulting from the concurrent negligence of (i) Indemnitee, its agents or employees and (ii) Design-Builder, its agents or employees. In case of concurrent negligence, Design-Builder's duty to indemnify shall limited to the extent of the negligence of Design-Builder, its agents or employees.

7.4.2 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligation set forth in Section 7.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors,

or other entity under any employee benefit acts, including workers' compensation or disability acts. Solely for the purposes of the indemnification obligations under this Agreement, Design Builder specifically and expressly waives any immunity that may be granted it under the worker's compensation laws under the Washington State Industrial Insurance Act, Title 51 RCW; provided that such waiver shall be expressly limited to Design-Builder's indemnity obligations herein and shall not be intended as a benefit to any third party. Further, the indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers compensation acts, disability benefits acts, or other employee benefits acts. This waiver was mutually negotiated.

7.4.3 THE PARTIES ACKNOWLEDGE THAT THE INDEMNIFICATION OBLIGATIONS IN THIS AGREEMENT AND THE WAIVER OF IMMUNITY UNDER RCW TITLE 51 WERE MUTUALLY NEGOTIATED.

OWNER'S INITIALS: (____)
DESIGN-BUILDER'S INITIALS: (____)

7.4.5 The Owner shall not be responsible or be held liable for any damage to person or property consequent upon the use, misuse or failure of any crane, hoist, rigging, blocking, scaffolding or other equipment used by the Design-Builder or any of its Subcontractors, even though the said crane, hoist, rigging, blocking, scaffolding, or other equipment be furnished or loaned to the Design-Builder by the Owner. The acceptance and/or use of any such crane, hoist, rigging, blocking, scaffolding or other equipment by the Design-Builder or its Subcontractors shall be construed to mean that the Design-Builder accepts all responsibility for any claims for damages whatsoever resulting from the use, misuse or failure of such apparatus whether such damages be by its own employees or property or to the employees or property of other contractors, the Owner, or otherwise.

7.5 Lower Tier Contractors Indemnification Obligations

7.5.1 Design-Builder shall include in its contracts with all lower tier contractors, including but not limited to its Design Consultant, Subconsultants, and Subcontractors, the indemnification obligations set forth in this Agreement and the General Conditions and shall include Owner as an Indemnitee for all such indemnification provisions.

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement and any Amendment to the Agreement.

8.2 Delays to the Work.

8.2.1 If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order by the process set forth in the Contract Documents. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in

the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders.

9.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

9.1.1.1 The scope of the change in the Work;

9.1.1.2 The amount of the adjustment to the Contract Price or any Commercial Term; and

9.1.1.3 The extent of the adjustment to the Contract Time(s) or any Commercial Term.

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes. Unless expressly set forth in the Change Order, Change Orders shall include all costs, including but not limited to all incidental and indirect costs, and time extensions associated with the Change.

9.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

9.1.4 Owner may make changes in the Project, including but not limited to adding and/or removing Work from the Project. In such case, Design-Builder shall adjust the remaining Work to meet Owner's Project changes as reasonably possible within the applicable Commercial Term. At Owner's sole discretion, it may remove Work from the Project rather than increase the applicable Commercial Term to equitably adjust for claims by Design-Builder pursuant to Article 10 or Differing Site Conditions pursuant to Section 4.2.

9.2 Work Change Directives.

9.2.1 A Work Change Directive is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work.

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments.

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

9.4.1.1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

9.4.1.2 A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

9.4.1.3 Costs, fees and any other markups set forth in the Agreement; or

9.4.1.4 If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement.

9.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

9.4.3 Pricing Components For Changed Work

9.4.3.1 The total cost of any Change in Work or of any other increase or decrease in the GMP, including a Claim, shall be limited to the following components.

9.4.3.2 Direct labor costs: These are the actual labor costs determined by the number of additional craft hours and the hourly costs necessary to perform the change in the Work.

9.4.3.3 Direct Material costs: This is an itemization, including material invoice, of the quantity and cost of additional materials reasonable and necessary to perform the change in the Work. No lump sum costs will be allowed except when approved in advance by the Owner.

9.4.3.4 Construction equipment usage costs: This is an itemization of the actual length of time that construction equipment appropriate for Work will be used solely on the change in the Work at the site times the applicable rental cost as established by the Cost of the Work.

9.4.3.5 Subcontractor costs: These are payments the Design-Builder makes to Subcontractors for changed Work performed by such Subcontractors. The Subcontractor's cost of changes Work shall be determined in the same manner as prescribed in this Section 9.4.3 and, among other things, shall not include consultant costs, attorney's fees, or claim preparation expenses.

9.4.4 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement

pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies.

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such written notice shall be separate from the Design Log or Trend Log maintained by the Design-Builder. The Design-Builder shall provide more complete information with respect to the claim within fourteen (14) days of the initial notice, the more complete information shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request. The failure to provide timely written notice of any claim shall operate as a waiver of such claim, but only to the extent that the failure to provide timely written notice prejudices the position of the non-claiming party.

10.2 Dispute Avoidance and Resolution.

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in

Section 10.1.1 unless the Owner and Design-Builder mutually agree otherwise.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation. Good faith mediation is a condition precedent to proceeding with arbitration or other binding dispute resolution procedure. Representatives of the parties with authority to resolve the dispute shall be present at any mediation.

10.3 Arbitration.

10.3.1 Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.

10.3.2 The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

10.3.3 Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

10.3.4 The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party.

10.4 Duty to Continue Performance.

10.4.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 CONSEQUENTIAL DAMAGES.

10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 AND 10.5.3 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES,

WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.

10.5.3 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the ability of any party to recover consequential damages that are covered by insurance.

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work.

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner.

11.2 Owner's Right to Perform and Terminate for Cause.

11.2.1 If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of any Commercial Term, then Design-Builder shall be obligated to pay the difference to Owner.

Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

11.3 Design-Builder's Right to Stop Work.

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

11.3.1.1 Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

11.3.1.2 Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. Design-Builder may not stop work unless it provides such written notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

11.4 Design-Builder's Right to Terminate for Cause.

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

11.4.1.1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

11.4.1.2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

11.4.1.3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8

of the Agreement.

11.5 Bankruptcy of Owner or Design-Builder.

11.5.1 If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the “Bankrupt Party”), such event may impair or frustrate the Bankrupt Party’s ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

11.5.1.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

11.5.1.2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

Article 12

Electronic Data

12.1 Electronic Data.

12.1.1 The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively “Electronic Data”).

12.2 Transmission of Electronic Data.

12.2.1 Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

12.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

12.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article

4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

12.3 Electronic Data Protocol.

12.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

12.3.2 Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

12.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Acceptance of the Project.

12.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

Article 13

Miscellaneous

13.1 Confidential Information.

13.1.1 Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

13.2 Assignment.

13.2.1 Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

13.3 Successorship.

13.3.1 Design-Builder and Owner intend that the provisions of the Contract Documents are

binding upon the parties, their employees, agents, heirs, successors and assigns.

13.4 Governing Law.

13.4.1 The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

13.5 Severability.

13.5.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

13.6 No Waiver.

13.6.1 The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

13.7 Headings.

13.7.1 The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

13.8 Notice.

13.8.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement, or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

13.9 Amendments.

13.9.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

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

03/26/2018

<u>Date Rec'd</u>	3/9/2018
<u>Clerk's File #</u>	OPR 2012-0011
<u>Renews #</u>	

Submitting Dept	INNOVATION & TECHNOLOGY	Cross Ref #	
Contact Name/Phone	MICHAEL 625-6468	Project #	
Contact E-Mail	MSLOON@SPOKANECITY.ORG	Bid #	RFP 4299-16
Agenda Item Type	Contract Item	Requisition #	CR 19149
Agenda Item Name	5300 XO COMMUN VARIABLE COSTS 2018		

Agenda Wording

Amendment to increase funds for the 2nd year variable costs associated with Telecommunications Carrier Services for the City. Funds requested: \$38,166.22 including tax.

Summary (Background)

Variable costs include long distance, WebEx, directory assistance, international calling, regulation fees, surcharges, and taxes. XO Communications was selected through RFP #4299-16 to provide telecommunications carrier services to the City. XO Communications had the most competitive pricing, account management and breadth of services that best fit the City's requirements.

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

Expense	\$ 38,166.22 inc tax	# 5300-73200-18880-54301
Select	\$	#
Select	\$	#
Select	\$	#

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	SLOON, MICHAEL	<u>Study Session</u>	Fin Com 3/19/18
<u>Division Director</u>	FINCH, ERIC	<u>Other</u>	
<u>Finance</u>	BUSTOS, KIM	Distribution List	
<u>Legal</u>	ODLE, MARI	Accounting - ywang@spokanecity.org	
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	Contract Accounting - mdoval@spokanecity.org	
<u>Additional Approvals</u>		Legal - modle@spokanecity.org	
<u>Purchasing</u>	WAHL, CONNIE	Purchasing - cwahl@spokanecity.org	
		IT - itadmin@spokancity.org	
		Taxes & Licenses	
		scott.poole@verizon.com	



City of Spokane

CONTRACT AMENDMENT

Title: **TELECOMMUNICATIONS SERVICES**

This Contract Amendment is made and entered into by and between the **City of Spokane** as ("City"), a Washington municipal corporation, and **XO COMMUNICATIONS SERVICES, LLC**, whose address is 13865 Sunrise Valley Drive, Herndon, Virginia 20171 as ("Company"). Individually hereafter referenced as a "party", and together as the "parties".

WHEREAS, the parties entered into a Contract wherein the Company agreed to provide Telecommunication Services to the City; 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 Contract, dated December 14, 2016 and addendum attached 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. The attached Service Order Agreements and Addendum outline the scope of work to be performed under this Amendment.

2. EFFECTIVE TERM.

This Contract Amendment shall become effective on upon signature of the parties and shall run through December 31, 2018.

3. COMPENSATION.

The City shall pay an additional amount not to exceed **THIRTY EIGHT THOUSAND ONE HUNDRED SIXTY SIX AND 22/100 DOLLARS (\$38,166.22)** including tax, for everything furnished and done under this Contract Amendment. This is the maximum amount to be paid under this Amendment, and shall not be exceeded without the prior written authorization of the City, memorialized with the same formality as the original Contract and this document.

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

XO COMMUNICATIONS SERVICES, 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

18-047

Briefing Paper

Finance & Administration Committee

Division & Department:	Innovation and Technology Services Division
Subject:	XO Communications – Funds Increase for 2 nd year variable costs associated with Telecommunications Carrier Services
Date:	March 19, 2018
Author (email & phone):	Michael Sloon, msloon@spokanecity.org , 625-6468
City Council Sponsor:	
Executive Sponsor:	Eric Finch and Michael Sloon
Committee(s) Impacted:	
Type of Agenda item:	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	ITSD – Funds Increase for 2 nd year variable costs associated with Telecommunications Carrier Services.
Strategic Initiative:	
Deadline:	December 31, 2018
Outcome: (deliverables, delivery duties, milestones to meet)	Ongoing telecommunications services.
Background/History: <i>XO Communications was selected through RFP #4299-16 to provide telecommunications carrier services to the City. XO Communications had the most competitive pricing, account management and breadth of services that best fit the City's requirements.</i>	
Executive Summary: <ul style="list-style-type: none"> • Requesting \$38,166.22 including tax for the increase of variable funds associated with this contract for 2018. • 2017 contract amount was \$76,416.22. • Utilizing budget account #5300-73200-18880-54301 	
Budget Impact: Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Annual/Reoccurring expenditure? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If new, specify funding source: Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impact: Consistent with current operations/policy? <input type="checkbox"/> Yes <input type="checkbox"/> No Requires change in current operations/policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Specify changes required: Known challenges/barriers:	

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

03/26/2018

<u>Date Rec'd</u>	3/15/2018
<u>Clerk's File #</u>	OPR 2018-0170
<u>Renews #</u>	

<u>Submitting Dept</u>	INTEGRATED CAPITAL	<u>Cross Ref #</u>	
<u>Contact Name/Phone</u>	ERIC LESTER 625-6894	<u>Project #</u>	2017186
<u>Contact E-Mail</u>	ELESTER@SPOKANECITY.ORG	<u>Bid #</u>	
<u>Agenda Item Type</u>	Contract Item	<u>Requisition #</u>	N/A
<u>Agenda Item Name</u>	4250 -FUNDING AGREEMENT WITH SPOKANE RIVER FORUM		

Agenda Wording

Spokane River Forum to provide funding for the Glover Field Boat Ramp Project in an amount not to exceed \$235,000.00.

Summary (Background)

Funding agreement between the City of Spokane and the Spokane River Forum to provide project funding for the Gover Field Boat Ramp. Proposed boat ramp to allow non-motorized small drift-type boats access to the Spokane River from Glover Field Park. These funds represent the residual grant funding provided for the proposed 2007 Spokane River White Water Park that was terminated in 2009. Total remaining funds are \$235,000.00. In 2018 the Washington State Legislation approved redirection

<u>Fiscal Impact</u>	Grant related?	YES	<u>Budget Account</u>
	Public Works?	NO	
Revenue	\$	\$235,000.00	# 4250 43387 99999 33342 99999
Select	\$		#
Select	\$		#
Select	\$		#
<u>Approvals</u>			<u>Council Notifications</u>
<u>Dept Head</u>	MILLER, KATHERINE E		<u>Study Session</u>
<u>Division Director</u>	SIMMONS, SCOTT M.		<u>Other</u> PIES 3/26/18
<u>Finance</u>	CLINE, ANGELA		<u>Distribution List</u>
<u>Legal</u>	ODLE, MARI		<u>Engineering Admin</u>
<u>For the Mayor</u>	DUNIVANT, TIMOTHY		elester@spokanecity.org
<u>Additional Approvals</u>			publicworksaccounting@spokanecity.org
<u>Purchasing</u>			icmaccounting@spokanecity.org
<u>GRANTS &</u>	BROWN, SKYLER		bblankenagel@spokanecity.org
			mdoval@spokanecity.org



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

Summary (Background)

of these funds toward the Glover Field Boat Ramp to complete project design and construction. Under separate grant funding, project design was initiated by the Spokane Conservation District in 2017 with AHBL as design consultant to 90% completion. AHBL has entered into contract with the City of Spokane to complete the remaining design work that includes interface with the Glover Field Park parking lot improvements as part of the CSO 25 project that is to begin spring 2018.

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List



City of Spokane

AGREEMENT

**Title: FUNDING AGREEMENT WITH SPOKANE RIVER
FORUM FOR PLANNING AND DESIGN SERVICES FOR
THE WATER TRAIL ACCESS AT GLOVER FIELD FOR THE
CITY OF SPOKANE**

This Agreement is made and entered into by and between the **City of Spokane**, as ("City"), a Washington municipal corporation, and the **Spokane River Forum** whose address is 2206 S. Sherman, Spokane, Washington, 99203, as ("SRF"). Individually hereafter referenced as a "party", and together as the "parties".

WHEREAS, the City of Spokane desires to provide for the care, improvement and maintenance of its city parks to promote recreational activities for its citizens; and,

WHEREAS the City of Spokane wishes to design and install a ramp for nonmotorized boats with water and trail access at Glover Field in Peaceful Valley; and;

WHEREAS, AHBL, Inc., provided the initial review and design for this project and won the bid for this work; and,

WHEREAS, SRF desires to further this project by providing funding to the City of Spokane;

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

1. TERM OF AGREEMENT.

This Agreement becomes effective upon signature of both parties.

2. SCOPE OF WORK.

SRF will provide the funding identified in section 3 of this Contract. In return, the City will contract with AHBL to complete the review, design work, and permit acquisition necessary to begin construction of the boat ramp with water and trail access. The work performed by AHBL is subject to City review and approval and is expected to be completed on or near the end of May 2018. The City will confer with SRF periodically about the work being performed by AHBL, and prepare and present information and materials (e.g. detailed outline of completed Work) requested by SRF to determine the adequacy of the work or AHBL's progress. Upon completion of project design and acquisition of permits, and upon authorization by the City, construction will commence and AHBL shall provide Construction Management services.

Construction of the boat ramp based on the AHBL design will be performed by contractor based on a competitive bid process with the construction funding limit noted in section 3 of this Contract and is expect to be performed between June and September 2018.

3. COMPENSATION / PAYMENT.

Total compensation provided by SRF to the City to pay for AHBL's Design services to the City under this Agreement shall be a maximum amount not to exceed **FORTY THOUSAND, FIVE HUNDRED AND 00/100 DOLLARS (\$40,500.00)**, unless modified by a written amendment to this Agreement. SRF will provide the funds to the City upon request of the City following AHBL's commencement of work. The Compensation total shown includes optional provision for AHBL to provide Construction Management services should the City so authorize.

In addition to the above, if SRF receives a pending grant and contract from the Washington State Commerce Department for Local and Community Projects (20064008), SRF agrees to pay up to the limit of **TWO HUNDRED, THIRTY FIVE THOUSAND, AND 00/100 DOLLARS (\$235,000)**, less any administrative costs the Department of Commerce may deduct for the construction phase of the boat ramp. The City will conduct and select the construction contractor for the construction phase of this project through a competitive bidding process and provide all construction phase oversight. Further, before payment SRF will review the conditions of the department of commerce grant and contract with the City, and the City will assume responsibility and provide SRF assurance in writing that all conditions of the grant and contract will be satisfactorily completed with the funding being made available. In the event less than \$235,000 is used for the boat ramp project, SRF agrees to allow any remaining funds to be put toward integration of boat ramp area with Glover Field Park trail improvements.

4. TERMINATION.

For those aspects of this agreement relating to AHBL's Design services, the agreement may not be terminated by SRF at any time after the City has contracted with AHBL to perform the remainder of the design work for the project. SRF will not be liable for providing funding for the construction phase of the boat ramp in the event a grant and contract from the Washington Department of Commerce is either not awarded, or construction phase responsibilities and assurances between SRF and the City are not agreed to in writing. The City may terminate this Agreement at any time, but must at the time of termination refund to SRF any funds remaining unspent at the time of the termination.

5. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS.

Original documents, drawings, designs, reports, or any other records developed or created under this Agreement shall belong to and become the property of the City. All records submitted by the City to SRF shall be safeguarded by SRF. The SRF shall make such data, documents and files available to the City upon the City's request.

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

6. ANTI KICK-BACK.

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


from or to any person involved in this Agreement.

7. MISCELLANEOUS PROVISIONS.

- A. **Amendments/Modifications:** This Agreement may be modified by the City in writing when necessary, and no modification or Amendment of this Agreement shall be effective unless signed by an authorized representative of each of the parties hereto.
- B. This Agreement shall be construed and interpreted under the laws of Washington. The venue of any action brought shall be in a court of competent jurisdiction, located in Spokane County, Washington.
- C. **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.
- D. **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. SRF 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.

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.

SPOKANE RIVER FORUM

By  2/27/18
Signature Date

Andrew Dunne
Type or Print Name

Executive Director
Title

Attest:

City Clerk

CITY OF SPOKANE

By _____
Signature Date

Type or Print Name

Title

Approved as to form:


Assistant City Attorney

Briefing Paper

Public Infrastructure, Environment and Sustainability Committee

Division & Department:	Public Works, Integrated Capital Management
Subject:	Project No. 2017186 - Glover Field Park Boat Ramp Funding Agreement
Date:	March 26, 2018
Contact (email & phone):	Brandon Blankenagel (bblankenagel@spokanecity.org ; 625-6419)
City Council Sponsor:	C.M. Candace Mumm
Executive Sponsor:	Scott Simmons
Committee(s) Impacted:	PIES
Type of Agenda item:	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	The project is consistent with the Joint Administration – Council 6-year Strategic Plan’s Urban Experience.
Strategic Initiative:	Urban Experience - River connection and trail access
Deadline:	
Outcome: (deliverables, delivery duties, milestones to meet)	Complete project design work and construct boat ramp in 2018
<p><u>Background/History:</u></p> <p><i>Funding agreement between City of Spokane and the Spokane River Forum to provide project funding for the Glover Field Boat Ramp. Proposed boat ramp to allow non-motorized small drift-type boats access to Spokane River from Glover Field Park.</i></p> <p><i>These funds represent the residual grant funding provided for the proposed 2007 Spokane River White Water Park that was terminated in 2009. Total remaining funds is \$235,000. In 2018 the WA State Legislation approved redirection of these funds toward the Glover Field Boat Ramp to complete project design and construction.</i></p> <p><i>Under separate grant funding, project design was initiated by the Spokane Conservation District in 2017 with AHBL as design consultant to 90% completion. AHBL has entered into contract with the City of Spokane to complete the remaining design work that includes interface with Glover Field Park parking lot improvements as part of the CSO 25 project that is to begin spring 2018.</i></p>	

Executive Summary:

- *Spokane River Forum (SRF) to provide project funding up to \$235,000*
- *Requested funding agreement to complete remaining project design, permit acquisition, and construct boat ramp in 2018.*
- *Project will interface with proposed Glover Field Park parking lot improvements being constructed as part of CSO 25 project.*

Budget Impact:

Approved in current year budget? ☒ Yes ☐ No ☐ N/A

Annual/Reoccurring expenditure? ☐ Yes ☒ No ☐ N/A

If new, specify funding source: WA Commerce Dept, c/o Spokane River Forum

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

Operations Impact:

Consistent with current operations/policy? ☒ Yes ☐ No ☐ N/A

Requires change in current operations/policy? ☐ Yes ☒ No ☐ N/A

Specify changes required: none known

Known challenges/barriers: none known

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

03/26/2018

<u>Date Rec'd</u>	3/12/2018
<u>Clerk's File #</u>	OPR 2017-0475
<u>Renews #</u>	

<u>Submitting Dept</u>	POLICE	<u>Cross Ref #</u>	
<u>Contact Name/Phone</u>	ERIC OLSEN 835-4505	<u>Project #</u>	
<u>Contact E-Mail</u>	EOLSEN@SPOKANEPOLICE.ORG	<u>Bid #</u>	
<u>Agenda Item Type</u>	Contract Item	<u>Requisition #</u>	CR19158
<u>Agenda Item Name</u>	0680-CONTRACT AMENDMENT WITH LIBERTY LAKE PD		

Agenda Wording

Contract Amendment with Liberty Lake Police Department (Liberty Lake, WA) for evaluating workflow processes. The amendment adds \$20,000 to the current contract bringing the total contract to \$111,500.

Summary (Background)

In April 2017, SPD and Liberty Lake PD entered into an agreement to have a Liberty Lake employee assist SPD with evaluating all workflow aspects of records and construct changes for employee operations, management, and policy enforcement of new business practices. A contract amendment is needed in order to cover hours that were needed in order to complete the project. A contract amendment of \$20,000 is requested to add to the 91,500 contract increasing the total contract to \$111,500.

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? NO	
Expense \$ 20,000		# 0680-11420-21140-55199
Select \$		#
Select \$		#
Select \$		#
<u>Approvals</u>		<u>Council Notifications</u>
<u>Dept Head</u>	OLSEN, ERIC	<u>Study Session</u> 3/5/2018
<u>Division Director</u>	OLSEN, ERIC	<u>Other</u>
<u>Finance</u>	SCHMITT, KEVIN	<u>Distribution List</u>
<u>Legal</u>	ODLE, MARI	SPD Finance
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	EOlsen
<u>Additional Approvals</u>		DRichards@spokanepolice.org
<u>Purchasing</u>		

Briefing Paper (Committee Name)

Division & Department:	Police
Subject:	Amendment with cost to OPR 2017-0475
Date:	2/21/2018
Contact (email & phone):	Eric Olsen 835-4505
City Council Sponsor:	
Executive Sponsor:	
Committee(s) Impacted:	Public Safety
Type of Agenda item:	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	
Strategic Initiative:	
Deadline:	
Outcome: (deliverables, delivery duties, milestones to meet)	
Background/History: <i>In April 2017, SPD and Liberty Lake PD entered into an agreement to have a Liberty Lake employee assist SPD with evaluating all workflow aspects of records and construct changes for employee operations, management, and policy enforcement of new business practices.</i>	
Executive Summary: <ul style="list-style-type: none"> <i>OPR 2017-0475 approved for \$49,000 for services through January 18, 2018</i> <i>Extension with costs submitted October 11, 2017 to add an additional \$42,500 and extend the expiration date to March 31, 2018, bringing total inter-local agreement to \$91,500</i> <i>Hours billed exceeded the original budgeted amount due to increased workload required</i> <i>Additional funds of \$20,000 are required to cover two remaining months of the contract term</i> <i>Total inter-local agreement including all extension is \$111,500</i> <i>Contract will not be extended beyond current expiration date of March 31, 2018</i> 	
Budget Impact: Approved in current year budget? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A Annual/Reoccurring expenditure? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A If new, specify funding source: Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impact: Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Requires change in current operations/policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A Specify changes required: Known challenges/barriers:	



City of Spokane

**Title: SECOND COST AMENDMENT TO
MEMORANDUM OF UNDERSTANDING
(MOU) BETWEEN CITY OF SPOKANE
AND LIBERTY LAKE POLICE DEPTS.**

This Contract Amendment is made and entered into by and between the **City of Spokane (Police Dept.)**, a Washington municipal corporation, whose address is West 1100 Mallon Avenue, Spokane, Washington, 99201, as ("City"), and the **City of Liberty Lake (Police Dept.)**, whose address is 23127 East Mission Avenue, Liberty Lake, Washington, 99019, as ("LLPD"). Individually hereafter referenced as "party" and together as the "parties".

WHEREAS, the parties entered into a Memorandum of Understanding wherein "LLPD", agreed to provide to the "City" with consulting services for a Records Department Workflow Assessment for the City of Spokane Police Department; and,

WHEREAS, the cost for work performed by the "LLPD" for the City of Spokane Police Department has surpassed the amount previously allocated and, therefore, additional funds must be encumbered by this Agreement in order to make payment under this Second Cost Amendment;

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

1. CONTRACT DOCUMENTS.

The Contract, dated June 8, 2017 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 DATES.

This Contract Amendment shall become effective upon signatures of all parties. The end date of this Agreement remains March 31, 2018.

3. AMENDMENT TO COMPENSATION

The "City" shall pay an additional amount not to exceed **Twenty Thousand Dollars (\$20,000)** for everything additionally furnished and done under this MOU Amendment. The new total amount under the original MOU, First Extension with Cost and this Second Cost Amendment is **\$111,500.00**.

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.

LIBERTY LAKE POLICE DEPT.

By _____
Signature Date

Type or Print Name

Title

602-124-505
WA UBI No. City of Spokane Bus.
License No. Required

Attest:

City Clerk

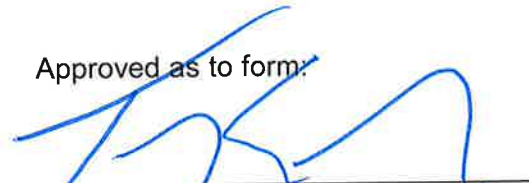
CITY OF SPOKANE

By _____
Signature Date

Type or Print Name

Title

Approved as to form:



Assistant City Attorney

Attachments that are part of this Agreement:
OPR 2017-0475

2018-1100-52

**Agenda Sheet for City Council Meeting of:**
10/23/2017

Date Rec'd	10/11/2017
Clerk's File #	OPR 2017-0475
Renews #	
Cross Ref #	
Project #	
Bid #	
Requisition #	BT

Submitting Dept	POLICE
Contact Name/Phone	ERIC OLSEN 835-4505
Contact E-Mail	EOLSEN@SPOKANEPOLICE.ORG
Agenda Item Type	Contract Item
Agenda Item Name	0680-WORKFLOW ASSESSMENT

Agenda Wording

MOU extension (with cost) with City of Liberty Lake Police Department (Liberty Lake, WA) for the Records Department Workflow Assessment project. The contract is being extended to March 31, 2018; the extended period compensation is \$42,500.00.

Summary (Background)

In April 2017, Spokane PD and Liberty Lake PD entered into an agreement to have a Liberty Lake employee assist SPD with evaluating all workflow aspects of records and construct changes for employee operations, management, and policy enforcement of new business practices. The evaluation is still ongoing hence the need for an extension. Total inter-local agreement including the extension is \$91,500.00.

Fiscal Impact	Grant related? NO	Budget Account
	Public Works? NO	

Expense	\$ 42,500.00	# 0680-11420-21140-55119-99999
Select	\$	#
Select	\$	#
Select	\$	#

Approvals

Dept Head	LUNDGREN, JUSTIN
Division Director	LUNDGREN, JUSTIN
Finance	DOVAL, MATTHEW
Legal	ODLE, MARI
For the Mayor	DUNIVANT, TIMOTHY

Council Notifications

Study Session	PSC Meeting 09/18/17
Other	

Additional Approvals

Purchasing		spdfinance
		mdoval
		cwahl
		eolsen

APPROVED BY
SPOKANE CITY COUNCIL:

10/23/2017
[Signature]
CITY CLERK



City of Spokane

**EXTENSION TO MEMORANDUM OF
UNDERSTANDING (MOU)
WITH COST**

**Title: RECORDS DEPARTMENT
WORKFLOW ASSESSMENT**

This MOU Extension including additional compensation is made and entered into by and between the **City of Spokane** as ("City"), a Washington municipal corporation, and **LIBERTY LAKE POLICE DEPARTMENT, a division of the CITY OF LIBERTY LAKE**, whose address is 23127 East Mission Avenue, Liberty Lake, Washington 99019, as ("LLPD"). Individually hereafter referenced as a "party", and together as the "parties".

*WHEREAS, the parties entered into a Contract wherein LLPD agreed to provide for the City **RECORDS DEPARTMENT WORKFLOW ASSESSMENT**; and*

WHEREAS, additional time is required, and thus the MOU time for performance needs to be formally extended by this written document.

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

1. CONTRACT DOCUMENTS.

The MOU, dated May 3, 2017 and June 30, 2017, 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 Extension shall become effective upon signatures of the parties.

3. EXTENSION.

The contract documents are hereby extended and shall run through **March 31, 2018**.

4. COMPENSATION.

The City shall pay an additional amount not to exceed **FORTY TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$42,500.00)** for everything furnished and done under this MOU Extension. The new amount under the original MOU and this Extension is **NINETY ONE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$91,500.00)**.

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

LIBERTY LAKE POLICE DEPARTMENT

CITY OF SPOKANE

By Brian K. Asmus 9-27-17
Signature Date

By David A. Condon 10-31-17
Signature Date

Brian K. Asmus
Type or Print Name

DAVID CONDON
Type or Print Name

Chief of Police
Title

MAYOR
Title

Attest:

Approved as to form:

Ava Swenson
City Clerk

Mary M. E.
Assistant City Attorney

Attachments that are part of this Contract Extension:

Attest:
Leri H. Hester
Spokane City Clerk

17-102



**Briefing Paper
City of Spokane
Spokane Police Department
Contract Extension for Police Records Consultant
September 18, 2017**

Subject

Extension of contract with the City of Liberty Lake to provide consulting services for the Spokane Police Records Unit.

Background

The Spokane Police Department has contracted with Liberty Lake PD to provide one of their employees to assist with the implementation of the Tyler / New World CAD/LERMS/MOBILE system. This employee is recognized regionally for her expertise in the Tyler / New World system and her extensive knowledge of NIBRS. In conjunction with this knowledge, she has been tasked with the evaluation of all workflow aspects of the Records Unit and with the construction of employee operations, management and policy enforcement of new business practices.

The contract commenced in April and was originally intended to last for approx. 6 months and be under the \$49,000 threshold for a minor contract. This process has proven more complex and lengthy than initially anticipated. We are seeking to extend this by up to another 6 months.

Impact

The Records Unit will continue to learn and work within the New World system and improve their business practices.

Action

Approve Contract Extension

Funding

The funding has been and will continue to come from salary savings from a Supervisor / Manager vacancy within the Unit. We are currently updating the job description for the vacant Manager position.

Briefing Paper (Committee Name)

Division & Department:	Police
Subject:	Amendment with cost to OPR 2017-0475
Date:	2/21/2018
Contact (email & phone):	Eric Olsen 835-4505
City Council Sponsor:	
Executive Sponsor:	
Committee(s) Impacted:	Public Safety
Type of Agenda item:	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	
Strategic Initiative:	
Deadline:	
Outcome: (deliverables, delivery duties, milestones to meet)	
Background/History: <i>In April 2017, SPD and Liberty Lake PD entered into an agreement to have a Liberty Lake employee assist SPD with evaluating all workflow aspects of records and construct changes for employee operations, management, and policy enforcement of new business practices.</i>	
Executive Summary: <ul style="list-style-type: none"> OPR 2017-0475 approved for \$49,000 for services through January 18, 2018 Extension with costs submitted October 11, 2017 to add an additional \$42,500 and extend the expiration date to March 31, 2018, bringing total inter-local agreement to \$91,500 Hours billed exceeded the original budgeted amount due to increased workload required Additional funds of \$20,000 are required to cover two remaining months of the contract term Total inter-local agreement including all extension is \$111,500 Contract will not be extended beyond current expiration date of March 31, 2018 	
Budget Impact: Approved in current year budget? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A Annual/Reoccurring expenditure? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A If new, specify funding source: Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impact: Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Requires change in current operations/policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A Specify changes required: Known challenges/barriers:	

THIS MEMORANDUM OF UNDERSTANDING, made and entered into by and between the Spokane Police Department, a division of the City of Spokane, a municipal corporation of the State of Washington, having offices for the transaction of business at West 1100 Mallon Avenue Spokane, Washington 99260, and the Liberty Lake Police Department, a division of the City of Liberty Lake, a municipal corporation of the State of Washington, having offices for the transaction of business at 23127 East Mission Avenue, Liberty Lake, Washington, and jointly referred hereinafter as the "PARTIES".

Now therefore, the SPD and LLPD agree as follows:

SECTION NO. 1: RECITALS AND FINDINGS

- (a) This MOU is authorized for use by the PARTIES under the Washington State Interlocal Cooperation Act (RCW 39.34); and
- (b) Certain Personal Services specifically needed by the Agency identified as SPD for the organization and evaluation of internal department functionalities, and the neighboring Agency of the LLPD can provide the necessary assistance authorized by RCW 39.34.

SECTION NO. 2: DEFINITIONS

- (a) **Agreement**: "Agreement" means this Interlocal Agreement (ILA) and also memorialized more simply as a Memorandum of Understanding (MOU) between the LLPD and SPD regarding the services provided for the reorganization of the workflow and structure of the SPD Regional Records Department specializing in Incident Based Reporting best practices.
- (b) **LLPD**: "LLPD" means the Liberty Lake Police Department of Liberty Lake, WA
- (c) **SPD**: "SPD" means the City of Spokane Police Department (SPD) of Spokane, WA
- (d) **Records**: "Records" means the Records Division of the Spokane Police Department that oversees all records related to police response for select agencies in the Tyler New World implementation.
- (e) **IBR**: "IBR" means Incident Based Reporting which is the federal standard for police report submissions for crime reporting metrics.

SECTION NO. 3: PURPOSE

The purpose of this MOU is to reduce to writing the "PARTIES" understandings as to their respective financial obligations for services rendered related to:

- (1) **Records Department Workflow Assessment** – LLPD anticipates, initially, the need for twenty (20) to thirty (30) hours per week at SPD to address/evaluate all workflow aspects of records, and construct changes for employee operations, management and policy enforcement of new business practices. This will ensure all aspects of the services rendered are tuned to make sure IBR best practices and efficiencies are embedded. Certain areas may also need immediate remedy (IBR, warrants, merging with errors, incident reports/docs, Sector citations), which may be unknown, and require additional dedicated time to develop procedures that will ensure operations run as smoothly as possible for all PARTIES in the future.

- (2) **Compensation** – Total compensation for LLPD's services under this MOU shall be for a maximum amount not to exceed forty nine thousand dollars (\$49,000.00), plus applicable taxes unless modified by the PARTIES in a written amendment to this MOU. This is the maximum amount to be paid under this MOU for the work described in this Section 3, and shall not be exceeded without the prior written authorization of the City in the form of an executed amendment to this MOU.

The rate of billing shall be as follows:

- A. Twenty (20) hours per week to be performed for SPD at an hourly rate of \$38.00 per hour payable to the City of Liberty Lake by the City of Spokane.
- B. Ten (10) hours minimum per week in allowable overtime to be performed for SPD at the applicable overtime rate of \$57.00 per hour payable to the City of Liberty Lake by the City of Spokane.
- C. In addition to the hourly rates listed above, a flat rate of \$15.45 per hour will be added to each hour worked for SPD for the purpose of covering the costs of the benefits incurred by the LLPD Records Clerk. This will be payable to the City of Liberty Lake by the City of Spokane.

The SPD shall pay the LLPD on a reimbursable basis, accompanied by receipts for allowable expenses and the provisions of all necessary supporting financial documentations. The City of Liberty Lake shall submit an invoice for payment to the City of Spokane Police Department, Administration Office, West 1100 Mallon Avenue Spokane, Washington, 99201. Payment shall be made within thirty (30) days after receipt of the invoice as provided by state law. If the City of Spokane Police Department objects to all or any portion of the invoice, it shall immediately notify the City of Liberty Lake 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.

- (3) **Authority** – This ILA authorizes the LLPD Records Clerk on special assignment at SPD to create and enforce, by delegation from SPD Command Staff, practices/processes throughout the records department in order to make effectual change. The LLPD Records Clerk on special assignment at SPD will document in written form, for SPD Command Staff approval and dissemination, new procedures/policies.
- (4) **Evaluation** – After the first ninety (90) days of this dated MOU, SPD and all Agencies participating in serviced rendered by the Records Department will assess the workflow and organization changes. Upon confirmation, additional ninety (90) day increments may be approved to extend this MOU until a maximum total of nine (9) months from the last signature dates of this MOU has been reached.
- (5) **Collaboration** – The Records reorganization effort will require access to other SPD units and staff, including but not limited to: Patrol, Investigations, Crime Analysis and Command Staff for input on procedures for reports possibly changing based upon IBR submissions and further analysis.

SECTION NO. 4: DURATION/WITHDRAWAL

This MOU shall commence on execution by SPD of an agreement with LLPD and run for a term of a maximum of nine (9) months. A three (3) month period shall be referred to as the ("Initial Term"). Upon successful completion of the Initial Term, this MOU may be renewed upon mutual agreement of the PARTIES up to the maximum term allotted under this MOU of nine (9) months. All Renewals/Extensions shall be subject to all terms and conditions set forth herein, and mutual agreement of the PARTIES, memorialized with the same formality as this MOU.

This MOU may not be terminated during the Initial Term; except upon mutual agreement of the PARTIES. Subsequent to the Initial Term, either party may terminate this MOU for any reason whatsoever, upon a minimum of two (2) weeks advanced written notice to the other party.

SECTION NO. 5: NOTICE

All notices or other communications given hereunder shall be deemed given on: (i) the day such notices or other communications are received when sent by personal delivery; or (ii) the third (3rd) day following the day on which the same have been mailed by first (1st) class delivery, postage prepaid to SPD or LLPD at the address set forth below for the PARTIES, or at such other address as either party shall from time-to-time designate by advanced notice in writing to the other party:

SPD: Major Eric Olson
1100 West Mallon Avenue
Spokane, WA 99260

LLPD: Chief Brian Asmus
23127 East Mission
Liberty Lake, WA 99019

SECTION NO. 6: RECORDS REVIEW

The SPD shall maintain for a minimum of six (6) years, any records with respect to the subject matter of this MOU. The LLPD shall be allowed to conduct random reviews, during reasonable business hours of the records generated by SPD in the performance of this MOU. The LLPD will provide the SPD with reasonable advance notice of such record(s) reviews. The PARTIES agree that they will make best efforts to achieve a resolution of any potential records confidentiality issues, including entering into confidentiality agreements or other similar mechanisms that will allow disclosure of the necessary information to accurately conduct a records review, or per state law, federal law, or judgment or court order by the appropriate jurisdictional governing authority over the contents and subject matter of this MOU.

SECTION NO. 7: COUNTERPARTS

This MOU may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same.

SECTION NO. 8: ASSIGNMENT

No party may assign in whole or part its interest in this MOU without the prior written approval of the other party.

SECTION NO. 9: LIABILITY

SPD shall indemnify, defend and hold harmless the LLPD, its officers and employees from all claims, demands, or suits in law or equity arising from SPD's intentional or negligent acts or breach of its obligations under the MOU. SPD's duty to indemnify shall not apply to loss or liability caused by the intentional acts of LLPD, its officers and employees.


Reciprocally LLPD shall indemnify, defend and hold harmless, SPD its officers and employees from all claims, demands, or suits in law or equity arising from LLPD's intentional or negligent acts or breach of its obligations under the MOU. LLPD's duty to indemnify shall not apply to loss or liability caused by the intentional or negligent acts of SPD, its officers and employees.


If the comparative negligence of the PARTIES and their officers and employees is a cause of such damage or injury, the liability, loss, cost or expense shall be shared between the PARTIES in proportion to their relative degree of negligence and the right(s) of indemnity, and/or any other legal right shall apply to such proportion.

Where an officer or employee of a party is acting under the direction and control of the other party, the party directing and controlling the officer or employee in the activity and/or omission given rise to liability shall accept all liability for the other party's officer or employee's negligence.

Each party's duty to indemnify shall survive the termination or expiration of the MOU.

Each party waives, with respect to the other party only, its immunity under RCW Title 51, Industrial Insurance and only as necessary to make this indemnity provision enforceable with respect to claims relating to the death or injury of LLPD and/or SPD employees acting within the scope of this MOU. The PARTIES have specifically negotiated this provision in accordance with laws of the State of Washington.


SPD initials


LLPD initials

SECTION NO. 10: RELATIONSHIP OF THE PARTIES

LLPD is interested only in the results to be achieved by the rendering of the services hereunder, and further the right to control the particular manner, method and means in which SPD meets its responsibilities is solely within the discretion of SPD. Any and all employees who provide services to LLPD under this MOU shall be deemed employees solely of SPD. SPD shall be solely responsible for the conduct and action of all employees under this MOU, and any liability that may attach thereto.

Likewise, no agent, employee, servant or representative of LLPD shall be deemed to be an employee, agent, servant or representative of SPD for any purpose.

SECTION NO. 11: MODIFICATION

This MOU may be modified in writing by mutual written agreement of the PARTIES. Modification may include participation by additional parties not covered by the present MOU.

SECTION NO. 12: PROPERTY AND EQUIPMENT

The ownership of all property, equipment, source codes, and software for all cost items shall remain with SPD unless otherwise specifically and mutually agreed to by the PARTIES in advance.

SECTION NO. 13: ALL WRITINGS CONTAINED HEREIN/BINDING EFFECT

This MOU contains terms and conditions agreed upon by the PARTIES. The PARTIES agree that there are no other understandings, oral or otherwise, regarding the subject matter of this MOU. No changes or additions to this MOU shall be valid or binding upon the PARTIES unless such change or addition is in writing, executed by the PARTIES, and with the same formality as this MOU.

SPD and LLPD were each represented by their own attorney in the drafting of this MOU, and each relied upon the advice of their own attorney. This MOU was fully negotiated and the terms herein were either accepted by, or independently drafted or revised by SPD and LLPD. Accordingly, this MOU shall not be construed against the drafting party which undertook the principal preparation, but shall be construed as if both SPD and LLPD jointly prepared this MOU, and any ambiguity contained herein, shall not be interpreted against any party.

This MOU shall be binding upon the PARTIES hereto, their successors and assigns.

SECTION NO. 14: DISPUTE RESOLUTION

Any dispute between the PARTIES which cannot be resolved between the PARTIES shall be subject to arbitration. Such dispute shall first be reduced to writing. If the SPD CEO and the LLPD Administrator cannot resolve the dispute it will be submitted to arbitration. The provisions of chapter 7.04 RCW shall be applicable to any arbitration proceeding.

SPD and LLPD shall have the right to designate one (1) person each to act as an arbitrator. The two (2) selected arbitrators shall then jointly select a third (3rd) arbitrator. The decision of the arbitration panel shall be binding on the PARTIES, and shall be subject to judicial review as provided for in chapter 7.04A RCW. The costs of the arbitration panel shall be equally split between the disputing PARTIES.

SECTION NO. 15: VENUE STIPULATION

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

SECTION NO. 16: SEVERABILITY

The PARTIES agree that if any parts, terms or provisions of this MOU are held by the courts to be illegal, the validity of the remaining portions or provisions shall not be affected and the rights and obligations of the PARTIES shall not be affected in regard to the remainder of the MOU. If it should appear that any part, term, or provision of this MOU is in conflict with any statutory provision of the State of Washington, then the part, term or provision thereof that may be in conflict shall be deemed inoperative and null and void insofar as it may be in conflict therewith and this MOU shall be deemed to modify to conform to such statutory provision.

SECTION NO. 17: HEADINGS

The section headings appearing in this MOU have been inserted solely for the purpose of convenience and ready reference. In no way do they purport to, and shall not be deemed to define, limit or extend the scope or intent of the sections to which they pertain.

SECTION NO. 18: TIME OF ESSENCE OF MOU

Time is of the essence of this MOU and in case either party fails to perform the obligations on its part to be performed at the time fixed for the performance of the respective obligation by the terms of this MOU, the other party may, at its election, hold the other party liable for all costs and damages caused by such delay.

SECTION NO. 19: UNCONTROLLABLE CIRCUMSTANCES/IMPOSSIBILITY

A delay or interruption in or failure of performance of all or any part of this MOU resulting from uncontrollable circumstances shall be deemed not a default under this MOU.

A delay or interruption in or failure of performance of all or any part of this MOU resulting from any change in or new law, order, rule or regulation of any nature which renders providing of services in accordance with the terms of this MOU legally impossible, and any other circumstances beyond the control of the SPD which render legally impossible the performance by the SPD of its obligations under this MOU, shall be deemed not a default under this MOU.

SECTION NO. 20: FILING

The LLPD shall file this MOU with its LLPD clerk or alternatively place the MOU on the LLPD's website. The SPD shall file this MOU with the SPD auditor, or, alternatively, place the MOU on the SPD's website or other electronically retrievable public source.

SECTION NO. 21: EXECUTION AND APPROVAL

The PARTIES warrant that the officers executing below have been duly authorized to act for and on behalf of the party for the purposes of confirming this MOU.

SECTION NO. 22: COMPLIANCE WITH LAWS

The PARTIES shall observe all federal, state and local laws, ordinances and regulations, to the extent that they may be applicable to the terms of this MOU.

SECTION NO. 23: DISCLAIMER

Except as otherwise provided, this MOU shall not be construed in any manner that would limit either party's authority or powers under law.

SECTION NO. 24: ANTI-KICKBACK

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

SECTION NO. 25: NON-DISCRIMINATION

No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this MOU 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.

SECTION NO. 26: NO THIRD PARTY BENEFICIARIES

Nothing in this MOU is intended to give, or shall give, whether directly or indirectly, any benefit or right, greater than that enjoyed by the general public, to third persons.

SECTION NO. 27: INSURANCE

During the term of the MOU, the SPD shall maintain in force at its own expense, each insurance noted below:

- A. Worker's Compensation Insurance in compliance with RCW 51.12.020, which requires subject employers to provide worker's compensation coverage for all their subject workers and Employer's Liability or Stop Gap Insurance in the amount of \$1,000,000.
- B. General Liability Insurance on an occurrence basis, with a combined single limits of not less than \$10,000,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this MOU. It shall provide that the LLPD, its officers and employees are additional insureds but only with respect to the SPD's services to be provided under this MOU;
- C. Automobile Liability Insurance with a combined single limit, or the equivalent of not less than \$15,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles; and
- D. Professional Liability Insurance with a combined single limit of not less than \$5,000,000 each claim, incident or occurrence. This is to cover damages caused by the error, omission, or negligent acts related to the professional services to be provided under this MOU. The coverage must remain in effect for two (2) years after the MOU is completed.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the SPD or its insurer(s) to the LLPD.

SECTION NO. 28: RCW 39.34 REQUIRED CLAUSES

- A. **PURPOSE**: See section No. 3 above.
- B. **DURATION**: See section No. 4 above.
- C. **ORGANIZATION OF SEPARATE ENTITY AND ITS POWERS**: No new or separate legal or administrative entity is created to administer the provisions of this MOU.
- D. **RESPONSIBILITIES OF THE PARTIES**: See provisions above.
- E. **MOU TO BE FILED**: See section No. 20.
- F. **FINANCING**: Each party shall be responsible for the financing of its contractual obligations under its normal budgetary process.
- G. **TERMINATION**: See section No. 4 above.
- H. **PROPERTY UPON TERMINATION**: See section No. 12 above.

IN WITNESS WHEREOF, the PARTIES have caused this MOU to be executed on date and year opposite their respective signatures.

City of Liberty Lake

By: [Signature] 5.3.17

Signature/Date

Steve Peterson

Type or Print Name

Mayor

Title

Attest:

[Signature]

City Clerk

Approved as to form:

[Signature]

Sean P. Boutz, City Attorney

City of Spokane Police Department

By: [Signature] 4/8/17

Signature/Date

Craig Meidl

Type or Print Name

Chief

Title

Approved as to form:

[Signature]

Assistant City Attorney

Attest:

[Signature]
Spokane City Clerk

(06.30.17) **Acting**



OPR2017-0475

RECEIVED

MAY 26 2017

OFFICE OF THE CITY ATTORNEY



Administrative Services

May 18, 2017

Major Eric Olsen
1100 West Mallon Avenue
Spokane, WA 99260

RE: *Memorandum of Understanding between the Spokane Police Department and the City of Liberty Lake*

Dear Major Olsen:

Enclosed are two original signed copies of the above-referenced MOU from the City of Liberty Lake. Please sign and send one fully-executed Agreement to either myself or Chief Brian Asmus at the address listed below.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Ann Swenson".

Ann Swenson
City Clerk

Enclosures



City of Spokane

Minor Contract Summary

OPR # OPR 2017-0475
 Cross Ref _____
 Destruct Date 2025
 Clerk's Dist. 07/05/17 SRB

Incomplete submissions will be returned to the Department until all requirements are met.
 (Summary to be printed on blue paper)

Department Name POLICE DEPARTMENT
 Department Project # 0680-Records Evaluation

New Contract ☒
 CR # 1825
 Date: _____

Contractor/Consultant

Name: City of Liberty Lake
 Address: 22710 E Country Vista Dr. Remittance Address: _____
 City, State, Zip: Liberty Lake, WA 99019 City, State, Zip: _____

Summary of Services

Evaluation of all workflow aspects of the records department. Construct changes for employee operations, management and policy enforcement of new business practices.

Amount: \$42,352 Budget Code: 0680-11420-21140-55119-99999
 Maximum Amount: \$49,000
 Beginning Date: 4.18.17 Expiration Date: 1.18.18 Open-Ended: ☐

- ☐ Quotes (per Purchasing Policy to be kept on file in Dept.)
- ☐ Insurance Certificate (attach to the contract)
- ☐ City Business Registration (attach verification that a current business license number exists)
- ☐ If Public Works Contract, Contractor has been notified of State Law requirements.
- ☐ Grant Related (if the contract is grant related, the Grants Management Department must sign below)
- ☐ Vendor is already set up for ACH payments or the Accounts Payable Vendor ACH Enrollment Form has been submitted to Accounting. Do not attach ACH form to the contract documents.

RECEIVED

JUN 29 2017

CITY CLERK'S OFFICE

Department Verification Statement: My signature below verifies that all documentation has been completed.

Requestor/Verifier/Contact: Micaela Martinez
 Funds are available in the appropriate budget account

Accountant	<u>S. H. Wade</u>	<u>6/28/17</u>
	Signature	Date
Department Head	<u>[Signature]</u>	<u>6/28/17</u>
	Signature	Date
Other	_____	_____
	Signature	Date
Grants Mgt. (if applicable)	_____	_____
	Signature	Date

Distribution List

Contractor E-mail: <u>aswenson@libertylakewa.gov, basmus@libertylakewa.gov</u>	Contract Accounting
Dept. Contact E-mail: <u>spdfinance</u>	Taxes and Licenses
_____	_____
_____	_____

**CITY OF SPOKANE
OFFICE OF THE CITY ATTORNEY**

CONTRACT REQUEST FORM

Requesting Department: Spokane Police

Contact Person: Erika Phone: 4061

Type of Contract: ☐ New Contract ☐ Renewal
☒ Amendment ☐ Extension

If Request Is For Amendment, Renewal or Extension, Provide OPR #: 2017-0475

Contractor/Consultant Name: Liberty Lake.

Contractor/Consultant Address: 23127 e. MISSION AVE, LIBERTY LAKE, WA 99019

Contract Begin Date: 4/1/2017 Contract End Date: 3/31/2018

Dollar Amount of Contract (Provide Breakdown of Costs If Applicable):

Please do an amendment to add \$20,000 for total of \$111,500. No date extension needed

- OPR 2017-0475 approved for \$49,000 for services through January 18, 2018
- Extension with costs submitted October 11, 2017 to add an additional \$42,500 and extend the expiration date to March 31, 2018, bringing total inter-local agreement to \$91,500
- Hours billed exceeded the original budgeted amount due to increased workload required
- Additional funds of \$20,000 are required to cover two remaining months of the contract term
- Total inter-local agreement including all extension is \$111,500

Contract will not be extended beyond current expiration date of March 31, 2018

Funding Sources (e.g., CD, Dept. of Justice, Etc.): General Fund

Was The Contractor / Consultant Solicited by City's Request for Proposal / Quote / Bid?

If Yes, Provide City's Specifications And / Or City's Request for Proposals.

If Yes, Provide Copy of the Consultant's Proposal / Contractor's Bid / Quote.

If No, Provide Scope Of Work To Be Performed By The Consultant / Contractor.

If No, Provide Sole Source Justification Form For Contracts Greater Than \$10,000.

Contract Amendments:

Provide Reason For Amendment.

Provide Desired Changes In Contract Wording.

*****IF THIS IS A PUBLIC WORKS CONTRACT REQUEST*****

Prevailing Wages:

Did The City's Request for Quote / Bid Require Payment of Prevailing Wages By the Contractor? ☐ Yes ☒ No

If Federal Funds Are Involved, Did The City's Request For Quote / Bid Require Payment of Davis Bacon Wages By The Contractor?

☐ Yes ☐ No Wage Decision No. _____

Performance / Payment Bond:

Did the City's Request For Quote / Bid require a 100% Performance / Payment Bond By The Contractor? ☐ Yes ☒ No

For Contracts Up To \$35,000, Does The Contractor Want To Do A 50% Retainage In Lieu Of A Bond? ☐ Yes ☒ No

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

03/26/2018

<u>Date Rec'd</u>	3/15/2018
<u>Clerk's File #</u>	OPR 2018-0171
<u>Renews #</u>	

<u>Submitting Dept</u>	SOLID WASTE DISPOSAL	<u>Cross Ref #</u>	
<u>Contact Name/Phone</u>	CHUCK CONKLIN 625-6524	<u>Project #</u>	
<u>Contact E-Mail</u>	CCONKLIN@SPOKANECITY.ORG	<u>Bid #</u>	RFB #4227-17
<u>Agenda Item Type</u>	Contract Item	<u>Requisition #</u>	CR 19139
<u>Agenda Item Name</u>	4490 DIVCO CONTRACT FOR HVAC SERVICES AT WTE		

Agenda Wording

Contract for quarterly scheduled and unscheduled maintenance on the HVAC systems at the Waste to Energy Facility. This contract is for a period of three years with a cost of \$195,000.00 (\$65,000.00 annually).

Summary (Background)

The WTE facility utilizes HVAC systems in all areas of the plant as well as the Administration Building. This equipment requires quarterly inspections and as-needed repairs to maintain safe operation of the facility and equipment. On January 8, 2018 four bids were received for RFB #4227-17 for these annual HVAC services. Divco Inc., of Spokane, was the lowest responsible bidder.

<u>Fiscal Impact</u>		Grant related? NO	<u>Budget Account</u>	
		Public Works? YES		
Expense	\$ 2018 Funds-	\$65,000.00	# 4490-44100-37148-54803-34002	
Expense	\$ 2019 Funds-	\$65,000.00	# 4490-44100-37148-54803-34002	
Expense	\$ 2020 Funds-	\$65,000.00	# 4490-44100-37148-54803-34002	
Select	\$		#	
<u>Approvals</u>			<u>Council Notifications</u>	
<u>Dept Head</u>		CONKLIN, CHUCK	<u>Study Session</u>	UE 3/12/18
<u>Division Director</u>		SIMMONS, SCOTT M.	<u>Other</u>	
<u>Finance</u>		CLINE, ANGELA	<u>Distribution List</u>	
<u>Legal</u>		ODLE, MARI	mdorgan@spokanecity.org	
<u>For the Mayor</u>		DUNIVANT, TIMOTHY	jsalstrom@spokanecity.org	
<u>Additional Approvals</u>			tprince@spokanecity.org	
<u>Purchasing</u>		PRINCE, THEA	rrinderle@spokanecity.org	
			danmcneal@divcoec.com	

Briefing Paper

Urban Experience Committee

Division & Department:	Public Works Division; Solid Waste Disposal
Subject:	Annual HVAC Services at the Waste to Energy Facility
Date:	March 12, 2018
Contact (email & phone):	David Paine, dpaine@spokanecity.org , 625-6878
City Council Sponsor:	
Executive Sponsor:	
Committee(s) Impacted:	Urban Experience and Public Infrastructure, Environment and Sustainability Committee
Type of Agenda item:	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	
Strategic Initiative:	
Deadline:	
Outcome: (deliverables, delivery duties, milestones to meet)	
<u>Background/History:</u> The WTE facility utilizes HVAC systems in all areas of the plant as well as the Administration Building. This equipment requires quarterly inspections and as-needed repairs to maintain safe operation of the facility and equipment. On January 8, 2018 four bids were received for RFB #4227-17 for these annual HVAC services. Divco Inc., of Spokane, was the lowest responsible bidder. The contract will span from March 1, 2018 to February 28, 2021 with the option of two optional one year renewals/extensions. These services will cost \$65,000.00 annually, totaling \$195,000.00 for the length of the three year contract.	
<u>Executive Summary:</u> <ul style="list-style-type: none"> Services to include inspections and as-needed repairs to the HVAC systems at the Waste to Energy Facility. Bids solicited under RFB #4227-17 for these HVAC services. Divco Inc., of Spokane, was the lowest bidder of the four bids received. Contract will span from March 1, 2018 to February 28, 2021 with the option of two optional one year renewals/extensions. Annual cost of the contract will be \$65,000.00, totaling \$195,000.00 for three years. Services are required to maintain function and efficiency of the facility's HVAC systems. 	
<u>Budget Impact:</u> Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Annual/Reoccurring expenditure? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If new, specify funding source: Other budget impacts: (revenue generating, match requirements, etc.)	
<u>Operations Impact:</u> Consistent with current operations/policy? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	

Requires change in current operations/policy?

☐

Yes

☒

No

☐

N/A

Specify changes required:

Known challenges/barriers:

City Clerk's No. _____



City of Spokane

CONTRACT

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

THIS CONTRACT is between the **CITY OF SPOKANE**, a Washington State municipal corporation, as ("City"), and **DIVCO, INC.**, whose address is 715 North Madelia, Spokane, Washington 99201, as ("Contractor"). Individually hereafter referenced as a "party", and together as the "parties".

The parties agree as follows:

1. **PERFORMANCE**. The Contractor will do all work, furnish all labor, materials, tools, construction equipment, transportation, supplies, supervision, organization, and other items of work and costs necessary for the proper execution and completion of the work described in the City's request for bids entitled **ANNUAL HVAC SERVICES – WTEF SCHEDULED AND UNSCHEDULED RFB #4427-17**.
2. **TIME OF PERFORMANCE**. The Contract shall begin on March 1, 2018 and shall run through February 28, 2021.
3. **TERMINATION**. Either party may terminate this Contract by ten (10) days written notice to the other party. In the event of such termination, the City shall pay the Contractor for all work previously authorized and performed prior to the termination.
4. **COMPENSATION**. The City will pay a maximum annual amount not to exceed **SIXTY FIVE THOUSAND AND NO/100 DOLLARS (\$65,000.00)** including tax, as full compensation for everything furnished and done under this Contract, subject to allowable additions and deductions as provided. The annual amount of \$65,000 includes \$17,748 for scheduled work, and \$47,252 for unscheduled work.
5. **PAYMENT**. The Contractor will send its applications for payment to the Waste to Energy Facility (WTEF), 2900 South Geiger Boulevard, Spokane, Washington 99224-5100. Payment will be made **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt of the Contractor's application except as provided in RCW 39.76. Five percent (5%) of the Contract price may be retained by the City, in accord with RCW 60.28 for a minimum of forty five (45) days after final acceptance, as a trust fund for the protection and payment of: the claims of any person arising under the Contract; and the State with respect to taxes imposed pursuant to Titles 50, 51 and 82 RCW which may be due from the Contractor.

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

7. **BONDS.** The Contractor may not commence work until it obtains all insurance, permits and bonds required by the contract documents and applicable law. This includes the execution of a payment/performance bond on the form attached, each equal to one hundred percent (100%) of the contract price, and written by a corporate surety company licensed to do business in Washington State. The payment/performance bond is for the "scheduled" work on this project, which constitutes a public work under state law.

8. **INSURANCE.** During the term of the Contract, the Consultant shall maintain in force at its own expense, the following insurance coverage(s):

- A. Worker's Compensation Insurance in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers;
- B. General Liability Insurance on an occurrence basis with a combined single limit of not less than \$1,500,000 each occurrence for Bodily Injury and Property Damage. It shall provide that the City, its agents, officers and employees are Additional Insureds but only with respect to the Consultant's services to be provided under this Contract;
 - i. Acceptable supplementary Umbrella insurance coverage combined with Consultant's General Liability insurance policy must be a minimum of \$1,500,000, in order to meet the insurance coverage limits required in this Contract;
- C. Automobile Liability Insurance with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles; and
- D. Professional Liability Insurance with a combined single limit of not less than \$1,000,000 each claim, incident or occurrence. This is to cover damages caused by the error, omission, or negligent acts related to the professional services to be provided under this Contract. The coverage must remain in effect for at least two (2) years after the Contract is completed.

There shall be no cancellation, material change, reduction of limits or intent not to renew the

insurance coverage(s) without sixty (60) days written notice from the Contractor or its insurer(s) to the City. As evidence of the insurance coverage(s) required by this Contract, the Contractor shall furnish acceptable Certificates of Insurance (COI) to the City at the time it returns this signed Contract. The certificate shall specify the City of Spokane as "Additional Insured" specifically for Contractor's services under this Contract, as well as all of the parties who are additional insureds, and include applicable policy endorsements, the sixty (60) day cancellation clause, and the deduction or retention level. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

9. 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.

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

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

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

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

14. NONDISCRIMINATION. No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Contract because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation including gender expression or gender identity, national origin,

honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. The Contractor agrees to comply with, and to require that all subcontractors comply with, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, as applicable to the Contractor.

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

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

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

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

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

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

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

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

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

24. **MODIFICATIONS.** The City may modify this Contract and order changes in the work whenever necessary or advisable. The Contractor will accept modifications when ordered in writing by the Director of the Wastewater Management, and the Contract time and compensation will be adjusted accordingly.

DIVCO, 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:

Exhibit A – Contractor's General Scope of Work
Payment Bond
Performance Bond
Exhibit B – Certificate Regarding Debarment

18-043

PAYMENT / PERFORMANCE BOND

We, **DIVCO, INC.**, as principal, and _____, as surety, are held and firmly bound to the City of Spokane, Washington, in the sum of **FIFTY THREE THOUSAND TWO HUNDRED FORTY FOUR AND NO/100 DOLLARS (\$53,244.00)** including tax, for the payment of which, we bind ourselves and our legal representatives and successors, jointly and severally by this document.

The principal has entered into a contract with the City of Spokane, Washington, to do all work and furnish all materials for the **ANNUAL HVAC SERVICES – WTEF SCHEDULED AND UNSCHEDULED RFB #4427-17**. If the principal shall:

- A. promptly and faithfully perform the Contract and any contractual guaranty, and indemnify and hold harmless the City from all loss, damage, or claim which may result from any act or omission of the principal, its agents, employees, or subcontractors; and
- B. comply with all federal, state and local laws and regulations; and
- C. pay all laborers, mechanics, subcontractors, material suppliers and all person(s) who shall supply such person or subcontractors, and pay all taxes and contributions, increases and penalties as authorized by law;

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

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

SIGNED AND SEALED on _____.

**DIVCO, INC.,
AS PRINCIPAL**

By: _____
Title: _____

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

AS SURETY

By: _____
Its Attorney in Fact

STATE OF WASHINGTON)
) ss.
County of _____)

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

DATED: _____

Signature of Notary Public

My appointment expires _____

Approved as to form:

Assistant City Attorney

EXHIBIT 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:**

03/26/2018

<u>Date Rec'd</u>	3/7/2018
<u>Clerk's File #</u>	OPR 2018-0172
<u>Renews #</u>	
<u>Cross Ref #</u>	
<u>Project #</u>	
<u>Bid #</u>	
<u>Requisition #</u>	SBO TO BE APPROVED 03/26

<u>Submitting Dept</u>	COMMUNICATIONS
<u>Contact Name/Phone</u>	BRIAN 6740 CODDINGTON
<u>Contact E-Mail</u>	BCODDINGTON@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Contract Item
<u>Agenda Item Name</u>	0330 - QUINN GROUP MARKETING CONTRACT

Agenda Wording

The city, as part of the joint strategic plan, desires marketing assistance to design, develop and produce a campaign that builds Spokane's image and reputation as a desirable place for new investment and to build and grow a career.

Summary (Background)

The Quinn Group marketing engagement will support the city's efforts to achieve at least three strategic measures identified in the joint plan: increasing median household income, increasing property values, and increasing livable-wage jobs. The effort will be built on deep story-telling and targeted outreach to support the city's urban experience initiative. Assets developed during the effort will be available to be leveraged by other community stakeholders and partners.

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? NO	
Expense \$ 250,000		# 0330-37100-18900-54201
Select \$		#
Select \$		#
Select \$		#
<u>Approvals</u>	<u>Council Notifications</u>	
<u>Dept Head</u>	CODDINGTON, BRIAN	<u>Study Session</u>
<u>Division Director</u>	CODDINGTON, BRIAN	<u>Other</u>
<u>Finance</u>	BUSTOS, KIM	<u>Distribution List</u>
<u>Legal</u>	ODLE, MARI	
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	
<u>Additional Approvals</u>		
<u>Purchasing</u>		



City of Spokane
PERSONAL SERVICES AGREEMENT
Title: **STRATEGIC MARKETING INITIATIVE**

This Agreement is made and entered into by and between the **City of Spokane** as ("City"), a Washington municipal corporation, and **QUINN**, whose address is 727 West Garland Avenue, Spokane, Washington, 99205 as ("Firm"), individually hereafter referenced as a "party", and together as the "parties".

WHEREAS, the purpose of this Agreement is to PROVIDE A MULTI-FACETED MARKETING CAMPAIGN TARGETING BUSINESS DECISION-MAKERS IN THE I-5 CORRIDOR FROM OLYMPIA TO EVERETT THAT ENCOURAGES BUSINESS/JOB GROWTH IN THE CITY. SPECIFICALLY, THE CITY IS SEEKING SECONDARY HEADQUARTERS LOCATIONS OR SATELLITE FACILITIES IN THE TECHNOLOGY OR HEALTHCARE INDUSTRIES, BUT ALSO MAINTAINS CENTERS OF EXCELLENCE IN AEROSPACE, MANUFACTURING, AND LOGISTICS; and

WHEREAS, the Firm was selected through RFP #4429-18 issued by the City.

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

1. TERM OF AGREEMENT.

The term of this Agreement begins on March 19, 2018, and shall run through December 31, 2019, unless amended by written agreement or terminated earlier under the provisions. This Agreement may be extended by written agreement of the parties not to exceed three (3) additional one year contract periods.

2. TIME OF BEGINNING AND COMPLETION.

The Firm 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 Firm is responsible, but may be extended by the City, in writing, for the City's convenience or conditions beyond the Firm's control.

3. SCOPE OF WORK.

The General Scope of Work for this Agreement is described in RFP 4429-18 and Firm's RFP Response, which is attached as Exhibit A and made a part of this Agreement. In the event of a conflict or discrepancy in the Agreement documents, this City Personal Services Agreement controls.

The Work is subject to City review and approval. The Firm 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 Firm's progress.

4. COMPENSATION / PAYMENT.

Total compensation for Firm's services under this Agreement shall not exceed **TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00)**, unless modified by a written amendment to this Agreement.

The Company shall submit its applications for payment to Communications Department, 808 West Spokane Falls Blvd., 7th Floor, Spokane, Washington 99201. **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt of the Company's application except as provided by state law. If the City objects to all or any portion of the invoice, it shall notify the Company and reserves the right to only pay that portion of the invoice not in dispute. In that event, the parties shall immediately make every effort to settle the disputed amount.

5. TAXES, FEES AND LICENSES.

- A. Firm 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 Firm's sole responsibility to monitor and determine changes or the enactment of any subsequent requirements for said fees, assessments, or changes and to immediately comply.
- B. The cost of any permits, licenses, fees, etc. arising as a result of the projects included in this Agreement shall be included in the project budgets.

6. CITY OF SPOKANE BUSINESS LICENSE.

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

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

7. SOCIAL EQUITY REQUIREMENTS / NON-DISCRIMINATION.

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

8. INDEMNIFICATION.

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

9. INSURANCE.

During the period of the Agreement, the Firm 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 Firm's services to be provided under this Agreement;

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

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

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without sixty (60) days written notice from the Firm or its insurer(s) to the City. As evidence of the insurance coverage(s) required by this Agreement, the Firm 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 Firm'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 Firm shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

10. DEBARMENT AND SUSPENSION.

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

11. AUDIT.

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

12. KEY PERSONS.

The Firm shall not transfer or reassign any individual designated in this Agreement as essential to the Work, nor shall those key persons, or employees of Firm 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 Firm's employment, the Firm 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 Firm from its obligations under this Agreement.

13. ASSIGNMENT AND SUBCONTRACTING.

The Firm 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 Firm shall incorporate by reference this Agreement, except as otherwise provided. The Firm shall ensure that all subcontractors comply with the obligations and requirements of the subcontract. The City's consent to any assignment or subcontract does not release the Firm from liability or any obligation within this Agreement, whether before or after City consent, assignment or subcontract.

14. TERMINATION.

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

15. STANDARD OF PERFORMANCE.

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

16. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS.

Original documents, drawings, designs, reports, or any other records developed or created under this Agreement shall belong to and become the property of the City. All records submitted

by the City to the Firm shall be safeguarded by the Firm. The Firm shall make such data, documents and files available to the City upon the City's request. If the City's use of the Firm's records or data is not related to this project, it shall be without liability or legal exposure to the Firm.

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

17. ANTI KICK-BACK.

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

18. MISCELLANEOUS PROVISIONS.

- A. **Amendments/Modifications:** This Agreement may be modified by the City in writing when necessary, and no modification or Amendment of this Agreement shall be effective unless signed by an authorized representative of each of the parties hereto.
- B. The Firm, 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 Firm shall comply with the requirements of this Section.
- C. This Agreement shall be construed and interpreted under the laws of Washington. The venue of any action brought shall be in a court of competent jurisdiction, located in Spokane County, Washington.
- D. **Captions:** The titles of sections or subsections are for convenience only and do not define or limit the contents.
- E. **Severability:** If any term or provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.
- F. **Waiver:** No covenant, term or condition or the breach shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed a waiver of any preceding or succeeding breach of the same or any other covenant, term of condition. Neither the acceptance by the City of any performance by the Firm after the time the same shall have become due nor payment to the Firm for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City in writing.
- G. **Entire Agreement:** This document along with any exhibits and all attachments, and subsequently issued addenda, comprises the entire agreement between the City and the Firm. If conflict occurs between Agreement documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this Agreement to afford the City the maximum benefits.
- H. **No personal liability:** No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made or in any connection with this Agreement.

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

QUINN

CITY OF SPOKANE

By _____
Signature Date

By _____
Signature Date

Type or Print Name

Type or Print Name

Title

Title

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Attachments that are part of this Agreement:

Exhibit A – Scope of Work
Exhibit B – Certificate Regarding debarment

18-052

EXHIBIT 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.

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

Briefing Paper

Urban Experience

Division & Department:	Communications
Subject:	Marketing RFP #4429
Date:	March 12, 2018
Contact (email & phone):	Brian Coddington (bcoddington@spokanecity.org, 625-6740)
City Council Sponsor:	Ben Stuckart and Lori Kinnear
Executive Sponsor:	Brian Coddington
Committee(s) Impacted:	Urban Experience
Type of Agenda item:	<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	Marketing Spokane's urban advantages and experience to grow jobs and economic investment is one of the elements detailed in the Strategic Plan two-year action plan. It directly supports strategic measures for increasing median household income, increasing property values, and increasing livable-wage jobs.
Strategic Initiative:	Urban Experience – Marketing Spokane
Deadline:	
Outcome: (deliverables, delivery duties, milestones to meet)	Approval of contracts to hire two agency teams
<u>Background/History:</u> <ul style="list-style-type: none"> The city's first-ever joint strategic planning process prioritized economic vitality and identified differentiating Spokane through marketing as an element of the two-year action plan. A one-time, \$52M Community Investment Plan over 2 years, includes marketing money Differentiating Spokane with a marketing effort supports three important measures: <ul style="list-style-type: none"> Grow median household income (currently \$45,676 to greater than \$54,000 need for a family of four to meet basic needs, according to two independent studies) Increase property values Increase livable-wage jobs 	
<u>Executive Summary:</u> <ul style="list-style-type: none"> Spokane is on the verge of amazing opportunity, and it is all about urban experience. The city spent six years working on finances and realigning resources That work has created stability and included: <ul style="list-style-type: none"> Unprecedented levels of investment – \$2.4B over the past six years Riverfront Spokane – \$64M Back-to-back record construction seasons \$300+M investment in a cleaner river faster 	

- We are in a position to focus on telling a story that differentiates Spokane as an urban center and supports the city's desire for increased economic vitality.
- The marketing effort has three elements:
 - New business investment
 - Spokane alumni recruitment
 - Local brand building
- The city issued RFP #4429-18 Strategic Marketing Initiative in January and received about a dozen responses
- A selection committee of Ben Stuckart, Lori Kinnear, Rick Romero, Gavin Cooley, Charlie Wolff, and Brian Coddington reviewed the proposals and interviewed two agency teams: a partnership between Quinn + Treatment and a single agency, Chapter & Verse
- Both agency teams made strong proposals; Q+T developed a direct outreach strategy based on deep storytelling to target specific industries and businesses based on research they had conducted while C&V proposed a digital lifestyle strategy to reach professionals that consider Spokane an place to build and grow a career
- The selection committee met multiple times and determined the proposals from the agency teams work really well as a package to meet all three objectives
- The selection committee is recommending that Council approve the hiring of both agency teams and increase the RFP budget from an initial \$250,000 to \$500,000
- An SBO will be presented to the Council for consideration to move money from Unappropriated Reserves to a Communications Contractual Services line

Budget Impact:

Approved in current year budget? ☐ Yes ☒ No ☐ N/A

Annual/Reoccurring expenditure? ☐ Yes ☒ No ☐ N/A

If new, specify funding source:

The current budget includes \$250,000 for marketing services. An additional \$250,000 is being requested for marketing services as detailed above.

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

Operations Impact:

Consistent with current operations/policy? ☒ Yes ☐ No ☐ N/A

Requires change in current operations/policy? ☐ Yes ☒ No ☐ N/A

Specify changes required:

Known challenges/barriers:

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

03/26/2018

<u>Date Rec'd</u>	3/14/2018
<u>Clerk's File #</u>	OPR 2018-0173
<u>Renews #</u>	
<u>Cross Ref #</u>	
<u>Project #</u>	
<u>Bid #</u>	
<u>Requisition #</u>	SBO TO BE APPROVED 03/26

<u>Submitting Dept</u>	COMMUNICATIONS
<u>Contact Name/Phone</u>	BRIAN 6740 CODDINGTON
<u>Contact E-Mail</u>	BCODDINGTON@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Contract Item
<u>Agenda Item Name</u>	0330 - CHAPTER & VERSE MARKETING CONTRACT

Agenda Wording

The city, as part of the joint strategic plan, desires marketing assistance to design, develop and produce a campaign that builds Spokane's image and reputation as a desirable place for new investment and to build and grow a career.

Summary (Background)

The Chapter & Verse marketing engagement will support the city's efforts to achieve at least three strategic measures identified in the joint plan: increasing median household income, increasing property values, and increasing livable-wage jobs. The effort will be built on deep story-telling and targeted outreach to support the city's urban experience initiative. Assets developed during the effort will be available to be leveraged by other community stakeholders and partners.

<u>Fiscal Impact</u>	Grant related? NO	<u>Budget Account</u>
	Public Works? NO	
Expense \$ 250000		# 0330-37100-18900-54201
Select \$		#
Select \$		#
Select \$		#
<u>Approvals</u>	<u>Council Notifications</u>	
<u>Dept Head</u>	CODDINGTON, BRIAN	<u>Study Session</u> 3/12 - UE
<u>Division Director</u>	CODDINGTON, BRIAN	<u>Other</u>
<u>Finance</u>	BUSTOS, KIM	<u>Distribution List</u>
<u>Legal</u>	ODLE, MARI	bstuckart@spokanecity.org
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	lkinnear@spokanecity.org
<u>Additional Approvals</u>		rromero@spokanecity.org
<u>Purchasing</u>		cwolff@spokanecity.org
		gcooley@spokanecity.org
		bcoddington@spokanecity.org

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Requires change in current operations/policy? ☐ Yes ☒ No ☐ N/A

Specify changes required:

Known challenges/barriers:



City of Spokane

PERSONAL SERVICES AGREEMENT

Title: **STRATEGIC MARKETING INITIATIVE**

This Agreement is made and entered into by and between the **City of Spokane** as ("City"), a Washington municipal corporation, and **CHAPTER & VERSE**, whose address is 111 North Post Street, Spokane, Washington, 99201 as ("Firm"), individually hereafter referenced as a "party", and together as the "parties".

WHEREAS, the purpose of this Agreement is to PROVIDE A MULTI-FACETED MARKETING CAMPAIGN TARGETING BUSINESS DECISION-MAKERS IN THE I-5 CORRIDOR FROM OLYMPIA TO EVERETT THAT ENCOURAGES BUSINESS/JOB GROWTH IN THE CITY. SPECIFICALLY, THE CITY IS SEEKING SECONDARY HEADQUARTERS LOCATIONS OR SATELLITE FACILITIES IN THE TECHNOLOGY OR HEALTHCARE INDUSTRIES, BUT ALSO MAINTAINS CENTERS OF EXCELLENCE IN AEROSPACE, MANUFACTURING, AND LOGISTICS; and

WHEREAS, the Firm was selected through RFP #4429-18 issued by the City.

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

1. TERM OF AGREEMENT.

The term of this Agreement begins on March 19, 2018, and shall run through December 31, 2019, unless amended by written agreement or terminated earlier under the provisions. This Agreement may be extended by written agreement of the parties not to exceed three (3) additional one year contract periods.

2. TIME OF BEGINNING AND COMPLETION.

The Firm 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 Firm is responsible, but may be extended by the City, in writing, for the City's convenience or conditions beyond the Firm's control.

3. SCOPE OF WORK.

The General Scope of Work for this Agreement is described in RFP 4429-18 and Firm's RFP Response, which is attached as Exhibit A and made a part of this Agreement. In the event of a conflict or discrepancy in the Agreement documents, this City Personal Services Agreement controls.

The Work is subject to City review and approval. The Firm 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 Firm's progress.

4. COMPENSATION / PAYMENT.

Total compensation for Firm's services under this Agreement shall not exceed **TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00)**, unless modified by a written amendment to this Agreement.

The Company shall submit its applications for payment to Communications Department, 808 West Spokane Falls Blvd., 7th Floor, Spokane, Washington 99201. **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt of the Company's application except as provided by state law. If the City objects to all or any portion of the invoice, it shall notify the Company and reserves the right to only pay that portion of the invoice not in dispute. In that event, the parties shall immediately make every effort to settle the disputed amount.

5. TAXES, FEES AND LICENSES.

- A. Firm 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 Firm's sole responsibility to monitor and determine changes or the enactment of any subsequent requirements for said fees, assessments, or changes and to immediately comply.
- B. The cost of any permits, licenses, fees, etc. arising as a result of the projects included in this Agreement shall be included in the project budgets.

6. CITY OF SPOKANE BUSINESS LICENSE.

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

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

7. SOCIAL EQUITY REQUIREMENTS / NON-DISCRIMINATION.

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

8. INDEMNIFICATION.

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

9. INSURANCE.

During the period of the Agreement, the Firm 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 Firm's services to be provided under this Agreement;

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

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

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without sixty (60) days written notice from the Firm or its insurer(s) to the City. As evidence of the insurance coverage(s) required by this Agreement, the Firm 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 Firm'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 Firm shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

10. DEBARMENT AND SUSPENSION.

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

11. AUDIT.

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

12. KEY PERSONS.

The Firm shall not transfer or reassign any individual designated in this Agreement as essential to the Work, nor shall those key persons, or employees of Firm 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 Firm's employment, the Firm 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 Firm from its obligations under this Agreement.

13. ASSIGNMENT AND SUBCONTRACTING.

The Firm 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 Firm shall incorporate by reference this Agreement, except as otherwise provided. The Firm shall ensure that all subcontractors comply with the obligations and requirements of the subcontract. The City's consent to any assignment or subcontract does not release the Firm from liability or any obligation within this Agreement, whether before or after City consent, assignment or subcontract.

14. TERMINATION.

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

15. STANDARD OF PERFORMANCE.

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

16. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS.

Original documents, drawings, designs, reports, or any other records developed or created under this Agreement shall belong to and become the property of the City. All records submitted

by the City to the Firm shall be safeguarded by the Firm. The Firm shall make such data, documents and files available to the City upon the City's request. If the City's use of the Firm's records or data is not related to this project, it shall be without liability or legal exposure to the Firm.

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

17. ANTI KICK-BACK.

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

18. MISCELLANEOUS PROVISIONS.

- A. **Amendments/Modifications:** This Agreement may be modified by the City in writing when necessary, and no modification or Amendment of this Agreement shall be effective unless signed by an authorized representative of each of the parties hereto.
- B. The Firm, 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 Firm shall comply with the requirements of this Section.
- C. This Agreement shall be construed and interpreted under the laws of Washington. The venue of any action brought shall be in a court of competent jurisdiction, located in Spokane County, Washington.
- D. **Captions:** The titles of sections or subsections are for convenience only and do not define or limit the contents.
- E. **Severability:** If any term or provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.
- F. **Waiver:** No covenant, term or condition or the breach shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed a waiver of any preceding or succeeding breach of the same or any other covenant, term of condition. Neither the acceptance by the City of any performance by the Firm after the time the same shall have become due nor payment to the Firm 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.
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- H. **No personal liability:** No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made or in any connection with this Agreement.

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

CHAPTER & VERSE

CITY OF SPOKANE

By _____
Signature Date

By _____
Signature Date

Type or Print Name

Type or Print Name

Title

Title

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Attachments that are part of this Agreement:

Exhibit A – Scope of Work
Exhibit B – Certificate Regarding debarment

18-052

EXHIBIT 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 certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
 2. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.
4. 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.

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

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

03/26/2018

Date Rec'd

3/6/2018

Clerk's File #

CPR 1981-0043

Renews #**Submitting Dept**

MAYOR

Contact Name/Phone

BRANDY COTE 6256774

Contact E-Mail

BCOTE@SPOKANECITY.ORG

Agenda Item Type

Boards and Commissions

Agenda Item Name

0520 TWO REAPPOINTMENTS TO THE SPOKANE ARTS COMMISSION

Cross Ref #**Project #****Bid #****Requisition #****Agenda Wording**

Re-appointment of Ginger Ewing and Garrett Daggett each to a three year term on the Spokane Arts Commission, from 01/01/2018 - 12/31/2020.

Summary (Background)

Re-appointment of Ginger Ewing and Garrett Daggett each to a three year term on the Spokane Arts Commission, from 01/01/2018 - 12/31/2020.

Fiscal Impact

Grant related? NO

Public Works? NO

Budget Account

Select \$

#

Select \$

#

Select \$

#

Select \$

#

Approvals**Dept Head**

COTE, BRANDY

Division Director**Finance****Legal****For the Mayor**

DUNIVANT, TIMOTHY

Council Notifications**Study Session****Other****Distribution List**

bcote@spokanecity.org

melissa@spokanearts.org

Additional Approvals**Purchasing**

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

03/26/2018

Date Rec'd

3/6/2018

Clerk's File #

CPR 1981-0043

Renews #**Submitting Dept**

MAYOR

Cross Ref #**Contact Name/Phone**

BRANDY COTE 6256774

Project #**Contact E-Mail**

BCOTE@SPOKANECITY.ORG

Bid #**Agenda Item Type**

Boards and Commissions

Requisition #**Agenda Item Name**

0520 THREE APPOINTMENTS TO THE SPOKANE ARTS COMMISSION

Agenda Wording

Appointment of Dennis Carman, Chuck Horgan, and Katie Patterson Larson each to a three year term, from 3/26/18 - 3/26/21, on the Spokane Arts Commission.

Summary (Background)

Appointment of Dennis Carman, Chuck Horgan, and Katie Patterson Larson each to a three year term, from 3/26/18 - 3/26/21, on the Spokane Arts Commission.

Fiscal Impact

Grant related? NO

Budget Account

Public Works? NO

Select

\$

#

Select

\$

#

Select

\$

#

Select

\$

#

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

COTE, BRANDY

Study Session**Division Director****Other****Finance****Distribution List****Legal**

bcote@spokanecity.org

For the Mayor

DUNIVANT, TIMOTHY

melissa@spokanearts.org

Additional Approvals**Purchasing**

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

03/26/2018

Date Rec'd

3/7/2018

Clerk's File #

ORD C35605

Renews #Submitting Dept

COMMUNICATIONS

Contact Name/Phone

BRIAN 625-6740

Contact E-Mail

BCODDINGTON@SPOKANECITY.ORG

Agenda Item Type

Special Budget Ordinance

Agenda Item Name

0330 - SBO TO ESTABLISH FUNDING FOR MARKETING CONTRACTS

Cross Ref #Project #Bid #Requisition #Agenda Wording

Amending Ordinance No. C-35565 and appropriating funds in the General Fund, FROM: Unappropriated Reserves, \$500,000; TO: Contractual Services, same amount.

Summary (Background)

This ordinance establishes the funding for two marketing contracts that will be used as part of the City's economic development efforts in business recruitment and retention.

Fiscal Impact

Grant related?

NO

Budget Account

Public Works?

NO

Expense \$ 500,000

0330-37100-18900-54201

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

CODDINGTON, BRIAN

Study SessionDivision Director

CODDINGTON, BRIAN

Other

Urban Experience

Finance

BUSTOS, KIM

Distribution ListLegal

DALTON, PAT

bcoddington@spokanecity.org

For the Mayor

DUNIVANT, TIMOTHY

gcooley@spokanecity.org

Additional Approvals

kbustos@spokanecity.org

PurchasingCITY COUNCIL

MCDANIEL, ADAM

ORDINANCE NO C35605

An ordinance amending Ordinance No. C-35565, passed by the City Council December 11, 2017, and entitled, "An ordinance adopting the Annual Budget of the City of Spokane for 2018, making appropriations to the various funds, departments, and programs of the City of Spokane government for the fiscal year ending December 31, 2018, and providing it shall take effect immediately upon passage", and declaring an emergency.

WHEREAS, subsequent to the adoption of the 2018 budget Ordinance No. C-35565, as above entitled, and which passed the City Council December 11, 2017, it is necessary to make changes in the appropriations of the General Fund, which changes could not have been anticipated or known at the time of making such budget ordinance; and

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

The City of Spokane does ordain:

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

FROM:	0100-99999	General Fund	
	99999-	Unappropriated Reserves	<u>\$ 500,000</u>
TO:	0330-37100	General Fund	
	18900-54201	Contractual Services	<u>\$ 500,000</u>

Section 2. It is, therefore, by the City Council declared that an urgency and emergency exists for making the changes set forth herein, such urgency and emergency arising from the need to budget one-time funding to support the City's communication and marketing efforts related to Economic Development, and because of such need, an urgency and emergency exists for the passage of this ordinance, and also, because the same makes an appropriation, it shall take effect and be in force immediately upon its passage..

Passed the City Council _____

Council President

Attest: _____
City Clerk

Approved as to form: _____
Assistant City Attorney

Mayor

Date

Effective Date

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

03/26/2018

Date Rec'd

3/15/2018

Clerk's File #

ORD C35606

Renews #Submitting Dept

HUMAN RESOURCES

Cross Ref #Contact Name/Phone

CHRIS CAVANAUGH 6383

Project #Contact E-Mail

CCAVANAUGH@SPOKANECITY.ORG

Bid #Agenda Item Type

Special Budget Ordinance

Requisition #Agenda Item Name

0620 SPECIAL BUDGET ORDINANCE RELATED TO REVISED CLASSIFICATIONS FOR DSC

Agenda Wording

Special Budget Ordinance related to the Revised Classification Specification for two DSC positions to Range 49 from Range 48

Summary (Background)

Lead Building/Plumbing Inspector and Lead Electrical/Mechanical Inspector have taken on additional supervisory duties. Range changing from A05-270L 48 to 49.

Fiscal Impact

Grant related? NO

Budget Account

Public Works? NO

Expense \$ -1,526

4700-30210-24100-53502-99999

Expense \$ 763

4700-41200-24600-03060-99999

Expense \$ 763

4700-41200-24600-03160-99999

Select \$

#

ApprovalsCouncil NotificationsDept Head

CAVANAUGH, CHRISTINE

Study Session

3/19/2018 FTC

Division Director

CAVANAUGH, CHRISTINE

OtherFinance

BUSTOS, KIM

Distribution ListLegal

PICCOLO, MIKE

For the Mayor

DUNIVANT, TIMOTHY

Additional ApprovalsPurchasingCITY COUNCIL

MCDANIEL, ADAM

ORDINANCE NO C35606

An ordinance amending Ordinance No. C-35565, passed by the City Council December 11, 2017, and entitled, "An ordinance adopting the Annual Budget of the City of Spokane for 2018, making appropriations to the various funds, departments, and programs of the City of Spokane government for the fiscal year ending December 31, 2018, and providing it shall take effect immediately upon passage", and declaring an emergency.

WHEREAS, subsequent to the adoption of the 2018 budget Ordinance No. C-35565, as above entitled, and which passed the City Council December 11, 2017, it is necessary to make changes in the appropriations of the Development Services Center, 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 Development Services Center, and the budget annexed thereto with reference to the Development Services Center, the following changes be made:

FROM:	4700-30210	Development Services Center	
	24100-53502	Minor Equipment	<u>\$ 1,526</u>
TO:	4700-41200	Development Services Center	
	24600-03060	Lead Building/Plumbing Inspector (from Grade 48 to 49 Local 270)	763
	24600-03160	Lead Electrical/Mechanical Inspector (from Grade 48 to 49 Local 270)	763
			<u>\$ 1,526</u>

Section 2. It is, therefore, by the City Council declared that an urgency and emergency exists for making the changes set forth herein, such urgency and emergency arising from the need to implement classification and pay adjustments in accordance with approved union agreements and City policies, 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

Memo

To: Tim Dunivant, Finance & Administration Director
From: Christine M. Cavanaugh, Human Resources Director 
Effective Date: December 19, 2017
Subject: Revised Classification Spec- Lead Building/Plumbing Inspector

Recently a new classification specification of Lead Building/Plumbing Inspector was adopted by the Civil Service Commission. Human Resources evaluated the classification using the City's adopted internal equity Point Factor system and by conducting an analysis of surrounding classifications. The below salary grade assignment has been agreed to by the City and Local 270 AFSCME.

<u>SPN</u>	<u>CLASSIFICATION</u>	<u>PAY PLAN</u>	<u>PAY GRADE</u>
306	Lead Building/Plumbing Inspector	A05- 270L	49

The FLSA status is designated as Non-Exempt, the EEO4 Code is 1- Officials and Administrators and the Worker's Compensation Code is 0803- Regular City Operations

If you have any questions please let me know.

CC:
Department
Theresa Sanders, City Administrator
HR Analysts
HR Clerks
Payroll

Memo

To: Tim Dunivant, Finance & Administration Director
From: Christine M. Cavanaugh, Human Resources Director 
Effective Date: December 18, 2017
Subject: Revised Classification Spec- Lead Electrical/Mechanical Inspector

Recently a new classification specification of Lead Electrical/Mechanical Inspector was adopted by the Civil Service Commission. Human Resources evaluated the classification using the City's adopted internal equity Point Factor system and by conducting an analysis of surrounding classifications. The below salary grade assignment has been agreed to by the City and Local 270 AFSCME.

<u>SPN</u>	<u>CLASSIFICATION</u>	<u>PAY PLAN</u>	<u>PAY GRADE</u>
316	Lead Electrical/Mechanical Inspector	A05- 270L	49

The FLSA status is designated as Non-Exempt, the EEO4 Code is 1- Officials and Administrators and the Worker's Compensation Code is 0803- Regular City Operations

If you have any questions please let me know.

CC:
Department
Theresa Sanders, City Administrator
HR Analysts
HR Clerks
Payroll

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

03/26/2018

<u>Date Rec'd</u>	3/12/2018
<u>Clerk's File #</u>	RES 2018-0021
<u>Renews #</u>	

<u>Submitting Dept</u>	PLANNING	<u>Cross Ref #</u>	
<u>Contact Name/Phone</u>	TIRRELL BLACK 625-6185	<u>Project #</u>	
<u>Contact E-Mail</u>	TBLACK@SPOKANECITY.ORG	<u>Bid #</u>	
<u>Agenda Item Type</u>	Resolutions	<u>Requisition #</u>	
<u>Agenda Item Name</u>	0650 - RESOLUTION SETTING THE 2018 COMP PLAN AMENDMENT WORK		

Agenda Wording

A Resolution setting the Comprehensive Plan Amendment Work Program for 2018. City Council adopts an Annual Comp Plan Work Program yearly, formalizing the non-city initiated proposals to review and including any city-initiated proposals to review.

Summary (Background)

The ad hoc committee of the city council to review these matters met on February 7, 2018 and reviewed applications Z2017-612COMP, Z2017-622COMP, Z2017-623COMP, Z2017-624COMP and Z2017-630COMP (the "Applications") and has forwarded a findings and recommendations to the city council to direct staff to begin full review of all five land use plan map amendments; these will be forwarded to the Plan Commission for full review, and they will forward individual recommendations to the city council.

<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>	KINDER, DAWN	<u>Other</u> Ad Hoc Committee
<u>Finance</u>	ORLOB, KIMBERLY	<u>Distribution List</u>
<u>Legal</u>	RICHMAN, JAMES	tblack@spokanecity.org
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	lkey@spokanecity.org
<u>Additional Approvals</u>		jrichman@spokanecity.org
<u>Purchasing</u>		sbishop@spokanecity.org
<u>CITY COUNCIL</u>	MCDANIEL, ADAM	

RESOLUTION 2018-0021

A Resolution regarding the City Council's approval of the Annual Comprehensive Plan Amendment Work Program for 2018.

WHEREAS, pursuant to chapter 36.70A RCW, the City Council has adopted and maintains a Comprehensive Plan; and

WHEREAS, pursuant to RCW 36.70A.130, Comprehensive Plan amendments proposals are considered yearly shall be considered concurrently so the cumulative effect of the various proposals can be ascertained; and

WHEREAS, pursuant to chapter 17G.020 SMC, the City Council will adopt by resolution an Annual Comprehensive Plan Amendment Work program for each year, therefore formalizing which non-city initiated proposals to amend the City's Comprehensive Plan as well as any city-initiated proposals to amend the Comprehensive Plan; and

WHEREAS, the ad hoc committee of the City Council met on February 7, 2018 at 2 p.m. in the City Council Chambers for the purpose of reviewing applications Z2017-612COMP, Z2017-622COMP, Z2017-623COMP, Z2017-624COMP and Z2017-630COMP (the "Applications"); and

WHEREAS, pursuant to SMC 17G.020.025(A)(1)(a), the committee has reviewed the proposals and forwarded findings to the City Council recommending unanimously that the City Council add all non-city initiated proposals to the Annual Comprehensive Plan Amendment Work Program so that they may undergo full review; and

WHEREAS, pursuant to SMC 17G.020.025, the committee has recommended that proposals Z2017-622COMP, Z2017-624COMP, and Z2017-630COMP be expanded geographically, noting that nearby, similarly situated properties share characteristics and are worthy of consideration through the annual amendment process; and

WHEREAS, staff have examined these geographic expansion proposals and estimated costs to the City of notification in the attached *Summary Report of Docket for City Council Consideration "Exhibit B"*; and

WHEREAS, the City Council finds that Z2017-630COMP most closely meets the guidance of SMC 17G.020.026(D) for consideration of geographic expansion and recommends only this geographic expansion described in "Exhibit B"; and

WHEREAS, pursuant to SMC 17G.020.025, the City Council may add additional items to the Annual Comprehensive Plan Amendment Work Program and Council

Member Kinnear is the sponsor of proposed text amendment to Chapter 2 including a reference to the Joint City council-Administration Six-Year Strategic Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE SPOKANE CITY COUNCIL, that the City Council and the Plan Commission shall review the *2018 Annual Amendment Work Program* consisting of the “the Applications”, the geographic expansion of Z2017-630COMP, and the addition the text amendment proposed by the City Council, following the guidance set forth in chapter 17G.025 SMC, Comprehensive Plan Amendment Procedures, for such review.

ADOPTED by the City Council this _____ day of March, 2018.

—

City Clerk

Comprehensive Plan Annual Amendments 2017 - 2018

*Summary Report of Docket for City Council Consideration for
setting the Annual Amendment Work Program 2018*



Planning Services
March 2018

Comprehensive Plan Annual Amendments 2017 - 2018

Summary Report of Docket for City Council Consideration for setting the Annual Amendment Work Program 2018

This is an abbreviated informational summary. Application materials and related documents are posted on the webpage [2017/2018 Proposed Comprehensive Plan Amendments](#).

For additional information, contact Tirrell Black, Associate Planner, Planning & Development Services, 509-625-6300, tblack@spokanecity.org

Comprehensive Plan Amendment Process

Once yearly, the City of Spokane accepts applications for the annual Comprehensive Plan Amendment process; the deadline for applications is typically October 31, per Spokane Municipal Code (SMC) [SMC 17G.020.010](#). Annual amendments were suspended for one year to accommodate the required update to the Comprehensive Plan in 2017. Applications for annual amendments received from non-city applicants by October 31, 2017 are included for consideration during 2018.

For the 2017/2018 review cycle, five land use applications have completed and have been forwarded to Ad Hoc City Council Committee for early threshold review. This review was completed on February 7, 2018. This committee recommended that the City Council move all five proposals onto the Annual Amendment Work Program. Additionally, at the February 7, 2018 meeting, the committee recommended that staff craft proposals to expand the geographic area of three of the proposed amendments and present these to the city council at time of Resolution setting the Annual Comprehensive Plan Amendment Work Program. These three geographic expansions are outlined in "Exhibit B" of this document.

The City Council will set the Annual Amendment Work Program in March 2018. At that time, the Council may also add any city-sponsored proposals to the work program. Council Member Kinnear is sponsoring a text amendment for Chapter 2, Section 2.1, to include a reference to the *Joint City Council-Administration Six-Year Strategic Plan*. This proposal is attached as "Exhibit C".

The documents for each of these applications may be accessed by going to the [webpage](#).

Generalized Procedural Steps:

- City Council Process to set the Annual Comprehensive Plan Amendment Work Program
- Agency & Departmental Review
- Notice of Application & Notice of SEPA Review
- Public Comment Period
- Plan Commission Substantive Workshops
- SEPA Determinations issued prior to Plan Commission hearing
- Notice of Plan Commission Hearing & SEPA Determination
- Plan Commission Hearing
- City Council Public Hearing

“Exhibit A”

Applications as made by applicants

Without any geographic adjustments

File Z17-612COMP, Clanton Family LLC

Cliff/Cannon Neighborhood

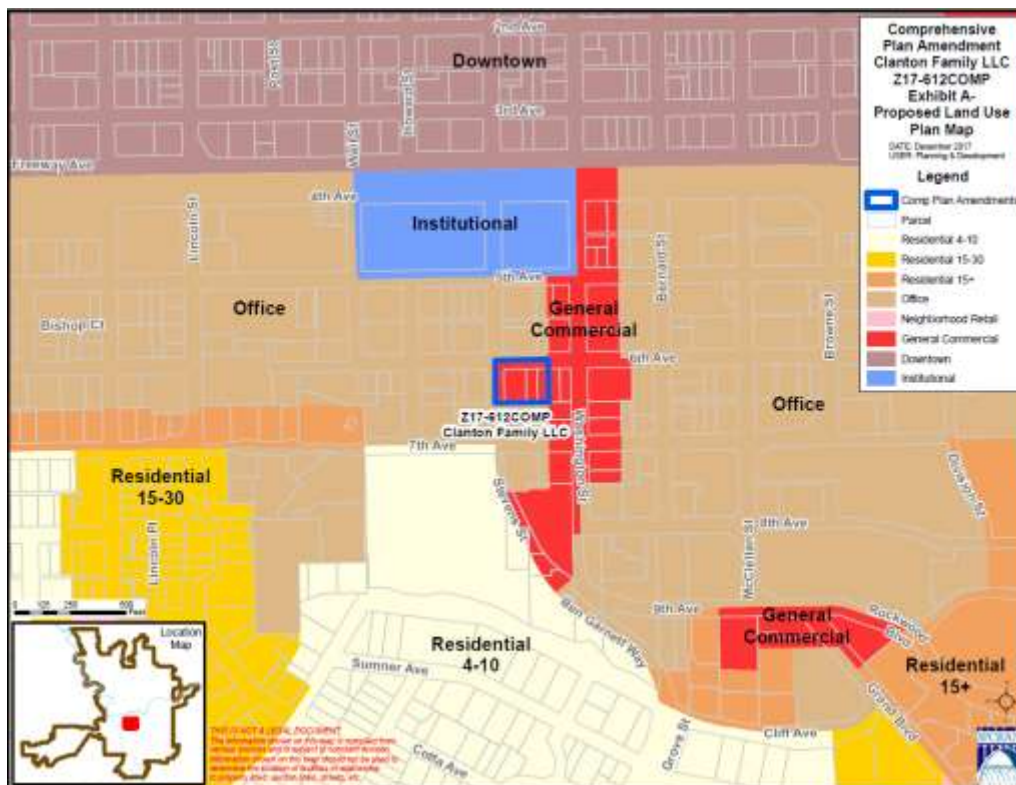
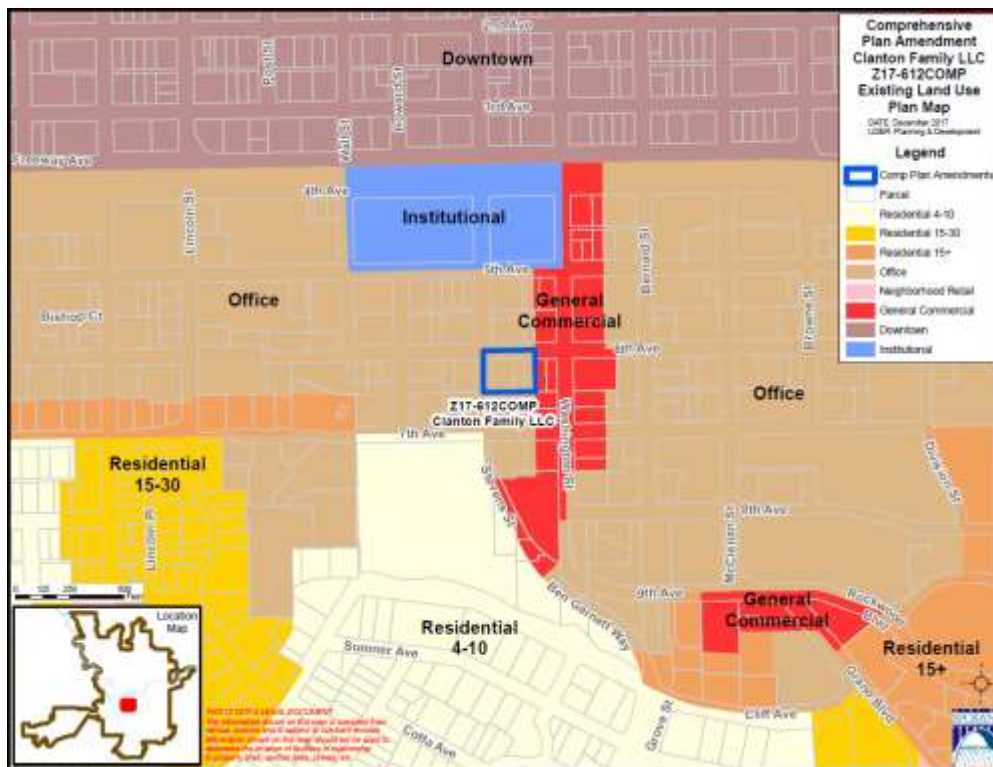
Proposed Map Amendment

Location: The subject site includes 3 parcels located on the southeast corner of W 6th Avenue and S Stevens St (parcels 35191.5101, .5102, and .5103). The concerned properties total approximately 0.68 acres.

Proposal: This proposal is to change the 3 parcels from Office Land Use and OR-150 zoning to Commercial Land Use and CB-150 zoning.

Agent: Dwight Hume, Land Use Solutions and Entitlement





Comprehensive Plan Amendment
Ventura Land Holdings LLC
Z17-622COMP

DATE: December 2017
 DRAWN: Planning & Development

Legend

- Camp Plan Amendment
- Parcel

Z17-622COMP
Ventura Land Holdings LLC

Location Map



File Z17-623COMP, Kain Investments Cliff/Cannon Neighborhood

Proposed Map Amendment

Location: The subject site includes 1 parcel located at 9th Ave and S Madison St (parcel 35193.9017). The concerned property totals approximately 0.11 acres.

Proposal: This proposal is to change the 1 parcel from Residential 15-30 Land Use and RMF zoning to Neighborhood Retail Land Use and NR-35 zoning (same as adjacent commercial Ace Hardware and Huckleberry's).

Agent: Dwight Hume, Land Use Solutions and Entitlement





File Z17-624COMP, U Haul

West Hills Neighborhood

Proposed Map Amendment

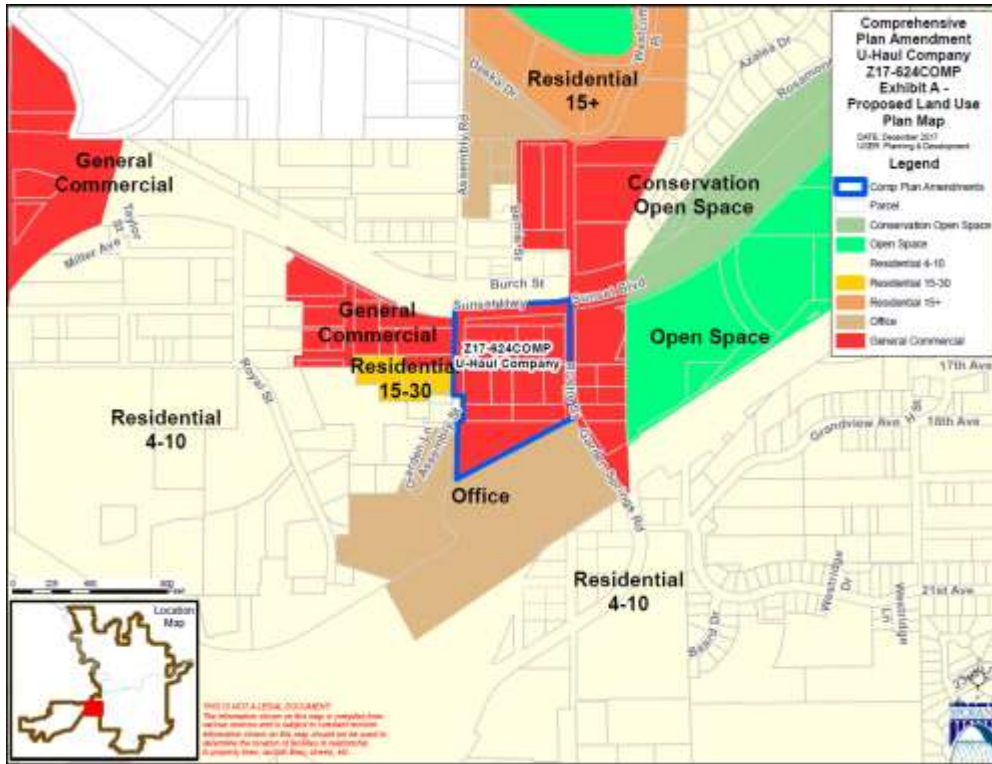
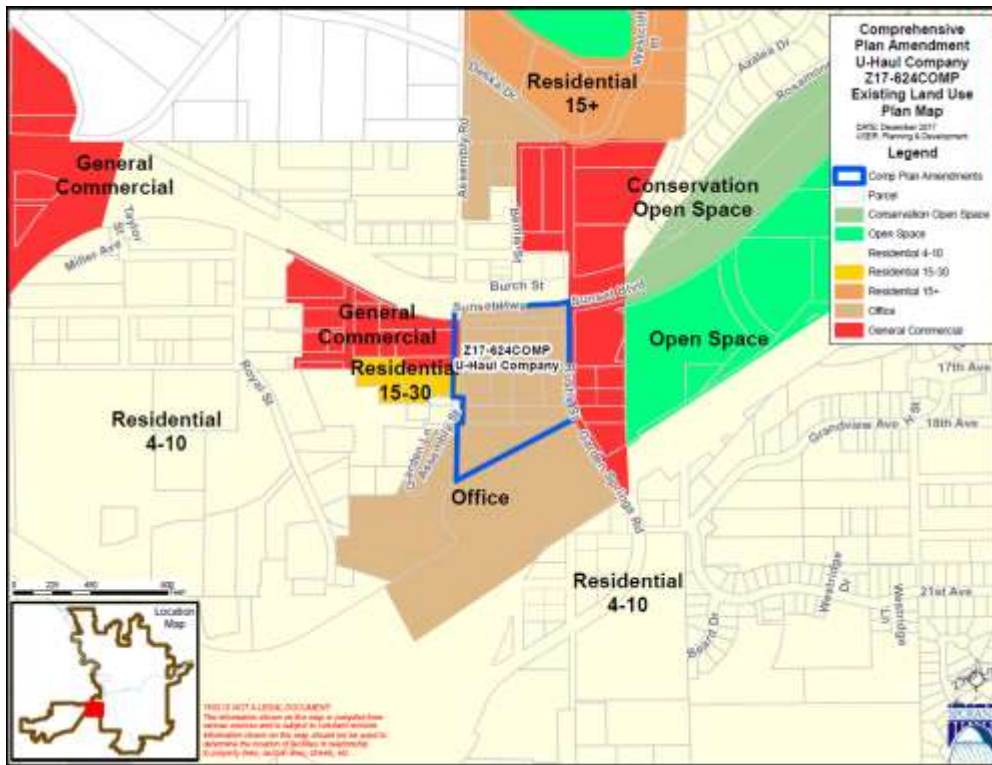
Location: The subject site includes 10 parcels located at 1616 S Rustle St, located south of Sunset Highway and west of S Rustle St (parcels 25262.0803, .0902, .0802, .0903, .0901, .0502, .0506, .0801, .0404, and .2212). The concerned properties total approximately 10.76 acres.

Proposal: This proposal is to change the 10 parcels from Office Land Use and OR-70 zoning to Commercial Land Use and GC-70 zoning.

Agent: Taud Hume, Parsons/Burnett/Bjordahl/Hume LLP

Committee Consideration for Expansion: See Exhibit B





File Z17-630COMP, Plese & Plese LLC

North Hill Neighborhood

Proposed Map Amendment

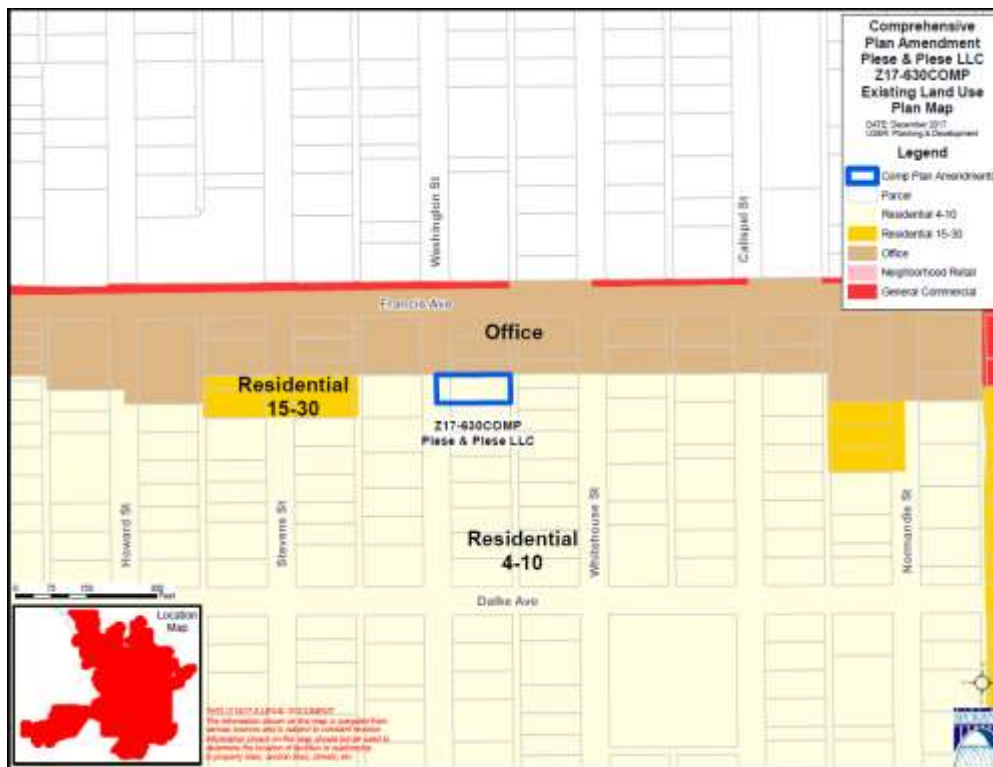
Location: The subject site includes a portion of 1 parcel located at 6216 N Washington St, located south of Francis Avenue (a portion of parcel 36311.0517, which is currently split-zoned). The concerned portion of the property totals approximately 0.175 acres.

Proposal: This proposal is to change the portion of the 1 parcel from Residential 4-10 Land Use and RSF zoning to Office Land Use and OR-35 zoning.

Agent: Taud Hume, Parsons/Burnett/Bjordahl/Hume LLP

Committee Consideration for Expansion: See Exhibit B





“Exhibit B”, Geographic Expansions proposed by committee

At Ad Hoc Meeting of City Council on February 7, 2018 which was held to review the amendments and forward a recommendation to City Council, a motion was made and approved to have staff undertake study of geographic enhancements to three of the applications. Staff have mapped the proposed expansions and identified likely comprehensive land use plan map changes and associated zoning changes for each.

Since these proposals will be sponsored by the city, and not the applicant, staff have also compared expanded notification areas and made rough estimates of notification costs with each expansion proposed.

If city council moves to add these expansions to the docket for review by the Plan Commission, the Plan Commission will still have the opportunity for full review and to recommend additional geographic changes, included a smaller expansion or no expansion, through the review process.

Fiscal Impact:

- Estimates of additional real costs to city to add all these areas – a rough estimate of notification costs total \$6,300.
- Staff time/costs for the additional applications and notification outreach are difficult to estimate since we have not undertaken this level of expansion in the past.

Comprehensive Plan Amendment
Ventura Land Holdings LLC
Z17-622COMP
Exhibit A
Expansion Application-
Proposed Land Use
Plan Map

DATE: March 2019
USER: Planning & Development

Legend

- Comp Plan Amendments
- Parcel
- Conservation Open Space
- Open Space
- Residential 4-10
- Residential 10-20
- Residential 15-30
- Office
- Neighborhood Retail
- Mini Center
- General Commercial

This Res 10-20 is proposed expansion.

Res 10-20

Res 15-30

Office

Residential 15-30

General Commercial

Mini Center

Neighborhood Retail

Conservation Open Space

Open Space

Residential 4-10

Residential 10-20

Residential 15-30

Office

Neighborhood Retail

Mini Center

General Commercial

DATE: March 2019
USER: Planning & Development

Scale: 0 125 250 Feet

Location Map

THIS IS NOT A LEGAL DOCUMENT
The information shown on this map is a proposed plan
and is not intended to be used as a legal document.
Information shown on this map should not be used to
determine the location of facilities or equipment
or property lines, section lines, etc.

23-25-42

Applicant's Proposal: This proposal is to change the 2 parcels from Residential 4-10 Land Use and RSF zoning to Residential 15-30 Land Use and RMF zoning.

14 •

Staff comment: Staff are concerned about the size of this expansion and the lack of property owner and neighborhood engagement in advance of this proposal. This may be more efficiently approached through subarea planning of the entire area.

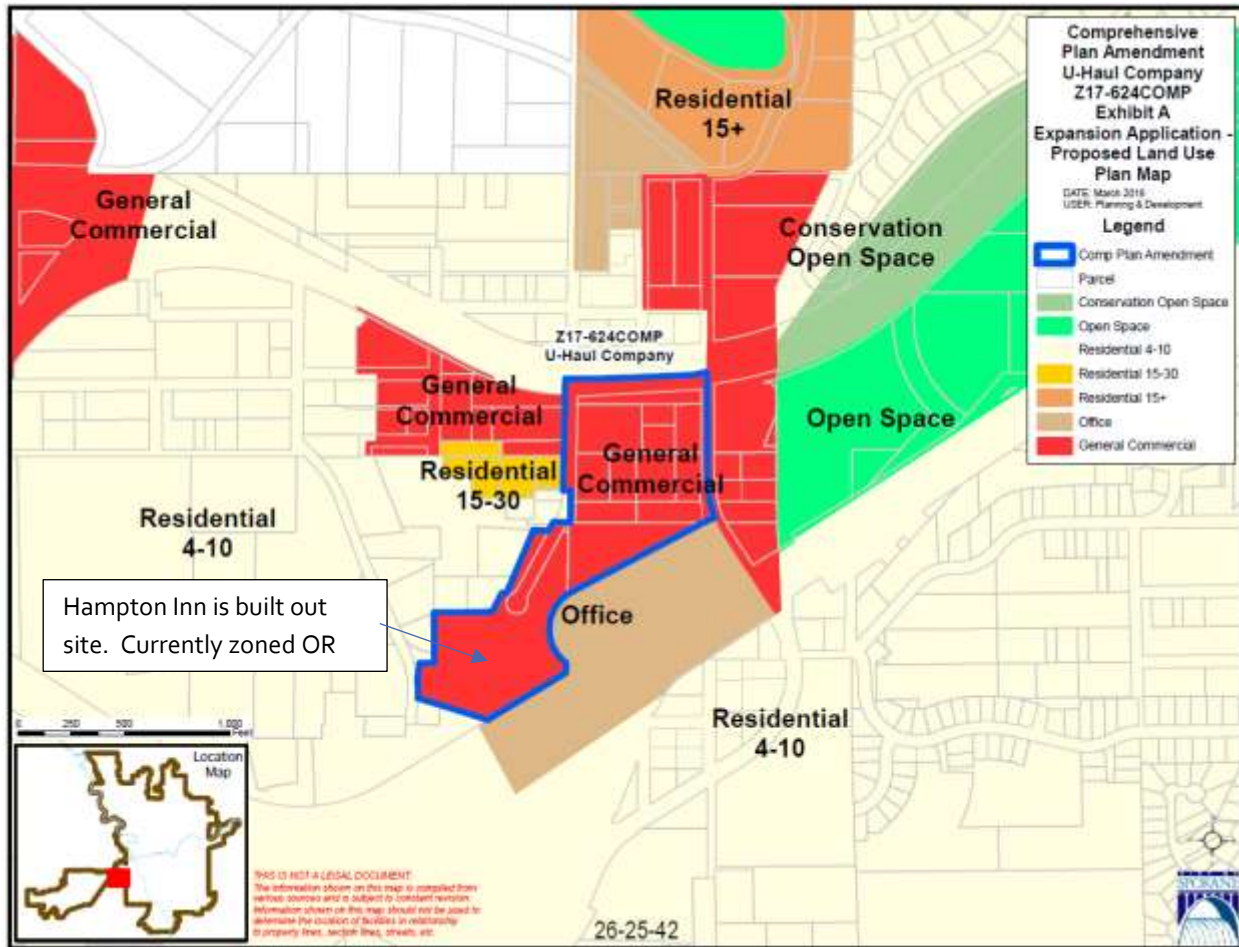
Agent: Dwight Hume, Land Use Solutions and Entitlement

Estimated costs: \$3,420 notification

- Without including staff time
- Notification via US Mail to 32 property owners, taxpayers, residents 2 times (notice of application and PC Hearing) (expansion to 15 new parcels, est. 2x15)
 - Estimate \$62.00
- Signage on property – signs must be located on two Rights of Way (must be on both 7th & Hartson), two times (cost per sign approximately \$700)
 - Signage estimate \$ 2800. (4 x 700)

Exhibit B – Proposal to Amend File Z17-624COMP, U Haul West Hills Neighborhood

Expansion of Proposed Map Amendment



Location: The subject site includes 10 parcels located at 1616 S Rustle St, located south of Sunset Highway and west of S Rustle St (parcels 25262.0803, .0902, .0802, .0903, .0901, .0502, .0506, .0801, .0404, and .2212). The concerned properties total approximately 10.76 acres.

Proposal: This proposal is to change the 10 parcels from Office Land Use and OR-70 zoning to Commercial Land Use and GC-70 zoning.

Agent: Taudd Hume, Parsons/Burnett/Bjordahl/Hume LLP

Expansion Location: The Hampton Inn site which is accessed from Assembly Street, Parcel 25271.0002, and size is 7.58 acres.

The expansion area would have the same zone change proposed as for the Uhaul site; Office Land Use and OR-70 zoning to Commercial Land Use and GC-70 zoning. Property owner, Vandervert North LLC has expressed no concerns.

Committee Consideration for Expansion: Staff recommend if this expansion is made, that the Land Use Plan Map designation be changed to General Commercial and the zoning changed to "GC-70". This site is currently also in the OR-70 zone. The property owner has expressed no opposition to this change.

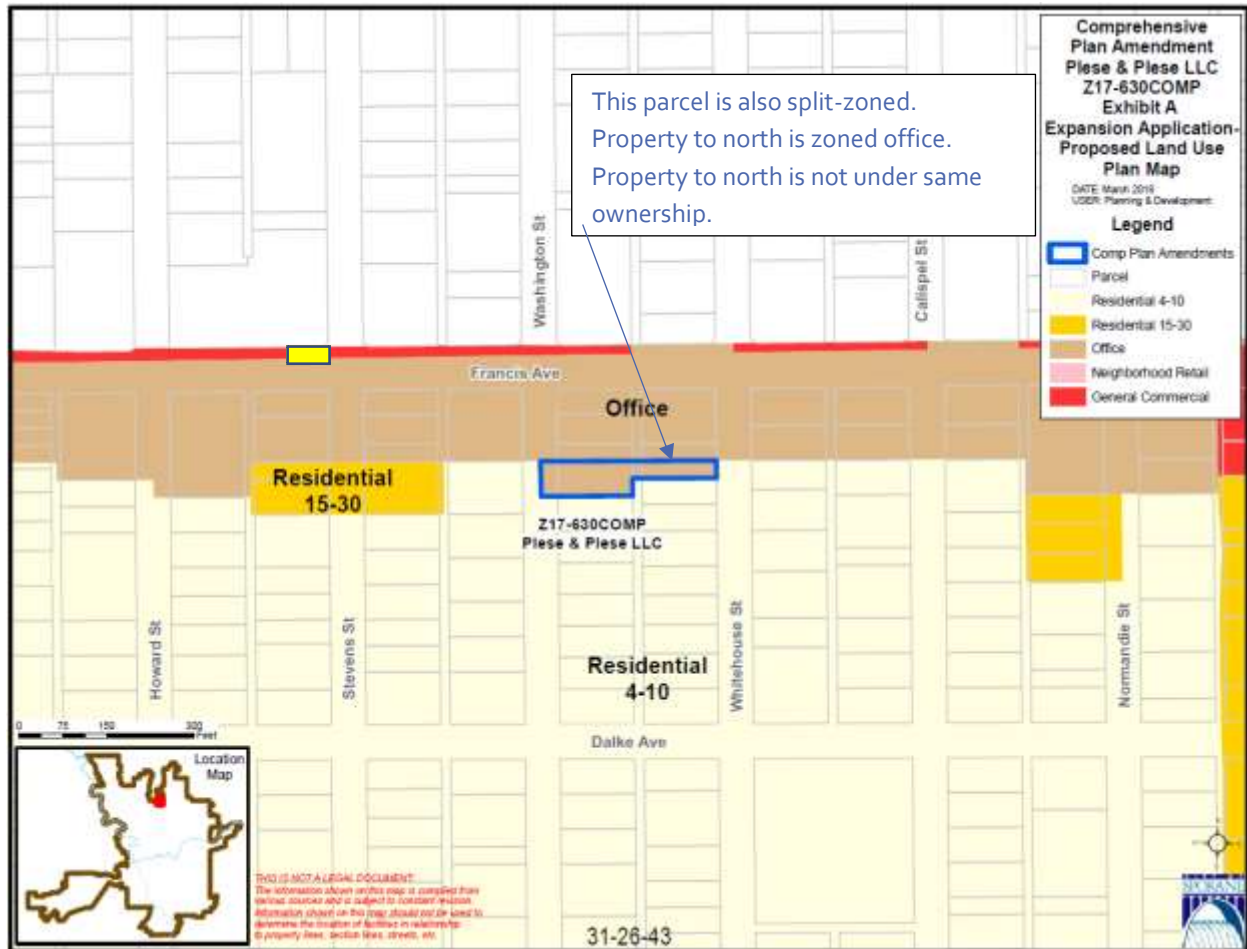
Staff note: This increases the size from approximately 10.76 acres to 18.34 acres.

Estimated costs: \$1,452 notification

- Without including staff time
- Notification via US Mail to estimated 26 property owners, taxpayers, residents 2 times (notice of application and PC Hearing) (expansion to 13 additional parcels – estimate 2x13)
 - Estimate \$52.00
- Signage on property – signs must be located on one Right of Way (Assembly), two times (cost per sign approximately \$700)
 - Signage estimate \$ 1400. (2 x 700)

Exhibit B – Proposal to Amend File Z17-630COMP, Plese & Plese LLC North Hill Neighborhood

Expansion of Proposed Map Amendment



Location: The subject site includes a portion of 1 parcel located at 6216 N Washington St, located south of Francis Avenue (a portion of parcel 36311.0517, which is currently split-zoned). The concerned portion of the property totals approximately 0.175 acres.

Expansion Location: Parcel to the east, across the alley, 36311.0503, address at 6217 N. Whitehouse Street. This parcel is also split-zoned RSF and Office and is proposed to be changed to the same category. Expansion would encompass approximately 3,851 square feet or 0.9 acres.

Staff note: Current parcel configurations in this area make a “straight line” from east to west for a zone boundary impossible to stay purely within parcel lines. It is currently a “straight line” east to west.

Proposal: This proposal is to change the portion of the 1 parcel from Residential 4-10 Land Use and RSF zoning to Office Land Use and O-35 zoning. If expansion is approved, this will become two parcels.

Agent: Taud Hume, Parsons/Burnett/Bjordahl/Hume LLP

Committee Consideration for Expansion: Proposed expansion to include a parcel located to the east, across the alley, which is also "split zoned". This is parcel 36311.0503. Staff recommend that if this proposal is forwarded for consideration, the land use plan map and zoning change be the same as for the other site – RSF to O-35 zoning.

Estimated costs: \$1,414 notification

- Without including staff time
- Notification via US Mail to estimated 14 property owners, taxpayers, residents 2 times (notice of application and PC Hearing) (expansion to 7 additional parcels – estimate 2x7)
 - Estimate \$14.00
- Signage on property – signs must be located on one Right of Way (N Whitehouse St), two times (cost per sign approximately \$700)
 - Signage estimate \$ 1400. (2 x 700)

Exhibit C

Z2018-253COMP

Text Amendment Proposal, Chapter 2, Section 2.1

Sponsored by Council Member Lori Kinnear

February 14, 2018



SPOKANE CITY COUNCIL
808 W. Spokane Falls Blvd.
Spokane, WA 99201-3335
(509) 625-6255

Lori Kinnear
Council Member District 2

Dear Council President and Fellow Council Members:

Council Member Kinnear, as sponsor, is forwarding for your consideration an amendment to Section 2.1, of Chapter 2 of the City's Comprehensive Plan to include a reference to the Joint City Council-Administration Six-Year Strategic Plan adopted by resolution number (2017-0101), amended or adopted thereafter, with the addition of the following language to follow the last paragraph:

In addition to these regulatory tools city staff will implement the tenets of the plan in their projects and programs. Because the Comprehensive Plan is designed to help the community realize a shared vision of the future, as the community, environment, and legal framework changes over time so should the community's guiding document. To ensure that the Comprehensive Plan functions as a living document, evolving to meet the needs of the community, the Joint Administration-Council Strategic Plan will serve as a strategic implementation guide to help direct the actions and priorities of elected officials and city staff. The Strategic Plan is designed to direct attention to projects that implement the goals and policies of the Comprehensive Plan.

The following criteria have been met:

- A. The proposed amendment to the comprehensive plan is consistent with any recent state or federal legislative actions, or changes to state or federal regulations, such as changes to the Growth Management Act, or new environmental regulations.
- B. The proposed text change is consistent with the goals and purposes of the state Growth Management Act.
- C. This proposal does not require a financial commitment
- D. This proposal has no funding requirements or service level standards.
- E. The proposed text amendment seeks to increase internal consistency between the comprehensive plan, and the Strategic Plan. The proposed changes to the text of the comprehensive plan do not require corresponding adjustments to the zoning map or implementation regulations in the Spokane Municipal Code.
- F. The proposed text amendment will maintain regional consistency.
- G. The proposed text amendment has no land use impacts.

Additionally this text amendment is procedural in nature and categorically exempt from SEPA review per WAC 197-11-800(19).

Respectfully Submitted,

A handwritten signature in blue ink that reads "Lori Kinnear".

Lori Kinnear
City Council Member, District 2

Spokane City Council – Ad Hoc Committee

FINDINGS OF FACT, CONCLUSIONS, and RECOMMENDATION

Comprehensive Plan Amendment Application No. Z2017-612COMP

- A. The Washington State Legislature passed the Growth Management Act (“GMA”) in 1990, requiring among other things, the development of a Comprehensive Plan (RCW 36.70A).
- B. The City of Spokane adopted a Comprehensive Plan in May of 2001, and substantially amended it in 2017, in compliance with the requirements of the GMA, and has provided for periodic updates and annual amendments, as allowed under GMA.
- C. Under GMA, comprehensive plans generally may be amended no more frequently than once per year. All amendment proposals must be considered concurrently, in order to be evaluated for their cumulative effect. Also, the amendment period should be timed to coordinate with budget deliberations.
- D. In 2017, the City Council adopted Ordinance No. C-35536 (Aug. 21, 2017), which established a threshold review process, to be undertaken by an ad hoc City Council committee.
- E. The ad hoc review committee reviews comprehensive plan amendment applications at the threshold review stage for compliance with six specific criteria. See SMC 17G.020.026.
- F. The ad hoc committee met on February 7, 2018 at 2:00 p.m. in the City Council Chambers, and reviewed applications Z2017-612COMP, Z2017-622COMP, Z2017-623COMP, Z2017-624COMP and Z2017-630COMP (the “Applications”).
- G. Notice of the ad hoc committee meeting was provided via email to affected city neighborhood council leadership on January 24, 2018.
- H. Applicants were given an opportunity to address the ad hoc committee regarding their respective applications.

CONCLUSIONS:

Based upon the application materials, staff presentation, applicant testimony and public comments received, the City Council ad hoc committee finds that each of the Applications meet the threshold review criteria, as detailed in SMC 17G.020.026:

1. Each of the Applications present a matter appropriately addressed through the comprehensive plan.
2. None of the Applications raise policy or land use issues that are more appropriately addressed by an ongoing work program approved by the City Council or by a neighborhood or subarea planning process.
3. Each of the proposed amendments can be reasonably reviewed within the resources and time frame of the Annual Comprehensive Plan Amendment Work Program.
4. The ad hoc committee asked staff to provide the City Council with information regarding the possible geographic expansion of Applications Z2017-622COMP, Z2017-624COMP and Z2017-630COMP.
5. Each of the proposed amendments is consistent with current general policies in the comprehensive plan for site-specific amendment proposals. The proposed amendment is also consistent with policy implementation in the Countywide Planning Policies, the GMA, or other state or federal law, and the Washington Administrative Code.
6. None of the proposed amendments are the same as or substantially similar to a proposal that was considered in the previous year's threshold review process, but was not included in the Annual Comprehensive Plan Amendment Work Program.

RECOMMENDATION: Based on the foregoing findings and conclusions, the ad hoc committee voted unanimously to recommend that the City Council include each of the Applications in the City's 2018 Annual Comprehensive Plan Amendment Work Program and further recommended unanimously that the City Council consider geographic expansion of Applications Z2017-622COMP, Z2017-624COMP and Z2017-630COMP.

Ben Stuckart



Council President

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

03/26/2018

<u>Date Rec'd</u>	3/15/2018
<u>Clerk's File #</u>	RES 2018-0022
<u>Renews #</u>	
<u>Cross Ref #</u>	OPR 2016-0267
<u>Project #</u>	
<u>Bid #</u>	
<u>Requisition #</u>	CR 19150

<u>Submitting Dept</u>	INNOVATION & TECHNOLOGY
<u>Contact Name/Phone</u>	MICHAEL 625-6468
<u>Contact E-Mail</u>	MSLOON@SPOKANECITY.ORG
<u>Agenda Item Type</u>	Resolutions
<u>Agenda Item Name</u>	5300 JOURNAL TECH JUSTWARE ANNUAL 2018

Agenda Wording

Resolution declaring Journal Technologies, Inc. as a sole source for annual support and upgrades of Justware Case Mgmt Software and the subscription of Business Intelligence and authorizing staff to execute a contract with Journal Technologies, Inc.

Summary (Background)

This contract combines the annual maintenance and support for City Prosecutor, Probation, Public Defender, and Municipal Court. Using the same case management software package with custom modules designed specifically for the various agencies, improves efficiency and aids in establishing consistency in case counting methodology and reporting across the various agencies, in addition to allowing each agency to use the City's existing document imaging system to move towards a paperless environment.

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

Expense	\$ 117,327.76 inc tax	# 5300-73300-18850-54820
Select	\$	#
Select	\$	#
Select	\$	#

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	SLOON, MICHAEL	<u>Study Session</u>	Fin Com 3/19/18
<u>Division Director</u>	FINCH, ERIC	<u>Other</u>	
<u>Finance</u>	BUSTOS, KIM	Distribution List	
<u>Legal</u>	ODLE, MARI	Accounting - ywang@spokanecity.org	
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	Contract Accounting - mdoval@spokanecity.org	
<u>Additional Approvals</u>		Legal - modle@spokanecity.org	
<u>Purchasing</u>		Purchasing - cwahl@spokanecity.org	
<u>CITY COUNCIL</u>	MCDANIEL, ADAM	IT - itadmin@spokancity.org	
		Taxes & Licenses	
		bstocks@journaltech.com	



Continuation of Wording, Summary, Budget, and Distribution

Agenda Wording

\$117,327.76 including tax. April 1, 2018 through March 31, 2019. \$

Summary (Background)

Fiscal Impact

Select \$

Select \$

Budget Account

#

#

Distribution List

RESOLUTION 2018-0022

A RESOLUTION declaring JustWare by Journal Technologies, Inc. as a sole source for Legal Case Management Systems software and authorizing staff to negotiate and execute a contract with Journal Technologies, Inc., for the procurement at a cost of \$117,327.76 including tax.

WHEREAS the City Prosecutor's Office, City Public Defender's Office, Municipal Court and City Probation Department all already use JustWare to manage their criminal justice responsibilities and caseload for the City of Spokane; and

WHEREAS the City Prosecutor's Office, City Public Defender's Office, Municipal Court and City Probation Department has gone entirely paperless in an effort to reduce costs, increase the efficiency and speed of case handling; and

WHEREAS the contract before the City will include API (Application Programming Interfaces) software to link the City Prosecutor's Office, City Public Defender's Office, Municipal Court and City Probation Department to other participating offices and departments within the City as well as state agencies to speed the receipt and handling of criminal cases before it and between one another; and

WHEREAS extensive experience exists with this program and its vendor and there are city employees well trained in the program's requirements, capabilities, hardware needs, and the business requirements of the Offices, Department, and the Court; and

BE IT RESOLVED by the City Council for the City of Spokane that it declares JustWare Municipal Court by Journal Technologies, Inc. a sole source and authorizes its purchase from Journal Technologies, Inc. without public bidding at a cost of \$117,327.76, including sales tax.

ADOPTED BY THE CITY COUNCIL ON _____

City Clerk

Approved as to form:

Assistant City Attorney

Invoice

Page: 1

JOURNAL TECHNOLOGIES, INC.
843 South 100 West
Logan, UT 84321 USA
accounting@journaltech.com
Phone: 435-713-2100

Number: 0000003675

Date: 2/16/2018

Salesperson:

Customer: 3212

Please make check payable to: Journal Technologies, Inc., 915 E. 1st Street, Los Angeles, CA 90012

Sold To	Ship To
SPOKANE MUNICIPAL PROSECUTORS, PROBATION 808 W Spokane Falls Blvd Spokane, WA 99201 USA	SPOKANE MUNICIPAL PROSECUTORS, PROBATION 808 W Spokane Falls Blvd Spokane, WA 99201 USA

Customer P.O.	Ship Via	F.O.B	Terms
3212-S			Net 30 days

Description	Qty Shipped	Price	Amount
Support: 69 JustWare, 2 API, Pro.Prob.Pubd.	1.00	49,651.00	49,651.00
Taxes and Other Fees 8.8% Pros., Prob., Pubd.	1.00	4,369.28	4,369.28
Support: 46 JustWare, API, Web, Crt.	1.00	54,844.00	54,844.00
Taxes and Other Fees 8.8% Crt.	1.00	4,826.27	4,826.27
BI Annual Subscription 25 Hours Pros., Prob., Pubd., Crt.	1.00	3,343.00	3,343.00
Taxes and Other Fees 8.8% Pros., Prob., Pubd., Crt.	1.00	294.21	294.21
LAST ITEM			
Annual Sup Renewal 04/01/2018-03/31/2019			
Subtotal			117,327.76
Freight			0.00
Sales Tax			0.00
Trade Discount			0.00
Payment/Credit Amount			0.00
Balance			117,327.76

Briefing Paper

Finance & Administration Committee

Division & Department:	Innovation and Technology Services Division
Subject:	Journal Technologies, Inc. Annual Support and Upgrades
Date:	March 1, 2018
Author (email & phone):	Michael Sloon, msloon@spokanecity.org , 625-6468
City Council Sponsor:	
Executive Sponsor:	Eric Finch and Michael Sloon
Committee(s) Impacted:	Finance and Administration Committee
Type of Agenda item:	<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Discussion <input type="checkbox"/> Strategic Initiative
Alignment: (link agenda item to guiding document – i.e., Master Plan, Budget, Comp Plan, Policy, Charter, Strategic Plan)	ITSD – Annual Support and Upgrades of Justware Case Management Software and annual subscription of Business Intelligence.
Strategic Initiative:	
Deadline:	March 31, 2019
Outcome: (deliverables, delivery duties, milestones to meet)	Ongoing support
Background/History: <i>This contract combines the annual maintenance and support for City Prosecutor, Probation, Public Defender, and Municipal Court. Using the same case management software package with custom modules designed specifically for the various agencies, improves efficiency and aids in establishing consistency in case counting methodology and reporting across the various agencies, in addition to allowing each agency to use the City's existing document imaging system to move towards a paperless environment.</i>	
Executive Summary: <ul style="list-style-type: none"> • Requesting \$117,327.76 including tax for the renewal of this contract. • 2017 contract amount was \$113,816.48. • Utilizing budget account # 5300-73300-18850-54820. <p>This 2.99% increase is consistent with the annual license and maintenance fees established in the Support Service Agreement from Journal Technologies, Inc. to City of Spokane.</p>	
Budget Impact: Approved in current year budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Annual/Reoccurring expenditure? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If new, specify funding source: Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impact: Consistent with current operations/policy? <input type="checkbox"/> Yes <input type="checkbox"/> No Requires change in current operations/policy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Specify changes required: Known challenges/barriers:	

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

03/26/2018

Date Rec'd

3/12/2018

Clerk's File #

RES 2018-0023

Renews #Submitting Dept

DEVELOPER SERVICES CENTER

Contact Name/Phone

ELDON BROWN 625-6305

Contact E-Mail

EBROWN@SPOKANECITY.ORG

Agenda Item Type

Resolutions

Agenda Item Name

4700 - RESOLUTION FOR ERIE-MLK STREET VACATION

Cross Ref #Project #Bid #Requisition #Agenda Wording

Resolution setting hearing before the City Council for April 30, 2018. As part of the City's MLK Way Street Project the City wishes to initiate by resolution the vacation of portions of Erie Street.

Summary (Background)

Staff requests that City Council set a public hearing on the vacation.

Fiscal Impact

Grant related? NO

Budget Account

Public Works? NO

Neutral \$

#

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

BECKER, KRIS

Study SessionDivision Director

KINDER, DAWN

OtherFinance

BUSTOS, KIM

Distribution ListLegal

RICHTMAN, JAMES

ebrown@spokanecity.org

For the Mayor

DUNIVANT, TIMOTHY

edjohnson@spokanecity.org

Additional Approvals

kbecker@spokanecity.org

Purchasing

sbishop@spokanecity.org

CITY COUNCIL

MCDANIEL, ADAM

RESOLUTION NO. 2018-0023

A RESOLUTION INITIATING THE VACATION OF CITY RIGHT-OF-WAY AND SETTING A HEARING.

WHEREAS, the City is engaged in the construction of the Martin Luther King Jr. Way (Riverside Extension) Project, as set forth in Public Works File Number 2005264 & 2015078 (the "Project");

WHEREAS, as part of the Project, a small segment of Erie Street will be realigned which will render certain portions of Erie Street surplus to the City's right-of-way needs, as identified as Proposed Vacation Area 1 and Proposed Vacation Area 2 in Exhibit "A"; and

WHEREAS, pursuant to Chapter 35.79 RCW, the City may initiate by resolution the vacation of any street or portion thereof when it is in the public interest; and

WHEREAS, the City Council finds it in the public interest to vacate those portions of Erie Street identified in Exhibit "A" upon completion of the Project, and desires to provide posted and mailed notice to owners of lots, tracts or parcels of property abutting upon such portions of Erie Street, as shown on the rolls of the county treasurer and set a public hearing in order to act upon the vacation; and

NOW, THEREFORE - - it is hereby resolved by the Spokane City Council;

1. The Spokane City Council hereby initiates the vacation of those portions of Erie Street identified in Exhibit "A" by Resolution.
2. The hearing on the proposed resolution will be held in front of the Spokane City Council at 6:00 P.M. or as soon thereafter as possible on April 30, 2018, and the City Clerk of the City of Spokane is instructed to proceed with all proper notice according to State law.

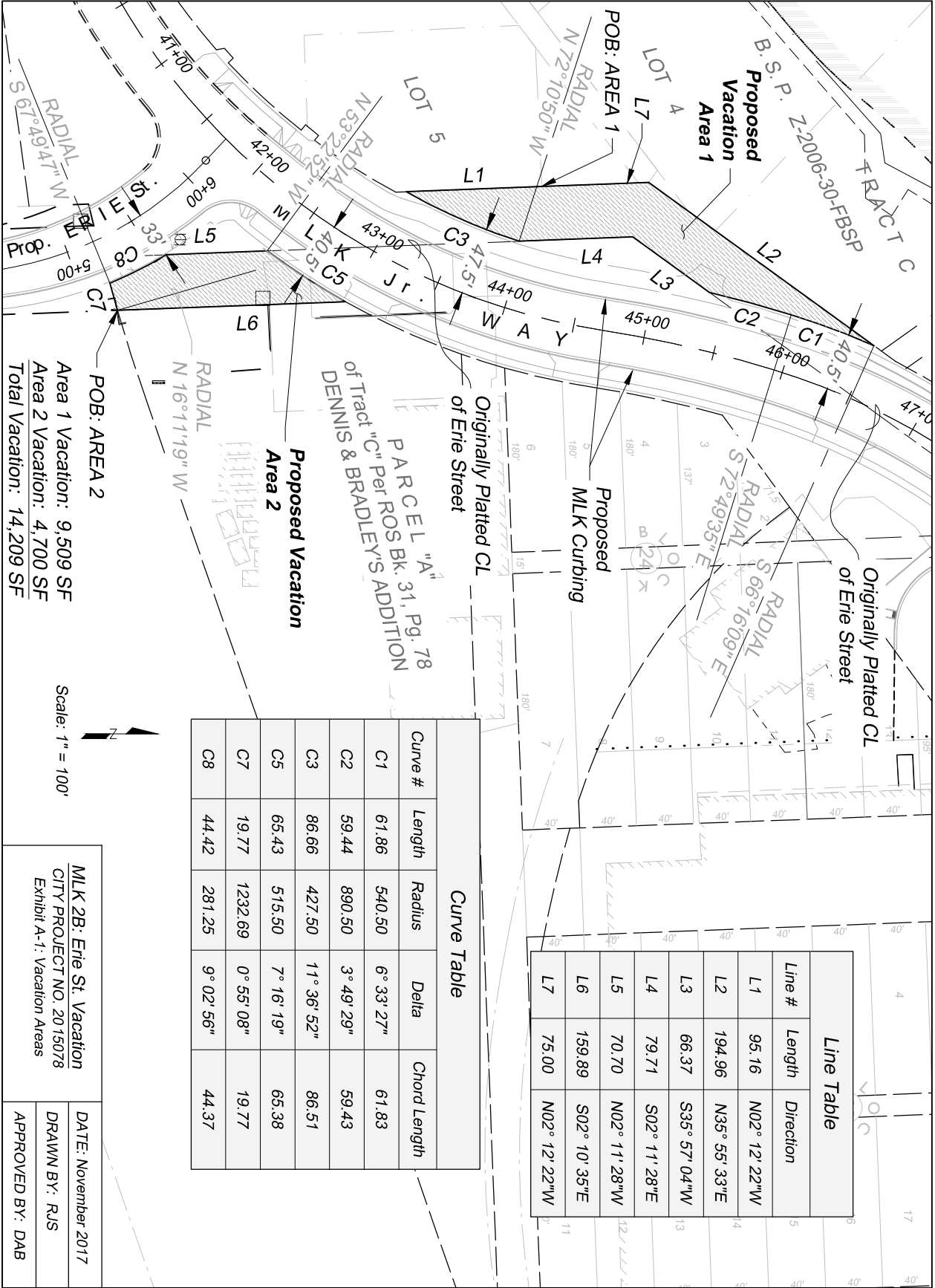
ADOPTED by the Spokane City Council this _____ day of _____, 20____.

City Clerk

Approved as to form:

Assistant City Attorney

Exhibit A





**CITY OF SPOKANE
PLANNING & DEVELOPMENT**

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

**STREET VACATION REPORT
March 5, 2018**

LOCATION: Portions of Erie St for MLK Way Project

PROPONENT: City of Spokane

PURPOSE: To establish new roadway.

HEARING: April 30, 2018

REPORTS:

AVISTA UTILITIES – I have reviewed the vacation request and Avista serves the area with gas and electric distribution. Avista has existing facilities in both proposed vacation areas 1 and 2, therefore requests an easement be reserved for serving utilities in both proposed vacation area.

COMCAST – Comcast has reviewed the vacation request. Comcast has no objection with the vacation.

CENTURYLINK – CenturyLink has no facilities in the area of S Erie St. Century Link has no issues with vacations and land acquisitions.

INLAND POWER & LIGHT – Inland Power & Light has no facilities in this MLK area.

XO COMMUNICATIONS - XO Comm. is fine with this proposal.

ASSET MANAGEMENT - CAPITAL PROGRAMS – No comments

FIRE DEPARTMENT – Fire has no issue with this Right-of-Way Vacation

NEIGHBORHOOD SERVICES - No comments

PARKS DEPARTMENT - No comments

PLANNING & DEVELOPMENT – DEVELOPER SERVICES – It appears that one of the ROW vacation areas are over both a 69” CSO Outfall and a 60” interceptor. It seems like the easements for the sewer would negate the usefulness of the vacation area. There may also be a 8” water main that also encroaches a bit on the same area.

PLANNING & DEVELOPMENT – TRAFFIC DESIGN – I have no issues with this street vacation

PLANNING & DEVELOPMENT – PLANNING – No concerns

POLICE DEPARTMENT - No comments

SOLID WASTE MANAGEMENT - No comments

STREET DEPARTMENT – No issues for streets

WASTEWATER MANAGEMENT - WWM has multiple significant assets in both areas that are being called to vacate. Vacation area 1 has both a 69” and 60” sanitary pipe running through it. Vacation area 2 has a 36” sanitary pipe running through it. The 60” pipe in particular is very deep at around 20-25’ deep.

The only way we can agree to this vacation is if the city retains an easement over the full area of the proposed vacation sites. This easement would have to specify no buildings be constructed within it and must also include complete access for both maintenance and inspection equipment. As is typical any and all storm runoff would have to be maintained and treated on site.

I would like to add that the “maintenance” of the pipelines be allowed by an easement must specifically include excavation as necessary. We (WWM) would like to review/comment on such an easement wording prior to approval.

WATER DEPARTMENT – No comments

BICYCLE ADVISORY BOARD – No comments

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

1. An easement as requested by Avista Utilities, CenturyLink, Comcast, and the City of Spokane shall be retained to protect existing and future utilities.

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

A handwritten signature in black ink, reading "Eldon W. Brown". The signature is written in a cursive style with a large, stylized 'E' and a long, sweeping underline.

EDJ/edj

h:\dsc\permitting\stvac\erie - mlk\report.docx

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

03/26/2018

Date Rec'd

3/12/2018

Clerk's File #

RES 2018-0024

Renews #Submitting Dept

CITY ATTORNEY

Contact Name/Phone

NATHANIEL J. 625-6288

Contact E-Mail

NODLE@SPOKANECITY.ORG

Agenda Item Type

Resolutions

Agenda Item Name

SETTLEMENT RESOLUTION

Cross Ref #Project #Bid #Requisition #Agenda Wording

Resolution approving claim of Robert O. Swearingen, arising out of an incident on or about December 6, 2017.

Summary (Background)

This claim was settled through negotiations.

Fiscal Impact

Grant related? NO

Budget Account

Public Works? NO

Expense \$ \$87,709.23

5800-00000-00000-00000

Select \$

#

Select \$

#

Select \$

#

ApprovalsCouncil NotificationsDept Head

PICCOLO, MIKE

Study SessionDivision DirectorOther

Executive Session

Finance

BUSTOS, KIM

Distribution List

Legal

PICCOLO, MIKE

nodle@spokanecity.org

For the Mayor

DUNIVANT, TIMOTHY

dstragier@spokanecity.org

Additional ApprovalsPurchasingCITY COUNCIL

MCDANIEL, ADAM

RISK MANAGEMENT

DUNIVANT, TIMOTHY

RESOLUTION RE SETTLEMENT OF
CIVIL CLAIM AGAINST CITY OF SPOKANE

WHEREAS, a claim for damages was filed with the City of Spokane by Robert O. Swearingen on January 3, 2018, arising out of an incident on or about December 6, 2017, in the City of Spokane, as more fully described in the claim for damages; and

WHEREAS, the City has determined to resolve all claims with Claimant and any third parties who may claim a subrogated interest against the City, its officers, agents, employees and contractors, for a payment of EIGHTY-SEVEN THOUSAND SEVEN HUNDRED AND NINE DOLLARS AND 23/100 (\$87,709.23).

WHEREAS, Claimant has agreed to accept said payment and in return to release any and all claims against the City of Spokane.

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

1. The City of Spokane authorizes that payment in the amount of EIGHTY-SEVEN THOUSAND SEVEN HUNDRED AND NINE DOLLARS AND 23/100 (\$87,709.23), to be paid to Claimant, without admission of fault or liability, as a full settlement and compromise of the above-referenced litigation and/or claim, and in exchange the Claimant will provide a signed release fully extinguishing all claims by Claimant in connection with the incident and pledging to fully protect and indemnify the City of Spokane, its officers, agents, employees, contractors, and insurers, against all loss or liability in connection with said claim.

PASSED the City Council this _____ day of _____, 2018.

City Clerk

Approved as to form:

Assistant City Attorney

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

03/26/2018

<u>Date Rec'd</u>	3/8/2018
<u>Clerk's File #</u>	ORD C35596
<u>Renews #</u>	

<u>Submitting Dept</u>	DEVELOPER SERVICES CENTER	<u>Cross Ref #</u>	
<u>Contact Name/Phone</u>	ELDON BROWN 625-6305	<u>Project #</u>	
<u>Contact E-Mail</u>	EBROWN@SPOKANECITY.ORG	<u>Bid #</u>	
<u>Agenda Item Type</u>	Final Reading Ordinance	<u>Requisition #</u>	
<u>Agenda Item Name</u>	4700 - ORDINANCE FOR 7TH AND CHESTNUT STREET VACATION		

Agenda Wording

Ordinance vacating a portion of 7th Avenue and Chestnut Street. (Cliff-Cannon Neighborhood Council)

Summary (Background)

City Council considered the above vacation petition at its legislative session held January 22, 2018.
This ordinance was read for the first time on February 26, 2018.

<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>	WEST, JACQUE	<u>Study Session</u>
<u>Division Director</u>	TRAUTMAN, HEATHER	<u>Other</u> P.C.E.D. 8/28/17
<u>Finance</u>	DOVAL, MATTHEW	<u>Distribution List</u>
<u>Legal</u>	RICHMAN, JAMES	ebrown@spokanecity.org
<u>For the Mayor</u>	SANDERS, THERESA*	jeliason@spokanecity.org
<u>Additional Approvals</u>		sbishop@spokanecity.org
<u>Purchasing</u>		htrautman@spokanecity.org
<u>CITY COUNCIL</u>	MCDANIEL, ADAM	

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

ORDINANCE NO. C35596

An ordinance vacating a portion of 7th Avenue and Chestnut Street located north of the established 7th Avenue roadway west of Cannon Street further described in Section 1 below.

WHEREAS, a petition for the vacation of a portion of 7th Avenue and Chestnut Street located north of the established 7th Avenue roadway west of Cannon Street further described in Section 1 below has been filed with the City Clerk representing 100% of the abutting property owners, and a hearing has been held on this petition before the City Council as provided by RCW 35.79; and

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

The City of Spokane does ordain:

Section 1. That a portion of 7th Avenue north of the established 7th Avenue roadway west of Cannon Street along with a portion of Chestnut Street located north of 7th Avenue to the previous vacated Chestnut Street (Ordinance C17505) as further described:

A parcel of land located adjacent to Block 50 of the plat of CANNON'S ADDITION, recorded in Volume "B" of Plats, Page 52, in the Northwest Quarter of the Southeast Quarter of Section 24, Township 25 North, Range 42 East, Willamette Meridian, Spokane County, Washington, more particularly described as follows:

Beginning at the southwest corner of Lot 6, Block 50, of the plat of CANNON'S ADDITION, from which a point on the south line of Lot 4, Block 50, of the plat of CANNON'S ADDITION, bears North 89°00'36" East, a distance of 137.80 feet, as shown on Record of Survey, recorded in Book 158 of Surveys, Page 64, records of Spokane County, Washington;

Thence South 89°00'36" West, a distance of 51.36 feet to the west line of Block 8 of the plat of COEUR D'ALENE ADDITION TO SPOKANE, recorded in Volume "C" of Plats, Page 82;

Thence South 01°30'18" East along the west line of Block 8 of the plat of COEUR D'ALENE ADDITION TO SPOKANE, a distance of 42.36 feet;
Thence leaving the west line of Block 8 of the plat of COEUR D'ALENE ADDITION TO SPOKANE North 72°18'36" East, a distance of 95.20 feet;

Thence North 80°16'21" East, a distance of 98.74 feet to the south line of Block 50 of the plat of CANNON'S ADDITION;

Thence South 89°00'36" West along the south line of Block 50 of the plat of CANNON'S ADDITION, a distance of 137.80 feet to the Point of Beginning;

Containing 3,354.9 square feet or 0.077 acres, more or less

is hereby vacated. Parcel number not assigned.

Section 2. An easement agreement with Avista Utilities is to be executed upon final reading of this ordinance.

Section 3. An easement, described below, is reserved and retained over and through a portion of the vacated area for the utility services of the City of Spokane for the construction, repair, and maintenance of existing and future utilities. The easement area more particularly described as:

A parcel of land located in and adjacent to Block 50 of the plat of CANNON'S ADDITION, recorded in Volume "B" of Plats, Page 52, in the Northwest Quarter of the Southeast Quarter of Section 24, Township 25 North, Range 42 East, Willamette Meridian, Spokane County, Washington, more particularly described as follows:

Commencing at the southwest corner of Lot 6, Block 50, of the plat of CANNON'S ADDITION, from which a point on the south line of Lot 4, Block 50, of the plat of CANNON'S ADDITION, bears North 89°00'36" East, a distance of 137.80 feet, as shown on Record of Survey, recorded in Book 158 of Surveys, Page 64, records of Spokane County, Washington;

thence South 89°00'36" West, a distance of 51.36 feet to the east line of Block 8 of the plat of COEUR D' ALENE ADDITION TO SPOKANE, recorded in Volume "C" of Plats, Page 82;

thence South 01°30'18" East along said east line of Block 8 of the plat of COEUR D' ALENE ADDITION TO SPOKANE, a distance of 36.98 feet to the **Point of Beginning**;

thence continuing South 01°30'18" East along said east line of Block 8 of the plat of COEUR D' ALENE ADDITION TO SPOKANE, a distance of 5.38 feet;

thence leaving the east line of Block 8 of the plat of COEUR D' ALENE ADDITION

TO SPOKANE North 72°18'36" East, a distance of 95.20 feet to a point from this point forward referred to as Point 'A';

thence North 80°16'21" East, a distance of 98.74 feet to the south line of Block 50 of the plat of CANNON'S ADDITION;

thence South 89°00'36" West along the south line of Block 50 of the plat of CANNON'S ADDITION, a distance of 27.36 feet;

thence leaving said south line of Block 50 of the plat of CANNON'S ADDITION, South 76°57'17" West, a distance of 71.82 feet to Point 'A';

thence South 75°27'50" West, a distance of 93.84 feet to the **Point of Beginning**;

Passed the City Council _____

Council President

Attest: _____
City Clerk

Approved as to Form:

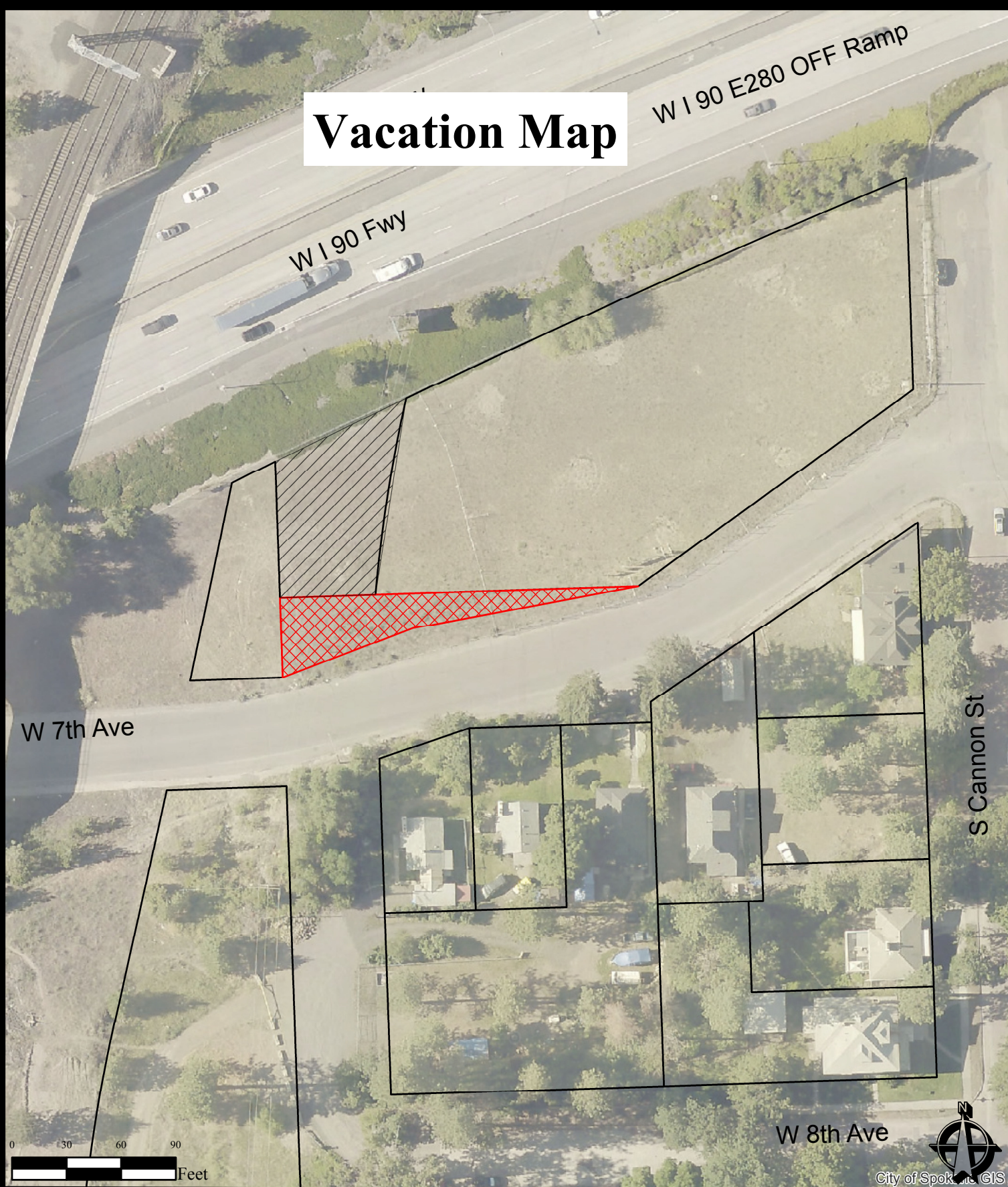
Assistant City Attorney

Mayor

Date: _____

Effective Date: _____



Vacation Map



**Right of Way Description:
A portion of 7th Avenue and
Chestnut St. right-of-ways**

THIS IS NOT A LEGAL DOCUMENT:
The information shown on this map is compiled
from various sources and is subject to constant
revision. Information shown on this map should
not be used to determine the location of facilities
in relationship to property lines, section lines,
streets, etc.

Legend

-  Previously Vacated by Ord C17505
-  Vacation Area





**CITY OF SPOKANE
PLANNING & DEVELOPMENT**

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

**STREET VACATION REPORT
December 11, 2017**

LOCATION: 7th & Chestnut

PROPONENT: Namva Chan

PURPOSE: Site Development

HEARING: February 26, 2018

REPORTS:

AVISTA UTILITIES – Avista currently operates a 115 kilovolt Transmission line through this right of way. Avista will need an easement reserved over and across the proposed vacation area.

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

CENTURYLINK – CenturyLink does not have any facilities in this location.

ASSET MANAGEMENT - CAPITAL PROGRAMS – No Comments

FIRE DEPARTMENT - No Comments

NEIGHBORHOOD SERVICES - No Comments

PARKS DEPARTMENT - No Comments

PLANNING & DEVELOPMENT – DEVELOPER SERVICES – There appears to be no city utilities in the proposed vacation area, however there is a sewer line which looks to be very close to the property. We recommend that a portion of the vacation area be included in an easement or removed from the vacation request.

PLANNING & DEVELOPMENT – TRAFFIC DESIGN – No Comments

PLANNING & DEVELOPMENT – PLANNING – No Concerns

POLICE DEPARTMENT – No issues from the Police Department.

SOLID WASTE MANAGEMENT - No Comments

STREET DEPARTMENT – No objection

WASTEWATER MANAGEMENT – Approved provided the sewer line at the south end near 7th is located and a 30' wide no build easement be maintained over it if it is within the vacation area. All onsite runoff must be maintained onsite.

WATER DEPARTMENT - No Comments

BICYCLE ADVISORY BOARD - No Comments

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

1. An easement as requested, Avista Utilities and the City of Spokane, shall be retained to protect existing and future utilities.
2. Adequate emergency vehicle access shall be maintained to existing and future buildings.
3. The proponent shall pay to the City of Spokane the assessed valuation for the vacated land as defined by the latest information from the County Assessor's Office. This is calculated to be \$10,413.99 and is to be deposited to Budget Account #3200 49199 99999 39510.
4. That the final reading of the vacation be held in abeyance until all of the above conditions are met and that the above conditions are met by December 31, 2019.



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

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

03/26/2018

<u>Date Rec'd</u>	3/14/2018
<u>Clerk's File #</u>	ORD C35607
<u>Renews #</u>	

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

Agenda Wording

Vacation of the east 15 feet of S. Riverton from Sinto to Sharp; and the alley between Sinto and Sharp, from South Riverton to Helena.

Summary (Background)

At its legislative session held on February 26, 2018, the City Council set a hearing for the vacation of the alley between Sinto Ave and Sharp Ave, from South Riverton Ave to Helena St; and the east 15 feet of South Riverton Ave from Sinto Ave to Sharp Ave. Staff has solicited responses from all concerned parties.

<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>Study Session</u>
<u>Division Director</u>	BECKER, KRIS	<u>Other</u> P.I.E.S 1/22/18
<u>Finance</u>	BUSTOS, KIM	<u>Distribution List</u>
<u>Legal</u>	RICHMAN, JAMES	ebrown@spokanecity.org
<u>For the Mayor</u>	DUNIVANT, TIMOTHY	edjohnson@spokanecity.org
<u>Additional Approvals</u>		sbishop@spokanecity.org
<u>Purchasing</u>		kbecker@spokanecity.org

City of Spokane
Planning & Development Services
808 West Spokane Falls Blvd.
Spokane, WA 99201-3343
(509) 625-6700

ORDINANCE NO. C35607

An ordinance vacating the alley between Sinto Avenue and Sharp Avenue, from South Riverton Avenue to Helena Street; and the east 15 feet of South Riverton Avenue from Sinto Avenue to Sharp Avenue

WHEREAS, a petition for the vacation of the alley between Sinto Avenue and Sharp Avenue, from South Riverton Avenue to Helena Street; and the east 15 feet of South Riverton Avenue from Sinto Avenue to Sharp Avenue has been filed with the City Clerk representing 100% of the abutting property owners, and a hearing has been held on this petition before the City Council as provided by RCW 35.79; and

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

The City of Spokane does ordain:

Section 1. That the alley between Sinto Avenue and Sharp Avenue, from South Riverton Avenue to Helena Street; and the east 15 feet of South Riverton Avenue from Sinto Avenue to Sharp Avenue is hereby vacated. Parcel number not assigned.

Section 2. An easement is reserved and retained over and through the alley in Block 26 of the Subdivision of School Section 16 along with the extension of the alley extended west from the east line of Block 26, west a distance of 15 feet for the utility services of Avista Utilities to protect existing and future utilities.

Section 3. An easement is reserved and retained over and through the alley in Block 26 of the Subdivision of School Section 16 for the utility services of CenturyLink and Comcast to protect existing and future utilities.

Passed the City Council _____

Council President

Attest: _____
City Clerk

Approved as to Form:

Assistant City Attorney

Mayor

Date: _____

Effective Date: _____

\\cosfile4\bds\dsc\permitting\stvac\s riverton-sinto to sharp\ordinance.docx

P1706995VACA

N South Riverton Ave

E Mission-Sinto Aly

E Sinto Ave

E Sharp-Sinto Aly

E Sharp Ave

N Helena St

E Boone-Sharp Aly

E Boone Ave

0 50 100 150 Feet



Right of Way Description:

**Vacation of the alley between Sinto and Sharp,
from South Riverton to Helena; and the east
15 feet of South Riverton from Sinto to Sharp**

Legend

 **Vacation Area**

THIS IS NOT A LEGAL DOCUMENT:
The information shown on this map is compiled
from various sources and is subject to constant
revision. Information shown on this map should
not be used to determine the location of facilities
in relationship to property lines, section lines,
streets, etc.





**CITY OF SPOKANE
PLANNING & DEVELOPMENT**

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

**STREET VACATION REPORT
January 31, 2018**

LOCATION: East 15 feet of S. Riverton from Sinto to Sharp; and the alley between Sinto and Sharp, from South Riverton to Helena.

PROPONENT: Yolanda Jones

PURPOSE: Increase lot size for development.

HEARING: March 26, 2018

REPORTS:

AVISTA UTILITIES – I have reviewed the proposed vacation and Avista has facilities in the area to be vacated. Avista is requesting a 16' wide easement in the vacated area to be reserved as indicated by the attached map.

COMCAST – Comcast has reviewed the vacation request. Enclosed is a map showing our cable plant in this area. As long as we have access to our plant, we have no problem with the vacation.

ZAYO COMMUNICATIONS GROUP – There are no Integra/ELI Facilities in your proposed work area.

CENTURYLINK – CenturyLink has an aerial attachment to an Avista Power pole in the alley that we would like to retain an easement for.

XO COMMUNICATIONS – XO Comm. is clear and has no interest concerning this property.

INLAND POWER – Inland Power has no utility facilities within the proposed area to be vacated.

ASSET MANAGEMENT - CAPITAL PROGRAMS – We would like to retain space along South Riverton Drive. The right of way is not consistent, but I think we would want a 50 feet width.

FIRE DEPARTMENT - No comments

NEIGHBORHOOD SERVICES - No comments

PARKS DEPARTMENT - No comments

PLANNING & DEVELOPMENT – DEVELOPER SERVICES – We typically only vacated that portion of the ROW which will leave an equal portion on the other side and still leave our minimum ROW (60'). South Riverton has a ROW of 75', that would mean typically we could only vacate 15' of ROW (7.5' on each side). However in this case the City owns the adjacent parcel to the west, so I guess we might be able to vacate 15 feet on the east side of the ROW bearing in mind that this puts the center line 7.5 feet closer to the river. There are no city utilities in the proposed vacation area.

PLANNING & DEVELOPMENT – TRAFFIC DESIGN – I see no issues with the vacation request.

PLANNING & DEVELOPMENT – PLANNING – No concerns

POLICE DEPARTMENT - No comments

SOLID WASTE MANAGEMENT - No comments

STREET DEPARTMENT – The City of Spokane Street Department does not have any objection to the vacation of the alley right of way. The City of Spokane Street Department does have concerns about the vacation of the street right of way for South Riverton. Vacation of right of way in this manner makes for an inconsistent right of way width, which can affect future plans and/or needs. Street Department asks that other, such as Planning, strongly consider any future needs that may apply to this location, especially since it is adjacent to the Spokane river and may apply to potential trail needs.

WASTEWATER MANAGEMENT – As typical with any vacation, on site run off for any vacated property must be maintained and treated on site. For this request specifically, the city maintains significant large storm and sewer mains in South Riverton. The sewer main is 42" and the storm main is 27". Before we would approve any such vacation, the exact location of each line should be determined. Because of the limited access presented by the river and the steep bank along the west side of these lines, combined with the depth of the mains, we would be opposed to any vacation that encroaches less than 30' on the east side of these mains. The vacation of the alley section is acceptable provided that all of the above criteria are followed.

WATER DEPARTMENT - No comments

BICYCLE ADVISORY BOARD - No comments

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

1. An easement as requested by Century Link and Comcast, across, over, and through the alley in Block 26 of the Subdivision of School Section 16 shall be retained to protect existing and future utilities.
2. An easement as requested by Avista, across, over, and through the alley in Block 26 of the Subdivision of School Section 16 along with the extension of the alley extended west from the east line of Block 26 West 15 feet shall be retained to protect existing and future utilities.
3. Plans for termination and closure of the alley must be submitted to Planning & Development for review and accepted and the closure work must be completed.
4. The proponent shall pay to the City of Spokane the assessed valuation for the vacated land as defined by the latest information from the County Assessor's Office. This is calculated to be \$12,040.74 and is to be deposited to Budget Account #3200 49199 99999 39510.
5. That the final reading of the vacation be held in abeyance until all of the above conditions are met and that the above conditions are met by January 1, 2019.

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

EDJ/edj

